

# Terms and Conditions of Sale Pertaining to Copper Rod Products and Services

## 1. GENERAL

These Terms and Conditions of Sale (the "Terms") govern Buyer's purchase of any Copper Rod products (the "Products") or services (the "Services") from Essex Group, Inc. or any of its subsidiaries or affiliates (collectively, "Seller"). Buyer's purchase of the Products and/or Services is limited to the terms and conditions contained herein. If there is an executed written sales agreement in effect between the parties (a "Sales Agreement"), these Terms form a part thereof. Any additional or different terms in any of Buyer's forms are hereby deemed to be material alterations and Seller hereby provides notice of objection and rejection of any such terms. Waiver by Seller of any breach, remedy or provision of these Terms shall not be construed to be a waiver of any succeeding breach or any other provision or legal remedy of Seller. These Terms and all accepted orders shall be construed in accordance with the laws of the State of Indiana, United States of America without regard to its conflict of law principles. The section headings of these Terms are for ease of reference only and shall not be admissible in any action to alter, modify or interpret the contents of any section hereof. The International Convention on the Sale of Goods shall have no application to any sales of Products or Services hereunder.

## 2. PRICE AND PAYMENT

Orders are not binding upon Seller until accepted by Seller in its sole discretion. No order submitted by Buyer shall be deemed accepted by Seller unless and until either confirmed in writing by Seller or by delivery of the Product specified in the order. Seller may modify Buyer's order where necessary as follows: (a) substituting the latest or correct part number or part description for the part number or part description set forth on the order; (b) substituting Seller's prices in effect as applicable to the order; (c) substituting an estimated delivery schedule which is reasonable (considering Seller's stock availability and lead time); and (d) correcting any stenographical or typographical error. The price per pound for the Products shall be the sum of the applicable processing adder in effect at time of shipment, plus the current month's COMEX 'spot' settlement average. Seller will issue provisional invoices, with pricing based on the COMEX HG settlement price for the last trading day of the month prior to delivery. Provisional invoices are due and payable within thirty (30) days after the date of invoice. Seller will issue a final adjusted invoice following the end of the calculation period. Any additional amounts due Seller shall be due and payable within ten (10) days after the date of the final invoice, and any amounts due Buyer will be credited against the following month's invoice (or returned to Buyer in the absence of any future deliveries). Overdue payments shall bear interest from the due date until paid at a rate of 1.5% (.015) per month or the maximum legal rate, whichever is less. All shipping charges and costs shall be paid by Buyer. Seller's weights shall govern provisional and final settlement.

Credit is extended at the sole discretion of Seller. If credit has been extended, the amount of credit may be changed or credit withdrawn by Seller at any time, in its sole discretion. If a cash discount is stipulated, it is subject to Buyer's entire account being current. Any discounts given to Buyer by Seller in relation to the price of the Products are conditional upon payment for the Products being made strictly in accordance with the Sales Agreement and these Terms and to Buyer's entire account for all products purchased from Seller being current.

## 3. DELIVERY, TITLE, RISK OF LOSS, AND SHIPPING OF PRODUCTS

Title to and risk of loss of the Products shall pass to Buyer upon tender of such Products to Buyer at Seller's factory or a common carrier. Unless otherwise agreed to in writing by both parties, Buyer shall pay for shipping costs and charges for the Products. Product shall be released on full truckload quantities only. All shipments will be at the Seller's option. Wherever transportation rates and carrier's liability for damage depend upon the value of the shipment as declared by shipper, Seller will declare such value as will entitle Buyer to have the Products shipped at the lowest permissible rates unless otherwise instructed in writing by Buyer.

Buyer will furnish destination instructions for all Products as promptly as possible. Any shipping date provided by Seller is the Seller's best estimate and will not operate to bind Seller to ship or make deliveries on such date. In the absence of destination instructions, Seller will not be required to ship Buyer any Products. Seller shall not be liable for loss or damage attributed to negligence either in selection of the carrier or in agreeing with a carrier to contract terms on Buyer's behalf.

## 4. LIMITED WARRANTIES AND DISCLAIMERS

Seller warrants to Buyer that at the time of delivery the Products will be free from material defects in workmanship and materials under normal use and will conform substantially to Seller's applicable specification. As Buyer's sole and exclusive remedy and Seller's entire liability for any breach of the foregoing warranty, Seller will, at its sole option and expense, either refund the purchase price paid, repair or replace the Product which fails to meet this warranty upon return of the nonconforming Product; provided, Buyer notifies Seller of noncompliance in writing within sixty (60) days of delivery of such Product. Transportation charges to and from Seller's location for the return of nonconforming Products to Seller and their re-shipment to Buyer and the risk of loss thereof will be borne by Seller. Buyer shall use Seller's designated carrier for all re-shipments. These warranties do not apply to any Product that was not properly stored or handled by the Buyer, that was repaired or altered or was otherwise subject to abuse, neglect or improper use by Buyer, or that has any stage of processing performed on it which causes the defect. EXCEPT WITH RESPECT TO THE SPECIFIC WARRANTIES SET FORTH IN THIS SECTION 4 OF THESE TERMS, SELLER MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS, SERVICES OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Without limitation, under no circumstances shall Seller be liable for any costs associated with reworking, re-manufacturing or scrapping goods in which defective Product supplied by Seller was incorporated, for any costs associated with production stoppages, machinery breakdown or recall campaigns, or for any trouble shooting, administrative or engineering charges.

## 5. CLAIMS OF PATENT INFRINGEMENT

Seller shall conduct, at its own expense, the entire defense of any claim, suit, action or other proceedings ("Claim") brought against Buyer by a third party alleging that any Product infringes upon any United States patent of any third party; provided, however: (i) Seller receives prompt written notice of the Claim; (ii) Seller has full control of the defense and all related settlement negotiations; (iii) the Products are made according to a specification or design furnished by Seller, or if a process patent is involved, the process performed by the Products are recommended in writing by Seller; and (iv) Buyer provides Seller with all necessary assistance, information and authority to perform the defense and negotiate settlement thereof. Provided all four of the foregoing conditions are met, Seller shall, at its own expense, either settle said Claim or shall pay all damages (excluding consequential damages) and costs awarded by the court therein. If the use or resale of such Products is finally enjoined, Seller shall, at Seller's option, procure for defendant the right to use or resell the Products, replace them with equivalent non-infringing Products, modify them so they become non-infringing but equivalent, or remove them and refund the purchase price (less a reasonable allowance for use, damage or obsolescence). Buyer shall indemnify and hold Seller harmless from all Claims based upon (i) the use of a Product customized for Buyer based on Buyer's ideas, specifications or designs, (ii) the performance of a process performed by the Products not recommended in writing by Seller, or (iii) the use or sale of the Products delivered hereunder in combination with other products not delivered to Buyer by Seller.

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## 6. EXCUSABLE PERFORMANCE

Seller is excused from performing any of its obligations under these Terms, any order or Sales Agreement if its performance is prevented, hindered or delayed by delays of suppliers, acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order (whether or not it proves to be invalid), fires, riots, inability to supply or obtain labor, products, materials, raw materials, supplies, fuel or utilities, labor disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures or any other events or circumstances beyond Seller's reasonable control (an "Event"). To the extent an Event delays Seller's performance, such performance shall be extended for as many days beyond the due date as is required to obtain removal of such delay; provided, however, if Seller is unable to perform any of its obligations under any order due to an Event for more than thirty (30) days, it may in its sole option terminate, without liability or penalty, any Sales Agreement, order or obligation in whole or in part. It is expressly understood that the Seller has available a limited source for the materials used by Seller in the manufacture of the Products and provision of the Services. If there is an interference, limitation or cessation of any material from Seller's source of supply for any reason, Buyer agrees to relieve the Seller temporarily, proportionately, or permanently of liability under these Terms or any Sales Agreement or order, depending upon whether the interruption of the source of supply is a temporary interruption, a reduced delivery of materials, or a permanent cessation of supply. In the event there is a Product shortage pursuant to this section, Seller may ration and distribute such Products as it deems appropriate.

## 7. TAXES AND EXPORTS

Any and all taxes (not including any U.S. income or excess profit taxes attributable to Seller) which may be imposed by any taxing authority, arising from the sale, delivery or use of the Products or Services and for which Seller may be held responsible for collection or payment, either on its own behalf or that of Buyer, shall be paid by Buyer to Seller upon Seller's demand.

## 8. FINANCIAL RESPONSIBILITY OF BUYER

Buyer's solvency is a condition of Seller's performance and Seller may, at any time, in its sole discretion for credit reasons (including a good faith belief that a current or future payment is or may be impaired) or because of Buyer's breach of this or any other agreement with Seller, suspend or change credit terms, fix a limit on credit, require progress payments, demand payment in full of any outstanding balance, withhold shipments, demand COD or request other assurances of payment, cancel or terminate any order or agreement, or repossess all Products previously delivered, which Products shall become the absolute property of Seller subject to credit therefore. Seller retains a security interest in Products delivered hereunder until paid in full. Notwithstanding any other provision of these Terms, Seller reserves the right in its absolute discretion from time to time to require payment in full of the price of the Products before delivery of all or any of the Products.

Seller may terminate any order or Sales Agreement by written notice to Buyer if (i) a receiver or trustee is appointed for any of Buyer's property; (ii) Buyer is adjudicated or voluntarily becomes bankrupt under any bankruptcy, dissolution or reorganization laws or similar legislation; (iii) Buyer becomes insolvent or makes an assignment for the benefit of creditors; (iv) an execution is issued pursuant to a judgment rendered against Buyer; or (v) Buyer is unable or refuses to make payment to Seller. If any order or Sales Agreement is terminated by Seller pursuant to this section, Seller shall be relieved of any further obligation to Buyer and Buyer shall reimburse Seller for its termination costs and expenses and a reasonable allowance for profit.

Each order shall be treated as a separate transaction, but if Buyer shall fail to fulfill the payment terms of any order, Seller may without prejudice to any other lawful remedy defer further shipments and/or cancel any order. Buyer shall be liable to Seller for all costs and fees, including attorneys' fees, which Seller may reasonably incur in any actions by Seller taken to collect on any overdue account of Buyer. In addition to any right of set off or recoupment provided by law, Buyer agrees that all its accounts with Seller will be administered on a net settlement basis and that Seller may set off debits and credits, including Seller's attorney fees and costs of enforcement, against any of Buyer's accounts regardless of basis for such debits and credits and without advance notice. In this section, "Seller" includes Seller's parent, subsidiaries and affiliates, and "Buyer" includes Buyer's parent, subsidiaries and affiliates.

## 9. CANCELLATIONS AND RETURNS

Due to raw material and manufacturing plant scheduling, all orders accepted by Seller are non-cancelable unless (i) such order is cancelled in writing thirty (30) days prior to the scheduled ship date and (ii) the Products ordered were not manufactured as special or customized items. If paid for, cancelled Products may be returned for credit only.

Return of any Product must be authorized by Seller. Seller will issue a formal RETURN MATERIAL AUTHORIZATION (RMA) tag to support all authorized returns. For any credit, this document must provide the Buyer's order number, Seller's invoice number, part number, description, and quantity of item to be returned, and reason for request. Standard stock items are returnable at invoice price less a 20% restocking charge, freight prepaid by Buyer to the plant of manufacturer or Seller's designated location. Non-stock items and/or special items are not subject to return. All material must be returned to Seller on the original pallets, undamaged and in the original packaging.

## 10. PACKAGING MATERIAL

The pallets, reels and spools Seller uses to ship Products to Buyer ("Packaging Material") shall always remain the property of Seller and are not a component of Buyer's purchase. Unless otherwise specified, all Packaging Material shall be returned by Buyer to the location from which they were shipped. Full truckloads of return pallets will be shipped at Seller's expense. Less than full truckloads will be shipped freight prepaid by Buyer. Seller reserves the right to charge for Packaging Material not returned within 6 months or which are damaged as the result of improper handling or storage.

**11. CHANGES — PROCESS, MATERIAL AND PRODUCT DESIGN.** Seller continually develops and uses new processes, materials and product designs in an effort to improve its Products, while maintaining conformity to specifications. If Buyer's applications of the Products rely upon any performance, dimensional or constant criteria other than as required by the applicable specifications, Buyer must conduct regular testing or evaluation of those specific Products. Seller makes no warranty or representation of any nature that any material shipped conforms to any material of like product description as may have previously been delivered to Buyer.

## 12. LIMITATION OF LIABILITY

IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, DELAY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DIRECT OR INDIRECT PROFITS, REVENUE, OR USE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF BUYER OR ANY OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY TO BUYER EXCEED ALL AMOUNTS ACTUALLY PAID BY BUYER TO SELLER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SET FORTH IN SECTION 4.

## 13. CONFIDENTIALITY

Buyer will not disclose to third persons any proprietary or confidential information of Seller concerning its business and operations, including without limitation, pricing information, for a period of five (5) years from the date such confidential information was learned or for confidential information meeting the definition

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of "trade secret" under applicable law, until such information is no longer a "trade secret." Confidential Information does not include any data or information that is publicly known or in the public domain through means that do not involve a breach by Buyer of its obligations set forth herein.

#### **14. ADDITIONAL TERMS**

The provisions of these Terms and the Sales Agreement, if any, constitute the entire agreement between Buyer and Seller with respect to the matter contained herein and supersedes any prior oral or written communications, understanding, representations, proposals or agreements. Seller may revise these Terms from time to time. These Terms may not be amended or modified by Buyer except upon the execution of a written agreement signed by both parties indicating an intent to modify these Terms. Neither Buyer nor Seller may assign any of its rights or obligations hereunder or under any order; provided, however, that Seller shall be permitted to assign any of its rights or obligations under these Terms, Sales Agreement or any order in connection with the sale or transfer of all or substantially all of its assets or capital stock, whether by merger, reorganization, consolidation or other similar transaction. If any provision of these Terms is held invalid, unenforceable or in conflict with any law by a court of competent jurisdiction or arbitration tribunal, such provision shall be deemed severed from these Terms and the validity of the remainder of these Terms shall not be affected thereby. The provisions of these Terms that by their nature are reasonably intended by the parties to survive the expiration or termination of the Terms or any accepted order, including without limitation sections 4, 5, 11, 12, 13 and this section 14, shall survive the expiration or termination of the Terms or any accepted order.