



PM-03425

## Terms and Conditions

1. Allowances shall be made by TMCI for shortages or errors or defective goods but only on the condition that: (a) the Buyer shall make a claim for shortages or errors in writing within 45 days of the invoice date, or, in the case of defective goods, within six (6) months of the invoice date of the goods giving rise to the claim and; (b) that TMCI shall be given an opportunity to conduct an adequate investigation, in such manner and at such place as TMCI may decide, of the facts upon which any claim for allowance is made. In the case of a shortage, error or defective goods, TMCI shall not be liable for more than the invoiced price of any shortage of, error in, or defective goods.
2. The prices shown on the face of this invoice are those in effect at the time of order. Pricing on subsequent orders will be the price that is in effect for each individual item at the time the subsequent order is placed and/or confirmed by TMCI. If TMCI is precluded from increasing, or is required to reduce, the price of any goods covered by this Agreement by any law, order, rule or regulation of any governmental agency or authority, then TMCI, at its sole discretion, may terminate this Agreement, or any part hereof, with respect to any undelivered goods.
3. If by reason of fire, earthquake, flood, explosion, accident, difference with or liability to secure workmen, lack of material, lack of facilities, Act of God, act of any public enemy, voluntary or involuntary compliance with any valid or invalid order, regulation, request or recommendation of any government agency or authority, lack of transportation or other cause beyond the control of TMCI or Buyer, respectively, whether or not of the kind hereinbefore specified, such party is delayed in making or taking delivery of any of the goods, such delay shall be excused during the continuance and to the extent of such cause. If in consequence of any such cause the total demands for TMCI's goods cannot be supplied by TMCI from its plants normally producing such goods, TMCI may allocate its supply of goods among its present and future customers, itself and its affiliates on such basis as TMCI deems fair and reasonable without liability for failure to deliver any goods to Buyer hereunder. Delivery shall be made and taken as soon as reasonably practicable after the removal of such cause, and the time for delivery shall be extended for a period of equal duration of such cause, provided that if the delay exceeds six months then either party may terminate the transaction with respect to any undelivered goods, effective upon receipt of written notice of such termination by the other party.
4. Any action against TMCI arising hereunder or relating to the goods delivered by TMCI, including but not limited to actions for breach of warranty, breach of contract or negligence, shall be commenced within one year after the cause has accrued, or the time prescribed by law, which ever is shorter.
5. In any action against TMCI arising hereunder or relating to the goods delivered by TMCI, including but not limited to actions for breach of warranty, breach of contract or negligence, TMCI shall not be liable for more than the purchase price.
6. No right, duty, or obligation of TMCI arising hereunder or relating to the goods delivered by TMCI, including but not limited to actions for breach of warranty, breach of contract or negligence, is assignable by the Buyer or by operation of law.



7. In the event of any breach of any provision herein by the Buyer, TMCI, at its option and without prejudice to any other remedy which TMCI may have by operation of law, may (a) without affecting in any way the obligation of either party regarding any undelivered goods, shall regard each shipment as a separate and independent sale on the terms and conditions applicable hereunder, or (b) terminate its obligations hereunder regarding any undelivered goods and shall declare the Buyer in breach and Buyer shall be liable for payment of all goods delivered and Buyer shall remain liable to TMCI for all loss and damage sustained by reason of any such breach, including but not limited to consequential and incidental damages, TMCI's right to require performance by Buyer's duties hereunder shall not be affected any way or waived by any previous waiver, forbearance, or course of dealing.
8. The terms and conditions herein specified, as applied to any order acknowledged and accepted by TMCI, shall not be modified, altered or rescinded except in writing by a duly authorized representative of TMCI.
9. PAYMENT. Payment terms are Net thirty (30) days unless otherwise specified herein.
10. CONFIDENTIALITY OBLIGATIONS. The Parties may exchange Confidential Information. The Parties agree, at all times: (i) to regard and preserve as confidential such Confidential Information; (ii) to refrain from directly or indirectly publishing or disclosing any part of such Confidential Information; (iii) to refrain from using Confidential Information except as required in connection with performance under this Purchase Order; and (iv) to refrain from any other acts or omissions that would reduce the value of such Confidential Information to non-disclosing Party. The Parties agrees to require all of their employees, agents, representatives, or other consultants to whom Confidential Information must be disclosed in order to perform under this Agreement to sign a non-disclosure agreement or other equivalent agreement containing limitations on disclosure and use substantially similar to the limitations herein. The Parties acknowledges that disclosure of Confidential Information (including but not limited to that which is a process, machine, manufacture, or composition of matter) is not intended to be an offer for sale or public use. If the non-disclosing Party believes that they are required by law or a competent regulatory authority to disclose any Confidential Information, notice shall be provided to the non-disclosing Party, to the greatest extent possible, prior to making such disclosure so as to allow the non-disclosing Party time to undertake legal or other action to prevent such disclosure or otherwise obtain confidential treatment of such disclosure. The disclosing Party shall exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to any Confidential Information so disclosed.
11. EXCEPT AS SET FORTH HEREIN, TMCI MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. BUYER ASSUMES ALL RESPONSIBILITY FOR THE ADEQUACY AND FITNESS OF GOODS FOR ANY PARTICULAR PURPOSE.