

## Charlotte Pipe Terms and Conditions of Sale – Commercial Castings

### 1. Applicability.

(a) Charlotte Pipe and Foundry Company (“**Seller**”) and Buyer agree that these terms and conditions (these “**Terms**”) govern all sales of goods (“**Goods**”) by Seller to the Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) These Terms and the order for Goods from Buyer and agreed by Seller (the “**Order**,” and collectively with the Terms, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s Order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

(c) Seller’s acceptance of Orders from Buyer and its delivery of Goods to Buyer is conditioned on Buyer’s agreement to these Terms.

(d) Buyer acknowledges that these Terms may be amended from time to time at Seller’s sole discretion. Buyer further acknowledges and agrees that each sale of Goods shall be governed by the Terms available at [https://charlottepipe.com/terms\\_and\\_conditions.aspx](https://charlottepipe.com/terms_and_conditions.aspx) at the time of Seller’s acceptance of an Order for such Goods.

### 2. Delivery.

(a) Delivery terms are as stated on each Order for Goods. All shipping dates are approximate. Goods will be delivered within a reasonable time after the receipt of Buyer’s Order.

(b) Freight charges are the responsibility of Buyer.

(c) Title and Risk of loss or damage to Goods shall transfer to Buyer upon delivery by Seller to a common carrier for shipment. Claims for Goods lost or damaged in transit must be filed with the carrier involved or Seller within five (5) calendar days after receipt of the Goods. All damaged Goods must be returned to Seller tagged or labeled as “damaged.” The Goods will be inspected by Seller and credit will be issued if appropriate.

(d) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s Order.

(e) If for any reason Buyer fails to accept delivery of any of the Goods, or if Seller is unable to deliver the Goods on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered and Buyer agrees to make payment at the maturity of the invoice rendered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Inspection of Goods.

(a) All Goods are shipped at Buyer's risk. Buyer shall inspect the Goods upon receipt. A signed bill of lading or delivery receipt with no exceptions noted will indicate that the count, description, and condition of Goods are satisfactory.

(b) Claims for errors in shipment must be made within a reasonable time after discovery of the error. In the event of an error in Goods shipped, Seller at its sole discretion shall either replace the Goods or issue a credit to Buyer. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods back to Seller.

4. Price. Prices and payment terms are as stated on the Seller's invoice document. All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

5. Limited Warranties.

(a) Goods are warranted to be free from manufacturing defects, to conform to any specifications provided by Buyer, and, if applicable, to be consistent with any sample Goods provided by Seller, for a period of three (3) years from date of delivery.

(b) Buyer's remedy for breach of this warranty is limited to replacement of, or credit for, nonconforming Goods. This warranty excludes any expense for removal or reinstallation of any nonconforming Goods and any other incidental, consequential, or punitive damages.

(c) This Limited Warranty shall not apply if:

(i) Goods are used for purposes other than their intended purpose;

(ii) Goods are not installed in good and workmanlike manner consistent with normal industry standards;

(iii) Goods fail due to defects or deficiencies in design, engineering, testing, or installation; or

(iv) Goods have been the subject of modification; misuse; misapplication; improper maintenance or repair; damage caused by the fault or negligence of anyone other than Seller; or any other act or event beyond the control of Seller.

(d) **THIS LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY SELLER AND IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** No statement, conduct or description by Seller or its representative, in addition to or beyond this Limited Warranty, shall constitute a warranty. This Limited Warranty may only be modified in writing signed by an officer of Seller.

(e) Seller shall not be liable for breach of this Limited Warranty unless Buyer gives written notice of alleged nonconformity, reasonably described, to Seller within ten (10) calendar days from the date Buyer discovered, or should have discovered, the alleged nonconformity. Any Goods alleged to be nonconforming must be made available to Seller to review before providing credit or replacement. Buyer shall contact Seller's sales representative or commercial castings coordinator and provide details including, without limitation, cast dates and a description of the alleged nonconformity.

(f) Seller shall not be liable for a breach of this Limited Warranty if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the nonconformity arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods, or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(g) Return of nonconforming Goods shall be subject to Seller's Return Material Policy, available at [https://charlottepipe.com/terms\\_and\\_conditions.aspx](https://charlottepipe.com/terms_and_conditions.aspx). Buyer must obtain a Return Material Authorization ("RMA") number and return instructions from Seller, or scrap at Buyer's facility with credit documentation issued. All papers, including the RMA and packing slip, must accompany the Goods being returned. Failure to comply will result in a delay or denial in processing the return. All collect returns must be sent back through Seller-approved carriers. Buyer will be charged any additional freight charges above Seller's standard shipping rates for returns received on a carrier not approved by Seller.

(h) **THESE REMEDIES SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY, AND SELLER'S ENTIRE LIABILITY, FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS AGREEMENT.**

6. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, DAMAGE TO OTHER PROPERTY, OR FOR ANY CONSEQUENTIAL, INDIRECT,**

**INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**

7. Arbitration.

**(a) THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS.**

**(b) BUYER AND SELLER AGREE THAT ANY DISPUTE, CLAIM OR CONTROVERSY OF ANY NATURE, WHETHER BASED ON CONTRACT, TORT, STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SALE OF GOODS TO BUYER SHALL BE RESOLVED THROUGH BINDING ARBITRATION ADMINISTERED PURSUANT TO TITLE 9 OF THE U.S. CODE BY JAMS UNDER ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES, AND JUDGMENT ON THE AWARD ENTERED BY THE ARBITRATOR(S) MAY BE ENTERED BY ANY COURT HAVING JURISDICTION THEREOF. SUCH ARBITRATION SHALL BE CONDUCTED IN CHARLOTTE, NORTH CAROLINA.**

**(c) EITHER PARTY MAY APPLY TO THE ARBITRATOR SEEKING INJUNCTIVE RELIEF UNTIL THE ARBITRATION AWARD IS ENTERED OR THE MATTER IS RESOLVED. EITHER PARTY ALSO MAY, WITHOUT WAIVING ANY REMEDY AVAILABLE TO IT, SEEK THROUGH COURT ANY PROVISIONAL OR INTERIM RELIEF THAT IS NECESSARY TO PROTECT ITS RIGHTS PENDING THE ARBITRATOR(S)' DETERMINATION OF THE MERITS OF THE DISPUTE, CLAIM, OR CONTROVERSY. THE EXCLUSIVE JURISDICTION FOR ACTIONS SEEKING SUCH PROVISIONAL OR INTERIM RELIEF SHALL BE THE STATE OR FEDERAL COURTS LOCATED IN MECKLENBURG COUNTY, NORTH CAROLINA.**

8. Class Action Waiver.

**(a) BUYER AND SELLER AGREE THAT THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE, CLAIM, OR CONTROVERSY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SALE OF GOODS TO BUYER TO BE BROUGHT, HEARD, OR ARBITRATED AS A CLASS ACTION AND/OR COLLECTIVE ACTION AND/OR REPRESENTATIVE ACTION. NOR SHALL ANY ARBITRATOR(S) HAVE ANY AUTHORITY TO HEAR OR ARBITRATE ANY SUCH CLASS AND/OR COLLECTIVE ACTION AND/OR REPRESENTATIVE ACTION. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS OR BY VIRTUE OF ANY JAMS ARBITRATION RULES OR PROCEDURES THAT NOW APPLY OR ANY AMENDMENTS AND/OR MODIFICATIONS TO THOSE RULES, THE ENFORCEABILITY AND VALIDITY OF THIS CLASS ACTION WAIVER MAY BE DETERMINED ONLY BY A COURT AND NOT BY AN ARBITRATOR.**

**(b) NOTWITHSTANDING ANY OTHER CLAUSE CONTAINED IN THIS AGREEMENT, THIS SECTION SHALL NOT BE SEVERABLE IN ANY CASE IN WHICH THE DISPUTE TO BE ARBITRATED IS BROUGHT AS A CLASS AND/OR COLLECTIVE ACTION. THIS CLASS ACTION WAIVER AND THE AGREEMENT TO ARBITRATE ANY CLAIM, DISPUTE OR CONTROVERSY PRECLUDES BUYER FROM LITIGATING IN COURT OR ARBITRATING ANY CLAIMS AGAINST SELLER AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.**

9. Indemnification. Buyer shall indemnify, defend, and hold harmless Seller against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising out of or relating to any claim of a third party alleging that the Goods infringe any patent, trademark, copyright, or other intellectual property right of a third party.

10. Tooling and Patterns. In the event that Buyer fails to fully pay amounts due under this Agreement pursuant to the applicable payment terms, Seller shall be permitted to retain all such tooling and patterns until past due amounts are paid. In the event that such payment has not been made within 180 days of the due date of such payment, ownership of such tooling and patterns shall transfer to Seller.

11. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement without liability to Buyer if Seller believes in good faith that Buyer has violated or intends violate this Section.

12. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

13. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. Relationship of the Parties. The relationship between Buyer and Seller is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15. Confidential Information.

(a) All non-public, confidential or proprietary information disclosed by one party (the “Disclosing Party”) to the other (the “Receiving Party”), including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by the Disclosing Party in writing. Upon the Disclosing Party’s request, the Receiving Party shall promptly return all documents and other materials received from the Disclosing Party. The Disclosing Party shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the Receiving Party at the time of disclosure; or (c) rightfully obtained by Receiving Party on a non-confidential basis from a third party.

(b) Notwithstanding the above, if Buyer and Seller have entered into a separate nondisclosure agreement regarding the Goods, the terms of that nondisclosure agreement shall govern.

16. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God; flood; fire; storm; accident; earthquake; explosion; governmental actions; war, invasion or hostilities (whether war is declared or not); terrorist threats or acts; riot, or other civil unrest;

national emergency; revolution; insurrection; pandemic or epidemic; lockouts, strikes or other labor disputes (whether or not relating to either party's workforce); restraints or delays affecting carriers; inability or delay in obtaining supplies of adequate or suitable materials, supplies or equipment; materials or telecommunication breakdown or power outage; or any other cause, provided that such cause is beyond Seller's reasonable control. Seller will have such additional time for performance as may be reasonably necessary under the circumstances and may adjust prices to reflect increases occasioned by Force Majeure. If delivery is delayed or interrupted by Force Majeure, Seller may store Goods at Buyer's expense and risk and charge Buyer a reasonable storage rate.

17. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

18. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

19. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement.

20. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

21. Interpretation. Buyer and Seller agree that no provision of this Agreement shall be construed against either party as the drafting party.

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