

**ATLANTIC TRACK & TURNOUT CO.**  
**SELLER'S CONDITIONS OF SALE**

1. Title to the said material passes to Purchaser upon delivery of said material to Purchaser in good condition. Delivery to Purchaser occurs, and Seller's liability as to delivery ceases, when, at Seller's option, said material is (i) loaded on a for hire carrier for delivery to Purchaser, the carrier acting as Purchaser's agent; or (ii) picked up by Purchaser at Seller's shipping point; or (iii) deposited by Seller at Purchaser's receiving point. Purchaser ASSUMES FULL RESPONSIBILITY FOR PROPER ARRANGEMENT AND SECURITY OF THE GOODS FOR SAFE TRANSPORTATION.
2. Except as provided in Condition 10 herein, Seller makes NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, except that the goods sold hereunder shall be of merchantable quality; and buyer assumes all risk and liability for results obtained by the use of the material covered by this order, whether used singly or in combination with other products.
3. NO CLAIM OF ANY KIND, WHETHER AS TO GOODS DELIVERED OR FOR NONDELIVERY OF GOODS, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE GOODS IN RESPECT OF WHICH DAMAGES ARE CLAIMED; and failure to give notice of claim within ninety (90) days from the date of deliver, or the date fixed for deliver, respectively, shall constitute a waiver by Purchaser of all claims in respect of such goods. No action or arbitration of any kind may be commenced against Seller more than one (1) year from the date of Purchaser's claim or cause of action against Seller first accrued. This is an express condition precedent to arbitration notwithstanding any other provisions for arbitration. No charges or expenses incident to any claims will be allowed unless approved by an authorized representative of Seller. Goods shall not be returned to Seller without Seller's permission. No claim will be allowable after the goods have been treated or processed in any manner. THE REMEDY HEREBY PROVIDED SHALL BE THE EXCLUSIVE AND SOLE REMEDY OF Purchaser; ANY RIGHT OF Purchaser TO CONSEQUENTIAL DAMAGES IS EXCLUDED.

Notwithstanding anything herein contained in this paragraph (3) to the contrary, it is expressly acknowledged and understood that if the Seller has informed the Purchaser that the material to be supplied by Seller to the Purchaser under this contract is available from predominantly one source, then in that event if there is any interference or cessation of the supply from the Seller's source, the Seller shall be temporarily, proportionately and/or permanently relieved of all liability under this contract depending upon whether the interruption of the source of supply is a temporary interruption, a reduced delivery of materials, or a permanent cessation of supply.

4. a) The terms of payment applicable to this order are set forth in the Purchase Order. In the event Purchaser fails to fulfill the terms of payment, or in case Seller shall have any doubt at any time as to Purchaser's financial responsibility, Seller may decline to make further deliveries except upon receipt of cash or satisfactory security.  
  
b) Purchaser to pay service or interest charges on past due bills at a rate three (3%) percent higher than the prime rate then posted by Citibank, N.A. provided that such charges shall not exceed the highest rate permitted by law. Purchaser shall pay reasonable attorney's fee if attorneys are utilized by Seller to collect payment.
5. Purchaser shall reimburse Seller all taxes, excises or other charges which Seller may be required to pay to any government (National, State or Local) upon the sale, production or transportation of the commodities sold thereunder.
6. Any portion of this order not taken by buyer in the month originally specified, may be postponed or cancelled at Seller's option, without tender or notice to the buyer. Such postponement or cancellation shall not affect any remaining portion of the order.
7. Purchaser's sole remedy upon rejection after inspection of Seller's goods is to request replacement. In no event shall Purchaser be entitled to a reduction in price or cancellation of the order.
8. No liability shall result from delay in performance or non-performance of this agreement, directly or indirectly caused by fire, explosion, accidents, flood, labor trouble or shortage, war, act of or authorized by any Government, inability to obtain suitable material, equipment, fuel, power or transportation, or act of God or arising from contingencies, happenings, or causes beyond the control of the party affected. Quantities so affected by any such circumstances may be eliminated without liability, but this agreement shall otherwise remain unaffected.
9. This order is not assignable or transferable by Purchaser, in whole or in part, except with the written consent of Seller.
10. Seller warrants that the material delivered hereunder does not infringe any United States patent. No further patent warranty is made.
11. Upon request, the Seller will furnish such technical advice or assistance as it has available in reference to the use of its product by Purchaser. It is expressly understood, however, that all such technical advice or assistance is given gratis and the Seller assumes no obligation or liability for the advice or assistance given or results obtained, all such advice or assistance being given and accepted at Purchaser's risk.
12. In the event of inability for any reason to supply the total demands for the material specified in this order, Seller may allocate its available supply among any or all purchasers, as well as departments and divisions of the Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.
13. No modification of these terms and conditions shall be of any force unless such modification is reduced to writing and signed by the party claimed to be bound thereby.
14. a) Where goods are sold otherwise than F.O.B. destination, delivery to any carrier customarily used by the public shall constitute delivery to Purchaser, and in the absence of shipping or any other necessary instructions, the mailing of an invoice shall constitute tender of delivery, all subject to Seller's rights hereunder as an unpaid vendor. Goods invoiced and held by Seller for whatever reasons shall be held at Purchaser's risk and expense.  
  
b) Any delivery not in dispute shall be paid for regardless of dispute as to other delivered or undelivered merchandise and as such undisputed delivery. Purchaser waives the right to assert offsets, defenses or counterclaims. Upon breach by Purchaser as to any installment, Seller, at its option, may treat such breach as severable or as a breach of the entire contract.
15. Notwithstanding the provision in the Purchase Order, the terms of Seller's Conditions of Sale shall govern and control.