

SHELLS INC. ("SELLER")

TERMS AND CONDITIONS OF SALE

PURCHASE/SALE – ON THE TERMS AND SUBJECT TO THE CONDITIONS SET FORTH BELOW, SELLER AGREES TO SELL TO BUYER AND BUYER AGREES TO PURCHASE FROM SELLER THE PRODUCTS SPECIFIED ON THE SELLER'S INVOICE.

TERM – EITHER SELLER OR BUYER MAY TERMINATE ANY OR ALL CONTRACTS BETWEEN THEM WITH A WRITTEN NOTICE PROVIDED 60 DAYS IN ADVANCE OF SUCH TERMINATION.

CONFLICTING TERMS – IF THIS WRITING CONFLICTS IN ANY WAY FROM THE TERMS AND CONDITIONS OF THE BUYER'S ORDER OR IF THIS WRITING IS CONSTRUED AS AN ACCEPTANCE OR A CONFIRMATION ACTING AS AN ACCEPTANCE, THE SELLER'S ACCEPTANCE IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING. FURTHER, THIS WRITING SHALL BE DEEMED NOTICE OF OBJECTION TO SUCH TERMS AND CONDITIONS OF BUYER. IF THIS WRITING IS CONSTRUED AS THE OFFER, ACCEPTANCE HEREOF IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. IN ANY EVENT, BUYER'S ACCEPTANCE OF THE GOODS SHALL MANIFEST BUYER'S ASSENT TO SELLER'S TERMS AND CONDITIONS.

WARRANTIES AND REMEDIES

- A. WARRANTY OF TITLE – SELLER WARRANTS TO BUYER THAT IT HOLDS AND WILL PASS MARKETABLE TITLE TO GOODS SOLD HEREUNDER. THE SOLE AND EXCLUSIVE REMEDY ON WHICH THE BUYER MAY RELY FOR A BREACH OF THIS WARRANTY SHALL BE SELLER'S CURE OF THE NON-CONFORMITY OR THE REPLACEMENT OF THE NON-CONFORMING GOODS.
- B. WARRANTY OF QUALITY – SELLER WARRANTS TO BUYER THAT THE GOODS SOLD HEREIN SHALL CONFORM TO THE DESCRIPTION SET FORTH IN, OR APPENDED TO, THE DOCUMENT OR PREVIOUSLY PROVIDED TO BUYER. THE WARRANTY OF QUALITY SHALL COMMENCE UPON TENDER OF DELIVERY TO BUYER AND SHALL EXPIRE 90 CALENDAR DAYS THEREAFTER. THE SOLE AND EXCLUSIVE REMEDY ON WHICH BUYER MAY RELY FOR A BREACH OF WARRANTY OF QUALITY SHALL BE THE REPLACEMENT OF THE NON-CONFORMING GOODS (F.O.B. ORIGINAL DESTINATION). IF THIS REMEDY IS ADJUDGED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SELLER'S TOTAL LIABILITY FOR A BREACH OF THE WARRANTY OF QUALITY GOODS SHALL BE A REFUND OF THE PRICE OF THE NON-CONFORMING GOODS.
- C. EXCLUSIONS AND CONDITIONS – SELLER'S OBLIGATIONS WITH RESPECT TO THE EXPRESS WARRANTIES AND REMEDIES CONTAINED HEREIN ARE CONDITIONED ON THE FOLLOWING: (1) BUYER'S RETURN OF THE NON-CONFORMING GOODS, AT SELLER'S OPTION, AT BUYER'S COST AND RISK OF LOSS, TO SELLER'S PLANT; (2) BUYER SHALL NOT ASSIGN ITS RIGHTS UNDER THESE EXPRESS WARRANTIES AND ANY ATTEMPTED ASSIGNMENT SHALL RENDER SAID WARRANTIES, BUT NOT ANY DISCLAIMERS AND LIMITATIONS, VOID AND THE GOODS SOLD HEREINUNDER SHALL BE SOLD AS IS.

- D. DISCLAIMER OF IMPLIED WARRANTIES – SELLER MAKES NO WARRANTIES WITH RESPECT TO THE GOODS SOLD HEREUNDER EXCEPT THOSE EXPRESSLY CONTAINED HEREIN. SELLER DISCLAIMS ALL OTHER WARRANTIES IMPLIED BY LAW, USAGE OF THE TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT IT ALONE HAS DETERMINED THE INTENDED PURPOSE AND SUITABILITY OF THE GOODS SOLD HEREUNDER AND THAT ANY TECHNICAL OR OTHER ADVICE GIVEN BY SELLER IS PROVIDED SOLELY AT BUYER'S RISK.

LIMITATIONS OF LIABILITY – THE FOLLOWING LIMITATIONS OF SELLER'S LIABILITY ARE ACKNOWLEDGED BY THE PARTIES TO BE FAIR AND REASONABLE AND SHALL APPLY TO ANY ACT OR OMISSION HEREUNDER AND TO ANY BREACH BY SELLER OF THE CONTRACT OF WHICH THESE TERMS AND CONDITIONS FORM PART.

- A. SELLER'S TOTAL LIABILITY FOR ANY CLAIM ARISING FROM THIS AGREEMENT SHALL BE LIMITED TO THE CONTRACT PRICE.
- B. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY. SUCH DAMAGES INCLUDE BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE OF GOODS, DAMAGE TO PROPERTY, AND CLAIMS OF THIRD PARTIES.
- C. NOTICE AND TIME OF CLAIMS – (i) EVERY CLAIM FROM ANY CAUSE, INCLUDING, BUT NOT LIMITED TO, A CLAIM UNDER THE WARRANTIES CONTAINED HEREIN, SHALL BE DEEMED WAIVED BY BUYER, OR BUYER'S CUSTOMER IN THE CASE OF REALES, UNLESS DELIVERED BY BUYER TO SELLER WITHIN ONE (1) YEAR PLUS TEN (10) CALENDAR DAYS OF DELIVERY OF THE GOODS TO BUYER. (ii) THE PARTIES EXPRESSLY WAIVE ALL APPLICABLE STATUTES OF LIMITATION AND AGREE THAT ANY LEGAL PROCEEDING FOR ANY BREACH OF THIS CONTRACT SHALL BE WAIVED UNLESS FILED WITHIN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THEREFOR.
- D. LIMITATION OF LIABILITY FOR ENVIRONMENTAL USES – NEITHER SELLER NOR ITS SUPPLIERS SHALL HAVE ANY LIABILITY TO BUYER OR ITS INSURERS FOR ANY DAMAGE TO PERSONS OR PROPERTY RESULTING FROM ENVIRONMENTAL HAZARDS WHEN THE GOODS SOLD ARE USED IN HAZARDOUS MATERIAL APPLICATIONS. AS USED HEREIN "LIABILITY" MEANS LIABILITY OF ANY KIND AT ANY TIME, WHETHER IN CONTRACT, TORT, (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY OR OTHERWISE. "HAZARDOUS MATERIAL" SHALL MEAN ANY SUBSTANCE WHICH IS OR BECOMES DEFINED AS A "HAZARDOUS WASTE", "HAZARDOUS SUBSTANCE", "POLLUTANT", OR "CONTAMINANT" UNDER ANY STATE OR LOCAL STATUTE, REGULATION, RULE, OR ORDINANCE OR AMENDMENTS THERETO. INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (42 U.S.C. SECTION 6901 ET SEQ). BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS AGAINST CLAIMS BY BUYER'S CUSTOMERS OR ANY OTHER THIRD PARTIES, INCLUDING ACTIONS BY STATE OR FEDERAL AGENCIES, RESULTING FROM THE USE OF GOODS COVERED HEREUNDER IN HAZARDOUS MATERIAL APPLICATIONS.

FORCE MAJEURE – SELLER SHALL NOT BE LIABLE FOR ANY DELAY IN DELIVERY, OR FAILURE TO DELIVER, DUE TO ANY CAUSE BEYOND THE SELLER’S CONTROL, INCLUDING, BUT NOT LIMITED TO, FIRES, FLOODS, OR OTHER FORCES OF THE ELEMENTS, STRIKES OR OTHER LABOR DISPUTES, ACCIDENTS TO MACHINERY, ACTS OF SABOTAGE, RIOTS, PRECEDENCE OR PRIORITIES GRANTED AT THE REQUEST OR FOR THE BENEFIT DIRECTLY OF THE FEDERAL OR ANY STATE GOVERNMENT OR ANY SUBDIVISION OR AGENCY THEREOF, DELAY IN TRANSPORTATION OR LACK OF TRANSPORTATION FACILITIES, RESTRICTION IMPOSED BY FEDERAL, STATE, OR OTHER GOVERNMENTAL LEGISLATION OR RULES OR REGULATIONS THEREOF; OR SUBSTANTIAL INCREASES IN SELLER’S COST. FOR PURPOSE OF THIS DOCUMENT, A SUBSTANTIAL INCREASE IN SELLER’S COST SHALL BE DEEMED TO HAVE OCCURRED IF SELLER’S PERFORMANCE HEREUNDER WOULD RESULT IN A LOSS TO SELLER ON THIS SALE, AS COMPUTED UNDER SELLER’S NORMAL ACCOUNTING PROCEDURES, IN WHICH CASE SELLER MAY TERMINATE THIS AGREEMENT IN WHOLE OR IN PART WITHOUT LIABILITY FOR ANY DELAY IN THE DELIVERY OF OR FAILURE TO DELIVER THE GOODS HEREUNDER.

RISK OF LOSS – BUYER ASSUMES ALL RISK OF LOSS TO AND DAMAGE FROM THE GOODS COVERED HEREBY UPON DELIVERY THEREOF TO THE CARRIER.

NON-WAIVER – THE TERMS AND CONDITIONS CONTAINED HEREIN MAY NOT BE MODIFIED, ALTERED, OR WAIVED EITHER ORALLY, BY USAGE OF TRADE, COURSE OF PERFORMANCE, OR COURSE OF DEALING. ANY CHANGE OR DEVIATION WHEREFROM SHALL BE IN WRITING, SIGNED BY THE PARTY TO BE BOUND.

SEVERABILITY – A HOLDING THAT ANY TERM OR CONDITION HEREOF IS VOID OR UNENFORCEABLE SHALL NOT RENDER VOID OR UNENFORCEABLE ANY OTHER TERM OR CONDITION.

JURISDICTION – ALL SUCH DISPUTES SHALL BE RESOLVED IN A COURT OF COMPETENT JURISDICTION IN THE CITY AND COUNTY OF THE SELLER’S PLANT OF ORIGIN OF THE GOODS. BUYER HERBY CONSENTS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS IN THE CITY AND COUNTY OF SELLER’S PLANT OF ORIGIN OF GOODS, APPOINTS THE SECRETARY OF STATE OF THE SELLER’S PLANT OF ORIGIN OF THE GOODS AS ITS AGENT FOR SERVICE OF PROCESS AND AGREES TO APPEAR IN ANY SUCH PROCEEDING.

APPLICABLE LAW – ALL QUESTIONS ARISING HEREUNDER OR IN CONNECTION WITH A QUOTATION OR ANY ORDER SUBMITTED IN CONNECTION THEREWITH SHALL BE INTERPRETED AND RESOLVED IN ACCORDANCE WITH UNIFORM COMMERCIAL CODE OF THE STATE OF SELLER’S PLANT OF ORIGIN OF GOODS WITHOUT REGARD TO ITS CONFLICT OF LAW PROVISIONS AND EXCLUDING THE UNITED NATIONS CONVENTION OF THE INTERNATIONAL SALE OF GOODS.

COLLECTION COSTS – IF BUYER DEFAULTS IN MAKING PAYMENT, SELLER SHALL BE ENTITLED TO RECOVER ALL COSTS OF COLLECTION FROM BUYER, INCLUDING BUT NOT LIMITED TO, COLLECTION FEES, ATTORNEY FEES, AND COURT COSTS.