

# **TERMS AND CONDITIONS**

## **BUYER'S TERMS AND CONDITIONS:**

Incom products are offered for sale only under the terms and conditions contained herein. Notwithstanding terms and conditions of Buyer's order, Incom's acceptance of any order is expressly made conditional on Buyer's agreement to Incom's terms and conditions of sale unless otherwise specifically agreed to in writing. In the absence of such agreement commencement of performance and/or delivery shall be for the Buyer's convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions or any of them.

## **ORDERS:**

All orders are subject to acceptance only at Incom's Plant(s).

## **END USE:**

Determination of the suitability of the products described on the face hereof for the use contemplated by the Buyer or Buyer's customer is the sole responsibility of the Buyer or Buyer's customer, whichever the case may be, and Incom shall have no responsibility in connection therewith unless otherwise specifically agreed to in writing.

## **WARRANTY:**

Incom warrants that the goods supplied hereunder shall meet the description or specification stated herein. The Buyer's exclusive remedy and Incom's sole liability hereunder shall be limited to the refund of the purchase price of, or the replacement of all goods shown to be otherwise than as warranted and Incom shall in no case be liable otherwise or for incidental or consequential damages. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WRITTEN OR UNDERWRITTEN EXPRESS OR IMPLIED.

## **WARRANTY REPLACEMENT OR ADJUSTMENT:**

Replacement or refund of purchase price for goods supplied hereunder which do not meet the description or specifications herein is conditional on buyer giving Incom notice within ninety (90) days from date of shipment by Incom that said goods are otherwise than as warranted. Where said goods are not standard products and have been manufactured to Buyer's drawings and specifications, Incom reserves the option to repair or replace said goods in lieu of refunding the purchase price.

## **RETURN OF GOODS:**

No goods may be returned for any reason without written permission of Incom.

## **PATENTS:**

Incom will hold the buyer harmless, as set forth herein in respect to any claim that the method of manufacture of goods supplied hereunder constitutes an infringement of any patent of the United States. Incom will pay all damages and costs either awarded in a suit or paid, in Incom's sole discretion, by way of settlement, which are based on such claim of infringement provided that Incom is notified promptly in writing of such claim of infringement and is given full authority, information and assistance in settling or defending such claim. The foregoing fully expressed Buyer's exclusive remedy and Incom's sole liability with respect to any infringement of any patent by the goods supplied hereunder and Incom HEREBY EXPRESSLY DISCLAIMS ANY OTHER WRITTEN OR UNWRITTEN EXPRESS OR IMPLIED WARRANTY AGAINST INFRINGEMENT, with respect to such goods. In no case will Incom be liable to defend or pay any award of damages assessed against the Buyer in any suit or cause of action alleging that the use of the goods supplied hereunder infringes any patent. Buyer shall hold Incom harmless against any claim, loss or expense arising out of Incom's compliance with any specification furnished by Buyer with respect to the goods supplied hereunder.

## **TITLE AND RISK OF LOSS:**

Title and risk of loss or delay of all goods supplied hereunder shall pass to Buyer upon Incom's delivery thereof to carrier at shipping point.

## **SHIPMENTS:**

In the absence of specific instructions shipment will be made at the discretion of the shipper.

## **CONTINGENCIES:**

Incom shall not be liable for any delay in performance of any order accepted by it or in delivery or shipment of goods thereunder when such delay is directly or indirectly caused by or in any manner arises or results from fire, flood, strike, accident, riot, war, governmental interference, act of God, or other difficulties (whether or not similar in nature to any of those specified) beyond its control. Whenever such causes are remedied, Incom will make and Buyer shall accept deliveries under such order.

## **CANCELLATION:**

No order accepted by Incom may be cancelled by Buyer except by mutual agreement of Incom and Buyer and on terms which will indemnify Incom against loss or damage.

## **TAXES:**

Incom does not report, pay or collect any use tax, sales tax, or similar tax which may be imposed upon the Buyer under the laws of the state to which shipment is made unless Incom shall separately state such charge to Buyer on the acceptance of such order and the invoice for such goods. Buyer shall report and pay any use taxes or similar taxes which may be imposed upon Buyer by reason of such order and shall hold Incom harmless therefrom.

## **TERMS OF PAYMENT:**

Terms of payment shall be as stated on the face hereof. If Buyer's credit rating is unavailable or unsatisfactory to Incom, the latter reserves the right to require payment upon delivery.

## **EXPORT**

(a) Buyer agrees that it shall not sell, transfer, or deliver, directly or indirectly, any part or portion of the products or related documentation supplied by Incom pursuant to this purchase order to any person or organization in any country where such sale, transfer, or delivery by Buyer would be prohibited by law or regulation now or hereafter in effect which imposes any restrictions on United States trade with foreign countries.

(b) Incom's obligations hereunder are conditioned upon Incom (or Buyer) obtaining, from the appropriate agencies or departments of the United States Government, all export licenses and other governmental permits that may be required by law to enable Incom to export the products, services and related documentation supplied by Incom pursuant to this purchase order. Incom agrees to take all reasonable steps to obtain such licenses and permits; provided, that Buyer shall reimburse Incom for any costs Incom expends in connection with obtaining such licenses and permits. In the event that the required approvals are not granted, withdrawn, or not extended, then either party may terminate this purchase order and such termination for purposes of determination of costs shall be considered caused by Excusable Delay. (c) Buyer shall indemnify and save harmless Incom from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Buyer's failure to comply with the provisions of this Paragraph. Any failure of Buyer to comply with the requirements or any breach of the representations contained in this Paragraph shall be a material breach of this purchase order.