



MAXAL, Inc's Terms and Conditions

Terms of Sale refers to the terms and conditions contained herein. "Seller" refers to MAXAL, Inc. "Buyer" refers to the applicant in the account application to which these Terms of Sale are affixed, or in which these Terms of Sale are referenced. Each Contract of sale of Goods between Seller and Buyer ("Contract") shall include these Terms of Sale, together with any other material describing the Goods being sold, their price, delivery terms, and all other special provisions. "Goods" refers to any items of tangible personal property described in any Contract.

1. Delivery. Seller may deliver the Goods or ship the Goods by a carrier of Seller's selection, F.O.B. shipping point to the Buyer's address in the Contract, unless the Contract provides otherwise. Unless otherwise specifically provided in a Contract, Seller shall have no obligation to arrange for any valuation of the Goods over and above the valuation provided in the carrier's tariffs or other rate schedules at the lowest rates of carriage.

2. Delivery Date(s). Delivery date(s) are determined from the date of each Contract and are estimates of approximate dates of delivery, not a guarantee of a particular day of delivery.

3. Buyer's Delay of Acceptance. If Buyer delays acceptance of the Goods when delivered or ready for shipment, Buyer shall forthwith pay to Seller the full price of the Goods and shall also pay Seller such warehousing and pier charges and other expenses as Seller may incur as a result of Buyer's delay.

4. Claims for Shortages, Non-conformity, and Damage in Transit; Returns. Seller shall have no obligation with respect to any shortages, or damage in transit, unless Buyer gives Seller written notice of the same within 10 days after such Goods arrive at the point of delivery and Seller is given a reasonable opportunity to investigate. No Goods shall be returned to Seller without Seller's written authorization. Buyer shall pay a 20% restocking charge on all Goods returned to Seller, except for returns required under Section 7 hereof.

5. Terms of Payment. Unless otherwise specified in a Contract, Buyer shall make payment in full within 30 days after the date of Seller's invoice. Interest at 1.5% per month, or the maximum lawful rate of interest allowable in the state where the Goods are delivered, whichever is less, shall accrue on all past due payments.

6. Taxes. Any taxes imposed by federal, state, or other governmental authority on the sale or use of the Goods referred to in this Order shall be paid by Buyer in addition to the purchase price.

7. Warranty of Quality. (a) Seller warrants that, at the time of shipment the Goods shall be free from defects in material and workmanship. (b) Seller's obligations under the said warranty shall be limited to replacing F.O.B. point of shipment of the Goods. (c) Except for the warranties expressly set forth above, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED;

NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY WHICH EXCEEDS THE FOREGOING WARRANTY; AND ALL SUCH IMPLIED WARRANTIES ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM ANY CONTRACT RESULTING OR ARISING FROM, OR OTHERWISE EVIDENCED BY ANY CONTRACT.

8. Limitation of Liability. Seller's liability on any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, replacement, or use of the Goods shall in no case exceed the price allocable to the Goods, which gives rise to the claim, except as may otherwise be specifically provided in Section 7 above. In no event shall Seller be liable for consequential or incidental damages. Seller shall not have any liability, whether in contract, tort (including negligence), or otherwise, as the result of furnishing any advice or assistance to Buyer concerning any Goods supplied hereunder or concerning any system or equipment in which any such Goods may be installed unless the Contract provides separate compensation to Seller for such advice or assistance.

10. Force Majeure. Seller shall not be liable for delays or failures in performance resulting directly or indirectly from: (a) natural phenomena, including but not limited to weather conditions, floods, droughts, earthquakes, and epidemics; (b) acts or failure or omissions to act on the part of any Governmental authority, domestic or foreign, including but not limited to war, declared or undeclared, priorities, quarantines, embargoes, licensing controls, or production or distribution restrictions; (c) accidents and disruptions, including but not limited to fires, explosions, breakdowns of machinery or equipment and power shortages; (d) transportation or storage delays, accidents or shortages; (e) labor difficulties including but not limited to strikes, slowdowns, lockouts, sabotage, and labor shortages; (f) failure or delay in Seller's sources of supply; (g) acts or omissions of Buyer; or (h) any other cause which is beyond Seller's control. Dates of delivery shall be extended for a period equal to the time lost by reason of any cause set forth above even though such cause may occur after Seller's performance of its obligations has been delayed for other causes. If, at any time, it shall appear that any delay resulting from any such cause shall exceed 60 days, Seller may cancel the Contract otherwise requiring such delivery without further obligation hereunder.

11. Errors. Stenographic and clerical errors are subject to correction.

12. Amendments; Entire Agreement; No Variations Permitted. No promise, condition, agreement, representation or warranty with respect to any Goods shall bind Seller or Buyer unless expressed in a Contract. Each such Contract shall supersede and cancel all other promises, conditions, agreements, representations and warranties; and shall also supersede and cancel any terms of sale in any purchase order or other document of Buyer, so that all such terms of Buyer will be disclaimed and excluded, so that no terms of sale inconsistent with these Terms of Sale shall govern any Contract, except to the extent Seller may agree in writing. The written portion of each Contract supersedes and cancels all other promises, conditions, agreements, representations and warranties. No Contract, and no amendment to any Contract, shall bind Seller unless and until approved for Seller in writing by an executive officer of Seller. No person other than an executive officer of Seller has any authority to agree on Seller's behalf to any Terms of Sale not set forth herein or elsewhere in a Contract. If the Seller has provided more than one version of terms of sale applicable to a contract, Seller shall have the right to take advantage of either or both provisions.