

American Chemet Corporation General Terms and Conditions of Sale

Limited Warranty:

Seller expressly warrants that the Product sold hereunder conforms to its description as set forth in Section 2. EXCEPT FOR THE EXPRESS LIMITED WARRANTY DESCRIBED ABOVE, WE DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY OTHER KIND, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Contractual Documents:

These general sellers conditions shall govern the contractual relationship between the parties. The applicability of the general conditions of the PURCHASER is herewith explicitly rejected, unless if and to the extent the SELLER has previously agreed in writing to a derogation by an authorized representative of the Seller. The acceptance of material shipped under these Terms and Conditions shall be deemed to be an acceptance of the SELLER conditions. In case the Purchaser refers in its Purchase Order or any other document to its own terms and conditions, such reference shall be invalid and the Seller shall not be bound thereby. Amendments and deviations from the present general conditions shall only be valid if agreed in writing between both parties. In the event of a conflict between the Contract agreement and these general sellers conditions, the former shall prevail.

The ICC Incoterms 2000 and subsequent amendments shall apply to the extent that they are not contradicted by the Contract, including these general terms and conditions of sale.

Exclusive Remedy for Non-Conformity:

Customer shall have the right to inspect the Product upon receipt, and should any portion prove to not conform to the description set forth in Section 2, the Customer shall within 10 days of such receipt notify the Seller in writing of such non-conformity. If the Customer fails to give such notice, the Product shall be deemed to conform to such description. Receipt shall mean the latter of (1) the date the Product arrives at the destination provided under this agreement; or (2) issuance date of the letter of credit or other promissory form for payment; Purchaser's sole and exclusive remedy for any breach of warranty shall be the replacement of any non-conforming portion of Product or, at Seller's option, the refund of the purchase price paid for such portion, in either case upon proper notification and return (at the expense of, and in a manner determined by, Seller) of the non-conforming portion of the Product to Seller. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY NEGLIGENCE WITH RESPECT TO ITS PERFORMANCE UNDER THIS AGREEMENT, OR FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ANY ACTION BY CUSTOMER FOR BREACH OF THIS AGREEMENT MUST BE COMMENCED WITHIN ONE YEAR OF THE DATE THE CAUSE OF ACTION OCCURS.

Force Majeure:

Seller shall not be liable for any loss or damage of any kind due to delay or inability to deliver on account of strikes, labor difficulties, riot, civil unrest, war, fire, delay or defaults of carriers, failure or curtailment of Seller's usual sources of supply, government decree or orders or, without limiting the foregoing, any other delays beyond Seller's reasonable control. Seller shall have the right upon the happening of any of the above contingencies, at its option, to cancel this agreement or any part thereof without any resulting liability.

Cancellation:

Customer may cancel this agreement by giving Seller written notice of cancellation and paying to Seller within 7 days of such notice an amount equal to the sum of (1) 10% of the full purchase price, and (2) the decrease, if any, in the futures price of copper (for the quantity set forth in Section 3), from the date of this order to the date Customer's notice of cancellation is received by Seller. Such decrease shall be determined by reference to the decrease in the settlement price for copper quoted on the New York Commodities Exchange (COMEX) for the traded month (January, March, May, July, September and December) which is or which most closely follows the last month in which the price set forth in this agreement is valid under Section 5.

Installment Shipments:

If this agreement calls for multiple shipments, each shipment shall be treated as a separate and independent agreement with respect to forwarding and terms of settlement, provided, however, that if the Customer defaults in the payment of any purchase price when due, the Seller may, without prejudice to other lawful remedies, defer further performance until the defaulted payments are made, or make future deliveries against the agreement for cash in advance only, or treat the entire agreement as breached by the Customer and pursue its remedies for such breach.

Shipment After Expiration of Letter of Credit:

If Seller ships any portion of the Product by bill of lading dated after the expiration date of the Irrevocable Letter of Credit delivered under Section 7, Buyer agrees to forthwith authorize and otherwise cause payment of the purchase price against the bill of lading issued for such shipment.

Applicable Law:

This agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of Illinois, including its provisions of the Uniform Commercial Code, as amended, but specifically excluding the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

Submission to Jurisdiction; Consent to Process:

All actions brought to enforce any claim arising out of this agreement shall be brought in a state or federal court having subject matter jurisdiction and located in Chicago, Illinois. For the purpose of any action or proceeding instituted with respect to any such claim, each party hereby irrevocably submits to the jurisdiction of such courts, and irrevocably consents to the service of process out of said courts by mailing a copy thereof, by any form of mail requiring a signed return receipt, postage prepaid, to the party and agree that such service, to the fullest extent permitted by law, (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall be taken and held to be valid personal service upon and personal delivery to it. Nothing herein contained shall affect the right to serve process in any other manner permitted by law. Each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any court located in Chicago, Illinois and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.