

## TERMS AND CONDITIONS OF SALES

- 1. Terms:** The following terms and conditions apply to all sales of goods by or on behalf of Tioga Pipe, Inc. or its affiliates (hereinafter "Tioga"), and expressly supersede any contrary provision presented by Buyer in any written form or otherwise. These terms and conditions may NOT be changed or waived in any manner other than in writing signed by an authorized representative of Tioga. To the extent that any quotation, offer to sell, or sale constitutes an acceptance by Tioga of an offer to Buyer, the acceptance is expressly conditioned on Buyer's assent to the terms and conditions herein which are additional or different to those presented by Buyer. To the extent that any portion of any quotation, offer to sell, or sale constitutes an offer, acceptance is expressly limited to the terms of the offer and subject to the express written confirmation of such offer by an authorized representative of Tioga.
- 2. Price, Terms and Payment:** Except as otherwise expressly agreed in writing signed by an authorized representative of Tioga, prices are subject to change at any time without notice and are payable in full within thirty (30) days after date of the applicable invoice. All prices and payment terms are subject to credit approval by Tioga. Tioga shall have no obligation to make any shipment if Buyer is overdue on any payments due from Buyer to Tioga, whether under these Terms and Conditions or otherwise, and Tioga may pursue any and all remedies available to it with respect to such overdue payments, including the filing of a mechanics lien or similar lien in all relevant jurisdictions (it being understood and agreed that such lien rights cannot be waived in any manner other than in writing signed by an authorized representative of Tioga specifically referencing such a lien waiver). Buyer agrees to pay any costs, or any expenses, including reasonable attorney's fees, incurred by Tioga in the enforcement of these terms and conditions and the collection of any sum payable by Buyer to Tioga. Any overdue payments shall accrue interest at the lesser of 1.5% per month from the original due date for such payment or the maximum interest rate permitted by applicable law.
- 3. Delivery:** Tioga will use its commercially reasonable best efforts to meet all delivery and shipping dates set forth in any quotation, offer to sell or mutually agreed purchase order, but all such dates constitute good faith estimates only. Tioga will not be liable or responsible for failure to meet any specific delivery or shipping date, so long as it acts in good faith.

Except as otherwise expressly provided, all shipping, delivery, and price terms are F.O.B. point of shipment.

**4. Warranty and Disclaimer:**

A: Tioga warrants to Buyer, that the goods covered by any quotation, offer to sell, or sale will, at the time of delivery, be free from material defects, defects in workmanship and will conform, in all respects, to any specifications provided by Tioga or provided by Buyer and approved in writing by Tioga. This warranty extends for one year from the date of delivery of the goods.

Tioga's sole responsibility under the warranty shall be, at its own option and expense, to repair, replace, or give full credit for any goods which it concludes, in its reasonable discretion, are defective or do not conform to specifications. Tioga shall have no responsibility, and the warranty shall not apply, to any alleged defect or non-conformance that is caused by or results from the negligence or intentional misconduct of Buyer or any Party acting for, or on behalf of Buyer, or if Buyer fails to give Tioga written notice of the alleged defect or non-conformance within 30 days after the delivery of the relevant goods.

**B: EXCEPT AS EXPRESSLY PROVIDED IN SUBPARAGRAPH A, TIOGA MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE GOODS COVERED BY ANY QUOTATION, OFFER TO SELL, OR SALE. ALL EXPRESS OR IMPLIED WARRANTIES NOT EXPRESSLY STATED IN SUBPARAGRAPH A, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HERBY DISCLAIMED.**

5. **Limitation of Remedy:** Buyer's sole and exclusive remedy, (excluding the repair, replacement or full credit remedy for defective or non-conforming goods under Paragraph 4), for any matter, or claim arising, under or relating to any quotation, offer to sell, or sale of goods covered hereby, and any transaction, involving or relating to such goods, whether in contract, or tort (including negligence) or otherwise, shall be general money damages not in excess of the lesser of the actual direct damage to Buyer, or the purchase price of the goods to which the claim relates. **IN NO EVENT OR CIRCUMSTANCE WILL TIOGA BE LIABLE FOR CONSEQUENTIAL DAMAGES OF ANY KIND AND/OR SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OR LOSS, INCLUDING, BUT**

**NOT LIMITED TO, ECONOMIC LOSS, LOST PROFITS OR SHORTFALLS OR DECREASE IN VALUE OR OPPORTUNITY ARISING FROM ANY TYPE OF CLAIM WHATSOEVER EVEN IF TIOGA WAS ADVISED OR AWARE OF THE POSSIBILITIES OF SUCH DAMAGES.**

**In no event or circumstances will Tioga be liable for liquidated damages for late delivery or other reasons unless the liquidated damages were expressly agreed to in writing signed by an authorized representative of Tioga at the time of contract acceptance.**

6. **Other:** Without limiting the provisions of Paragraph 2 above, if the costs of any goods to be provided by Tioga under any order after acceptance of such order by Tioga are increased due to factors outside the control of Tioga (for example, but not limited to, changes in import/export laws, tax law, duty, import restrictions, US Presidential executive order, government regulation, etc.), then the price of the effected goods provided to Buyer shall increase by the amount of such increased costs.
7. **Buyer Not an Agent:** Buyer has no authority to act on Tioga's behalf or as Tioga's agent for resale of the goods.
8. **Force Majeure:** Tioga shall not be liable or responsible, in any manner for delays in performance due to any cause, event or circumstance beyond Tioga's reasonable control (any such cause, event or circumstance, a "Force Majeure Event"). In the event of a delay resulting from or caused by a Force Majeure Event, all delivery and other deadlines shall be deemed tolled and extended (including, without limitation, any time period that must lapse prior to the imposition of liquidated damages to the extent applicable pursuant to Paragraph 5 above) for the period of the delay resulting from or caused by such Force Majeure Event; except that, if the delay extends for more than three (3) months, either party may terminate the order for the effected goods by written notice to the other.
9. **Returned Goods & Cancellation of Orders:** Buyer may not cancel an order or any items in an order without the prior written consent of an authorized representative of Tioga once that order has been accepted by Tioga or for which order processing by Tioga has begun. Except for defective or non-conforming goods subject to Paragraph 4.A above,

delivered goods cannot be returned to Tioga for credit without (a) the prior written consent of an authorized representative of Tioga and (b) a written agreement between Tioga and Buyer with respect to responsibility for any costs associated with the return. Returned goods may be subject to restocking fees, transportation costs and other costs as determined by Tioga in its reasonable discretion. Any goods authorized for return must be in the same condition as they were immediately prior to shipment.