

## **Livingston Pipe & Tube, Inc. (PO BOX 300 Staunton, IL 62088)**

### **General Terms and Conditions of Sale**

1. **Applicability.** These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) by Livingston Pipe & Tube, Inc. (“**Seller**”) to the company, firm, individual or other party purchasing the Goods (“**Buyer**”). The purchase order or sales confirmation (the “**Order**”) accompanying these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
2. **Delivery/Shipping.** All Goods purchased pursuant to the Order shall be delivered by Seller to Buyer's business from which the Goods were ordered unless otherwise provided in the Order. Unless otherwise indicated on the face of the Order, shipping terms shall be F.O.B. shipping point. Seller shall bear the cost of shipping the Goods in an amount equal to the lesser of the truck freight or rail freight to ship the Goods (“**Seller's Shipping Expense**”); to the extent that the actual cost to ship the Goods exceeds Seller's Shipping Expense, such excess cost shall be charged as a separate line item on the invoice to Buyer. If Buyer fails or refuses to take possession of the Goods within 30 days after notice of delivery has been given to Buyer by Seller then Seller will deem the Goods abandoned by Buyer and may charge (as additional charges hereunder) storage and warehousing charges as then in effect at the time of abandonment. All shipments may be insured at Buyer's expense, with the value to be determined by Buyer, which should be no less than the Purchase Price (defined below).
3. **Risk of Loss/Title/PMSI.** Title and risk of loss passes to Buyer upon delivery of the Goods at the F.O.B. shipping point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code in the state where Buyer is incorporated, organized or located (as applicable).
4. **Inspection/Rejection of Nonconforming Goods.** Buyer shall inspect the Goods within 48 hours of delivery (the “**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any defect or error with the Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Purchase Price (defined below) for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's facility. If Seller exercises its option to replace the nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods. Buyer acknowledges and agrees that the remedies set forth in Section 4 are Buyer's exclusive remedies for the delivery of nonconforming Goods. Except as provided under Section 4, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
5. **Price.** Buyer shall purchase the Goods from Seller at the price (the “**Purchase Price**”) set forth in the Order. In addition to the Purchase Price, the amount of any present or future sales, use, excise or similar tax applicable to the sale of the Goods will be paid by the Buyer, or alternatively, the Buyer will provide the Seller with a tax exemption certificate acceptable to the applicable taxing authorities.
6. **Payment Terms.** Payment, in full, of the Purchase Price shall be made within the expressed invoice terms. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof. Seller will impose a 3% surcharge on all credit card transactions, which is not greater than Seller's cost of acceptance; debit cards are not accepted. Buyer's usage of credit cards as payment for goods and/or services purchased from Seller is for the express purpose of settling business-to-business transactions only. Seller must first be contacted and given ample opportunity to settle any material discrepancies before Buyer requests a chargeback on any payment made by Buyer's use of a credit card.
7. **Warranty.** **THE GOODS ARE SOLD 'AS IS' AND THE SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
8. **Limitation of Liability.**
  - (a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
  - (b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

- (c) The limitation of liability set forth in Section 8(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.
9. **Termination.** The Seller reserves the right to terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer (a) fails to pay any amount when due under this Agreement, (b) has not otherwise performed or complied with any of these Terms, in whole or in part, or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or if Seller otherwise deems that its prospect of payment is impaired.
10. **Entire Agreement/Modification.** This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise. The Buyer acknowledges that it has not relied upon any representations of the Seller as to prospective performance of the Goods, but has relied upon its own inspection and investigation of the subject matter. This Agreement cannot be modified in any way except in writing signed by all the parties to this Agreement.
11. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
12. **Attorneys' Fees.** In any suit or action brought to enforce this Agreement, or to recover damages arising from any breach thereof, the prevailing party is entitled to recover its reasonable attorneys' fees and expenses.
13. **Mediation/Arbitration.** If any dispute relating to this Agreement between the Seller and the Buyer is not resolved through informal discussion within 14 days from the date a dispute arises, the parties agree to submit the issue first before a non-binding mediator and to an arbitrator in the event that mediation fails. Any arbitration under this Agreement will be in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator will be binding on the parties. Any mediator or arbitrator must be a neutral party acceptable to both the Seller and the Buyer. The cost of any mediations or arbitrations will be shared equally by the parties. Any mediation or arbitration under this Section shall be held in Macoupin County, Illinois.
14. **Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, including the Illinois Uniform Commercial Code, without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.
15. **Force Majeure.** No liability shall result from delay in performance or non-performance, directly or indirectly caused by circumstances beyond the control of the party affected ("**Force Majeure**"), including but not limited to, Act of God, fire, explosion, flood, war, pandemic, action by or authorized by any government, accident, labor trouble, strike, or shortage, equipment failure, inability to obtain raw material or packaging supplies, inability to obtain fuel, power, material, equipment or transportation, or commercial impracticability. A party requesting relief under Force Majeure shall provide the other party 10 days written notice and the parties will negotiate in good faith to amend the Order or future orders. If an agreement cannot be reached, the parties will agree to terminate any existing but not yet completed orders and all future orders until an agreement can be reached. Quantities of Goods so affected may be eliminated from the Order without liability. Seller has no obligation to purchase supplies or the Goods from another source to fulfill the Order. Seller may distribute its available supply of Goods among any or all purchasers, business units, affiliates, or subsidiaries in Seller's sole discretion.
16. **Compliance with Laws.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.
17. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
18. **Notice.** Any notice to be given or document to be delivered to either the Seller or Buyer pursuant to this Agreement will be sufficient if delivered personally or sent by prepaid registered mail to the address agreed to between the Buyer and Seller. Any written notice or delivery of documents will have been given, made and received on the day of delivery if delivered personally, or on the third (3rd) consecutive business day next following the date of mailing if sent by prepaid registered mail.
19. **Misc.** This Agreement will inure to the benefit of and be binding upon the Seller and the Buyer and their respective successors and assigns. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Time is of the essence in this Agreement. This Agreement may be executed in counterparts; facsimile and electronic signatures are binding.