



Terms & Conditions for Product Sales

(Last Revised March 20, 2020)

Exclusivity of these Terms and Conditions and Acceptance

These terms and conditions, together with the applicable final proposal or quotation ("Proposal"), form the entire contract between ERC Midwest, LLC (the "Company") and the Client named in the Proposal ("Client"). They supersede and replace any previous or existing agreements, written or oral, between the parties. All conflict or additional terms and conditions proposed by Client are rejected. Submission of any order or acceptance of product in response to the Company's Proposal shall be deemed acceptance of these terms and conditions, regardless of whether additional or conflicting terms are proposed by Client, and any such additional or conflicting terms are rejected by the Company. If Client's order is expressly conditioned upon the Company's acceptance or assent to terms other than those expressed herein, then the Company's issuance of acknowledgment by the Company with these terms and conditions attached serves as notice of objection to such terms and a counter-offer to provide the requested product in accordance with scope and terms of these terms.

Performance - The Company's duty to perform is contingent upon the absence of strikes, accidents, delays in transit, fires, the inability to procure materials from the usual sources of supply, the requirements of any government in any manner that diverts either the material or the finished product to the direct or indirect benefit of a government, or upon any other cause beyond the reasonable control of the Company. Upon occurrence of any of the foregoing events, the Company may delay performance, and may allocate available product in any manner that it deems commercially reasonable.

Taxes – Client shall provide at the Company's request any resale certificates necessary to avoid obligation of collection of any applicable excise or sales tax. Otherwise, the Company may charge taxes.

Warranty Matters – Product is not new unless specified in the Proposal. The Company warrants solely for a period of ninety days from date of shipment at the Company's designated shipping point that the products meet the description and specification, if any set forth in the Proposal. The Company's obligation for breach of warranty is limited to furnishing replacement product FOB the Company's designated shipping point for all non-conforming product. This warranty is given in lieu of all other warranties, express or implied, including IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE and/or others arising from course of dealing or trade, ALL OF WHICH ARE EXCLUDED.

Liability Disclaimer – **In no event shall the Company be liable for any incidental, consequential, or punitive damages arising out of the purchase, use or resale of the Company's products.** This exclusion applies regardless of whether such damages are sought based on breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory. In all events, the Company's liability in connection with the order, sale or use of the product is limited to the purchase price of the product under the order.

Shipment Dates and Delivery Terms - Shipment dates are estimates only.

Cancellation – An order is not cancellable once acknowledged by the Company.

Payment - Payment terms are thirty (30) days after invoice date. Finance charge of 1½% per month shall be due on all balances 30 days past invoice date. Client shall be liable to the Company for all collection expenses, including reasonable attorney's fees and court costs, incurred by the Company in collect overdue amounts. The Company reserves the right to suspend or terminate performance of any shipment in the event of Client's non-payment on any other order.

Returns - Products may be returned only with permission of the Company and may be subject to stocking charge.

Governing Law All order and sales shall be governed by and construed in accordance with the substantive laws of the State of Illinois.