

HARBISONWALKER INTERNATIONAL, INC.
STANDARD TERMS OF SALE

1. GENERAL

- A. Seller's prices are based on these sales terms and: (i) this document, together with any additional writings signed by Seller, represents a final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parole evidence, Buyer's purchase order, a course of dealing, Seller's performance or delivery, or in any other way except in writing signed by an authorized representative of Seller, and (ii) these terms are intended to cover all activity of Seller and Buyer hereunder, including sales and use of products and all related matters including technical advice and services. Any references by Seller to Buyer's specifications and similar requirements are only to describe the products covered hereby and no warranties or other terms therein shall have any force or effect. Catalogs, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof.
- B. The agreement formed hereby and the language herein shall be construed and enforced under the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania on the date hereof.

2. TAXES

Any sales, use or other similar type taxes imposed on this sale or on this transaction are not included in the price. Such taxes shall be billed separately to the Buyer. Seller will accept a valid exemption certificate from the Buyer if applicable, however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and the Seller is required to pay the tax covered by such exemption certificate, Buyer agrees to promptly reimburse Seller for the taxes paid.

3. PAYMENTS

Terms of payment are to be agreed upon in writing by Seller and invoicing shall be in United States dollars. All payments are to be made in accordance with agreed upon terms. Notwithstanding anything to the contrary in this Agreement and without prejudice to any other rights it may have, in the event that Buyer is in default or has past due invoices, Seller reserves the right at any time to offset such amounts from any deposits, and hold production and/or shipment until payment has been made. Except for invoiced payments that the Buyer has successfully disputed, all late payments shall bear interest at the lesser of the rate of LIBOR + 3% per month or the highest rate permissible under applicable law. Buyer shall also reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

4. PERFORMANCE, INSPECTION AND ACCEPTANCE

- A. Unless Seller specifically assumes responsibility for work, all products shall be finally inspected and accepted within (10) days after arrival at point of delivery. All claims whatsoever by Buyer (including claims for shortages) excepting only those provided for under the WARRANTY AND LIMITATION OF REMEDY AND LIABILITY and PATENTS Clauses hereof must be asserted in writing by Buyer within said ten (10) day period or they are waived. If this contract involves partial performances, all such claims must be asserted within said ten (10) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products or work and Buyer's remedy for lesser defects shall be those provided for under the WARRANTY AND LIMITATION OF REMEDY AND LIABILITY Clause.
- B. Seller shall not be responsible for non-performance or delays in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to, labor difficulties, delays of vendors or carriers, fires, governmental actions and material shortages. Any delays so occasioned shall effect a corresponding extension of Seller's performance dates which are, in any event, understood to be approximate. In no event shall Buyer be entitled to incidental or consequential damages for late performance or a failure to perform.
- C. If Buyer wrongfully rejects or revokes acceptance of items tendered under this agreement or fails to make a payment due on or before delivery or repudiates this agreement, Seller shall at its option have a right to recover as damages either the price as slated herein (upon recovery of the price the items involved shall become the property of the Buyer) or the profit (including reasonable overhead) which the Seller would have made from full performance together with incidental damages and reasonable costs.

5. DELIVERY, TITLE AND RISK OF LOSS

Unless, otherwise agreed to by Seller, full risk of loss (including transportation delays and losses) shall pass to the Buyer upon delivery of products to the FOB point. However, Seller retains title, for security purposes only, to all products until paid for in full in cash and Seller may, at Seller's option, repossess the same upon Buyer's default in payment hereunder and charge Buyer with any deficiency. Seller may retain custody of the goods at Buyer's request, subject to a mutually acceptable storage fee.

6. WARRANTY AND LIMITATION OF REMEDY AND LIABILITY

- A. Seller warrants only that its products, when shipped, will meet all applicable written specifications and other specific product requirements (including those of performance) if specifically agreed to by Seller, if any, of this agreement and will be free from defects in material and workmanship. Drawing Services furnished hereunder shall conform to the standards of practice customary in the refractories business for drawing services of a similar nature. All claims under this warranty must be made in writing immediately upon discovery and, in any event, no later than one (1) year from shipment of the applicable product or drawing. Defective and nonconforming items must be held for Seller's inspection and returned to the original FOB point upon request. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, EXPRESS IMPLIED AND STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS. Technical advice is furnished as an accommodation to the Buyer. Seller assumes no liability therefor, and Buyer accepts such advice at Buyer's sole risk.
- B. Upon Buyer's submission of a claim as provided above and its substantiation, as the sole remedy to Buyer, Seller shall at its option either: (i) repair or replace its product or work at the original FOB point; or (ii) refund an equitable portion of the purchase price; or (iii) reperform drawing services at no cost to customers.
- C. Seller shall not be liable for breach of warranty set forth herein if the defect arises because Buyer failed to follow Seller's instructions as to the storage, installation, commissioning, use or maintenance of the products. Refractory brick and shapes should be handled with care to avoid scuffing and breaking. All refractories should be stored in a dry place, protected against weather, especially in seasons when alternate freezing and thawing occur.
- D. THE FOREGOING IS SELLER'S ONLY OBLIGATION AND BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY AND, EXCEPT FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND REMEDIES PERMITTED UNDER THE PERFORMANCE INSPECTION AND ACCEPTANCE AND THE PATENTS CLAUSES HEREOF, THE FOREGOING IS BUYER'S EXCLUSIVE REMEDY AGAINST SELLER FOR ALL CLAIMS ARISING HEREUNDER OR RELATING HERETO WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES. BUYER'S FAILURE TO SUBMIT A CLAIM AS PROVIDED ABOVE SHALL SPECIFICALLY WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF, INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON LATENT DEFECTS. IN NO EVENT SHALL BUYER

BE ENTITLED TO INCIDENTAL OR CONSEQUENTIAL DAMAGES. ANY ACTION BY BUYER ARISING HEREUNDER OR RELATING HERETO, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES, MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OR IT SHALL BE BARRED.

7. PATENTS

Seller agrees to assume the defense of any suit for infringement of any United States' patents brought against Buyer to the extent such suit charges infringement of an apparatus or product claim by Seller's product in and of itself provided: (i) said product is built entirely to Seller's design, (ii) Buyer notifies Seller in writing of the filing of such suit within ten (10) days after the service of process thereof and (iii) Seller is given complete control of the defense of such suit, including the right to defend, settle and make changes in the product for the purpose of avoiding infringement. Seller assumes no responsibility for charges of infringement of any process or method claims unless infringement of such claims is the result of following specific instructions furnished by Seller.

8. SPECIAL TOOLING

Notwithstanding any molds, outfits, tool, die or pattern changes or amortization in connection herewith, all special tooling and related items shall be and remain the property of Seller.

9. ALLOWABLE VARIATION AND OVERSHIPMENT

Allowable variations from specified dimensions are plus 2% to minus 2% on dimensions over 4" and plus 3% to minus 3% on dimensions of 4" or less. Overage shall be allowable on all shipments of sizes and shapes that are not carried in stock in accordance with the following: 1-100: 10%, but not less than one shape or, if in sets, one complete set -- 101 – 1,000: 7%, 1,001 – 5,000: 3%, 5,001 – 10,000: 2%, Over 10,000: 1%.

10. MISCELLANEOUS CHARGES

- A. Individual orders or shipments from any of Seller's plants will be subject to a minimum charge of \$250.00.
- B. Individual orders or shipments from Seller's plant, warehouse or service center requiring less than a full pallet are subject to a charge for each pallet less than a full pallet.
- C. Prices include standard pallets. Special pallets, packaging and wrapping shall be subject to additional costs as published from time to time or quoted by Seller.

11. DRAWING SERVICES

Drawing Services are quoted and provided to offer suggested methods of installation. Buyer's approval of the drawings and/or buyer's decision to rely upon them for construction purposes is at the sole risk of Buyer/Installer. Buyer's payment for any drawing services recognizes that the information contained in the drawing is proprietary and is the intellectual property of Seller. Buyer agrees to keep the information confidential and shall not reproduce or make the drawings available to third parties.

12. TERMINATION OF ORDER BY BUYER

Buyer may terminate or cancel its order and return unused goods, but only upon the prior written consent or authorization of Seller. Seller may withhold its consent for any reason, including but not limited to, resalability of the returned products, the shelf life of the products, less than full pallets or other reasons. Seller may condition its consent upon payment of an amount specified by Seller representing costs. All returns shall be subject to a restocking fee of not less than 20% of the purchase price of the returned products.

13. SAFE USE OF PRODUCTS

Buyer acknowledges that the use or installation of the products sold hereunder may be hazardous to its employees and others. Buyer further acknowledges that the products or certain components or ingredients may require the use of personal protective equipment by those persons using, installing or tearing out the products sold under this order. Buyer agrees that it shall require its employees and all other persons it controls to abide by the warnings contained in the product warning labels included in the shipment of the products and the information on Seller's Material Safety Data Sheet for such products. Buyer shall indemnify Seller from and against any and all claims, demands, liability, actions or causes of action arising out of any claims by Buyer's employees or other persons under Buyer's control for personal injury, death or property damage, where one of the causes of such personal injury, death or property damage was the failure by such person to follow the requirements and advice contained in Seller's warning labels and Material Safety Data Sheets related to the products.