

TERMS & CONDITIONS OF SALE

These terms and conditions of sale ("**Terms and Conditions**") apply to all sales of Products (as defined below) to you, the buyer ("**Buyer**"), by Alsey Refractories Company ("**Seller**"), unless superseded by the terms of a separate subsequent written agreement between Buyer and Seller. Buyer and Seller may individually be referred to as a "**Party**" or collectively as the "**Parties**."

SCOPE AND APPLICABILITY

1. All products, materials, supplies, or other goods ("**Products**") sold by Seller to Buyer shall be made in accordance with these Terms and Conditions. These Terms and Conditions (a) constitute an offer by Seller to Buyer to sell the Products for the price (as defined below) and pursuant to the terms set forth herein and (b) are not an acceptance of the terms and conditions of any offer of Buyer. Acceptance of this offer is expressly conditioned upon and limited to the provisions of these Terms and Conditions. Acceptance of this offer shall be deemed to have occurred on the earlier of (A) the mailing or delivery of Seller's order acknowledgement to Buyer, (B) the commencement of the production or manufacturing of all or any portion of the Products, (C) or the shipment of all or any portion of the Products to Buyer. In the event of any additional, different, or conflicting provision contained in any document of Buyer relating to the Products, including, but not limited to, any purchase order of Buyer, the Buyer expressly agrees that (i) these Terms and Conditions shall apply and (ii) the Buyer's additional, different, and/or conflicting provisions shall not become part of these Terms and Conditions or Seller's offer to sell the Products to Buyer.
2. No modification or additional or conflicting terms will become applicable to these Terms and Conditions by Seller's receipt, acknowledgement, or acceptance of purchase orders, shipping instruction forms, service instruction forms, or other documentation. Any such modifications or additional terms are specifically objected to, rejected, and deemed a material alteration hereof. Seller hereby objects to and rejects the provisions of any Buyer's purchase order, confirmation, or terms and conditions that are inconsistent with, conflict with, or are a modification of or are in addition to the provisions of these Terms and Conditions.
3. Seller reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms and Conditions, at any time by providing written notice to Buyer.
4. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these Terms and Conditions shall be binding upon Seller unless hereafter made or confirmed in writing and signed by Seller.
5. The Parties hereby agree that any prior agreements with respect to the Products, whether written or oral, are superseded by these Terms and Conditions.

PRICE

6. The purchase price ("**Price**") for the Products shall be the total, gross amount that is set forth on Seller's sales invoice ("**Invoice**").
7. Prices do not include any applicable taxes, freight, or insurance costs, unless specifically provided for in a quote by Seller.
8. Buyer is solely responsible for the costs of taxes, freight, insurance, or other ancillary expenses with respect to the Products even where such costs are pre-paid by Seller.
9. Prices are final and no further discounts apply.
10. All price quotes from Seller to Buyer will be in writing and valid for a period of thirty (30) days from the date of such quote.

TERMS OF PAYMENT

11. Unless otherwise agreed upon in writing by the Parties, payment terms are net thirty (30) days from the date of Seller's Invoice.
12. All payments shall be made in United States currency.
13. Unless otherwise agreed upon in writing by the Parties, all payments shall be made without setoffs or deductions.
14. Seller is not obligated to begin performance on any purchase order for Products until Seller has received a signed order acknowledgment from Buyer.
15. If Buyer fails to pay any amount due for Products in a timely manner, Seller may, without waiving any other legal remedies available to Seller, terminate the corresponding order, suspend further performance of any obligation thereunder, or both.
16. Buyer hereby grants Seller a purchase money security interest in all Products as security for prompt and full payment of the Price, which security interest shall continue until all such Products are fully paid for.
17. Buyer, upon Seller's demand, shall execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.
18. Buyer acknowledges that all sales shall be subject to approval of Seller's credit department. If, in the sole discretion of Seller, the financial responsibility of the Buyer should become impaired, Seller reserves the right to defer shipments or deliveries subject to these Terms and Conditions.

ACKNOWLEDGEMENT OF ORDERS

19. Seller may reject any purchase order, for any reason, at Seller's sole discretion.
20. All orders are subject to and shall be effective only upon written order acknowledgement by an authorized representative of Seller.
21. Seller will acknowledge an order only after it receives complete and final information covering price, plans, specifications, delivery requirements and any information necessary to fill the order. It is Buyer's responsibility to supply all such information.
22. Nothing contained herein shall create any contractual obligation of Seller towards the Buyer's end customer any user of the Products, or any other third party.

BUYER'S OBLIGATIONS

23. Buyer must promptly inspect the Products upon delivery.
24. If Buyer does not accept delivery of Products, then Seller, at its sole discretion, may charge up to a twenty-five percent (25%) restocking fee for stock sales. However, for non-stock and/or custom sales, if Buyer does not accept delivery of Products, then Seller, at its sole discretion, may charge up to a one hundred percent (100%) restocking fee.
25. Buyer assumes all risk and liability for the results obtained by the use of the Products in the manufacturing processes of Buyer or in combination with other substances.
26. Any resale, commingling, alteration, or incorporation of the Products by Buyer shall be deemed acceptance of the Products as of the delivery date.

SHIPMENT AND DELIVERY

27. Except in the case of drop shipments, all shipments of Products are FOB Alsey's manufacturing plant in Alsey, Illinois. Title and risk of loss to the Products will pass to Buyer at the shipping point, which is Alsey's manufacturing plant in Alsey, Illinois. Buyer is responsible for all shipping costs associated with transporting the Products from Alsey's manufacturing plant in Alsey, Illinois.
28. A shipment of Products that is delayed for any reason to accommodate the Buyer will be subject to additional charges for warehousing and other incidental expenses created by the delay. Such charges and expenses shall be borne by Buyer.
29. Information and schedules related to the delivery of Products are approximate and not guaranteed. Delay by Buyer in supplying specifications or other information necessary to fill an order shall extend delivery schedules for a reasonable time. Seller is not liable for any penalties or damages, liquidated or otherwise, for shipments that are delayed.

INDEMNIFICATION

30. Buyer shall indemnify, defend, and hold harmless Seller, Seller's subcontractors, and their respective directors, officers, agents, representatives, or employees, for, from, and against any damages, claims, costs, expenses (including attorneys' fees), losses, or liabilities of any nature whatsoever, whether involving injury or damage to person or property, and any and all suits, causes of action, and proceedings related thereto arising or allegedly arising out of, based upon, attributable to, in connection with, or otherwise directly or indirectly related to the Products sold hereunder or from the use thereof.

LIMITED WARRANTY

31. The Products are provided on an "As-is" basis. Seller extends no warranties, either express or implied, concerning the Products, including, but not limited to, any implied warranties of merchantability, non-infringement, adaptability, or fitness for any particular purpose. In no event shall Seller be liable to Buyer, any user of the Products, or any third party for loss of profits, loss of business, indirect, incidental, consequential, special, punitive, or other damages whatsoever arising from the use or performance of the Products, or from the non-delivery, delayed delivery, damage to the Products, or otherwise. In no event will Seller's liability exceed the actual price paid by Buyer for the Products. Buyer expressly assumes all responsibility for determining the fitness of such Products for Buyer's intended use. Any technical information, product literature, Seller technical assistance or other information is given to and accepted by Buyer at its own risk and is not a warranty by Seller to Buyer.
32. Buyer shall not make, give, or extend any other warranties with respect to the Products or the use of the Products, except as authorized in writing by Seller, and shall hold Seller harmless against all damages, costs, and expenses (including attorneys' fees) related to claims based upon an unauthorized warranty given by Buyer.

LIMITATION OF LIABILITY

33. Under no circumstances shall Seller be liable for any: (A) special, indirect, incidental, exemplary, punitive, or consequential damages of any kind (including, without limitation, the loss of profits or damages resulting from business interruptions or loss of use) or (B) damages which in the aggregate exceed the purchase price paid for the Products giving rise to the claim.

EXCLUSIVE REMEDIES

34. The sole and exclusive remedies of the Buyer, any user of the Products, or any third party are, at Seller's option and depending on the circumstances, as follows: (1) the replacement of the Products or (2) credit in an amount no greater than the amount paid by Buyer for the Products. The limitations of this Section apply regardless of whether an underlying claim is for breach of contract, breach of warranty, infringement, negligence, strict liability, any other tort, or any other cause of action.
35. No cause of action of Buyer, any user of the Products, or any third party concerning, relating to, or arising from the Products may be commenced later than one year after the cause of action has accrued.

INTELLECTUAL PROPERTY OF SELLER

36. All trade names, trademarks, logos, patents, designs, drawings, copyrights, engineering, patents, trade secrets, photographs, samples, literature, and any other legally protectable intellectual property of any kind with respect to the Products ("**Intellectual Property**") shall at all times remain the property of Seller. Except for the materials supplied by Seller that accompany the Products, Buyer shall not use any Intellectual Property of Seller at any time in any manner without the express written permission and approval of Seller. Further, Buyer shall not use any Intellectual Property of Seller at any time in any manner that may be detrimental to Seller's reputation or other interests. Buyer may not obtain any intellectual property rights with respect to any Intellectual Property of Seller in any country, territory, or region.

FORCE MAJEURE

37. Seller shall not be liable for any losses, damages, or delays caused by any event, condition, or circumstance beyond its ability to control, including without limitation, changes in government regulations, acts of God, Buyer's acts or omissions, fires, strikes, boycotts, floods, epidemics, quarantines, wars, insurrections, riots, terrorism, inclement weather, acts of civil or military authorities, transportation embargoes, shortages, wrecks, labor shortages, delays by Seller's suppliers, or other similar circumstances. If a Party becomes aware of any such event, condition, or circumstance, then such Party will promptly advise the other Party and both Parties will cooperate to ameliorate the event, condition, or circumstance as quickly as possible. If, due to such an event, condition, or circumstance, Seller is unable to supply the total demands for the Products, Seller may allocate its available supply among customers as it may determine or cancel orders without liability for any part thereof not shipped to the Buyer. Any such reduction in by allocation in quantity deliverable hereunder shall not be greater than the percentage reduction to other customers taken in the aggregate. In no case shall Seller be responsible for any liability, loss in deliveries, or damage after delivery of the Products to the shipping point as defined above in these Terms and Conditions.

CLAIMS FOR MISSING OR NON-CONFORMING PRODUCTS

38. Claims for missing or nonconforming Products must be made in writing and received by Seller within thirty (30) days of Buyer's receipt of any shipment of Products. Buyer's receipt of any Products delivered in accordance with these Terms and Conditions shall be and represent an unqualified acceptance of, and a waiver by Buyer of any claims with respect to, such Products, if Buyer does not give such notice of any claim within the above-proscribed period.

CANCELLATIONS

39. Upon the commencement of the production or manufacturing of all or any portion of the Products, no cancellations by Buyer will be allowed unless Seller, in its sole discretion, determines otherwise. For stock sales, Seller, at its sole discretion, may charge up to a twenty-five percent (25%) of the Price for such cancellations. For non-stock and/or custom sales, if Buyer cancels the sale, then Seller, at its sole discretion, may charge up to one hundred percent (100%) of the Price.

RETURNS

40. Seller will not accept Products for return or credit unless previously agreed to in writing by Seller and Buyer receives a Returned Goods Authorization form issued by a duly authorized representative of Seller. The Buyer retains the risk of loss and shall reimburse Seller for any costs it incurs in connection with the shipment and return of the Products, including, but not limited to, a restocking fee of up to a twenty-five percent (25%) for stock sales. A one hundred percent (100%) restocking fee shall apply for non-stock and/or custom sales.

ALLOWABLE OVERAGES

41. BRICK. Seller reserves the right to ship and invoice additional quantities as allowable overages in the following percentages: 1-250 pieces, 10%; 251-1000 pieces, 8%; 1001-5000 pieces, 5% and over 5000 pieces, 2%.
42. MONOLITHICS. Seller reserves the right to ship and invoice additional quantities as allowable overages in the following percentages: 1-750 pounds, 100%; 751-10,000 pounds, 10% and over 10,000 pounds, 5%.

INTEREST AND ATTORNEYS' FEES

43. Interest at the maximum legal rate or eighteen percent (18%) per annum, whichever is lower, shall be charged to Buyer on any overdue accounts and such amounts will be charged from the date the account becomes overdue.
44. If Seller retains the services of counsel in connection with enforcing Buyer's obligations hereunder, all costs of collection (including reasonable attorneys' fees) incurred by Seller shall be paid by Buyer to Seller, whether incurred in or out of court, on appeal, in arbitration, in bankruptcy court, or in any insolvency proceedings.

ERRORS

45. Seller's stenographic, clerical, or other errors are subject to correction by Seller.

PENALTY CLAUSES

46. Seller assumes no liability from penalty or liquidated damage clauses of any kind, written or implied, unless specifically approved in writing by a duly authorized representative of Seller.

ASSIGNMENT

47. Buyer shall not assign its rights or delegate its obligations hereunder or any interest herein without the prior written consent of Seller, and any such assignment without consent shall be void.

RELATIONSHIP BETWEEN THE PARTIES

48. These Terms and Conditions do not make either Party the employee, agent, or legal representative of the other for any purpose whatsoever. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party. In fulfilling its obligations pursuant to this Agreement, each Party shall be acting as an independent contractor.
49. Under no circumstances shall Seller, its subcontractors, or any of their respective employees or agents be deemed for any purpose to be an agent, servant, employee, or representative of them Buyer's end customers.

SEVERABILITY

50. If any provision of these Terms and Conditions is deemed invalid, illegal, or unenforceable in any respect, the remaining provisions of these Terms and Conditions shall remain fully valid and enforceable.

WAIVER

51. Except as otherwise set forth herein, no failure to exercise any right of either Party hereunder shall constitute a waiver of said right, nor shall any waiver of any right hereunder constitute a waiver of any other right, nor shall any waiver constitute a continuing waiver.
52. No waiver by either Party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a waiver of any other breach or default or of any other right or remedy, unless such waiver is in writing and signed by the Party to be bound.

GOVERNING LAW AND VENUE

53. These Terms and Conditions shall be deemed accepted in the State of Missouri, USA and the rights and obligations of the Parties hereunder shall be construed, interpreted, and enforced in accordance with the laws of the State of Missouri, without regard to its conflict of laws principles. In the event of any dispute or controversy arising under these Terms and Conditions or the transactions contemplated herein, the Parties mutually consent to the jurisdiction of the U.S. District Court for the Eastern District of the State of Missouri and agree that any and all process directed to either of them in any such litigation or controversy may be served by registered, certified mail, return receipt requested, outside Missouri with the same force and effect as if service had been made in Missouri.



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Please visit www.alsey.com to view the most up to date version of Alsey Refractories Company Terms & Conditions of Sale.