



When it has to be right.

TERMS AND CONDITIONS OF PURCHASE

1. **Terms.** The terms of this Purchase Order supersede any contrary provision presented by the Seller or Supplier identified on the Purchase Order or any other person or entity in any written form or otherwise and may not be changed in any manner other than a writing signed by an authorized representative of Tioga Pipe, Inc (hereinafter "Tioga"). To the extent that this Purchase Order constitutes an acceptance by Tioga of an offer by Seller, the acceptance is expressly conditioned on Seller's assent to Terms and Conditions herein which are additional or different to those presented by Seller. To the extent that any portion of this Purchase Order constitutes an offer, acceptance is expressly limited to the terms of the offer.
2. **Prices and Payment.** The purchase price for the goods covered by this Order (Goods) is set forth on the front of the Purchase Order, less the discount, if any, and may not be modified or varied, and no deviation of any kind will be effective without Tioga's prior written consent. Bills of Lading and Material Certifications must accompany shipments and invoices.
3. **Delivery and Risk of Loss.** Shipment and delivery will be made as provided on the Purchase Order, and each shipment shall contain a packing list showing this Purchase Order number, the amount of packages constituting this Order and quantity in each package, and must be accompanied by "Tally Sheets." Except as expressly provided on the front hereof, Seller shall bear the entire risk of loss, damage or destruction of all or any part of the Goods until the completion of delivery.
4. **Changes and Substitutions.** Seller shall not in any manner, without the prior written consent of Tioga, change or deviate from the specifications, code or requirements set forth or referenced on the Purchase Order or substitute any items, parts or part descriptions or materials from those specified on the Purchase Order, and no such change or deviation or substitution shall constitute compliance with the terms of the Purchase Order under any circumstances. Any request for a change, deviation or substitution must be made by Seller in writing and will not be effective until approved by Tioga in writing, which approval shall be given or withheld in Tioga's sole discretion, and no delay or failure of Tioga to respond to a request shall be considered an approval. Seller shall notify Tioga in writing of any change, substitution or deviation which Seller discovers after delivery, promptly after discovery.
5. **Inspections.** Seller shall grant Tioga or its assignee full access to Seller's facilities, during regular business hours on at least 24 hours advance written or oral notice, to inspect the facilities and the manufacture or processing or other performance in connection with the transactions contemplated by the Purchase Order and to review and inspect Seller's books and records relating to the Purchase Order and such transactions and conduct such other inspections and audits as Tioga may reasonably deem appropriate. Tioga's conduct or failure to conduct any such inspection or audit shall not constitute acceptance or approval by Tioga of any goods or processes or other matters or in any manner limit Tioga's right to reject or revoke acceptance or to exercise any other right or remedy.
6. **Late and Non-Conforming Deliveries.** Time is of the essence under this Agreement. If any part of the goods is delivered late or otherwise does not comply with the terms and conditions hereof, Tioga may, at its options, either (i) reject and return for full credit, including freight, all or any part of the Goods which is not in

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accordance with specifications set forth herein or (ii) utilize all or any part of such Goods, holding Seller liable for all damages resulting from the Seller's failure to comply with the terms and conditions hereof. In either event, Tioga shall retain and may exercise all of the rights and remedies available to it under this Purchase Order and applicable law.

7. **Warranty of Performance.** Seller represents and warrants that: (a) All Goods subject to this Order shall be new and merchantable and shall conform to and be in accordance with industry standards therefore, and shall be fit for the general purposes for which they are intended; (b) If Tioga furnishes to Seller, or sets forth on the front of this Order, any specifications, quality requirements, descriptions, models, samples, drawings or other instructions, all Goods shall conform to such matters; and (c) If Tioga specifies a particular purpose or use for the Goods, such Goods shall be fit for the particular purpose and use.

8. **Warranty of Authority.** Seller represents and warrants that it has the authority to enter into this Agreement and that any and all merchandise shipped pursuant to the Order does not and will not infringe any patent or other proprietary rights of any third party. Seller agrees to indemnify, defend and hold harmless Tioga, its successors and assigns, from and against any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses or liabilities, including reasonable attorneys' fees, arising from or relating to any claim or demand based upon breach of this Paragraph 8. In the event that any claim is made against Tioga with respect to such infringement, in addition to all other rights given by law, Tioga shall have the right to cancel this and any other orders with Seller and to return Goods already delivered and accepted for full credit or reimbursement. Tioga shall be entitled to any manufacturer's warranty provided.

9. **Other.** In the event there is a material cost increase for any line item after any order/line item is placed with Seller due to factors outside the control of the Buyer (for example, but not limited to, changes in the tax law, duty, import restrictions, US Presidential executive order, government regulation, etc.), then Buyer shall have the option of cancelling the order. In the case of a cancellation, both parties agree that any and all claims, damages, recoveries or losses against the other party in regards to said cancellation are hereby waived.

10. **Prohibition on Disclaimers.** Without limiting the generality of Paragraph 1 hereof, no disclaimer, limitation of liability or other provision which in any manner varies from or limits or restricts the warranties in Paragraph 7 and 8 or the remedies of Tioga in connection with such warranties shall be effective without the prior written consent of Tioga in a document which makes specific reference to this Purchase Order by date and number and to Paragraph 7 and 8 hereof. Any attempted disclaimer or other provision to the contrary shall be null and void and of no effect.

11. **Indemnification.** Seller shall indemnify, defend and hold harmless Tioga from and against any and all claims, damages, losses or liability of any kind, including reasonable attorneys' fees, incurred by or claimed against Tioga as a result of the provision or use of the Goods, except for matters caused by Tioga's negligence or intentional misconduct.

12. **Subcontractors.** Seller shall be responsible to cause each of its subcontractors and subsuppliers to comply with all of the terms hereof and with applicable law. Seller shall be fully responsible and liable to

Tioga for the failure of any subcontractor or subsupplier so to comply, and the acts or omissions of a subcontractor or subsupplier shall not relieve Seller of any responsibility or liability.

13. **Confidentiality.** The terms of this Purchase Order, including all of Tioga's specifications and related descriptions or drawings, are confidential between Tioga and Seller, and Seller shall not disclose to any third party the terms and conditions hereof without Tioga's written permission.

14. **Cessation of Business.** If Seller ceased to operate its business in the normal course (including inability to meet its obligations as they mature) or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver is appointed or Seller makes an assignment for the benefit of creditors, Tioga may terminate this Order without liability except for payment for Goods previously received and as yet unpaid, or subsequently received in accordance with the terms or this Order. This Paragraph shall not in any manner limit any other rights or remedies of Tioga, including any right of termination.

15. **No Assignment.** Seller shall not assign or transfer all or any portion of this Purchase Order or of rights and obligation hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, without Tioga's prior written consent, and any attempted assignment or transfer to the contrary shall be null and void and of no effect.

16. **Compliance with Laws.** In all matters relating to this Purchase Order and the transactions contemplated hereby, Seller shall comply in all respects with all federal, state and local laws and regulations, including without limitation laws and regulations (including executive orders) governing nondiscrimination and affirmative action.

17. **Applicable Law.** Pennsylvania law shall govern the validity, construction, interpretation and effect of this Purchase Order and all transactions hereunder.