

TERMS OF SALE

EMFCO'S ACCEPTANCE OF BUYER'S ORDER IS EXPRESSLY CONDITIONAL ON BUYER'S ASSENT TO ALL TERMS IN THESE TERMS OF SALE.

Payment: Net 30 days. Plus 1-1/2% per month, or the maximum legal rate, whichever is less, late charge unless otherwise specified in writing on face of invoice. If buyer fails to comply with these payment terms, EMFCO may suspend further shipments until Buyer pays for all previous shipments and late charges. If EMFCO reasonably believes that the financial responsibility of the Buyer has been or will be impaired, EMFCO may notify the Buyer of this belief and suspend further shipments until the Buyer furnishes adequate security for payment. Unless Buyer furnishes and maintains adequate security within ten days after receiving such notice, or sooner if reasonably required by EMFCO, EMFCO may cancel this agreement with respect to undelivered shipments.

Title and Risk of Loss: Title and risk of loss pass to Buyer F.O.B. EMFCO plant. All governmental charges and taxes (except tax on EMFCO's income) shall be paid by the buyer.

Force Majeure: Neither party will be liable for delays in or failure of performance due to a force majeure event. "Force Majeure" includes war, fire, flood, strike, labor trouble, force majeure affecting EMFCO's suppliers, accident, riot, acts of God, act or orders of federal or state government, and any contingencies of like or different character beyond reasonable control of the party claiming force majeure interfering with the production, supply or transportation of the products covered by this agreement. EMFCO shall be excused from the performance of any obligation under this agreement when the cause of such nonperformance is force majeure, except that Buyer shall not be excused from accepting and paying for products already shipped or delivered by EMFCO. Provided the party claiming force majeure gives the other party prompt written notice of such claim, the obligation of the party giving such notice so far as it is affected by the force majeure shall be suspended during, but not longer than, the continuation of the force majeure. Deliveries of products excused by an event of force majeure shall not be made up except by mutual agreement. If the force majeure condition is not removed within thirty days, the party not affected may terminate this agreement. Notwithstanding the above, should Buyer desire to cancel, revise or suspend an order in the event of force majeure, Buyer shall discuss the matter promptly with EMFCO and the parties shall use their best efforts to reach a mutually satisfactory agreement. In the case where the material has been manufactured partially or completely for Buyer's requirement and EMFCO is unable to cancel, Buyer will be informed of charges incurred to Buyer's account and Buyer agrees to pay such charges promptly.

Claims: Claim for damage, shortage or non-conforming goods is waived and released unless Buyer notifies EMFCO in writing within ninety days after shipment.

Buyer's Tooling & Materials: EMFCO in its discretion may from time to time return to Buyer, freight collect, any or all of Buyer's tooling and material in EMFCO's possession, provided the tools and materials have not been used to produce a part shipped to Buyer within one year before the return shipment.

Warranty: EMFCO warrants, for a period of one year after shipment, that its products meet all applicable written specifications in effect, specified in the order and accepted by EMFCO at the later of the time of initial order placement, the time of any written change order accepted by EMFCO, or the time of any written interpretation accepted by EMFCO, and are free from defects in material and workmanship.

LIMITATION OF REMEDIES AND DAMAGES: ALL WARRANTY OBLIGATION, EXPRESSED OR IMPLIED, AND ALL REMEDIES, RELIEF AND MEASURE OF DAMAGES ARE LIMITED EXCLUSIVELY TO REPAIR OR REPLACEMENT. ALL CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LABOR, TRANSPORTATION, LOSS OR USE, INCREASED EXPENSES OF OPERATION, LOSS OF PROFITS, OR DAMAGE TO PERSONS OR PROPERTY) RESULTING FROM THE BREACH OF ANY WARRANTY OBLIGATION ARE EXCLUDED.

DISCLAIMER OF WARRANTY: THE FOREGOING WARRANTY IS IN LIEU OF. AND EMFCO DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW. COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES AS TO CONDITION, USE, OPERATION, DESIGN, QUALITY, CAPACITY, WORKMANSHIP, INSTALLATION, SERVICING, LATENT DEFECTS, COMPLIANCE WITH ANY LAW, ORDINANCE, REGULATION, RULE, CONTRACT OR SPECIFICATION. "MERCHANTABILITY" FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL OTHER QUALITIES AND CHARACTERISTICS WHATSOEVER.

Buyer's Inspection: Where source inspection is made by Buyer. Buyer's inspector shall be deemed to be the agent of Buyer to accept material on Buyer's behalf with complete authority to waive specified tests or details of test procedure, and to accept material which may deviate from formal specifications.

Relationship of Parties: The relationship between Seller and Buyer is solely that of vendor and vendee, and Buyer is not and shall not be construed to be a partner, joint venturer, employee, agent, representative or participant of or with EMFCO for any purpose whatsoever. Buyer does not and shall not have any right or authority whatsoever to assume or to create any obligation or responsibility, expressed or implied, on behalf of or in the name of EMFCO or to bind EMFCO in any manner.

Assignment: Buyer's rights, claims, duties and responsibilities may not be assigned, delegated or otherwise transferred in any manner without the prior express written consent of EMFCO in each instance.

Nonwaiver: Failure of either party at any time to require performance of any provision of these terms of sale shall not limit that party's right to enforce such provisions, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision itself or of any other provision.

Entire Agreement: The invoice and terms of sale supersede any terms which may conflict with any terms set forth in Buyer's purchase order, and this invoice, these terms of sale, and any quote by EMFCO constitute the entire agreement between the parties. There are no other provisions, representation, warranties, or understandings expressed or implied. No modification, variation or amendment of this invoice or the terms of sale, or trade or local custom not expressly stated herein, shall have any effect unless set forth in writing signed by both parties.

Governing Law: This agreement shall be construed and enforced according to the laws of Washington without giving effects to its rules regarding conflicts of interest. Any lawsuit or legal proceeding that arises under or by reason of this agreement shall have its venue in King County, Washington.

Cumulative Remedies: The parties' remedies under this agreement are not exclusive, but are in addition to any other remedies in favor of each party at law or in equity.

Successors: This agreement shall bind and inure to the benefit of the parties, their respective successor and permitted assigns.

Attorneys' Fees: If either party commences any legal action or suit arising out of this agreement, the prevailing party in such action or suit shall be entitled to recover reasonable attorney's fees and expenses, including fees and expenses on appeal and petition for review, as determined by the appropriate court.