

Terms & Conditions

I. SCOPE

1. This site ("Site") is provided by Ferguson Enterprises, Inc., a Virginia corporation (hereinafter called "Ferguson", "us" or "Seller") as a service to its electronic business customers ("Electronic Partner", "you" or "Buyer").

2. By using this Buyer will to conduct business using electronic transmissions, in lieu of standard hard copy business documents, under the following terms and conditions ("Agreement"). However, invoicing, monthly statements, delivery tickets and payment method will continue to be mailed unless you choose otherwise.

3. Transactions arising out of or related to use of the Site shall be governed by this Agreement.

4. The parties deemed this Agreement to be incorporated by reference into each transaction to the same extent they would have been had they been sent to you as part of each electronic transmission.

5. All electronic transmissions made pursuant to this Agreement shall create a binding legal obligation and shall be deemed to be the same as signed written communications.

II. ELECTRONIC TRANSMISSIONS

1. Each party shall independently provide and maintain at our own expense the equipment, software, services and testing necessary to effectively and reliably transmit and receive electronic transmissions. All electronic transmissions shall be transmitted in accordance with the standards set forth in the Electronic Trading Partner Profile available on this Site.

2. Electronic transmissions will be forwarded electronically by you to us or by us to you directly or through third party communications networks. Each party shall provide written instructions and authorizations to such selected third party networks as required to facilitate the electronic transmissions.

3. Each party shall each pay its respective costs for use of any third party network. Connect time and any other charges of the third party networks shall be paid for by the party initiating each communication, provided however, that in the event you elect to employ a third party network other than that employed by us, each of us shall be responsible only for those costs associated with sending and receiving communications to and from its own third party network, and for those costs associated with communications initiated by its third party network.

4. Each party shall use those security procedures that are reasonably sufficient to ensure that all documents are authorized and to protect our business records and data from improper access.

5. If any properly transmitted Document is received in an unintelligible or garbled form, the receiving party shall promptly notify the originating party. In absence of such a notice, the originating party's records of the contents of such Document shall control.

III. PURCHASES

1. An order shall be initiated with the transmission of a Purchase Order or similar form of order placement as provided in the system.

2. Each order shall be acknowledged with the transmission of a "functional acknowledgement" or "transaction response" upon receipt of such Purchase Order, which shall be deemed an acknowledgement only of receipt of the Purchase Order and shall not be deemed an acceptance thereof.

IV. RECOMMENDATIONS BY SELLER:

1. Buyer acknowledges that Seller does not make and specifically negates, renounces and disclaims any representations, warranties and/or guaranties of any kind or character, expressed or implied, with respect to (i) the products 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 the products, (iii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers and employees or (iv) the accuracy or reliability of any information, designs or documents furnished to Buyer.

2. At its own expenses, Buyer shall apply for and obtain any permits and inspections required for the purchase, installation, and/or use of the products. Buyer is solely responsible for choosing the products, including decisions regarding use, style, size, and finishes. Some of the products sold to Buyer may contain materials deemed potentially harmful under federal, state or local laws, ordinances, regulations, codes or standards. Seller makes no representation, warranty, or promise that the products or services will conform to any applicable laws, ordinances, regulations, codes or standards, including but not limited to, low lead or lead free laws or regulations, except as particularly specified and agreed upon in writing by an authorized representative of Seller. Seller is not responsible if the product does not fit the particular use, style, size, or finish requirements or is misapplied or misused by Buyer or any other party in violation of law. Seller's products are not for use in or with any nuclear facility unless specifically so stated by Seller in writing.

3. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its products and/or rendering of its services. Any recommendations made by Seller concerning the use, design, application or operation of the products shall not be construed as representations or warranties, expressed or implied. Failure by Seller to make recommendations or give advice to Buyer shall not impose any liability upon Seller.

V. FINANCIAL

1. PAYMENT TERMS:

1. Buyer will pay for the products according to the payment terms established by the Seller's credit manager. Seller reserves the right to change the Payment Terms upon notice to Buyer upon any change in Buyer's creditworthiness as determined in Seller's sole discretion.

2. The amount of any sales, excise or other taxes, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand.

3. Buyer does hereby grant Seller a purchase money security interest in the products until such time as Seller is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest.

4. Buyer shall not be entitled to set-off any amounts due Buyer against any amount due Seller.

2. ELECTRONIC BILL PAY:

1. If Buyer chooses to utilize the functionality to pay invoices online, then Buyer will identify one or more individual with signature authority on Buyer's respective bank account for which it provides ABA transit and account number information. All transactions initiated using the user id and password are deemed valid and authorized. Buyer shall safeguard all user ids and passwords issued to ensure that only properly authorized individuals use their respective user id and password. Buyer shall notify Seller immediately if any account number, user id or password is stolen or otherwise compromised.

2. If Buyer chooses to utilize the functionality to pay invoices online, then Buyer authorizes Seller to originate an ACH debit entry or other electronic transfer. Buyer shall maintain sufficient funds to cover any payments initiated under the service. Upon a returns resulting from insufficient funds in the

account, closure account, or incorrect account information, Buyer will pay a service charge in the amount of \$25.00 per returned payment.

3. Seller may subcontract or otherwise assign other service providers to perform incidental services related to online bill pay and other payment methods.

4. Buyer will indemnify, defend and hold Seller harmless from any claim for damages arising out of use of the online bill pay services including but not limited to claims from the owner of any account to which Buyer provided account information.

5. Seller reserves the right to prenote an account upon initial set up or any change to the account or authorized users.

3. EVENTS OF DEFAULT

Any of the following constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law:

1. the failure of Buyer to perform any term or condition contained herein;
2. any failure of Buyer to give required notice;
3. 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 receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt;
4. the death, incompetence, dissolution or termination of existence of Buyer;
5. a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or
6. if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired.

4. REMEDIES:

Upon default by Buyer,

1. Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to service charges of 1.5% per month, or the maximum contract rate permitted by law if lower.
2. 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.
3. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law.

VI. FULFILLMENT

1. DELIVERY:

Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller 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 Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect., or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

2. SHIPMENTS:

All products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier unless otherwise stated. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount 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 and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier.

3. INSPECTION AND ACCEPTANCE:

Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer acknowledges that such seven (7) 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 cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Specially fabricated or ordered items may not be canceled or returned, and no refund

will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to the manufacturer's inspection and warranty.

4. RETURNS:

Buyer may return any product which Seller stocks with a 15% restocking charge if:

1. it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and
2. it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged and
3. meets all applicable laws ordinances, regulations, codes or standards governing the type of product that can be sold or put into transit in the state in which the product is being returned.
4. Buyer's surplus job returns, and those not meeting (i), (ii) and (iii), above, will be evaluated on an individual basis after Buyer has contacted Seller's authorized representative for prior written permission.
5. Special orders or non-stock items may be returned if the manufacturer will accept the return. Except for items Seller stocks which meet (i), (ii) and (iii), above, credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges.

VII. WARRANTY, INDEMNITY

1. WARRANTY:

THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. SELLER MAKES NO EXPRESSED OR IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ALL EXPRESSED 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.

2. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD BY SELLER. BUYER HEREBY ACKNOWLEDGES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT,

SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

3. INDEMNIFICATION:

Seller 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 products. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

VIII. GENERAL

1. Force Majeure:

Neither party will be responsible for any failure to comply with the provisions of this Agreement due to causes beyond its reasonable control or the control of any named third party network. These causes shall include but not be restricted to fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, labor disputes, acts of God, acts of the state or federal governments or agencies thereof and judicial action. Upon cessation of causes operating to excuse the performance by either of us or third party network, this Agreement shall continue in full force and effect for the remainder of its term.

2. Severability:

If any of the provisions of this Agreement are deemed invalid under any applicable statute or rule of law, such provisions shall be deemed omitted without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

3. Choice of Law:

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. All actions, regardless of form, arising

out of or related to this transaction or the products sold hereunder must be brought against Seller within the applicable statutory period, but in no event more than ONE (1) YEAR after the date of transaction.

4. Entire Agreement:

This Agreement constitutes the entire agreement between the parties relative to the subject matter hereof and supersedes all proposals and all other communications between the parties relating hereto and may not be modified except in writing signed by the party against whom the modification is to be enforced. Such modifications may not be communicated by EDI transmission.

5. Waiver:

No forbearance by any party to require performance of any provision of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. No waiver by any party of any breach or default hereunder shall constitute or be deemed to be a waiver of any subsequent breach or default, whether of the same or similar nature or of any other nature, or a waiver of the provision or provisions breached or with respect to which such default occurred. No waiver of any of the terms and conditions of this Agreement shall be effective or binding unless such waiver is in writing and is signed by the party claimed to have given or consented to such waiver. Such waivers may not be communicated by electronic transmission.

6. Signature Requirements:

The parties will not to contest the validity or enforceability of the Documents or the sale/purchase transaction created pursuant hereto under the provisions of any applicable law relating to whether certain agreements must be in writing and signed by the party to be bound thereby. If introduced as evidence, the Documents will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Documents were not originated or maintained in documentary form.

7. Notices:

All written notices required or permitted to be given hereunder shall be in writing and shall be given by certified mail, return receipt requested, to the party being given such notice for Seller at the address shown below and for Buyer at the address indicated in its electronic transmissions; or such other address as shall be provided in writing for future notices from time to time:
Ferguson, 12500 Jefferson Avenue, Newport News, VA 23602

Your continued use of this Site constitutes acceptance of the terms of this Agreement.

