

TERMS AND CONDITIONS OF SALE

The terms and conditions of sale set forth below (the "Agreement") govern all sales of goods (the "Goods") by Hackney Ladish, Inc. (the "Company"). Each acceptance of a purchase order by the Company, and each delivery by the Company of Goods to a Purchaser, is made upon the express condition that the Purchaser acknowledges and agrees to all of the terms and conditions set forth below.

- 1. Price.** The total invoice purchase price, late fees and applicable taxes for the Goods shall be paid in United States Dollars. The price of the Goods does not include any international, federal, state or local sales, use or related taxes, however designated or imposed, and any such tax shall be paid by Purchaser.
- 2. Delivery.** All sales are F.O.B. the Company's plant. All risk of loss shall pass to Purchaser upon delivery to carrier. **The Company shall pay freight via carrier of the Company's choice on any single order of Ten Thousand Dollars (\$10,000) net or more from the Company's Price List, if shipped to a single destination within the continental United States.** The delivery date given or estimated by the Company is subject to delay if the Goods are on backorder and may be delayed to allow the Company to accumulate economic shipping quantities for customers in a similar geographic area. **Claims for shortages must be made in writing to the address identified in Section 10 (Notices) within two (2) business days after receipt of shipment from the Company.** Cancellation of any purchase order after the Company's acceptance of the purchase order may be made only with the Company's written consent, and a restocking charge shall be assessed by the Company.
- 3. Term of Payment.** Purchaser shall pay the total invoice purchase price for the Goods within thirty (30) days of shipment, unless otherwise agreed to in writing (the "Payment Period"). Purchaser agrees to be responsible for protecting the Company's title to the Goods sold hereunder until the total invoice purchase price has been paid. In the event Purchaser does not pay the total invoice purchase price within the Payment Period, Purchaser agrees to pay a late payment charge at a rate equal to the lesser of (i) eighteen (18) percent per annum or (ii) the maximum lawful rate permitted by applicable law, on and in addition to the amount of the past due payment beginning the thirty-first (31st) day after shipment. Delivery by the Company of Goods purchased pursuant to this Agreement which are not in dispute shall be paid for as provided herein, regardless of controversies relating to other delivered or undelivered Goods, whether pursuant to this Agreement or otherwise.
- 4. Security Interest.** As security for the payment and fulfillment of its obligations to the Company, Purchaser hereby grants to the Company a security interest in the Goods and the products, proceeds and accessions of and to all Goods, together with all right, title and interest of Purchaser therein and all rights and remedies which Purchaser might exercise with respect thereto. Purchaser acknowledges that these provisions shall constitute a security agreement between the parties. Purchaser agrees to execute, at the Company's request, a UCC-1 financing statement or other similar document prior to the delivery of the Goods or thereafter and agrees that this Agreement may be filed as a non-standard financing statement in any jurisdiction. Title to the Goods sold hereunder shall pass to Purchaser only when the full amount of the total invoice purchase price is received by the Company.
- 5. Warranty.** THE COMPANY WARRANTS ITS GOODS TO BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL AND PROPER USE AND SERVICE FOR ONE (1) YEAR FROM DATE OF SHIPMENT FROM THE COMPANY'S PLANT. THE COMPANY'S LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING THE COMPANY'S NEGLIGENCE OR CLAIMS BASED ON STRICT LIABILITY, ALLEGED DAMAGES OR DEFECTIVE GOODS, IRRESPECTIVE OF WHETHER SUCH DEFECTS ARE DISCOVERABLE OR LATENT, SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT, AT THE ELECTION OF THE COMPANY, AT THE COMPANY'S PLANT OR AT A SITE SELECTED BY THE COMPANY, OF ANY GOODS (A) THAT SHALL, WITHIN ONE (1) YEAR FROM THE DATE OF SHIPMENT FROM THE COMPANY'S PLANT, BE RETURNED TO THE COMPANY WITH TRANSPORTATION CHARGES PREPAID AND (B) THAT THE COMPANY'S EXAMINATION SHALL DISCLOSE TO ITS SATISFACTION TO HAVE BEEN SO DEFECTIVE. EXCEPT AS PROVIDED IN THIS SECTION, THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (WHETHER WRITTEN, ORAL, STATUTORY, ARISING BY PREVIOUS COURSE OF DEALING OR USAGE OF TRADE, OR OTHERWISE), INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE. THE COMPANY SHALL HAVE NO OTHER OBLIGATION OR LIABILITY FOR DAMAGES TO THE PURCHASER OR ANY OTHER PERSON OF ANY TYPE, INCLUDING BUT NOT LIMITED TO, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR OTHER COMMERCIAL LOSS, OR ANY OTHER LOSS, DAMAGE OR EXPENSE ARISING OUT OF OR IN CONNECTION WITH THE USE, LOSS OF USE, NONPERFORMANCE OR REPLACEMENT OF THE PRODUCT, FOR ANY REASON WHATSOEVER. ANY STATEMENTS OR DESCRIPTIONS OF THE GOODS SOLD UNDER THIS AGREEMENT HAVE BEEN MADE FOR THE SOLE PURPOSE OF IDENTIFYING SUCH GOODS, AND PURCHASER ACKNOWLEDGES THAT ANY SUCH STATEMENTS OR DESCRIPTIONS WERE NOT INTENDED TO, AND DID NOT FORM, THE BASIS OR ANY PART OF THE BARGAIN OF THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE COMPANY TO PERFORM ITS OBLIGATIONS HEREUNDER. THIS WARRANTY IS CONDITIONED UPON COMPLIANCE BY PURCHASER WITH SHIPPING, HANDLING, INSTALLATION AND USE IN ACCORDANCE WITH GOOD COMMERCIAL PRACTICES OF THE TRADE. THE COMPANY SHALL NOT BE RESPONSIBLE FOR FAILURES CAUSED BY, AMONG OTHER THINGS, SHIPPING, MISHANDLING, IMPROPER INSTALLATION, PHYSICAL ABUSE, ACCIDENT, CORROSION, EROSION OR NORMAL WEAR AND TEAR.
- 6. Delays.** The Company shall not be responsible for delays by reason of any and all causes whatsoever beyond the reasonable control of the Company, including, but not limited to, the following: strikes, industrial disturbances; short or late delivery of material; unavailability, interruptions or inadequacy of fuel supplies; acts of God; war; sabotage, vandalism, malicious mischief, insurrection or threats thereof; floods, tornadoes, hurricanes or earthquakes; fires; delays of carriers by land, sea or air; and delays in delivery of supplies, material or equipment or shortage of skilled labor which the Company by commercially reasonable precaution cannot avoid. Any such delays shall not constitute grounds for Purchaser's cancellation of this Agreement.
- 7. Applicable Terms.** No terms or conditions other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these terms or conditions shall be binding on the Company unless hereafter the Company accepts such modification in writing, signed by its authorized representative, and only on condition that the modification expressly includes the terms and conditions stated herein, notwithstanding any conflicting terms and conditions of the modification. The signing of Purchaser's purchase order by a representative of the Company shall not constitute a waiver, modification, supplement, amendment, consent or acquiescence with respect to any provision of this Agreement by the Company. No waiver of any of the provisions of this Agreement by the Company shall be deemed or shall constitute a waiver of any other provision nor shall any such waiver constitute a continuing waiver. If these terms and conditions are not acceptable, Purchaser must notify the Company in writing prior to the time Goods are shipped.
- 8. Applicable Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. DALLAS COUNTY, TEXAS SHALL BE THE PROPER PLACE OF VENUE FOR ALL SUITS TO ENFORCE THIS AGREEMENT, AND ANY LEGAL PROCEEDINGS TO ENFORCE THE PROVISIONS OR TERMS HEREOF SHALL BE BROUGHT IN THE DISTRICT COURTS OF DALLAS COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS.
- 9. Severability.** Any provision of this Agreement that is inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the inoperability, unenforceability, or invalidity without affecting the remaining provisions of this Agreement or affecting the operation, enforceability or validity of that provision in any other jurisdiction.
- 10. Notices.** All notices, demands, requests and other communications to the Company under this Agreement shall be in writing and deposited in the United States mail, registered or certified mail, postage paid, return receipt requested, addressed to Hackney Ladish, Inc., 5495 Beltline Road, Dallas, TX 75254, Attn: Legal Department.
- 11. Attorneys' Fees.** If the Company prevails in any legal proceeding brought by or against the Purchaser to enforce or defend any provision or term of this Agreement, then the Company shall be entitled to recover from the Purchaser reasonable attorneys' fees, court costs, and other expenses.
- 12. Entire Agreement.** PURCHASER ACKNOWLEDGES THAT IT HAS READ THESE TERMS AND CONDITIONS OF SALE, UNDERSTANDS THEM, AND AGREES TO BE BOUND BY THE SAME. THESE TERMS AND CONDITIONS REPRESENT THE COMPLETE AGREEMENT BETWEEN THE PURCHASER AND THE COMPANY AND MAY NOT BE AMENDED OR MODIFIED, UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. THIS AGREEMENT SUPERSEDES AND REPLACES ALL OTHER AGREEMENTS RELATING TO THE GOODS INCLUDING, WITHOUT LIMITATION, PURCHASE ORDERS, ORDER ACKNOWLEDGEMENTS, ORAL OR WRITTEN AGREEMENTS, AND ANY OTHER DOCUMENT OR COMMUNICATION BETWEEN THE PURCHASER AND THE COMPANY.