

## IMPERIAL INDUSTRIES, INC. STANDARD TERMS OF SALE

Effective for any proposal, bid, quote or order on or after March 20, 2017

**1. Acceptance:** Any bid, proposal, quote, or order of Imperial Industries' ("Seller") goods ("Products") is conditioned on Buyer's acceptance of Imperial Industries, Inc. Standard Terms of Sale ("Imperial Standard Terms") set forth on page 1 and 2 herein which are incorporated into the Product sale and contract between Seller and Buyer. The entirety of Imperial Standard Terms is incorporated into every sale of Seller's Product and any contradicting, conflicting or different term is rejected. In order to change or amend Imperial Standard Terms and corresponding bid, proposal or quote, Seller and Buyer must sign a written form designated "Quote \_" specifically identifying the new or revised term(s). Imperial Standard Terms and corresponding Product order contain the entire agreement between Seller and Buyer. No oral or written statement by Seller's sales representatives or other agents made before or after the sale shall modify or vary Imperial Standard Terms unless reduced to a formal Imperial Quote. To the extent any advertising or promotional material of Seller contradicts or disagrees with the terms hereof, the Imperial Standard Terms control.

**2. No Agency:** Buyer and Seller are independent of one another. No agency, joint venture or partnership exists. Neither party has authority to bind the other to any third-party. Buyer's acts and representations are independent of Seller.

**3. Disclaimer of Warranties and Limitation of Liability:** *ONLY THE LIMITED WARRANTIES AND REMEDIES STATED IN THE IMPERIAL STANDARD TERMS APPLY. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND FITNESS FOR INTENDED USE OTHER THAN OR DIFFERENT FROM THE SELLER'S LIMITED WARRANTY AND REMEDIES CONTAINED HEREIN. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR ANY ATTORNEY FEES, INCIDENTAL, PUNITIVE, SPECIAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES REGARDLESS OF LEGAL OR EQUITABLE THEORY.*

Goods made by third-party manufacturers or suppliers ("others") carry only warranties as may be given by others to Buyer and no additional warranty or liability of Seller, express or implied, shall be attached to goods made by others. Seller's design, manufacture and delivery of Product are primarily based on Buyer providing complete and accurate written information to Seller. Seller is a manufacturer and does not warrant or claim expertise regarding how Product is used in operation. Buyer should retain its own experts to match Product with intended capabilities, use, flow, operation or project. Seller relies on Buyer to provide complete and accurate written information to Seller for Seller to design, manufacture and deliver Product. Seller's warranties are limited to the original Buyer for goods manufactured by Seller and are not transferrable.

Seller warrants to Buyer goods of Seller's own manufacture are free from defect in material and workmanship under proper use and service for a period of eighteen months from date Title Passes to Buyer as defined in Section 12 below. This limited warranty is conditioned on two events:

1. Buyer giving Seller immediate written notice of any possible warranty claim no later than within four business days once Buyer discovers or should have discovered the alleged defect; and
2. Seller is provided with a right, but not a duty, to cure the alleged defect in whole or in part within a reasonable manner as determined by Seller.

Seller at its option may (a) exercise its right to cure the alleged defect in whole or in part, or (b) require Buyer, at its own cost, return the allegedly defective Product to investigate cause of alleged defect and establish the warranty claim with Seller retaining its right to cure. Seller's right to cure any defect, deficiency or non-conformance is without any back-charge, offset or damage claim asserted against Seller. If Seller is unable to cure defect, deficiency or non-conformance, then Buyer's remedies for any claim or suit regardless of legal or equitable theory are limited to either, at Seller's option: (a) return of the defective, deficient or non-conforming Product and Buyer credited with prorated amount of Buyer payment for returned Product; or (b) commercially reasonable price adjustment to Product price agreed by Seller not to exceed original Product price.

Limited warranty and remedies in this section are void if any of the following occur:

- A. Product is not properly used, operated or maintained;
- B. Product is used under circumstances or conditions not incorporated into the sales order when those circumstances or conditions were known to Buyer and would have assisted Seller in fulfilling its contract requirements;
- C. Repairs or alterations to Product occur without pre-approval from Seller;
- D. Product is damaged, in part or whole, by the actions of third-parties; or
- E. Product is damaged, in part or whole, by disaster or causes outside of Seller's control.

No warranty exists for corrosion or erosion of Product caused by or resulting from:

- A. Acids, chemicals, paint, caustic substances, surface substances selected by Buyer or anything else beyond quote;
- B. Any material or component part selected by Buyer and incorporated into the Product or its use.

**4. Limitation Period:** Any civil action brought by Buyer against Seller arising out of or in connection with Product or the Imperial Standard Terms shall be commenced within two years after Title Passes to Buyer as set forth in Section 12 below.

**5. Intellectual Property Infringement:** Buyer shall indemnify and hold harmless the Seller against any allegations, demands or claims which are instituted against the Seller concerning infringement of United States Patents or Trademarks (IP) relative to the Products. Buyer shall give Seller immediate notice in writing of any such alleged IP infringement claim and permit Seller, through its own counsel to defend such claim. Buyer's indemnification includes payment of Seller's costs and attorney fees during Seller's defense on a quarterly basis. Buyer shall cooperate with Seller's defense including Buyer, at its own expense, furnishing Seller access, inspection and delivery of the goods that are the subject matter of the alleged IP infringement.

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**6. Price and Payment:** Price and payment are in United States Dollars (USD). Price is based on delivery FOB Imperial Industries in Rothschild, Wisconsin, USA. Full payment is expected before delivery unless credit terms incorporating Imperial Standard Terms have been accepted by Seller and Buyer in a separate Imperial Quote. Shipping and taxes are pre-paid before delivery. A late charge of 1.5% per month or highest applicable legal rate is charged to Buyer for any outstanding balance owed. Credit is extended based on Buyer accepting Imperial Standard Terms as well as Seller's assessment of Buyer credit worthiness on a per order basis.

**7. Taxes:** Buyer is solely liable for any sales, excise or similar taxes levied by government authority, either foreign or domestic in addition to the Product prices specified in a bid, quote or order. As part of total purchase price beyond Product price, Buyer shall pay applicable taxes or indemnify Seller for any present or future sales, use, excise or other similar tax charged to Seller for the applicable sale. Buyer may claim tax exempt status before Title Passes to Buyer by providing Seller with a tax exemption certificate acceptable to taxing authorities of the delivery destination.

**8. Inspection/Testing:** Product shall be, at Seller's option, subject to a single visual inspection at Seller's facility during manufacture. Additional inspection or testing shall be negotiated separately and expressed in an Imperial Quote.

**9. Excluded Work, Goods & Service:** Seller's responsibility is contained in the scope of the bid, quote or order that corresponds to Imperial Standard Terms. Seller does not install. Installation and assembly are responsibilities of the Buyer or its consignee. (Excluded work examples include but are not limited to unloading, unpacking, storage, field assembly of goods, construction of foundations, or service of Product; and Seller is not responsible for choice of or use of linings, sealants, and gasket materials or the installation, attachment, or connection of piping, conveying and ventilating equipment, or other attachment of accessories or components).

**10. Payment Delay:** Any delays in Buyer meeting payment schedules may result in delayed production start, completion date, and delivery date as determined by Seller. Buyer shall indemnify Seller for any consequential damages alleged against Seller by a third-party for delivery delay caused by Buyer. No extra labor, materials, parts or quote will be furnished or supplied to Buyer unless Buyer is current with all payment obligations to Seller.

**11. Cancellation:** Buyer's cancellation of any order must in writing and delivered to Seller. Buyer's cancellation is subject to Buyer paying Seller for the cancelled order as determined by the date Buyer delivers notice of cancellation to Seller:

- A. If notice delivered to Seller before manufacture begins Buyer shall pay 15% of the total Product price;
- B. If notice delivered to Seller after manufacture begins:
  1. Buyer shall pay 50% of total Product price if notice delivered before substantial completion.
  2. Buyer shall pay 100% total Product price if notice delivered after substantial completion.

**12. Title to Product and Invoice Date.** Date on which title to product passes and the invoice date are the same. On the Buyer's delivery date as stated in the signed purchase order or signed Imperial Quote, Product shall be placed in the possession of a third-party transport carrier for delivery to Buyer and Buyer is invoiced.

**13. Risk of Loss:** Seller's responsibility for delivery of Product ends at time of Seller delivers Product to Buyer or transportation carrier, whichever occurs first. Any claims by Buyer against Seller for shortage in shipment must be presented in writing with documented proof of claim to Seller within fifteen calendar days after Buyer or its agent receives shortage of Product. Buyer is solely responsible for risk of loss or damage to Product once Product is placed on transportation carrier or delivered to Buyer, whichever occurs first. At a minimum, any Product shipment shall be insured by Buyer with Seller as named additional insured for the full insurable value of any balance of purchase price owed to Seller.

**14. Storage Fees and Buyer Delivery Delay:** If Buyer delays delivery after Title passes per Section 12 above, then Buyer is solely responsible for payment of any storage fees assessed during delay.

**15. Dispute Resolution:** Any dispute between Buyer and Seller is controlled by the law of the State of Wisconsin USA. Jurisdiction for conflict resolution, suit or claim shall be in the State of Wisconsin, USA. In the event a civil action is filed, Buyer and Seller shall attempt mediation facilitated by a mutually agreed upon neutral mediator before conducting formal discovery. At mediation, both Buyer and Seller shall each have a designated representative attend with full authority to settle the civil action. Buyer and Seller are responsible for their own attorney fees and other expense associated with mediation as well as equally paying the mediator's fee.