

TERMS AND CONDITIONS OF SALE

- 1. TERMS AND CONDITIONS.** The following terms and conditions of sale apply to all quotations, offers, purchase orders, order acknowledgements, purchase contracts, and deliveries for the sale of goods (the "goods") supplied by First American Resources Company, LLC ("the seller"), to the purchaser thereof ("buyer"). Terms and conditions contained in Buyer's purchase order, or any other writing of Buyer in which Buyer manifests its intent to any terms of conditions of purchase that are different from, in addition to, in conflict with or otherwise vary the terms herein are void from the beginning and shall not be binding on Seller. These Terms and Conditions of Sale shall become effective, and are accepted by Buyer, at the latest upon Buyer's receipt of all or part of the goods and materials sold hereunder. Seller's acceptance of Buyer's order is expressly conditional on Buyer's assent to these Terms and Conditions of Sale. All orders by the Buyer are subject to acceptance by Seller at its office.
- 2. QUOTATIONS AND ORDER.** Seller's written quotation and order confirmation, and these Terms and Conditions of Sale, shall be conclusive in determining the provisions of any contract between Seller and Buyer. Seller reserves the right to make changes in design and construction in the goods to be supplied; provided that such changes do not materially impair the operation or durability of the goods, and such changes shall not alter the price.
- 3. PURCHASE PRICE AND PAYMENT TERMS.** (a) Seller's prices do not include federal, state or local sales, use, excise or other applicable taxes, and Buyer agrees to pay same, if any, and to indemnify and hold Seller harmless for any such taxes that Seller may incur. The amount of any such applicable taxes shall be paid by Buyer; (b) Payment of Seller's invoice shall be made in full within thirty (30) days. A late payment charge of the lower of 1-1/2% per month or the maximum applicable legal rate shall be imposed on the entire outstanding balance of any account not paid within this period; (c) the invoice price shall be paid without deduction or offset; in addition, Buyer agrees to pay all expenses of collection, including reasonable attorneys' fees, if price is collected by or through an attorney at law; and (d) if more than one delivery is specified herein, each shipment shall constitute a separate and independent transaction and Seller shall have the right to recover payment for each such payment without reference to any other. If, in the judgment of Seller, the financial responsibility of Buyer shall at any time become questionable or impaired, in the sole discretion of Seller, Seller may decline to make further deliveries under this contract except upon receipt, before shipment, of payment in cash for such deliveries and all prior unpaid deliveries or satisfactory security for such payment.
- 4. DELIVERY AND RISK OF LOSS.** Unless otherwise specified in a writing duly signed by both parties, the price(s) quoted are for a single shipment, F.O.B. & C.I.F. Seller's plant. All shipping and transportation charges shall be the responsibility of Buyer unless otherwise specified. Delivery to Buyer's designated representative or to a common carrier, licensed trucker, or the post office shall constitute delivery. Partial shipments shall be permitted. Contract modifications shall cause as appropriate extension of time of delivery by Seller. The time of shipment, delivery and start-up is Seller's estimate. Seller will make reasonable efforts to arrange for shipment, delivery and start-up at such estimated times. Shipment date is not guaranteed by Seller and is not binding in the event of unforeseen circumstances, including but not limited to acts of God, fire, war, labor disputes, delay of delivery of essential materials, and other events and forces beyond Seller's control. The risk of loss passes to Buyer when tendered F.O.B. Seller's plant, irrespective of whether Seller is required to render additional services under the contract. In the event of a delay in shipment for which the Buyer is responsible, the risk of loss passes to Buyer as of the date the goods are ready for shipment.
- 5. ACCEPTANCE.** Buyer shall notify Seller of any defect, error, or shortage in any items received by Buyer, in writing, within thirty (30) days after delivery thereof. If Buyer fails to provide Seller with timely written notice, Buyer shall be deemed to have forever waived any defect, error, or shortage, and shall be deemed to have irrevocably accepted the items delivered as is.
- 6. FORCE MAJEURE.** In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence (including but not limited to any delay of delivery or performance) which is (i) due to any act of God; governmental regulation or requirement, including without limitation, performance pursuant to any government order, and any order bearing priority rating or place under any allocation program (mandatory or voluntary) established pursuant to law; local labor shortage, fire, flood or other casualty; shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment; or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated; or (ii) due to any strike, labor dispute or difference with workmen regardless of whether Seller is capable of settling any such labor problem.
- 7. SECURITY AGREEMENT.** Until all amounts owed by Buyer to Seller pursuant to this contract or any other contract between Seller and Buyer are paid in full, Seller retains security title to the goods and Buyer grants to Seller a lien upon and purchase money security interest in the goods and all insurance and other proceeds there from under the Uniform Commercial Code or other applicable law. Buyer agrees to execute all documents and to do and perform all other acts which Seller may consider necessary, desirable or appropriate to further establish, perfect; or otherwise protect Seller's security interest. Buyer hereby authorizes every present and future officer of Seller to execute in Buyer's name and file on Buyer's behalf any and all financing statements deemed necessary by Seller.
- 8. BUYER'S PROPERTY.** Buyer's property shall be received and stored by Seller without liability for loss or damage from fire, water, theft, strikes, vandalism, act of God or other causes beyond Seller's control. It is understood that any gratuitous storage of Buyer's property shall be solely for the benefit of Buyer and not any third party.
- 9. DEVIATIONS IN AMOUNTS MANUFACTURED; SUBSTITUTIONS AND MODIFICATIONS.** Goods manufactured by Seller to meet Buyer's specifications are subject to a plus or minus deviation of ten percent (10%) in quality of goods ordered, and such deviations shall constitute an acceptable delivery. Any excess or deficiency shall be charged or credited to Buyer proportionately. Seller's records as to the quantities of materials shipped shall always govern except in case of proven error. Seller shall have the right to make substitutions and modifications in and to the items delivered hereunder so long as such substitutions or modifications do not or will not, in Seller's judgment, materially impair the overall performance of the goods.
- 10. WARRANTY AND DISCLAIMER.** Seller warrants that the goods will be designed and manufactured so as to perform the functions as expressly set forth in the specifications, if any, which are part of this contract. This performance warranty shall be effective only if Buyer thoroughly tests the goods promptly, notifies Seller in writing of any deficiency in performance immediately upon the completion of such tests, and delivers to Seller a written performance report within ten (10) days after the completion of such tests. This warranty shall not apply unless Buyer gives prompt written notice to Seller of the specific defect and Buyer has met its own obligations under the contract, including payment. Seller shall be deemed to have fulfilled its performance warranty in the event the applicable specifications can be achieved within ten percent (10%) of the specifications upon performance testing. The foregoing warranty shall not cover and Seller makes no warranties concerning any defects arising from misapplication, neglect, alteration or accident; to improper or incorrect installation or maintenance; or to abnormal conditions of use, temperature, moisture, dirt or corrosive matter. THE WARRANTY HEREIN IS EXCLUSIVE, AND IN LIEU OF, AND SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR OTHERWISE ARISING BY OPERATION OF LAW, TRADE USAGE OR COURSE OF DEALING INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Buyer's failure to provide timely written notice to Seller shall fully and completely release and discharge Seller from any obligation or liability for breach of any warranty. The foregoing warranty extends only to Buyer and to no other person.
- 11. REMEDIES AND LIMITATION OF REMEDIES.** Subject to the above notice provisions, in the event of any breach of warranty, Seller shall, at its sole option, credit Buyer's account or repair any defective goods or furnish replacement goods. THE REMEDIES SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BUYER SO THAT SELLER'S CREDIT OF BUYER'S ACCOUNT OR REPAIR OR REPLACEMENT IS A FULFILLMENT OF ALL SELLER'S OBLIGATIONS, AND SELLER SHALL NOT BE LIABLE WHATSOEVER FOR DAMAGES BEYOND THE PRICE OF GOODS PURCHASED BY BUYER WHETHER IN CONTRACT (ACTUAL, CONSEQUENTIAL, INCIDENTAL OR OTHERWISE), IN TORT OR UNDER ANY WARRANTY OR OTHER LEGAL THEORY.
- 12. LIMITATION OF LIABILITY.** Seller shall in no event be liable to Buyer for injury to persons or damage to property arising out of or in connection with the sale, assembly, use, installation, or employment of the goods, whether arising from any claim based upon contract, warranty, tort, strict liability, or otherwise, for any amount in excess of the amount actually paid by Buyer to Seller for the goods.
- 13. CANCELLATION.** This contract shall not be cancelled or terminated without the written consent of Seller.
- 14. NO WAIVER.** Seller's failure to insist on performance of any of the terms and conditions herein in any specific instance shall not thereafter waive any other terms, conditions or privileges, whether of the same or similar type.
- 15. GOVERNING LAW.** The laws of the state of Georgia shall govern and apply to this contract, its construction, interpretation, effect, validity and enforceability performance and nonperformance thereunder and the consequence thereof. Seller and Buyer specifically consent to jurisdiction in federal court within the Northern District of Georgia or any state court within Cobb County, Georgia, which courts shall together constitute the exclusive forum in which disputes arising out of this agreement are to be resolved, the parties specifically submitting to personal jurisdiction and waiving all objections to jurisdiction and venue.
- 16. MISCELLANEOUS.** The heading contained herein are for convenience of reference only and shall not affect the meaning or interpretation of the terms and conditions hereof. The contract contains the entire agreement and understanding between the parties with respect to its subject matter, and the Terms and Conditions hereof shall not be modified or amended except by express written amendment signed by the duly authorized representatives of the parties.