

AMERICAN CAST IRON PIPE COMPANY

TERMS AND CONDITIONS OF SALE

1. All orders are subject to approval and acceptance by an authorized representative of Seller at its general office in Birmingham, Alabama. Terms of payment as shown on the face hereof are subject to approval of Seller's Credit Manager.
2. Should the financial responsibility of Buyer at any time become unsatisfactory to Seller, Seller shall have the right to suspend performance of any order or require payment for any shipment hereunder in advance or require satisfactory security or other adequate assurance satisfactory to Seller. If Buyer fails to make payment in accordance with the terms of this agreement or fails to comply with any provision hereof, the Seller may at its option in addition to any other remedies, cancel any unshipped portion of this order, Buyer to remain liable for all unpaid accounts. In the event Buyer fails to make payment in accordance with the terms of this agreement, the account shall be deemed to be delinquent and a service charge of one and one-half percent (1 1/2%) per month or 18% per annum, charged weekly will be made on the unpaid balance. Where the annual rate of 18% exceeds the maximum allowed by law, the charge shall be the maximum allowed. Buyer agrees to pay all collection costs and expenses, including reasonable attorneys' fees, incurred by Seller in collecting or attempting to collect such account. Seller shall have the right to credit toward the payment of any monies that may become due Seller hereunder any sums which may now or hereafter be owed to Buyer by Seller.
3. If there is a delay in completion of manufacture or shipment of this order due to any change requested by the Buyer or as a result of any delay on Buyer's part in furnishing information required for completion of the order, the price and delivery terms agreed upon at the time of acceptance of the order is subject to change. Prices are F.O.B. factory except as otherwise noted on the face of the sale order contract. Unless otherwise provided in writing, freight charges on all shipments, and spotting, switching, demurrage, or drayage at destination are to be paid by Buyer. Any increase in the amount of freight from that shown on the face hereof as being included is for Buyer's account. Seller reserves the right to designate origin and intermediate carriers. If a specific delivering carrier is required, Buyer must designate such carrier in writing to Seller prior to shipment. Seller reserves the right to make partial shipments.
4. Prices do not include any present or future federal, state or local taxes based upon or measured by the sale, use, manufacture or shipment of the products covered hereby. All such taxes shall be for Buyer's account, and, if paid by Seller, the Buyer agrees to reimburse Seller on demand for the full amount thereof.
5. Title to products sold shall pass upon delivery to carrier at the point of shipment, irrespective of any freight allowance or prepayment of freight, and thereafter risk of loss or damage shall be upon Buyer.
6. Specifications and instructions on the face hereof are in accordance with directions of Buyer and full responsibility for their correctness is assumed by Buyer.
7. SELLER WARRANTS THAT THE PRODUCTS COVERED HEREBY CONFORM TO THE DESCRIPTION AND SPECIFICATIONS, IF ANY, ON THE FACE HEREOF, AND ARE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF ONE (1) YEAR FROM THE DATE THE PRODUCTS ARE FIRST SHIPPED. ALL OTHER WARRANTIES ARE EXCLUDED, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES DIRECTLY OR INDIRECTLY ARISING OR RESULTING FROM THE BREACH OF ANY OF THE TERMS HEREOF OR FROM THE SALE, HANDLING OR USE OF THE PRODUCTS SOLD. SELLER'S SOLE LIABILITY (AND BUYER'S EXCLUSIVE REMEDY) HEREUNDER, EITHER FOR BREACH OF WARRANTY OR FOR NEGLIGENCE, IS EXPRESSLY LIMITED AT THE OPTION OF SELLER: (a) TO THE REPLACEMENT AT THE AGREED POINT OF DELIVERY OF ANY PRODUCTS FOUND TO BE DEFECTIVE OR NOT TO CONFORM TO THE DESCRIPTION AND SPECIFICATIONS SET FORTH HEREIN, (b) TO THE REPAIR OF SUCH PRODUCTS, (c) TO THE REFUND OR CREDITING TO BUYER OF THE PRICE OF SUCH PRODUCTS, OR (d) AS TO MOTORS, CONTROLS OR ACCESSORY EQUIPMENT PURCHASED BY SELLER FROM OTHERS, AND USED OR INCORPORATED IN SELLER'S PRODUCTS, TO THE SAME EXTENT THAT THE LIABILITY OF SUCH SUPPLIER(S), IS LIMITED AS TO SELLER. ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, SELLER'S WARRANTIES SHALL NOT APPLY TO ANY PRODUCT SOLD HEREUNDER IF BUYER ALTERS SUCH PRODUCT OR REPLACES ANY PART OR PARTS OF SUCH PRODUCT WITH ANY PART OR PARTS NOT MANUFACTURED, SOLD OR OFFERED FOR SALE BY SELLER. No representation or warranty, express or implied, made by any sales representative or other agent or representative of the Seller which is not specifically set forth herein shall be binding upon the Seller. In the event the material to be furnished hereunder is claimed to be defective, the Seller shall be given ample opportunity for inspection or, upon request, shall be furnished with a sample.
8. No products may be returned for credit and no order may be cancelled or changed in whole or in part without the prior written consent of Seller. Shipment of products cannot be extended beyond the original shipping date specified without Seller's written consent.
9. No contract is subject to cancellation or to change unless agreed to in writing by an authorized representative of Seller. In the event of any cancellation, and without limitation to other available remedies to Seller, the Buyer shall pay Seller within thirty (30) days of such cancellation the contract price, including applicable taxes, for all articles, materials and services which have been completed prior to cancellation. Additionally, Buyer shall pay Seller within thirty (30) days of such cancellation all cost and other expenses incurred by Seller for uncompleted items (including without limitation all commitments to Seller's suppliers, subcontractors, and others) and a cancellation charge in an amount equal to twenty percent (20%) upon the total of the foregoing. In the event of any change, Seller shall be entitled to revise its prices and delivery schedules to reflect such change.
10. Seller shall not be liable for any failure or delay in manufacture, shipment or delivery of products resulting from any cause beyond Seller's control, including, but not limited to, provision of law or governmental regulations, accident, explosion, fire, windstorm, flood or other casualty, or acts of God, strike, lockout, or other labor difficulty, riot, war, terrorism, insurrection, shortage or inability to secure labor, raw materials, production or transportation facilities. Shipping dates are approximate and are based on factory conditions at the time of quotation.
11. Buyer may not assign this agreement without Seller's prior written consent.
12. Buyer agrees to accept delivery of any part or all of the products on the mutually agreed upon delivery date, and failure of the Buyer to furnish Seller with shipping instructions shall in no way alter the terms of payment of Seller's invoice for any of the products offered for delivery. Any deferred delivery request by Buyer shall be subject to Seller's written approval. On any approved deferred delivery Seller shall have the right to render invoice for the completed portion to reflect its increased costs, delays and expenses.
13. Waiver of any term or provision of this agreement or of any breach of this agreement shall not be construed as a waiver of any other term or provision or of any other breach, nor shall any such waiver be deemed or construed as a continuing waiver. Any provision of this agreement prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.
14. This agreement shall be governed under and according to the laws of the State of Alabama.
15. In the event of a conflict between any of the printed provisions hereof and any written or typed provisions hereof, the written or typed provisions shall govern.
16. There are no terms, conditions, understandings or agreements between Buyer and Seller other than those stated herein and all prior proposals and negotiations are merged herein. NO TERMS AND CONDITIONS IN ANY WAY ALTERING OR MODIFYING THE PROVISIONS HEREOF SHALL BE BINDING UPON SELLER UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NO MODIFICATION OR ALTERATION OF ANY PROVISION HEREOF SHALL RESULT FROM SELLER'S ACKNOWLEDGEMENT OF BUYER'S PURCHASE ORDER, SHIPMENT OF MATERIAL OR OTHER AFFIRMATION ACTION BY SELLER TOWARD PERFORMANCE HEREUNDER FOLLOWING RECEIPT OF BUYER'S PURCHASE ORDER, SHIPPING ORDER, OR OTHER FORMS CONTAINING PROVISIONS, TERMS OR CONDITIONS IN ADDITION TO OR IN CONFLICT OR INCONSISTENT WITH THE PROVISIONS HEREOF.