



TERMS AND CONDITIONS OF SALE

CONTROLLING PROVISIONS: No terms and conditions other than the terms and conditions contained in ACT's Proposal and herein shall be binding upon ACT unless accepted by ACT in a writing and signed by the ACT Branch Manager. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order or Buyer's receipt ticket, which are different from or in addition to the terms and conditions contained in ACT's Proposal and herein are hereby rejected and shall not be binding on ACT, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Any instruction, order, direction, demand or request by Buyer, whether verbal or written, for shipment or delivery of all or any portion of the materials described herein, and/or shipment of all or any portion of the materials described herein, shall be deemed an acceptance by Buyer of the Terms and Conditions of Sale. The Proposal shall expire fifteen (15) calendar days after the Bid Date shown on the Proposal, or fifteen (15) calendar days after the date of the Proposal if no Bid Date is shown. Notwithstanding the foregoing, it is agreed and understood that the prices included in the Proposal are for estimating purposes only; the prices are not firm and are not fixed for said fifteen (15) calendar day period, and the price will be the current price in effect at the time of shipment.

TERMS: Buyer agrees to pay for the goods and materials according to the following terms: Payment is due net thirty (30) calendar days from the date of invoice. In the event Buyer fails to make any payment to ACT when due, Buyer's entire account(s) with ACT shall become immediately due and payable without notice or demand. Past due payments shall bear interest at the rate of one and one-half percent (1½ %) per month or, if that rate is determined to be usurious, at the highest non-usurious rate allowed by applicable law. Buyer does hereby grant ACT a purchase money security interest in the products until such time as ACT is fully paid. Buyer will assist ACT in taking the necessary action to perfect and protect ACT's security interest. No goods or materials furnished by ACT shall become a fixture by reason of being attached to real estate. Purchase price shall be ACT's price in effect at time of shipment, notwithstanding any price quotes or estimates given by ACT. Prices are subject to manufacturer's and/or supplier's price increase.

SHIPMENTS: All products are shipped *ex works* - ACT's loading dock (INCOTERMS 2010). All freight and/or shipping & handling charges shall be paid by Buyer, in addition to the price. Risk of loss shall transfer to the Buyer upon delivery to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the price of the order. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage, transportation and all other additional costs and risks shall be borne solely by Buyer. Claims for goods or materials damaged or lost in transit should be made by Buyer to the carrier, as ACT's responsibility ceases upon delivery of goods to Buyer, Buyer's representative or common carrier.

INSPECTION AND ACCEPTANCE: Claims for damage, shortage or errors in shipping must be reported within one (1) calendar day following delivery to Buyer. Buyer shall have seven (7) calendar days from the date Buyer receives any goods or materials to inspect such goods and materials for defects and nonconformance which are not due to damage, shortage or errors in shipping, and notify ACT, in writing, of any defects, nonconformance or rejection of such goods and materials. After such seven (7) calendar day period, Buyer shall be deemed to have irrevocably accepted the goods and materials, if not previously accepted. After such acceptance, Buyer shall have no right to reject the goods and materials for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) calendar day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service previously ordered by Buyer or its representatives, or to cancel any order without ACT's written consent and payment to ACT of all charges, costs, expenses, losses, and/or reasonable profits owed to or incurred by ACT as a result of any such change, modification or cancellation. Specially fabricated or ordered items may not be cancelled or returned, and no refund will be made or credit given. **The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the remedy or remedies, if any, available under the manufacturer's warranty and Buyer irrevocably waives all other remedies associated therewith.**



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DELIVERY: In the event of force majeure, including, but not limited to acts of God, war, acts of terrorists, government order or regulation, strikes, embargos, inability to obtain material or material shortage, accidents, delays of carriers, contractors or suppliers, inclement weather including, but not limited to hurricanes and named tropical disturbances or other cause beyond ACT's reasonable control, or in the event of impracticability of performance or failure of presupposed conditions, which delays, impairs, or otherwise affects ACT's ability to furnish and/or deliver the materials contemplated by the Proposal, in whole or in part, ACT's obligation to perform hereunder and which cannot be overcome by the exercise of ordinary diligence shall be suspended during the continuation of such event, or, in the alternative, ACT may cancel the sale under the proposal upon written notice to Buyer, without liability for performance or any loss, cost, expense or damages suffered by Buyer. ACT assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to ACT.

WARRANTY: THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE MANUFACTURER OF THE GOODS AND MATERIALS, AND SUCH WARRANTY, IF ANY, EXTENDS ONLY TO THE ORIGINAL BUYER. ACT MAKES NO EXPRESS OR IMPLIED WARRANTIES. ACT HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. BUYER SHALL BE RESPONSIBLE FOR THE PAYMENT FOR LABOR AND EXPENSES OF REPAIRING OR REPLACING DEFECTIVE GOODS, MATERIALS OR WORKMANSHIP, OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL GOODS, MATERIALS AND/OR SERVICES PROVIDED BY ACT AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS" AND "WITH ALL FAULTS."

DAMAGES: NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED ELSEWHERE HEREIN, BUYER RELEASES ACT AND ITS SHAREHOLDERS, SUBSIDIARIES AND AFFILIATED COMPANIES AND ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES ("ACT INDEMNITEES") FROM ANY CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY AND PUNITIVE DAMAGES OF ANY KIND OR CHARACTER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFIT, LOSS OF BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF PRODUCTIVITY, LOSS OF EFFICIENCY, ACCELERATION, LOSS OF CONTRACT (COLLECTIVELY "CONSEQUENTIAL DAMAGES") WHENEVER ARISING OUT OF, IN CONNECTION WITH OR RELATED TO THIS PROPOSAL OR AS A RESULT OF, RELATING TO OR IN CONNECTION WITH THE MATERIALS, GOODS AND LABOR RELATING TO THIS PROPOSAL, AND NO CLAIM SHALL BE MADE BY BUYER REGARDLESS OF WHETHER SUCH CLAIM IS BASED OR CLAIMED TO BE BASED ON NEGLIGENCE (INCLUDING SOLE, JOINT, ACTIVE, PASSIVE, GROSS OR CONCURRENT NEGLIGENCE), FAULT, BREACH OF WARRANTY, BREACH OF CONTRACT, STATUTE, STRICT LIABILITY OR OTHERWISE AND INCLUDING PRE-EXISTING CONDITIONS.

RECOMMENDATIONS BY SELLER: Buyer acknowledges that ACT does not make and specifically negates, and disclaims any representations, warranties and/or guaranties of any kind or character, express or implied, with respect to (i) the goods and materials sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose, (ii) the maintenance or other expenses to be incurred in connection with use of the goods and materials, (iii) the engineering, design, fabrication work or any other work or service, whether gratuitous or for payment, supplied by ACT and/or its agents, suppliers and employees or (iv) the accuracy or reliability of any information, designs or documents furnished to Buyer. Any recommendations made by ACT concerning the use, design, application or operation of the goods and materials shall be merely ACT's opinion or recommendation, and shall not be construed as representations or warranties, express or implied, and shall not be made a part of the basis of the bargain. Failure by ACT to make recommendations or give advice to Buyer shall not impose any liability upon ACT.

COMPLIANCE: The Buyer shall at its own expense apply for and obtain any permits and inspections required for

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the installation and/or use of the goods and materials. ACT makes no promise or representation that the goods, materials or services will conform to any federal, state or local laws ordinances, regulations, codes or standards. Goods and materials sold by ACT are not for use in or with any nuclear facility unless specifically so stated by ACT in writing.

INDEMNIFICATION: ACT shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the goods and materials. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED ELSEWHERE HEREIN, BUYER SHALL RELEASE, DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS ALL MEMBERS OF THE ACT INDEMNITEES FROM AND AGAINST ANY LOSS, COST, CLAIM, SUIT, JUDGMENT, AWARD OR DAMAGE (INCLUDING REASONABLE ATTORNEY'S FEES) IN ANY CASE OF ILLNESS, INJURY OR DEATH, SUFFERED BY ANY PERSON OR ENTITY AND IN ANY CASE OF LOSS OR DAMAGE TO THE PROPERTY OF ANY PERSON OR ENTITY ARISING OUT OF OR RELATING TO ACT'S SUPPLY OF THE GOODS, MATERIALS OR LABOR UNDER THE PROPOSAL AND REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY THE NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT, CONCURRENT OR GROSS NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY AND INCLUDING PRE-EXISTING CONDITIONS ATTRIBUTABLE TO ANY MEMBER OF THE ACT INDEMNITEES.** The obligations, indemnities and covenants contained in this Indemnity paragraph shall survive the consummation or termination of this transaction.

INSURANCE. Buyer agrees to name all members of the ACT Indemnitees as an additional assured under its policies of insurance (with the exception of Buyer's Worker's Compensation Insurance) and to obtain a waiver of subrogation in favor of the members of the ACT Indemnitees, to the extent of Buyer's indemnification obligations under these terms and conditions of sale.

BUYER EXPRESSLY WAIVES THE PROVISIONS OF CHAPTER XVII, SUBCHAPTER E, SECTIONS 17.41 THROUGH 17.63, INCLUSIVE, VERNON'S TEXAS CODE ANNOTATED, BUSINESS & COMMERCE CODE (the "Texas Deceptive Trade Practices Act"). In this regard, Buyer represents that it is a party qualified and entitled to validly, legally, and effectively grant this waiver and understands that ACT have relied upon such representation as a material inducement to agree to sell the goods, materials and/or labor to Buyer.

RETURNS: Buyer may return any product which ACT stocks with no restocking charge only if: (i) it is in new condition, suitable for resale in its undamaged, original packaging and with all its original parts; and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged; as determined by an inspection by ACT. Any proposed returns not meeting (i) and (ii), above, will be evaluated on an individual basis and returnable solely at ACT's option, after Buyer has contacted Seller's authorized representative to request return. Special orders or non-stock items may be returned only if the manufacturer will accept the return. Except for items Seller stocks which meet (i) and (ii), above, credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in salable condition; and (b) handling and restocking charges. Buyer shall pay all freight and/or transportation charges for returned goods and materials.

INCORPORATION IN PROJECT: Buyer warrants and represents that the materials contemplated by the Proposal are being ordered for incorporation into a Project and Buyer acknowledges that the goods and materials delivered by ACT are being delivered for incorporation in the Project, and in reliance upon Buyer's warranty and representation.

TAXES: The amount of any sales, use, excise or other taxes, if any, applicable to the goods and materials shall be added to the purchase price and shall be paid by Buyer unless Buyer provides ACT with a sales tax exemption certificate acceptable to the applicable authorities. Any taxes which ACT may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, use or consumption of any of the goods or materials, including taxes upon or measured by the receipts from the sale thereof, shall be for the



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account of the Buyer, who shall promptly pay the amount thereof, as well as any and all fines, penalties or interest assessed by or for the taxing authority in connection therewith, to ACT upon demand.

REMEDIES OF SELLER: Upon default by Buyer, Buyer agrees to reimburse ACT all attorney fees and court costs incurred by ACT in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable ACT, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law or in equity: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of a receiver for Buyer or for the materials covered by this order, or the filing of any petition to adjudicate Buyer bankrupt, and a failure by Buyer to provide adequate assurance of performance within ten (10) calendar days after a demand by Seller; (d) the death, incompetence, dissolution or termination of existence of Buyer; or (e) if ACT, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of ACT herein are in addition to, and shall not exclude, any rights or remedies that ACT may have by law or in equity. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

SEVERABILITY: These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance herefrom.

SET-OFF: Buyer shall not be entitled to any set-off, deductions or withholding against any amounts otherwise due Buyer against any amount due to ACT in connection with this transaction, and Buyer hereby waives and relinquishes any such right of set-off, deduction or withholding.

NON—WAIVER: ACT's failure to Insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of ACT's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by ACT's Branch Manager.

ENTIRE AGREEMENT: ACT's Proposal, including these terms and conditions, constitutes the entire, complete, and exclusive agreement between ACT and Buyer with respect to the subject matter hereof, and contains all the agreements and conditions of sale. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by ACT's Branch Manager, and no other conduct of the parties, course of dealing or usage of the trade shall supplement, modify, supersede or otherwise alter these terms and conditions. All transactions shall be governed solely by the terms and conditions contained in ACT's Proposal and herein.

APPLICABLE LAW: This transaction shall be governed in all respects by the laws of the State of Texas, excluding choice of law provisions. Exclusive venue and jurisdiction for any dispute arising out of or related to this transaction or any right, duty or obligation created in whole or in part by the Proposal, including these terms and conditions, shall be in the State or Federal Courts (as appropriate) located in Harris County, Texas. All suits or actions, regardless of form, arising out of or related to this transaction or the goods and materials sold hereunder, must be brought against ACT within two (2) years and one (1) calendar day after accrual of the cause of action, or within the applicable statutory period, whichever is shorter. Buyer and ACT irrevocably waive the right to a jury trial.