

## TERMS AND CONDITIONS OF SALE

**General.** The following terms and conditions of sale ("Contract") will be the final, complete and exclusive Contract for sale between the IPS Diversified Products Group entity named on seller's Acknowledgment form ("Seller") and the entity to which Seller is providing Products under the Contract ("Buyer") and supersedes all other communications in regards to the Products, whether written or oral. Any terms and conditions in any of Buyer's other documents that are inconsistent with or add to these terms are hereby objected to and are not binding upon Seller without express written consent, even though there may have been acknowledgment of the Purchase Order, work has commenced or the order has shipped. This Contract may only be amended in a writing signed by both parties. To the extent this Contract is construed as an acceptance of the Buyer's offer, this acceptance is expressly conditioned on the Buyer's assent to any additional or different terms contained in this Contract. When used herein the term "Standard Product" refers to a product that is standard product, currently in stock, and inventoried by Seller and identifiable as returnable. The term "Product" refers to both Standard Product and Non-standard or Non-stocked Product.

**Price.** Quotations are valid for thirty (30) days unless extended in writing by Seller. Prices quoted will be firm for orders accepted at the factory within thirty (30) days, where material is released and scheduled by Seller for shipment within thirty (30) days after the date of order entry; otherwise, Seller reserves the right to apply prices in effect at the time of shipment. Additional charges may be made to cover any extra, unforeseen or unusual cost elements, including without limitation, overtime work authorized by Buyer, special packing, engineering, special certificates determined after quality review, or documentation. All orders are subject to acceptance by Seller and credit approval. Prices do not include sales, use, excise, VAT, GST, and all similar taxes. Total prices on invoices may differ slightly, as price records for electronic calculation may either be on a "list and discount" or on a net basis.

**Packaging, Shipment and Delivery.** Seller will decide how to pack and ship unless specific written instructions are given by Buyer and accepted by Seller. If required, special export packaging that includes extra packaging, fully crated, with corrosion protection and heat-treated lumber can be included for an additional 3% of order value (\$300 minimum fee). Special packaging will not be provided by Seller unless requested in writing by Buyer. Unless otherwise expressly agreed to in writing by Seller, all shipments are Ex Works (International Incoterms 2020) Seller's departure dock, at which point title also transfers. Buyer will pay all delivery costs and charges. If the Buyer asserts a claim against the transportation company, Seller will cooperate in attempting to resolve the claim. Delivery dates are approximate, not guaranteed, and are subject to prior sale. Goods are deemed delivered on the day the shipment is made available to the carrier.

**Force Majeure.** Seller will not be liable for delays in delivery due to circumstances beyond its reasonable control, including, but not limited to, acts of Buyer, government, nature, or the public enemy, civil or labor unrest, fires, pandemic, floods, explosions, energy shortages, delay in obtaining licenses, or unavailability or reduced availability of supply at its usual source, or other similar events.

**Cancellation and Revision Charges.** Standard Product-no charge for cancellation if made prior to shipment. All other Product will incur a \$100 minimum cancellation charge. Additional charges may apply (up to 100% of the value of the Contract) based on stage of order completion when cancellation or revision is requested. Additional charges may include, but are not limited to, materials ordered, engineering, drawing, or manufacturing development time. Reschedules may not be made unless written notification is received and accepted at the manufacturing location more than 90 days prior to the latest acknowledged shipping date, and then only upon terms which will indemnify Seller against loss. Buyer delays may result in extra costs to Buyer.

**Patents.** Seller will defend and indemnify Buyer against claims by a non-affiliated third party of infringement of United States patents issued at the time of sale to Buyer; provided the claims are based exclusively on infringement by Products designed and manufactured by Seller and not based on the use of the Products in combination with products manufactured or designed by Buyer or others. Seller must be promptly notified in writing, tendered the defense and be allowed to obtain a license for Buyer or substitute a non-infringing equivalent product. In no event will Seller's total liability to Buyer exceed the purchase price of the Product.

**Manufacturing Devices and Technical Information.** Unless otherwise expressly agreed to in writing by Seller, all manufacturing devices, design data and other technical information relating to an order will remain Seller's property. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, will be owned exclusively by Seller. Buyer's patterns/tooling in Seller's possession are held at Buyer's risk and not covered by Seller's insurance.

**Warranty.** For a period of one year from the date of shipment\*\*, and provided payments for the products have been made by Buyer to Seller, Seller warrants to Buyer that its products: (i) substantially conform to Seller's published specifications and (ii) are free from defects in material or workmanship. Product performance is limited by the capability of the structure and/or system it is installed in. If a warranted product fails to conform to these warranties, Buyer must promptly notify Seller in writing. For a valid warranty claim, Seller will, at its discretion and at no product charge to the Buyer: (i) repair the product; (ii) replace the product; or (iii) offer a full refund of that portion of the purchase price allocable to the non-conforming product. Warranty repair or replacement by Seller will not extend or renew the applicable warranty period. Buyer will obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a product non-conformance exists. Buyer will bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination and re-installation. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty allocates the risks of product failure between Seller and Buyer. This allocation is recognized by both parties and is reflected in the price of the products. Buyer acknowledges that it has read this warranty, understands it, and agrees to and is bound by its terms.

**What is Not Covered by Warranty.** No representative of Seller has authority to waive, alter, vary or add to the scope of the warranty without prior written approval of an officer of Seller. Seller's warranty does not apply to: (i) products impacted by adverse water conditions, extreme weather or temperatures, or other natural conditions; (ii) improper or unauthorized repair, installation or maintenance of the products by a party other than Seller; (iii) use for purposes or under conditions other than those for which designed, or other abuse, negligence, misuse,

unauthorized access, or normal wear and tear; (iv) unauthorized attachments, modifications or disassembly; (v) damage during shipping; or (vi) products purchased from unauthorized distributors, resellers or internet sites. Buyer's care in selection, adequate testing at time of installation and proper installation, operation and maintenance of all products is required for adequate performance.

**Limitations of Liability.** NOTWITHSTANDING ANY PROVISION OF THIS CONTRACT OR THE LAW, IT IS EXPRESSLY AGREED THAT SELLER'S TOTAL LIABILITY FOR ANY DAMAGES, COSTS OR EXPENSES ARISING OUT OF OR RELATED TO THIS CONTRACT OR ITS PRODUCTS, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCT, AS APPLICABLE, OR, AT SELLER'S OPTION, A RETURN OF AN AMOUNT THAT WILL NOT EXCEED THE PURCHASE PRICE. UNDER NO CIRCUMSTANCES WILL SELLER, ITS OFFICERS, DIRECTORS, EMPLOYEES OR ASSIGNS BE LIABLE FOR ANY OTHER REMEDY, LOSS, COST, DAMAGE OR EXPENSE WHETHER DIRECT OR INDIRECT. IN NO EVENT WHATSOEVER WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, LIQUIDATED, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT, OR PRODUCTION; INCREASED COST OF OPERATION; SPOILAGE OR DAMAGE TO MATERIAL OR DATA; OR CHANGE OUT COSTS. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY LOSS, COST, EXPENSE, DAMAGE, OR CAUSE OF ACTION TO OR BY A THIRD PARTY THAT EXCEEDS THESE LIMITATIONS OF LIABILITY.

**Terms of Payment.** Terms of payment, unless agreed otherwise in writing, are thirty (30) days net from date of invoice, without set-off for any payment from Seller not due under this Contract. 1% 10<sup>th</sup> and 25<sup>th</sup> Prox, 20<sup>th</sup> prox. Seller reserves the right to charge interest at the rate of 1.5% per month or the highest rate allowed by law, whichever is lower, for all amounts more than thirty (30) days past due. Costs of collection (including reasonable attorney's fees) will be the responsibility of the Buyer.

**Compliance with Law.** Seller's obligations under this Contract are conditioned upon Buyer's compliance with all export laws of the United States and other applicable trade control laws and regulations with regard to the exportation of the Products and any technical data associated therewith. Buyer will not re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

**Time and Place for Commencing Suit.** Any action by Buyer for breach of any of the terms of this Contract by Seller must be commenced within six (6) months of the alleged breach. The parties consent to the exclusive jurisdiction and venue of the federal and state courts where the applicable IPS business is headquartered in any action arising out or relating to this Contract or the Products and both parties waive any objection they might have to jurisdiction or venue of such forum.

**Legal Construction.** The laws of the state of jurisdiction, per the preceding paragraph, will apply to this Contract, with the exception of its conflict of laws provisions. The failure of Seller to insist upon strict performance of any of the terms and conditions stated herein will not be considered a continuing waiver of any term or condition or of any of Seller's rights. The headings in this Contract are informational and do not modify the agreement. The parties specifically exclude the application of the U.N. Convention on the International Sale of Goods.

**Returned Material.** Orders of Standard Product are subject to Seller's returned goods policy.

\*\*The products listed below have different warranty periods. All other terms of the Limited Warranty set forth herein apply to these products, just the duration of the warranty is different. Duration of the warranty begins at date of shipment.

*Studor Products: 3 years*  
*Water-Tite Roofing Products: Life of the current roof system*  
*Roof Top Blox: 20 years*  
*Test-Tite Pneumatics: 2.5 years*  
*AB&A: 6 months*