

TERMS AND CONDITIONS OF SALE

- 1.0 AGREEMENT.** These terms and conditions of sale shall apply to any sale of goods by Fisher & Ludlow (a division of Harris Steel Limited) (hereinafter called the "Seller") and acceptance of these terms and conditions is an express condition of such sale. Purchaser shall be deemed to have full knowledge of the terms and conditions herein and such terms and conditions shall be binding of the goods are requested, ordered, or delivered to and accepted by Purchaser. Alternatively, if the purchaser has not yet requested ordered or received, ordered or received the goods, it shall be deemed to have accepted these terms and conditions if it does not within five days from the dates of receiving them deliver to the Seller its written objection to said terms and conditions or any part hereof. In the event of any conflict or inconsistency between the terms and conditions of sale herein and the terms and conditions in Purchaser's order or in any other form issued by Purchaser whether or not any such form has been acknowledged or accepted by the Seller's terms and conditions herein shall prevail. No waiver, alteration or modification of these terms and conditions shall be binding upon the Seller unless made in writing and signed by a duly authorized representative of the Seller.
- 2.0 TITLE.** Title to the goods or any part thereof shall not pass from the Seller to Purchaser until all payments due hereunder have been duly made in cash, except as otherwise expressly stipulated herein. The goods shall be and remain personal or moveable property, notwithstanding their mode of attachment to realty or other property. If default is made in any of the payments herein, the Seller shall be free to enter the premise where the goods may be located and remove them as the Seller's property, without prejudice to any other remedies available to the Seller.
- 3.1 WARRANTY.** Seller warrants all goods of its manufacture to be free from defects caused by faulty material or poor workmanship and will at its option repair or replace, without charge and such goods found to be defective under normal use and service within one year from date of shipment to the Buyer, provided Seller is promptly notified in writing upon discovery of such defects. Goods shall not be returned to Seller or modified at Seller's expense without Seller's consent in writing.
- 3.2 WARRANTY EXCLUSION, etc.** The warranty in section 3.1 does not cover damages caused by improper installation or maintenance, overloading, accident, neglect or harmful alterations or repairs made by others; nor shall the Seller be liable for costs of any kind associated with gaining access to the goods for repair or removal and replacement by any person ("out-and-in costs"). The warranties contained in section 3.1 are the exclusive warranties of the Seller to the Purchaser and no other warranties or condition, statutory or otherwise shall be implied. Any and all implied warranties of merchantability, of fitness for the intended use, and against infringement are hereby expressly excluded. Correction of any non-conformity in the manner and for the period of time above shall constitute complete fulfillment of all the liabilities of the Seller whether the claims of the Purchaser are based in contract, including fundamental breach, in tort or delict, including negligence or otherwise with respect to or arising out of the work performed hereunder.

4.0 LIMITATION OF LIABILITY OF SELLER, etc. Notwithstanding any other provision of the agreement between Seller and Purchaser and to the full extent permitted by law, the Seller shall not be liable to the Purchaser for indirect, special, consequential, incidental or punitive damages (including, without limitation, damages for or in relation to loss of use faculties, lateness in delivery, loss of revenue or profits, downtime costs, claims of any customer for the Purchaser, the cost of capital or of substitute goods) arising directly or indirectly from any breach of this contract (fundamental or otherwise) or from any warranties or indemnities contained herein, or from any acts or omissions which may give rise to legal liability (whether in tort, including for negligence, strict liability or under any other theory of legal liability). In no event shall the liability of the Seller exceed the price of the defective goods provided hereunder, and all such liability shall terminate upon the warranty period. Further, Purchaser agrees that the officers, directors, employees and agents for the Seller shall have no liability whatsoever of any kind to the Purchaser in relation to the subject matter of this agreement. The provisions of this agreement providing for limitation of or protection against liability of the Seller and its officers, directors, employees and agents shall survive the termination, cancellation or expiration of this agreement, and shall also protect its direct and indirect suppliers and sub-contractors and their respective agents, employees, officers and directors.

5.0 Delivery Times Delays. The estimated shipping date is based on plant production schedule at the date of this quotation. Seller shall use reasonable commercial efforts to deliver the goods within the time agreed but, unless otherwise specifically agreed to in writing, shall in no circumstance be liable for any loss or damage, consequential or otherwise, caused directly or indirectly, by any delay in delivery. Under no circumstances will the Seller be liable for delay or failure in performance due to fires, floods, strikes or other differences with workmen, accidents, labour or material or transportation shortages, war (declared or undeclared), acts of terrorism, riot, governmental orders or regulations, legal interferences or prohibitions, defaults on the part of suppliers, or other causes beyond the Seller's reasonable control.

6.0 ERRORS, DAMAGES IN TRANSIT. If the quantity of goods received by Buyer shall be less than the quantity shown in the invoice, or if the goods received by Buyer shall have been damaged in transit, Buyer shall, within ten (10) days of receipt of such goods, give written notice of such or damage to the agent of the delivering carrier, and Buyer shall promptly send such a notice to the Seller.

7.0 ENTIRE AGREEMENT GOVERNING LAW. Unless other terms are expressly accepted by the Seller in writing, these terms and conditions of sale, together with the Seller's quote or proposal, constitute the entire agreement between the parties and supercede all other agreements of any kind between the parties. This agreement shall be governed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without reference to their conflicts of laws rules. In the event of a dispute, the parties agree to attorn to the jurisdiction of the courts located in the Province of Ontario.

8.0 TERMINATION BY PURCHASER. Any order or contract may be cancelled or altered by Purchaser only upon payment of charges based upon expenses already incurred by and commitments made by the Seller, and a reasonable amount in respect of Seller's overhead and profit.

9.0 MISCELLANEOUS. (i) Where a shop coat of paint is agreed to, it is understood that this is one temporary protective coat of the Seller's standard shop coat paint only. (ii) Weights of goods provided are subject of variation based on normal tolerances. (iii) The Seller reserves the right to change specifications of its goods without notice. (iv) Selling prices are subject to change due to the changes in relevant government taxes. (v) All returns and related credits shall be made or not in the sole discretion of the Seller, provided that no returns or credits will be allowed on material fabricated to Purchaser's own specifications. Goods will be considered for return only if they are in their original condition and packaging. The Seller may adjust the amount of any credit or refund depending on the condition of the goods on arrival in the Seller's warehouse.