

Merfish Pipe & Supply

MASTER DISTRIBUTORS OF STEEL PIPE, FITTINGS & FLANGES—SINCE 1920
1211 Kress Street, Houston, TX 77020 P.O. Box 15879, Houston, TX 77220-5879
Tel: 713.869.5731 Accounting Dept. Fax: 713.867.0772 www.merfish.com

ACCOUNT OPENING DOCUMENTS

Thank you for choosing Merfish Pipe and Supply, L.P, the service leader in carbon steel pipe, fittings and flanges – since 1920. In order for us to set up your account, we require that an authorized representative complete the Account Opening Documents which includes the following:

1. Credit Application (*required*)
2. Terms and Conditions (*required*)
3. Terms and Conditions Supplement (*upon request*)
4. Personal Guarantee (*upon request*)
5. Most recent comparative annual financial statements (*upon request*)

Upon completion, please send all documents to us via email accountsreceivable@merfish.com, fax (713) 867-0772 or mail (P.O. Box 15879, Houston, TX 77220-5879). Please do not hesitate to contact a Merfish representative should you have any questions. We look forward to serving you!

Thank you,



Gerrie DeFiori
Controller

Rebecca Smith
Credit and Collections

Merfish Pipe & Supply

DATE:	REFERRED BY:	<i>Office use only</i>	
NAME OF PURCHASING AGENT:			
CREDIT APPLICATION			
LEGAL COMPANY NAME WITH DBA (if applicable):			
PHYSICAL STREET ADDRESS:			
CITY:	STATE:	ZIP CODE:	
BILLING ADDRESS:			
CITY:	STATE:	ZIP CODE:	
TELEPHONE:		FAX:	
SALES / PURCHASING EMAIL ADDRESS:		ACCOUNTS PAYABLE EMAIL ADDRESS:	
SEND INVOICES VIA:	<input type="checkbox"/> EMAIL (include email address)	<input type="checkbox"/> FAX (include fax no.)	<input type="checkbox"/> MAIL
KIND OF BUSINESS:	INDIVIDUAL <input type="checkbox"/>	GENERAL PARTNERSHIP <input type="checkbox"/>	LLC <input type="checkbox"/>
	LTD PARTNERSHIP <input type="checkbox"/>	CORPORATION <input type="checkbox"/>	
UNDER THE LAW OF THE STATE OF :			
TYPE OF BUSINESS:			
IF CORPORATION, LEGAL NAME OF CORPORATION:			
IF SUBSIDIARY, NAME OF PARENT CORPORATION:			
REGISTERED AGENTS NAME:			
ADDRESS:			
CITY:	STATE:	ZIP CODE:	
LIST ALL OWNERS, PARTNERS OR OFFICERS:			
NAME	TITLE	RESIDENCE ADDRESS	RESIDENCE TELEPHONE
YEAR BUSINESS ESTABLISHED:	HOW LONG AT THIS LOCATION:	OWN <input type="checkbox"/> LEASE <input type="checkbox"/>	
ADDRESS OF BUSINESS AT PREVIOUS LOCATION:			
CREDIT REFERENCES:			
NAME	ADDRESS	TELEPHONE NO.	FAX NO.
NAME OF BANK:	NAME OF OFFICER:	TELEPHONE:	
ACCOUNT NUMBER:	ROUTING NUMBER OF BANK:	FAX:	

Merfish Pipe & Supply

TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS SHALL APPLY NOTWITHSTANDING THE ABSENCE OF AN EXECUTED COUNTERPART

1. Terms. These Terms and Conditions of Sale (“Terms”) between Merfish Pipe and Supply, LP (“Seller”) and that person or organization (“Purchaser”) detailed on the Account Opening Documents (“Credit Application”) or detailed below, dated as of the date detailed on the Credit Application or as detailed below, shall govern the relationship between the Seller and Purchaser with respect to the sale of goods (“Materials”).
2. Terms Paramount. Seller's acceptance of any purchase order is conditioned upon acceptance of these Terms. In the event of a conflict between these Terms and any other agreement or document, the Terms shall prevail. As such, these Terms constitute a notice of objection to conditions in Purchaser's inquiry or purchase order.
3. Uniform Electronic Transactions Act: The Purchaser hereby agrees to the application of the Uniform Electronic Transactions Act (“Act”) unless otherwise notified in writing. As such, Seller shall not deny the validity of any Electronic Record and Electronic Signature (each as defined in the Act) associated with this Contract.
4. Separate Contracts: Each contract between Seller and Purchaser shall consist of these Terms, Seller's invoice, associated bills of lading, the Security Interest Supplement (if applicable), and any proof of delivery (collectively, as applicable, the “Contract”). Purchaser hereby acknowledges that each purchase order accepted by Seller is a separate Contract. Seller shall have the right to make partial shipments with respect to each Contract. Each partial shipment shall be deemed a separate sale and payment shall become due therefore in accordance with the terms of payment.
5. Warranty: Except for the warranty that all Materials conforms to the Contract specifications SELLER MAKES NO WARRANTIES IN CONNECTION WITH THIS CONTRACT, INCLUDING, WITHOUT LIMITATIONS, ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE.
6. Risk of Loss: Unless otherwise specified herein, all risk of loss or damage to or destruction of the Material shall pass pursuant to the Contract; provided, however, in the absence of such terms in the Contract, all risk of loss or damage to or destruction shall pass at the time when the Materials is loaded on a delivery apparatus, regardless of ownership of such delivery apparatus, for delivery to the Purchaser or other party at the direction of the Purchaser, as applicable.
7. Failure to Take Delivery: If Purchaser fails to take delivery, the Materials shall be at the Purchaser's sole risk in all respects. Seller may utilize its sole and absolute discretion in disposing of goods not taken by the Purchaser; provided, however, that Seller may elect, at the Purchaser's expense, to transport, store, insure and otherwise protect the Materials.
8. Delay or Failure of Shipment: Seller shall be free from any liability for delay or failure in delivery or shipment of all or part of the Materials arising from any contingency beyond the Seller's reasonable control including, without limitation, factors affecting production, supply, transportation, or delivery, each for any reason, whether or not existing, known, or contemplated when the Contract is made.
9. Claims: (a) *Shortages*. All claims for shortages in Materials must be made within five (5) days from the actual or constructive receipt of the Materials. All claims for shortages must be supported by documentary evidence in the form of exceptions taken on the delivery receipt (however denominated) furnished by Purchaser to the delivering carrier; (b) *Damaged or Defective Materials*. All claims for damaged or defective Materials must be made within five (5) days from the date that the damage or defective condition is or should have been discovered. All claims for damaged or defective Materials must be reported in writing by Purchaser to Seller, with full particulars and confirmed by Seller within a reasonable time thereafter; (c) *General Provisions*. With respect to both (a) and (b), all claims must be made by registered or certified mail, or courier, must state with particularity the defect or damage complained of and must be supported by documentary evidence; in the event that a timely and bona fide claim is made with respect to shortages or damaged or defective Material, Purchaser shall be entitled, at Seller's sole and exclusive option, to replacement of the Material, refund of any purchase price paid therefore, grant an allowance or provide for any combination of the aforementioned; failure to make a claim for shortages or damaged or defective Materials in accordance with the conditions detailed herein shall constitute an irrevocable waiver and absolute bar to any claim; seller shall not be otherwise liable for any shortages or damaged or defective Materials; Purchaser's obligation to accept and make timely payment for the balance of the Materials shall not be affected thereby; NO CLAIMS OF ANY NATURE WHATSOEVER SHALL BE MADE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES; (d) *Specifications*. In case of an irreconcilable dispute as to whether Material meets specifications under the Contract, Seller

Merfish Pipe & Supply

and Purchaser shall designate a mutually acceptable independent testing company and/or surveyor to make an examination with said testing Company's and/or surveyor's findings to be conclusive and binding on both parties (the expense of which examination shall be borne by Seller with respect to each item found not to conform to specifications and by Purchaser with respect to each item found to conform to specifications). Seller shall not be responsible for inherent vice. Seller shall not be deemed to have knowledge of the intended ultimate purchase or use of any of the Material.

10. Seller's Remedies: Except as otherwise provided in this Contract, in the event that Purchaser fails to perform any of its obligations set forth in this Contract, Seller, at its option, may cancel the Contract and recover from Purchaser its damages, including its expenses and the difference between the Contract price and the lesser of Seller's cost or the market price at point of delivery, or, in the alternative, Seller may dispose of the Material and apply the net proceeds, after deducting expenses of disposition, against the purchase price. Purchaser is liable in the case of a deficiency arising from the aforementioned. Seller's expenses shall include reasonable attorney's fees and other costs of enforcing its rights.
11. Purchaser's Remedies: Except as otherwise provided in this Contract, in the event that Seller fails to perform its obligations set forth in this Contract, the Seller may, in the Seller's sole and exclusive option, replace Material shipped, refund all or part of the purchase price paid, grant an allowance, or provide for any combination of the aforementioned; provided, however, that the SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES.
12. Interest Due on Late Payment: If payment is not made on time, Seller, in addition to other legal rights, shall be entitled to interest at the maximum nonusurious interest rate allowed by applicable law.
13. Authority: Purchaser warrants that they have authority to enter into the transaction, grant a security interest in the Materials and otherwise comply with the terms and conditions set forth in the Contract. The failure thereof shall not affect the liability of the undersigned and the Purchaser shall remain liable as if the Purchaser had authority to enter into and perform the terms and conditions set forth in the Contract.
14. Change of Credit Terms: (a) *Representations*. Purchaser hereby represents that it is solvent and Purchaser's signing of any delivery receipt (however denominated) furnished by Purchaser to the delivering carrier shall constitute a continuing representation of solvency at the time of signing such receipt; (b) *Withholding*. In the event Purchaser fails to make timely payment under any contract between Purchaser and Seller, Seller shall have the right to withhold shipment or delivery of any portion of the Materials or other materials promised pursuant to an existing Contract; (c) *No Release*. The occurrence of (b) shall not release Purchaser from its obligation to accept and pay for such remaining portion of Materials if and when shipped by Seller; (d) *Material Adverse Effect*. If at any time there is a change in the financial conditions or structure of Purchaser, arising from a change in business or market conditions, or arising from a merger, reorganization or other change in business form, Purchaser becomes insolvent, Purchaser makes an assignment for the benefit of creditors, Purchaser files a petition in bankruptcy, a lien arising from judicial process is placed upon any material asset of Purchaser, or Purchaser breaches any provisions of this Contract, Seller shall have the right, in its sole and absolute discretion, to cancel the contract or otherwise require the payment of cash in advance of delivery.
15. Email: To the extent applicable, Purchaser hereby agrees to electronic communications pursuant to the standards set forth in the Electronic Signatures Act, 15 U.S.C. § 7001 et seq, as such may be amended, or supplanted.
16. Security: Purchaser grants Seller a security interest in the Materials, until the purchase price and all other debts currently owed and associated with any goods supplied by Seller are paid in full and Seller obtains satisfactory acknowledgment of finalization of payment from Seller's financial institution. Purchaser grants Seller the right to execute and file, on Purchaser's behalf, all appropriate financing statements, continuation statements or other documents to perfect and maintain the liens granted herein.
17. Representations: PURCHASER AND SELLER AGREE THAT NO REPRESENTATIONS HAVE BEEN MADE OR RELIED UPON CONCERNING THE SUBJECT MATTER OF THE CONTRACT, EXCEPT AS SPECIFICALLY STATED IN THE CONTRACT.
18. Entirety of Agreement: The Contract contains the entire agreement between the Seller and Purchaser, and there are no other terms, conditions, undertakings, statements or representations, express or implied, concerning the sale contemplated by this Contract. Any conditions or exceptions which may be stated in any communication or document received by Seller from Purchaser shall be of no effect unless executed by the party against which it is charged.

Merfish Pipe & Supply

19. Reporting Authorization: Purchaser hereby gives Seller authorization to obtain credit reports or other information of a similar character from third party reporting, record keeping or other agencies and individuals for purposes of determining the creditworthiness of Purchaser. Seller hereby agrees that such information is confidential and will not be disseminated unless required to by applicable law or in connection with the enforcement of the Contract.
20. Modifications: This Contract or the terms of this Contract may not be amended, waived or terminated unless set forth in writing signed by both Seller and Purchaser. This agreement shall constitute a “separate writing” under the UCC.
21. No Waiver of Terms: Failure of Seller to insist upon strict performance of any terms and conditions hereof shall not be deemed a waiver of any of Seller’s rights. The shipping or receiving of any material shall not be deemed a waiver of any rights concerning a failure by Purchaser to comply with any provision of this Contract. Waiver by Seller of any provision of this Contract shall not constitute a waiver as to any other provision, and shall not affect the right of Seller to exercise any right or remedy.
22. Assignment: The Contract may not be assigned and is not assignable by the Purchaser without the Seller’s prior written consent.
23. Severability: Any provision of the Contract held to be invalid, illegal or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions.
24. Force Majeure: Seller shall be relieved from performance of its obligations, promises, covenants or warranties hereunder due to inability to perform in whole or in part as a result of force majeure, which shall include without limitation compliance with any law, ordinance, regulation, ruling order or other governmental action, judicial decree or treaty (including embargo, wage or price control, or rationing or allocation of services or commodities), or due to acts of God, fire, flood, war, sabotage, accidents, labor disputes, shortage or failure of supply of transportation, supply of materials or equipment, interruption of or delay in communications or transportation, or any other circumstances of like nature beyond the reasonable control of Seller.
25. Governing Law: THE CONTRACT BETWEEN PURCHASER AND SELLER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, UNITED STATES OF AMERICA WITHOUT REGARD TO CONFLICT OF LAW PRINCIPALS.
26. Submission to Jurisdiction: Any controversy or claims arising out of the Contract, or the breach thereof, shall be finally settled in the District Court of Harris County, Texas. Each party irrevocably submits to the exclusive jurisdiction of the District Courts of Harris County, Texas and expressly and irrevocably waives its rights to bring suit against the other party in any court of law except that the entry of judgment or subsequent enforcement upon the award rendered, which may be entered or enforced, as applicable, in any court having jurisdiction. IN CONNECTION WITH ANY ACTION, TO THE FULLEST EXTENT OF THE PERMITTED BY LAW, THE PURCHASER WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE CONTRACT.
27. Headings: The section headings are used for convenience and reference only and shall not in any manner affect the meaning or intent of the terms of the Contract.

SIGN HERE AND RETURN

DATE _____

COMPANY _____

PRINTED NAME: _____

TITLE: _____

SIGNATURE _____

Return via email to accountsreceivable@merfish.com or Fax (713) 867-0772

Merfish Pipe & Supply

TERMS AND CONDITIONS OF SALE SUPPLEMENT

This Terms and Conditions of Sale Supplement, Security Agreement between Merfish Pipe and Supply, LP (“Seller”) and the party detailed herein, (“Purchaser”) dated as of the date of the Contract is part of the Contract executed between the Purchaser and Seller. All capitalized terms not defined herein shall have that meaning set forth in the Terms and Conditions of Sale.

1. **Security:** Purchaser hereby grants Seller a continuing lien on and security interest in all rights, titles, and interests in the Materials of the Purchaser to secure amounts due under the Contract including any future advances until (a) the purchase price and all other amounts are paid in full and (b) Seller obtains satisfactory acknowledgment of finalization of payment from Seller’s financial institution. As such, this Terms and Conditions of Sale Supplement constitutes a security agreement. Seller may hold any Materials as security for payment of all obligations due to Seller. Costs of enforcement shall be borne by the Purchaser and shall be secured by the Materials. Purchaser grants seller the right to execute and file, on Purchaser’s behalf, all appropriate financing statements, continuation statements or other documents to perfect and maintain the liens granted herein.
2. **Conflict:** In the event of conflict between this Terms and Conditions of Sale Supplement, Personal Guarantee and the Terms and Conditions of Sale Supplement, this Security Interest Agreement shall prevail.

SIGN HERE AND RETURN

DATE: _____

COMPANY _____

PRINTED NAME: _____

TITLE: _____

SIGNATURE: _____

Return via email to accountsreceivable@merfish.com or Fax (713) 867-0772

Merfish Pipe & Supply

PERSONAL GUARANTEE

This Personal Guarantee (“Guarantee”) executed by the parties detailed herein and for the benefit of Merfish Pipe and Supply, LP (“Seller”) dated as of the date of the Contract is part of the Contract executed between the Purchaser and Seller. All capitalized terms not defined herein shall have that meaning set forth in the Terms and Conditions of Sale.

1. **Terms Inclusive:** The Terms and Conditions supplied by Merfish Pipe and Supply are hereby incorporated by reference and made part of this Guarantee. In the event of a conflict between the Terms and Conditions and this Guarantee, this Guarantee shall control. All capitalized terms not defined herein shall have that meaning set forth in the Terms and Conditions of Sale.
2. **Guarantee:** The undersigned person or persons (each, a “Guarantor”), for and in consideration for the agreement to extend credit to the Purchaser named herein below by Seller does hereby personally, absolutely and unconditionally guarantee to Seller the prompt, punctual and full payment of all sums of money now or hereafter owing by the Purchaser to the Seller (the “Indebtedness”). Guarantor hereby agrees to bind itself to pay the Seller on demand any such sum which may become due to the Seller by the Purchaser whenever the Purchaser shall fail to pay the same. It is understood that this Guarantee shall be a continuous and irrevocable guaranty for indebtedness of the Purchaser.
3. **Waiver:** The Guarantor does hereby waive notice of default, non-payment and notice thereof and consent to any modification or renewal of the indebtedness guaranteed hereby. The Guarantor also agrees to waive the requirement that its name appear on any invoices as guarantor and agrees to be liable personally thereof under Rule 185, Texas Rules of Civil Procedure, as such may be revised, amended or supplanted. The Guarantor expressly waives all rights and remedies of a surety, endorser and guarantor arising or created by, under, or pursuant to Chapter 34 of the Texas Business and Commerce Code, as such may be revised, amended or supplanted, inclusive, and the Guarantor does hereby waive any indulgence granted by the Seller with respect to the Indebtedness and agrees that the Seller may grant any such indulgence with respect thereto without notice to or further consent by the Guarantor at any time or times.
4. **Choice of Action:** The Guarantor specifically agrees that it shall not be necessary or required, and that the Guarantor shall not be entitled to require that Seller file suit or proceed to obtain or assert a claim for a personal judgment against the Purchaser for said Indebtedness or make any effort at collection of said Indebtedness from the Purchaser or make any effort at collection of the indebtedness from any other party or exercise or assert any other right or remedy to which Seller is or may be entitled in connection with the Indebtedness before or as a condition of enforcing the liability of the Guarantor pursuant to this guaranty agreement.
5. **Authority:** In the event that the Purchaser is a corporation or is hereafter incorporated, the Guarantor agrees that if the Indebtedness of said corporation is not enforceable because the act of creating same acted without authority, or said corporation is not liable for any other reason or in the event said Indebtedness cannot be enforced against the corporation then, and in any such events, such facts shall in no manner effect the liability of the Guarantor hereunder but the Guarantor shall remain liable hereunder notwithstanding that said corporation is not liable for such Indebtedness to the extent that the Guarantor would have been liable if the Indebtedness of said corporation had been enforceable against it.
6. **Reporting Authorization:** Guarantor hereby gives Seller authorization to obtain credit reports or other information of a similar character from third party reporting, record keeping or other agencies for purposes of determining the creditworthiness of Guarantor. Seller hereby agrees that such information is confidential and will not be disseminated to any third party unless required to by applicable law or upon the enforcement of this Guarantee.
7. **Change in Name or Control:** The Guarantor agrees to notify Merfish Pipe & Supply by certified mail of any pending change of ownership of the Purchaser and further agrees to be liable for all purchases should the Guarantor fail to comply with said notification.
8. **Joint and Several:** In the event that this guaranty is executed by more than one person, then in such event, the liabilities and obligations of the Guarantor hereunder shall be joint and several and the relative words herein shall be read as if written in the plural.

Signatures Begin on Next Page

Merfish Pipe & Supply

PERSONAL GUARANTEE SIGNATURE PAGE

SIGN HERE AND RETURN

GUARANTOR #1

DATE: _____

SIGNATURE OF GUARANTOR: _____

PRINTED NAME: _____

TITLE: _____

NAME OF PURCHASER: _____

SOCIAL SECURITY NUMBER: _____

DOB: _____

RESIDENCE ADDRESS: _____

GUARANTOR #2

DATE: _____

SIGNATURE OF GUARANTOR: _____

PRINTED NAME: _____

TITLE: _____

NAME OF PURCHASER: _____

SOCIAL SECURITY NUMBER: _____

DOB: _____

RESIDENCE ADDRESS: _____

Return via email to accountsreceivable@merfish.com or Fax (713) 867-0772