

## TERMS AND CONDITIONS OF SALE

1. **Construction and Legal Effect:** Seller's sales to Buyer are limited to and expressly made conditional on Buyer's assent to these Terms and Conditions of Sale ("Terms") and those terms and conditions typed, handwritten or printed on the Seller's invoice and/or typed terms appearing on applicable Bills of Lading, all of which supersede all prior writings, representations, and negotiations relating to such sales and any additional or differing terms and conditions of Buyer. Any inconsistent supplemental conditions that may be supplied by Seller shall prevail over these printed Terms. Unless Buyer, prior to shipment of the subject materials, delivers a conspicuous written statement (the "Notice") directly to Seller's Vice President- Sales that expressly conditions Buyer's purchase of the materials upon Seller's assent to additional or differing terms and conditions specified by Buyer, then, the sending of an order to purchase Seller's materials (regardless of the form or manner of delivery of such order and whether or not such order is signed by Buyer) or Buyer's acceptance of the materials or payment for the materials shall operate as acceptance by Buyer of these Terms. Any Notice shall be construed as an acceptance of all terms and conditions on which the parties agree or which appear only in Seller's sales documents, and a counteroffer subject to written acceptance by Seller in respect of any additional or differing terms and conditions of Buyer. Such counteroffers may only be accepted in writing by Seller's Vice President- Sales. Seller's failure to so respond to such a counteroffer shall in no instance be construed as an acceptance thereof. This agreement cannot be modified except in writing signed by all parties hereto by their duly authorized agents.

2. **Action for Breach:** Any action by Buyer arising out of or relating to this agreement must be commenced within one (1) year after the cause of action has accrued.

3. **Prices:** Unless otherwise noted on Seller's invoice or in the Bill of Lading, all prices are net F.O.B. Seller's plant and are exclusive of all sales, use and property taxes. All clerical errors are subject to correction.

4. **Warranty and Limitation of Liability:** Seller warrants solely to Buyer only that materials furnished hereunder shall conform to applicable specifications, and no other warranty, except of title, shall be implied. Provided that Buyer gives notice in accordance with Article 13 below, if materials sold hereunder fail to conform to applicable specifications, demonstrated to Seller's satisfaction to have existed at the time of departure from Seller's plant, Seller, reserving the right to inspect materials, shall, at Seller's option, replace at Seller's expense F.O.B. Buyer's plant or give Buyer credit for materials determined by Seller to be non-conforming. Seller shall not be obligated to replace or provide credit for materials that shall have been subjected to alteration, contamination, improper maintenance or storage, misapplication, misuse, negligence or accident during or after shipment from Seller's plant or to materials to which Buyer's tests used an unrepresentative sample. The remedy set forth in this Article 4 shall be the sole and exclusive remedy available to Buyer for breach of warranty. In no event shall Buyer's remedy exceed the purchase price of the non-conforming materials, plus any transportation costs paid by Seller to supply replacement materials to Buyer as described above in this Article 4.

No employee or agent of Seller is authorized to make any warranty, statement, promise or understanding other than that which is specifically set forth in this Article 4. The provisions in any Technical Data sheet issued by Seller or attached hereto are descriptive only and are not warranties or representations.

THE WARRANTIES SET FORTH IN THIS ARTICLE 4 ARE THE ONLY WARRANTIES APPLICABLE TO THE MATERIALS SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE SPECIFICALLY DISCLAIMED AND SHALL NOT APPLY.

If the materials sold hereunder are resold by Buyer, without any alteration or processing by Buyer or incorporation into any of Buyer's products, Buyer agrees to include in the agreement for resale provisions which limit recoveries against Seller in accordance with this Article 4.

In no event shall Seller be liable for any direct, indirect, special, consequential or incidental damages under this agreement (including but not limited to any such damages arising out of late, partial and/or non delivery, the sale, use, furnishing of materials, or suitability for general or particular use). Buyer is solely responsible for determining suitability for use and Seller shall in no event be liable in this respect. The giving or failure to give advice, recommendations or safety warnings of any character by Seller shall not impose any liability upon Seller.

5. **Safety Warning, Handling and Buyer Indemnity:** PROLONGED INHALATION OF AIRBORNE SILICA CONTAINED IN SILICA SAND, CRISTOBALITE AND MATERIALS CONTAINING SILICA CAN CAUSE RESPIRATORY DISEASE INCLUDING SILICOSIS, A PROGRESSIVE, INCAPACITATING AND SOMETIMES FATAL DISEASE OF THE LUNGS. THE INTERNATIONAL AGENCY FOR RESEARCH ON CANCER HAS DETERMINED THAT SILICA DUST (WHICH INCLUDES CRYSTALLINE AND MICROCRYSTALLINE SILICA) AND CRISTOBALITE DUST CAN CAUSE LUNG CANCER IN HUMANS. THE RISK OF LUNG DISEASE IS INCREASED IF SMOKING IS COMBINED WITH SILICA RESPIRATION. CURRENT SAFETY DATA SHEET CONTAINING SAFETY INFORMATION IS AVAILABLE AND SHOULD BE CONSULTED.

PROPER RESPIRATORY PROTECTION, SILICA DUST PREVENTION AND APPLICABLE HEALTH AND SAFETY REGULATORY PROTOCOLS MUST BE STRICTLY OBSERVED AT ALL TIMES WHEN HANDLING MATERIALS SUPPLIED BY SELLER TO MINIMIZE RISK OF INJURY DUE TO INHALATION OF AIRBORNE SILICA.

SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY HARMFUL HEALTH EFFECTS WHICH MAY BE CAUSED BY EXPOSURE TO MATERIALS SUPPLIED BY SELLER. Buyer warrants that it will adequately warn all of its employees and customers who may come in contact with materials supplied by Seller

of the above described health hazards. Further, Buyer warrants it will fully comply with all applicable health and safety regulations and orders relating to the workplace handling of materials supplied by Seller. Buyer agrees that if the materials supplied by Seller are resold by Buyer, Buyer will include in its contract for resale provisions which include the full substance of those contained in this Article 5, including the foregoing safety warning.

Should Buyer breach any of the duties and warranties set forth within this Article 5, BUYER AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS from and against any and all liability, claims, and suits of any third party including but not limited to employees or insurers of Buyer, in any way, in whole or in part, alleged to have arisen out of exposure to or use of materials supplied by Seller. Further, upon acceptance of materials supplied by Seller or in the absence of any written notice of nonconformity of such materials as set forth in Article 13 below, BUYER AGREES TO FULLY RELEASE, INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS from and against any and all liability, claims, and suits it may possess or that may be asserted against Seller by any third party (including but not limited to contractors, subcontractors or property owners who have purchased, installed or otherwise used products or services of Buyer or have had such products incorporated into their property or products, or insurers of any of such parties or of the Buyer) in any manner arising in whole or in part, out of the production, marketing, distribution, sale, installation, use, exposure to or deficiencies of any products of the Buyer produced using the materials supplied by Seller. The provisions of this Article 5 shall survive the expiration, or earlier termination as provided herein, of this agreement.

6. **Credit and Payments:** Payment of amounts due hereunder shall be made by Buyer to Seller net thirty (30) days after shipment date. Seller reserves the right at any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion Buyer's financial condition so warrants. (Failure to pay an invoice at due date, at Seller's election, makes all subsequent invoices immediately due and payable, irrespective of terms, and Seller may withhold all subsequent deliveries under all outstanding orders until full payment is received). In the event of insolvency of Buyer, default in payment or repudiation by Buyer, or any breach of the terms of this agreement, Seller shall have the right to stop delivery of the materials and Buyer shall be liable to Seller for any and all liabilities incurred by Seller as a result thereof including, but not limited to liabilities to third parties, collection costs, attorneys' fees, and any associated costs incurred by Seller.

7. **Delivery:** Delivery and shipment dates are estimated dates only and are not guaranteed. In estimating such dates, no allowance has been made nor shall Seller be liable for any damages, losses, penalties, whether direct, indirect, special, incidental or consequential, resulting from Seller's failure or delay in performing, carriers' failure or delay in performing or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining materials or in Seller's mining and processing facility, acts of government affecting Seller directly or indirectly, bad weather, or any causes beyond Seller's control, or causes designated as acts of God or force majeure by any statute or court of law. In the event any failure or delay to ship materials continues for a period of ninety consecutive days, Buyer may cancel its order for the subject materials upon three days' written notice to Seller.

8. **Shipping:** Unless Buyer specifies otherwise in writing: (a) materials will be shipped as Seller may deem proper, and (b) routing and manner of shipment will be at Seller's discretion. If special routing instructions are given, Buyer agrees to pay additional handling and transportation charges, if any. Buyer shall comply with all applicable governmental laws and regulations governing import, export and trade of materials.

9. **Termination:** Seller may by written notice to Buyer terminate the whole or any part of this agreement in any one of the following circumstances: (1) if Buyer fails to remit payment within the time specified herein or any extension thereof authorized by Seller; or (2) if Buyer fails to perform any of the other provisions of this agreement so as to endanger performance of this agreement in accordance with its terms; or (3) if Buyer becomes insolvent, or engages in any act which reasonably causes the Seller to deem itself insecure. Seller shall not by reason of such termination be liable to Buyer for any compensation, reimbursement, or damages including, in particular, but not limited to any direct, indirect, special, incidental or consequential damages or losses whatsoever, on account of expenditures, investments, or commitments.

10. **Assignment:** The rights and obligations of Buyer hereunder may not be assigned without the prior written consent of Seller. Any purported assignment without Seller's prior written consent shall be void and of no force and effect.

11. **Non-Waiver:** Any failure by Seller to require full payment or strict performance by Buyer of any of the provisions herein or to exercise any right or remedy hereunder, shall not waive or diminish Seller's right thereafter to demand strict compliance therewith or with any other provision or to exercise any such right or remedy. Waiver of any default shall not waive any other default.

12. **Applicable Law:** This agreement shall be governed by and construed under the laws of the State of North Carolina, U.S.A., notwithstanding the principles, if any, that would otherwise govern the choice of applicable law. The 1980 United Nations Convention for the International Sale of Goods shall not apply to this agreement or Seller's sales to Buyer.

13. **Claims:** It shall be the duty of Buyer to thoroughly inspect the materials purchased from Seller. All claims of any nature relating to the materials subject to this agreement, including but not limited to claims of defect in materials, non-conformity or discrepancy in quantity or delivery date, shall be made in writing to Seller's Customer Service Department within fifteen (15) days of receipt of such materials by Buyer. Failure to make any such written claim within the above-prescribed period shall constitute waiver of any such claims and shall be deemed acceptance of such materials, quantities or delivery dates.