

In response to your order, Merfish Pipe and Supply submits this OFFER OF SALE. The only terms and conditions under which we sell are set forth on this OFFER OF SALE. Such terms and conditions of sale shall govern notwithstanding any request for quotation, purchase order, or other document setting forth contrary and/or additional terms and conditions. Your acceptance of and agreement to this OFFER OF SALE and to the terms and conditions set forth herein shall be conclusively presumed from your failure to notify us within ten (10) days of your refusal to accept and agree to same or from your acceptance of all or any part of the goods described in the invoice, whichever occurs first.

The property described in the invoice, in apparent good order, except as noted, (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated on the invoice, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or rail-water shipment, or (2) if the applicable motor carrier classification or tariff if this is a motor carrier shipment. Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth on the classification or tariff which governs the transportation of the shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

#### TERMS AND CONDITIONS OF SALE

1. All orders, payments terms, and shipments are subject to approval by Seller's Credit Department in Houston, Texas. Seller may at any time decline to make any shipment or delivery of goods, or perform any work or render any service except upon receipt of payment or security, or upon terms and conditions satisfactory to Seller's Credit Department.
2. All payments hereunder shall be made in United States currency or the equivalent thereof specified by Seller.
3. All prices, whether herein stated or heretofore quoted or proposed, shall be adjusted to Seller's prices in effect at time of shipping. In addition to the price, the Buyer shall pay any applicable taxes. Such purchase price must be paid in accordance with the terms on the invoice without deductions, setoffs, counterclaims, back charges, or any other charges whatever and the obligations of Buyer to Seller shall remain unimpaired irrespective of disputes which may arise between Buyer and other persons or entities.
4. (a) Unless otherwise specified on the invoice, all deliveries by Seller shall be F.O.B. points of shipment.  
(b) Seller will use all reasonable efforts to comply with Buyer's requests as to method and route of transportation, but Seller reserves the right, if such method or route of transportation is not reasonably available, to designate, without any liability to Buyer and whether or not a higher rate, an alternate method or route of transportation. In any such case, Seller shall notify Buyer of any change as promptly as possible.  
(c) Except as specifically provided on the face hereof, Seller shall not be responsible for switching, spotting, handling, storage, demurrage, or any other transportation or occasional service, nor to any changes incurred thereof.  
(d) Seller shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to the following causes, conditions, and/or contingencies: Seller's production requirements, any strike, difference with workmen, lockout, or labor shortage or difficulty, any fire, flood, accident, quarantine restriction, earthquake, tornado, epidemic or other casualty or act of God; any war, riot, civil disobedience or other emergency; acts of civil or military authorities; compliance with orders, priorities or request of any governmental agencies, or with embargoes; failure of suppliers or subcontractors to meet delivery schedules; any inability or delay in obtaining labor or materials, or in obtaining cars, trucks, fuel or machinery necessary for transportation; or any cause, condition, or contingency beyond the reasonable control of Seller, whether similar to those itemized herein or not. In the event of any of the foregoing, Seller may apportion its production and all stock material among its customers in such manner as Seller, in its sole discretion, considers equitable.  
(e) The risk of loss shall pass to Buyer upon Seller's delivery to carrier or upon tender to Buyer's agent, whichever occurs first.  
(f) Title of all goods shall remain with Seller until the complete purchase price and all additional costs and charges, as adjusted, are paid to Seller by Buyer.  
(g) Buyer shall be responsible for filling and pursuing any claim with carriers for loss or damage in transit.  
(h) Railroad and other transportation permits, as and when required, are to be obtained by Buyer.
5. All Goods sold pursuant hereto will upon shipment conform to the description on the invoice.

THE USE OF ANY SAMPLE, MODEL OR ILLUSTRATION OR THE FURNISHING OF ANY INFORMATION OF THE KIND DESCRIBED IN PARAGRAPH EIGHT (8) HEREOF, EXCEPT AS INCLUDED ON THE DESCRIPTION ON THE INVOICE, IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS NOT AND SHALL NOT BECOME PART OF OR A BASIS FOR THE BARGAIN, AND IT SHALL NOT UNDER ANY CIRCUMSTANCES BE CONSTRUED AS A WARRANTY OR GUARANTEE. SELLER'S SOLE OBLIGATION WITH RESPECT TO GOODS OR SERVICES FURNISHED PURSUANT HERETO SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR, AT SELLER'S OPTION, TO A REFUND OF THE PURCHASE PRICE OF SUCH NONCONFORMING GOODS. IN NO EVENT SHALL SELLER BEAR THE COSTS OF REMOVAL AND/OR REINSTALLATION OF NONCONFORMING GOODS, AND IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE PURCHASE PRICE OF THE GOODS.

#### DISCLAIMER OF WARRANTIES

THESE TERMS AND CONDITIONS ARE IN LIEU OF ALL WARRANTIES AND GUARANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. NO PROMISE OR AFFIRMATION OF FACT MADE BY ANY EMPLOYEE, AGENT, OR REPRESENTATIVE OF SELLER SHALL CONSTITUTE A WARRANTY OR GUARANTEE OR GIVE RISE TO ANY LIABILITY OR OBLIGATION WHATSOEVER. SELLER'S OBLIGATION UNDER THESE TERMS AND CONDITIONS OF SALE RUN ONLY TO BUYER, SUCH OBLIGATIONS ARE NONTRANSFERABLE AND NON-ASSIGNABLE EITHER DIRECTLY OR INDIRECTLY, OR BY OPERATION OF LAW. Buyer, its employees, agents, and representatives shall not claim, represent, or imply nor permit its purchasers, distributors, applicators, or contractors to claim, represent, or imply such obligations extend to or are available to persons or entities other than Buyer. To the limit of its legal right to do so, Buyer shall cause any third party to cease and desist any such representation.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR, AND BUYER AGREES TO INDEMNIFY AND SAVE SELLER HARMLESS WITH RESPECT TO, CLAIMS OR ACTIONS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PENAL, OR OTHER DAMAGES, IRRESPECTIVE OF WHETHER SUCH CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, THE FURNISHING OF INFORMATION DESCRIBED IN PARAGRAPH EIGHT (8) HEREOF OR OTHERWISE.

6. In order to ensure prompt inspection by Buyer and to eliminate improper methods of storage and other abuse of goods sold, Sellers must be notified in writing concerning the nonconformity of the goods to the description on the invoice within sixty (60) days after Buyer receives the goods or should have discovered such nonconformity. Such written notice shall set forth with particularity the nature and extent of the nonconformity. Seller must be given the opportunity, upon written demand, to inspect to Seller's satisfaction, the goods claimed to be nonconforming to said description. Any legal action based upon nonconformity of the goods must be commenced within one year from the date of delivery of the goods to Buyer. In no event shall Seller be responsible for claims resulting in whole or part directly or indirectly from the use or abuse of nonconforming goods or for the costs of labor and/or materials expended on any goods. Nonconforming goods, except for samples, may only be returned to Seller upon receipt of Seller's written authorization to do so. All transportation costs with respect to such returns shall be paid by Seller prior to shipment. All claims for shortages must be made in writing within fifteen (15) days after receipt of goods by Buyer or its agent, and such claims must specify with particularity the exact shortage complained of. Consignees must give immediate written notice to the carrier's agent at destination in the event of damage or loss in transit. Failure to furnish such written claim within such prescribed period of time shall terminate all liability of Seller. Buyer must demonstrate that any alleged nonconformity to the description on the invoice was caused solely by a breach on the part of the Seller.
7. Buyer cannot cancel or modify this agreement or hold up release of the goods without Seller's prior written consent.
8. Any technical data, production data, production estimates and performance figures, advice, drawings and specifications furnished by Seller with respect to the goods and/or service supplied are for Buyer's convenience only, and the use of any such data, figures, advice, drawings and specifications, is at Buyer's own sole risk.
9. If Buyer shall fail to make any payments on this or any other agreement between Buyer and Seller in accordance with the terms hereof and thereof, Seller may defer making further shipments of goods and defer rendering further services until such payments are made or at its option, cancel this agreement with respect to any further performance. If Seller, pursuant to this provision, shall defer any shipments or services or cancel this agreement in whole or in part. Buyer shall be liable for the reimbursement to Seller for all damage, including any and all direct and consequential damages incurred by Seller by reason of such deferral or cancellation.
10. This is an offer by Seller to sell the goods and/or services described on the invoice and not an acceptance or confirmation of any purchase order. Acceptance of this offer by Buyer is expressly and exclusively limited to the terms, conditions, and limitations set forth herein and on the invoice. Such terms, conditions, and limitations (a) are the only terms, conditions, and limitations to which Seller will agree, (b) supercede all prior statements, proposals, quotations, negotiations, representations, and agreements with respect thereto, (c) shall constitute the entire agreement between Seller and Buyer, and (d) shall take precedence over all terms, conditions, and limitations in any request for quotation, purchase order, and other forms and documents of Buyer or any other person or entity are inconsistent herewith or in addition hereto, the terms, conditions, and limitations set forth herein and on the invoice serve as a written objection to and rejection of all such inconsistent or additional terms, conditions and limitations. The terms, conditions, and limitations herein can be modified, altered, or added to only by a subsequent written instrument (on Seller's letterhead signed by an authorized representative of Seller) and which shall set forth with particularity and not through incorporation by reference the precise terms, conditions, and limitations modified, altered or added with specific written reference to the terms, conditions, and limitations of this offer which are modified, altered, or added to. No prior inconsistent course of dealing, course of performance or usage of trade, if any, shall constitute a waiver of or serve to explain or interpret these terms, conditions, and limitations.
11. Failure of the Seller to enforce any of the terms, conditions, and limitations of this agreements shall not be construed as a waiver thereof or a waiver of any other terms, conditions, or limitations herein or on the invoice, and the failure of Seller to exercise any rights arising from a default of Buyer or otherwise shall not be deemed to be a waiver of such right or any other right. The terms, conditions, and limitations herein and on the invoice and Seller's rights with respect thereto may be enforced, in whole or in part, at any time.
12. The law of Texas in effect on the date of the acceptance of this offer by Buyer shall apply in interpreting the terms, conditions, and limitations herein and on the invoice, without regard to which party drafted the language herein or on the invoice, prior course of dealing, course of performance or usage of trade. If any of such terms, conditions, or limitations are, in whole or in part, held to be in violation of applicable law, this offer, when accepted shall be interpreted as if such provisions were limited to the extent legally permitted, or if such provision is prohibited in its entirety, it shall be null and void, and the agreement as so modified shall remain in full force effect.

\*\* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight." NOTE - Where the weight is dependent on value, shippers are required to state specifically in writing the agreed or declared value of property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding \_\_\_\_\_ per \_\_\_\_\_.