

TEXMATE INC TERMS AND CONDITIONS OF SALE

1. SCOPE

The terms and conditions of sale contained herein constitutes the entire contract between, and exclusively determines the rights and obligations of, the parties hereto, any prior course of dealing, custom or usage of trade or course of performance notwithstanding, and shall apply to all quotations made and purchase orders entered into by Texmate, Inc. (Texmate). The said terms and conditions may in some instances conflict with some of the terms and conditions affixed to the form or order and/or specified by the Buyer. Therefore, acceptance of the Buyer's order is made only on the express understanding and condition that insofar as the terms and conditions of this acceptance conflict with any terms and conditions of the Buyer's order, the terms and conditions of this acceptance shall govern, irrespective of whether the Buyer accepts these conditions by a written acknowledgment, by implication, or acceptance and payment of goods ordered hereunder. Texmate's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions of this acceptance. Any changes in the terms and conditions of sale contained herein must specifically be agreed to in writing by the President or Vice President of Texmate before becoming binding on either Texmate or the Buyer. All orders or contracts must be approved and accepted by Texmate at its home office. No agent, employee or representative of Texmate has any authority to bind Texmate to any affirmation, representation or warranty concerning the goods sold hereunder, and unless an affirmation, representation or warranty made by agent, employee or representative is specifically included herein, it shall not be enforceable by Buyer. The said terms and conditions of sale shall be applicable whether or not they are attached or enclosed with the goods to be sold or sold hereunder.

2. PRICES

Irrespective of any prices quoted by Texmate or listed on Buyer's order, an order is accepted only at the prices shown on Texmate's acknowledgment. If a quantity discount price has been granted for the quantity hereunder ordered and such total quantity remains unshipped for whatever reason 12 months after the date that Texmate received Buyer's order, Texmate's standard prices in effect on such receipt date for the quantity actually shipped shall apply, and the Buyer shall pay the difference in price, if any. Notwithstanding the foregoing, any quantity discounts offered shall only be applicable for shipments when the payment is received within the month following shipment. In the event such payment is not received, the Buyer shall become liable to pay the prevailing full single unit price for the goods shipped.

In the event of extraordinary increases in the market price of fuels, metals, raw materials, equipment and other production costs. Texmate shall have the right and Buyer shall have the obligation to renegotiate in good faith the price of the goods hereunder not yet shipped, and if in good faith, agreement is not reached, Texmate shall have the right to cancel this contract without liability.

Prices shown herein may be subject to a surcharge to be assessed on the date of shipment to reflect increases (if any) in the market price of Gold and Silver, or other identified materials between a reference market price and the market price on date of shipment.

3. TAXES

All prices are quoted, all orders accepted, and all billings rendered exclusive of all federal, state and local excise, sales, use and similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future excise, sales, use or similar tax applicable to the sale of the product hereunder shall be paid by Buyer, or in lieu thereof Buyer shall provide Texmate with a tax exemption certificate, acceptable to the taxing authorities.

4. TERMS AND METHOD OF PAYMENT

Where Texmate has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice. The amount of credit, or terms of payment may

be changed or credit withdrawn by Texmate at any time. If the goods are delivered in installments, Buyer shall pay for each installment in accordance with the terms of payment hereof, Payment shall be made for the goods without regard to whether Buyer has made or may make any inspection of the goods. If shipments are delayed by Buyer, payments are due from the date when Texmate is prepared to make shipments. Goods held for Buyer are at the Buyer's sole risk and expense. Texmate reserves the right to charge interest at the rate of 0.1 % per day or the maximum percentage of interest allowed under the law, whichever is the lower, on the outstanding balance of any payments overdue. If in the judgment of Texmate, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, Texmate may require full or partial payment in advance, and in the event of the liquidation, bankruptcy or insolvency of the Buyer or in the event any proceeding is brought by or against the Buyer under the bankruptcy or insolvency laws. Texmate shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges.

5. SHIPMENTS, TITLE AND DELIVERY

All sales are made F.O.B. point of shipment. Texmate's title passes to Buyer and Texmate's liability as to delivery ceases upon making delivery of goods purchased hereunder to carrier at shipping point in good condition, the carrier acting as Buyer's agent. All claims for damages must be filed with the carrier. All Shipments will normally be made by UPS, UPS Blue, Parcel Post, Air Express or Air Freight. In the absence of specific instructions Texmate shall select the carrier.

Claims for short shipments or other discrepancies will not be considered valid unless Texmate is advised within 7 days of receipt of the shipment. The Buyer may request and/or Texmate may elect to prepay and charge Buyer for freight costs to the first destination. Notwithstanding such prepayment, for all other purposes such shipments shall be deemed to have been made F.O.B., with all risk of loss passing to Buyer at the point shipment is accepted by the first carrier.

Shipping dates are approximate. Texmate may make shipments up to 15 days prior to the Buyer's requested shipment date. Texmate will use its best efforts to fill all orders according to the agreed schedule. However, if any conditions arise which prevent compliance with delivery schedules, Texmate shall not be liable for damages, general, consequential or otherwise, or for failure to give notice of any delay. In the event of any such delay the date of delivery shall, at the request of Texmate, be deferred for a period equal to the time lost by reason of the delay. If any conditions occur that reduce the availability of Texmate's production, Texmate may allocate production and deliveries among Texmate's customers.

6. RETURN OF GOODS

Texmate will not accept the return of any goods for any reason unless the freight is prepaid and the shipment is accompanied with a copy of the original invoice or packing list and is clearly marked with a RETURN AUTHORIZATION NUMBER issued by Texmate's Customer Service Department, specifically for the goods being returned.

7. WARRANTIES

THE FOLLOWING ARE IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER WARRANTY OBLIGATION ON THE PART OF TEXMATE. Texmate warrants that its products are free from defects in material and workmanship under normal use and service for a period of one year from date of shipment. Texmate's obligations under this warranty are limited to replacement or repairing, at its option, at its factory, any of the products which shall within the applicable period after shipment be returned to Texmate's facility, transportation

TEXMATE INC TERMS AND CONDITIONS OF SALE

charges prepaid, and which are after examination disclosed to the satisfaction of Texmate to be thus defective.

The warranty shall not apply to any equipment which shall have been repaired or altered except by Texmate, or which shall have been subjected to misuse, negligence, or accident. In no case shall Texmate's liability exceed the original purchase price. The aforementioned provisions do not extend the original warranty period of any product which has either been repaired or replaced by Texmate, Inc.

8. BUYER'S RESPONSIBILITY

Texmate may offer suggestions on the use of its various products either by way of printed matter or through Texmate's sales and application engineering staff. However, since Texmate has no control over the use of its products once they are shipped, NO WARRANTY WHETHER OF MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHERWISE is made beyond the repair, replacement or refund of purchase price at the sole discretion of Texmate. Buyer shall determine the suitability of the product for the intended application before using and the Buyer shall assume all risk and liability whatsoever in connection therewith regardless of any of Texmate's suggestions or statements as to application or construction. In no event shall Texmate's liability in law or otherwise be in excess of the purchase price of the product.

9. PATENTS AND SOFTWARE COPYRIGHT

The Buyer shall hold Texmate harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications or instructions. The sale of goods by Texmate does not convey any license by implication, estoppel, or otherwise, under patent claims covering combinations of said products with other devices or elements. Texmate does not warrant that products or the use of products manufactured by Texmate may not be in breach or infringement of any patent or software copyright in the United States or elsewhere. In the event that Texmate becomes aware that such a breach or infringement has occurred, it will notify the Buyer. Notwithstanding the foregoing, it is the Buyer's sole responsibility and risk to ascertain that the products, or use of products furnished under this contract do not constitute an infringement of any patent or software copyright. In the case that any suit or proceeding is brought against the Buyer and it is held that said product, or part thereof, does constitute a patent or software copyright infringement and the use of said product or part is enjoined, Texmate may at its sole discretion, without obligation, elect at its own expense to either procure for the Buyer the right to continue using said product or part, or replace same with non-infringing product, or modify it so it becomes non-infringing, or remove said product, and refund the purchase price. The foregoing states the entire liability of Texmate for patent or software copyright infringement by said goods or any part thereof.

10. REMEDIES AND DAMAGES

If Texmate breaches any provisions of this contract, Texmate's sole and exclusive maximum liability shall not in any event exceed the total contract price specified herein less the purchase price for any items delivered and accepted hereunder. In no event shall Texmate be liable to anyone for special collateral, incidental or consequential damages for breach of any of the provisions of this contract, including without limitation, provisions regarding warranties, guarantees, indemnities, patent or software copyright infringement, such other damages for which it is agreed Texmate will not be liable, include but are not be limited to, costs of removal and reinstallation of items, loss of goodwill, loss of profits, or loss of use.

11. TERMINATION, CANCELLATION AND RESCHEDULING

Buyer may terminate this contract in whole or, from time to time, in part upon forty-five (45) days advance written notice to Texmate. In such event Buyer shall

be liable for termination charges which shall include a price adjustment based on the quantity goods actually delivered, and all costs, direct and indirect, incurred and committed for this contract together with a reasonable allowance for pro-rated expenses and anticipated profits. Any such termination shall be subject to a Minimum termination charge of twenty percent (20%) of the dollar amount of sales terminated. Texmate is not required to accept Buyer's request to re-schedule orders unless notice is received at least 45 days prior to the scheduled shipment date. No order cancellation for default shall be effective unless and until Texmate shall have failed to correct such alleged default within 45 days after receipt of a written notice specifying such default. Unless otherwise specified on the face hereof, all quantities must be shipped no more than twelve (12) months from the date of Texmate's receipt of Buyer's purchase order, otherwise this contract may be cancelled by Texmate and Buyer shall be liable for termination charges as provided herein. If in Texmate's judgement, Buyer's financial condition does not justify the terms of payment specified herein, Texmate may cancel this contract unless Buyer shall immediately pay for all goods which have been delivered and pay in advance for all goods to be delivered.

12. NON-WAIVER OF DEFAULT

In the event of any default by the Buyer, Texmate may decline to make further shipments. If Texmate elects to continue to make shipments, Texmate's actions shall not constitute a waiver of any default by Buyer or in any way affect Texmate's legal remedies for such default.

13. SUBSTITUTIONS AND MODIFICATIONS OF GOODS

Texmate may modify the specifications of goods designed by Texmate and substitute goods manufactured to such modified specifications for those specified herein provided such goods substantially conform to this contract. Texmate reserves the right to change circuitry, software, component parts, specifications and prices without notice at any time.

14. APPLICABLE LAW AND FORUM

The validity, performance and construction of this contract shall be governed by the laws of the State of California. The parties agree that the proper forum for any legal action, brought by either party, arising out of any dispute in connection with the matters, covered by or contained in the sale agreement or these terms and conditions of sale is in the county of San Diego, California.

15. ATTORNEY'S FEES AND COSTS

In the event that either party is required to bring or defend an action in connection with these terms and conditions of sale or any action in connection with collection of amounts due hereunder, the prevailing party shall be entitled to recover all of its cost, including reasonable attorney's fees.

16. U.S. GOVERNMENT CONTRACTS

If the goods to be furnished under this Contract are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number shall appear on Buyer's purchase order, those clauses of the applicable U.S. Government procurement regulation which are mandatorily required by Federal Statute to be included in U.S. Government subcontracts shall be incorporated herein by reference.

17. ASSIGNMENT

This contract shall be binding upon and inure to the benefit of the parties and the successors and assigns of the entire business and goodwill of either Texmate or Buyer, or of that part of the business of either used in the performance of this contract, but shall not be otherwise assignable without the written consent of Texmate.

Buyer Acceptance of Terms _____ Date _____

Name _____ Position _____

Company _____ (F30)