Efficient-Tec international Stainless Steel Systems

Efficient-Tec International LLC STANDARD TERMS AND CONDITIONS OF SALE for Stainless Steel Systems

OFFER AND ACCEPTANCE: Purchaser has offered to purchase from Efficient-Tec International, LLC ("Seller") certain lighting products ("Goods"). Seller's acceptance of this offer is expressly conditioned upon Purchaser's assent to the terms and conditions set forth herein. If terms are submitted in response to a purchase order or other written or oral offer of the Purchaser to purchase the Goods, to the extent that there are any material differences or additions in the terms contained in the Purchaser's offer, the terms listed herein shall be considered a counteroffer to sell the Goods to Purchaser under the terms and conditions herein contained. This Acknowledgment supersedes all previous quotations and agreements relating to the Goods. Purchaser's offer, Seller's counteroffer (if any), and any acceptance there of shall be governed by the laws of the State of Texas. Any action, suit, or other legal proceeding which is commenced to resolve any matter arising under or relating to any provision of this agreement shall be commenced and prosecuted only in a court located in Dallas County, Texas, and Buyer consents to the jurisdiction of such a court.

DELIVERY AND TITLE: Except as may be otherwise specified by Seller, delivery will be FOB point of shipment. All shipping dates are estimated and under no circumstances does Seller guarantee date of shipment. Seller shall not be liable for any delay in delivery of any Goods or any other default due to occurrences or contingencies, including, but not limited to, fire, flood, embargo, strike, failure to secure materials or labor from usual sources of supply, governmental restrictions considered "force majeure", delays occasioned by any subcontractors, acts of God, acts of governmental or military authorities, delay in transportation, labor difficulties or any other circumstances beyond Seller's control which shall prevent Seller from performing in the normal and usual course of its business.

Risk of loss and title to all goods furnished by Seller shall pass directly to Buyer at the FOB point of shipment.

WARRANTIES: THERE ARE NO EXPRESS WARRANTIES HEREUNDER, EXCEPT THAT ALL GOODS SHALL BE FURNISHED IN ACCORDANCE WITH THE DESCRIPTION AND SPECIFICATIONS FURNISHED BY SELLER SUBJECT TO THE STANDARD MANUFACTURING VARIATIONS AND PRACTICES OF SELLER. ALL IMPLIED WARRANTIES (INCLUDING, BUT NOT BY WAY OF LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS) ARE HEREBY EXCLUDED. ANY OUTSTANDING INVOICE BALANCES BEYOND THE COMPANY'S PAYMENT TERMS WILL VOID ALL WARRANTIES. ANY WARRANTY SHALL EXPIRE TWELVE (12) MONTHS FOLLOWING THE DATE OF SHIPMENT OF SUCH PRODUCTS OR PARTS TO THE PURCHASER. ALL WARRANTY RIGHTS ARE VALID TO THE ORIGINAL PURCHASER OF THE PRODUCTS OR PARTS. ALL WARRANTIES ARE NONTRANSFERABLE TO A THIRD PARTY.

BUYER'S REMEDIES: Claims respecting the condition of Goods or their non-compliance with specifications must be made by Buyer promptly after receipt of such Goods, and Seller must be given reasonable opportunity to investigate. Buyer shall set aside and hold such Goods, without further processing or installation, until Seller advises Buyer regarding the disposition to be made of it, which advice Seller hereby agrees to furnish within a reasonable time. Any transportation charges involved in such disposition shall be borne by Buyer. SELLER'S LIABILITY FOR ANY BREACH OF WARRANTY WITH RESPECT TO GOODS SHALL BE LIMITED TO REPLACEMENT OR REPAIR OF NON-CONFORMING GOODS, OR, AT SELLER'S OPTION, CREDIT OF THE PURCHASE PRICE THEREOF. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR CLAIMS FOR LABOR, PROCESSING OR INSTALLATION BY REASON OF ANY SUCH BREACH OR WARRANTY. BUYER SHALL HAVE NO RIGHT TO "COVER" BY PROCURING SUBSTITUTE GOODS AT THE COST OR EXPENSE OF SELLER. PURCHASER FURTHER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ALL LOSSES, DAMAGES, OBLIGATIONS, LIABILITIES, SUITS AND CAUSES OF ACTION ARISING FROM ANY BREACH OF WARRANTY UNDER THIS SECTION.

Any action for breach of this agreement arising out of the sale of Goods must be commenced within one year after the cause of action has accrued, or shall thereafter be forever barred.

PRICES: Prices are those in effect at the time of shipment. In the event of a published increase or reduction in prices by Seller, the new price will become effective immediately on the unshipped portion of the order at the time of the change. In no event, however, will a reduction in price be retroactive to shipments made prior to the date of the price change. Upon acceptance by Seller, Purchaser's order will not thereafter be subject to cancellation nor to deferment of deliveries without Seller's written consent.

Price is based on receiving complete field dimensions for all work to be released for fabrication at the same time. If multiple ship dates are requested by customer, Efficient-Tec International may request an upcharge to engineer, fabricate and ship separate releases as requested.

All lead-times are estimates based on the time of quotation. Actual lead-times will be determined at the time of order and can vary upon receipt of information for detailing and filed dimensions. Efficient-Tec International LLC. does not accept project delay or consequential damage claims based on estimated lead-times.

TAXES: Purchaser shall reimburse Seller for any sales, use, occupation, excise, or other tax arising out of sales of products or services to the purchaser upon receipt of Seller's invoice for the amount of the tax. At the option of the Company, Purchaser shall provide Seller with a tax exemption certificate acceptable to the appropriate taxing authorities.

STANDARD PROJECT TERMS OF PAYMENT: Payment terms are 10% with the buyer's submission of the purchase order, 20% with the Sellers submission of approval drawings, 30% due to the Seller immediately upon the purchase of material for the job. A final 30% will be due prior to delivery of material to the jobsite. The last 10% will be due within 15 days of final delivery. In the event of late payments or Seller's insecurity with respect to Buyer's credit standing, Seller in its sole discretion, may change its credit terms, terminate its obligations hereunder and/or require payment in advance of delivery. Pro rata payments shall become due as invoiced.

MATERIAL COST BETWEEN $5,000 AND $10,000 TERMS OF PAYMENT: Payment terms are 50% with the buyer's submission of the purchase order and 50% will be due within 15 days of shipment of material. In the event of late payments or Seller's insecurity with respect to Buyer's credit standing, Seller in its sole discretion, may change its credit terms, terminate its obligations hereunder and/or require payment in advance of delivery. Pro rata payments shall become due as invoiced.

MATERIAL COST $5,000 AND BELOW TERMS OF PAYMENT: Payment terms are 100% Prepayment with the buyer's submission of the purchase order. Pro rata payments shall become due as invoiced.

Raw material will be purchased by Efficient-Tec early in the project (30 to 60 days upon receipt of order) to avoid material price increases. We will invoice for stored materials once they are received in our warehouse.

Change Orders: Change Orders received prior to issuing the 30% invoice for material purchase will be amortized into the remaining invoices. Change order received after payment has been received for the 30% invoice for material purchase will require 100% prepayment. Change orders for Approval Drawing revisions, Structural Engineering Calcs, Additional Freight/Crate and small material changes require 100% prepayment.

TECHNICAL ADVICE: It is expressly understood that any technical advice furnished by Seller with respect to the use of its goods or services is given without charge and that Seller assumes no obligation or liability for advice given or results obtained, all such advice being given and accepted at Buyer's risk.

Efficient-Tec International is not responsible for an architects custom designed railing system meeting ADA, IBC or ASTM codes. This includes modifications to our standard product line, including but not limited to, changes in height, post spacing or material substitutions. Efficient-Tec International with review design and advise suitability.

Efficient-Tec International is not responsible for the design of stairs, balcony structure or any component that supports the attachment of our railing system. We limit our responsibility only to those components that we supply. If any doubt exists concerning the strength of items other than what we supply, the Engineer of Record for the project should review the condition and determine whether the supporting structure will meet acceptable performance requirements.

CANCELLATION OR REVISIONS: Any order may be canceled or revised by Buyer only upon written approval of Seller in its sole discretion, and upon payment of cancellation or revision charges specified in said approval which shall take into account expenses previously incurred, commitments made by or in reliance upon such order, whether or not such commitments are legally binding on Seller and any other factors considered relevant by Seller.

LIMITATION ON LIABILITIES: The sole and exclusive remedies of the Purchaser shall be those specifically set forth above. Seller's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations hereunder whether resulting from Seller's negligence or otherwise, shall not in the aggregate exceed the purchase price of the Goods. Under no circumstances shall Seller be liable to the purchaser or any third party for loss of business or profit or any other economic loss, or any incidental indirect, special or consequential damages.

LITIGATION: If Seller prevails in a lawsuit or other action arising out of or related to this sale, the purchased products or services, this agreement, or breach of this agreement, Seller will be entitled to recover its reasonable attorney's fees and costs of suit. Costs include fees for consultations and testimony from experts such as appraisers and engineers. If Seller is required to initiate or defend against litigation with a third party because of the violation by Purchaser of any term or provision of this agreement, or obligation of Purchaser, Seller will be entitled to recover reasonable attorney's fees and costs from Purchaser. Attorney's fees will include those incurred on appeal.

NON-WAIVER BY SELLER: Waiver by Seller of a breach of any of the terms and conditions of any contract shall not be construed as a waiver of any other breach.

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