

# AMERICAN PIPING PRODUCTS, INC.

Worldwide supply of Pipes, Tubing, Fittings & Flanges to the Energy-Manufacturing & Construction Industries

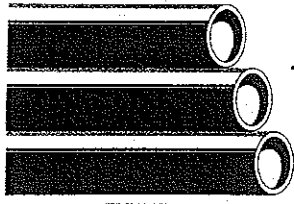
## *TERMS & CONDITIONS FOR SALE OF PRODUCT*

### *BY AMERICAN PIPING PRODUCTS*

#### **TERMS AND CONDITIONS**

"Seller" means American Piping Products, Inc., a Missouri corporation. "Buyer" means the person, firm or entity to which this quotation is directed. This quotation, any order resulting from this quotation, and any acceptance of such order shall together constitute the "Agreement," as that term is used herein. The only terms and conditions upon which Seller will accept orders in response to this quotation are those set forth herein, and any order resulting from this quotation shall be accepted by Seller on the condition that the order is subject to these terms and conditions, which will become a part of the Agreement upon its formation.

1. **FORMATION.** The Agreement will be formed only upon Seller's written acceptance of Buyer's order at Seller's headquarters in Chesterfield, Missouri, USA.
2. **PRICE; PAYMENT; INTEREST CHARGES.** Unless otherwise stated, prices quoted are F.O.B. Seller's facility in US dollars and payment is due upon receipt of Seller's invoice. Each payment that is due from Buyer shall be made strictly in accordance with the terms of the Agreement. Time is of the essence with respect to each payment. In the event that any payment is not made when due, Seller shall be entitled to interest on any unpaid balance at a rate equal to 9% per annum from and after the due date, to terminate the Agreement and to seek any and all additional remedies to which Seller may be entitled. Buyer agrees that Seller shall be entitled to recover from Buyer all reasonable costs and expenses of collection, including attorney's fees, which may be incurred by Seller in collecting any payment due under the Agreement. Buyer shall not be entitled to set off, recoupment or withholding any payment, or any portion thereof.
3. **DELIVERY; INSPECTION.** Unless otherwise stated, all delivery periods are estimates only. If no inspection procedure is specified, or if inspection by Buyer is not made as specified, such inspection shall be waived and delivery or tender of delivery by Seller shall constitute acceptance by Buyer. Buyer agrees to pay Seller reasonable storage charges in the event that Seller is unable to deliver goods as a result of any action or omission of Buyer. All freight and shipping charges, and all customs duties, are solely for Buyer's account irrespective of any role of Seller in arranging for or accommodating delivery.
4. **TITLE; RISK OF LOSS.** Title and risk of loss of goods shall pass to Buyer upon loading of goods at delivery point, subject to any lien or charge in favor of Seller for unpaid purchase price and/or taxes.
5. **TAXES.** Any and all sales, use, excise or similar tax or charge, and all penalties and/or interest thereon, imposed by any taxing authority upon the goods, services or activities which are the subject of the Agreement are not included in any price quoted, shall be added to the price quoted, and shall be promptly paid or reimbursed by Buyer.
6. **SOLE AND EXCLUSIVE WARRANTY.** Seller warrants to Buyer that the goods sold by Seller hereunder will be free from material defects in material and workmanship when used under proper and normal use for a period of thirty days from date of delivery. Should the goods not conform to such warranty, and upon confirmation by Seller of the facts giving rise to such nonconformance, Seller shall, upon prompt notice from Buyer, and at Seller's option, repair or replace nonconforming goods. THE FOREGOING WARRANTY SHALL NOT APPLY TO DAMAGE OR DEFECTS CAUSED BY DELIVERY, STORAGE, INSTALLATION, OPERATION OR MAINTENANCE BY ANY PERSON OTHER THAN SELLER, OR BY ORDINARY WEAR AND TEAR, AND IS THE SOLE AND EXCLUSIVE WARRANTY BY SELLER IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL OR IMPLIED. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR



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IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

7. **LIMITATION OF LIABILITY; NO CONSEQUENTIAL OR EXEMPLARY DAMAGES.** IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY, WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER, AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PRICE STATED IN THE AGREEMENT IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY.

8. **COMPLIANCE WITH LAWS; PATENT AND OTHER INDEMNITIES.** Buyer warrants to Seller each of the following: (1) Buyer is knowledgeable about, and shall fully comply with, all laws, orders, rules and regulations applicable to the goods and transactions contemplated by this Agreement, including all export control laws and regulations of the United States of America and all other laws regarding the use and destination of the goods that are the subject of this Agreement; (2) the goods that are the subject of this Agreement will not be sold, resold, exported or re-exported to any sanctioned country or nation; and (3) no design, specification, drawing or pattern provided to Seller by Buyer, nor any use contemplated by Buyer of the goods supplied by Seller, infringes any patent, copyright, trade secret or other intellectual property rights. Buyer agrees to defend, indemnify and hold Seller completely harmless from and against any and all claims, charges, actions or proceedings arising out of any breach of any of the foregoing warranties.

9. **CHOICE OF LAW; EXCLUSIVE FORUM FOR DISPUTE RESOLUTION.** This Agreement has been made at St. Louis County, Missouri and the Agreement shall be governed by and construed in accordance with the internal laws of the State of Missouri applicable to businesses operating wholly within that state. Any and all claims, actions, disputes or proceedings arising out of this Agreement shall be brought exclusively in a court having a situs in or jurisdiction over St. Louis County, Missouri, and each party hereby irrevocably submits itself to the jurisdiction and venue of any such court and waives all objections to venue and convenience therein.

10. **ENTIRE AGREEMENT; BINDING EFFECT; NO ASSIGNMENT.** This Agreement contains and sets forth the entire agreement between Seller and Buyer with respect to the subject matter of this Agreement. There are no promises, understandings, representations or warranties, express or implied, regarding that subject matter that are not set forth in this Agreement. This Agreement shall be binding upon, and inure to the benefit of, each of the parties and their respective successors and permitted assigns. Buyer shall not assign this Agreement, in whole or in part, without the prior written consent of Seller.