



Terms and Conditions of Purchase

Tyler Pipe Company, (the "Buyer"), a division of McWane, Inc., agrees to purchase the Goods and Services described in this order from Seller on the following terms and conditions (which, together with these terms on the face hereof shall constitute the "Agreement") which supersede any other or inconsistent terms of Seller, which are hereby rejected, unless such conflicting terms are the product of mutual written agreement signed by an authorized representative of Buyer. Acceptance of orders, whether oral or written, is based on the express condition that Seller agrees to all of the terms and conditions of this Agreement. The acknowledgment of this order, the delivery of the Goods or performance of the Services referenced herein, or the presentation of an invoice by Seller will constitute Seller's acceptance of these Terms and Conditions. This order shall not be binding upon Buyer until signed by an authorized representative of Buyer at its home office.

COVERAGE OF AGREEMENT: This Agreement shall govern and control all Services and Goods provided by Seller to Buyer, now or in the future, regardless of whether performed pursuant to written order(s) issued by Buyer, written agreement(s) executed by the parties and/or verbal request(s) or order(s) issued by Buyer, and shall remain in effect until either party shall provide the other with sixty (60) days advance written notice of termination. The term "Buyer" shall include Buyer's employees, agents, officers, directors, successors and assigns. The term "Seller" shall refer to the vendor shown on the face of this order, together with its employees, agents, subcontractors, suppliers and all other persons performing Services or supplying Goods on Seller's behalf. The terms "Goods" or "Services" whether used together or separately, and wherever appearing herein shall both mean (i) any and all products, supplies, materials, processes and/or equipment and/or (ii) any and all services, work or labor of any kind furnished or performed by Seller pursuant to this Purchase Order and any subsequent amendments, changes, or modifications hereof.

CONTRACT PRICE; TERMS OF PAYMENT; TRANSPORTATION: The cost of Goods and Services performed by Seller shall be those specifically set forth in each contract or order, except that Buyer shall receive the benefit of any price declines to actual time of shipment. Unless otherwise stipulated on the face of this order all Goods shall be shipped FOB Destination. Risk of loss and title shall pass to Buyer only upon delivery to Buyer's specified end destination on the Buyer's shipping date AND acceptance by Buyer. No charges for unauthorized transportation will be allowed. COD shipments without Buyer's prior written consent will not be accepted. No charge will be made for packing unless specified. If transportation charges are not allowed by Seller, transportation means and route must result in the lowest rate possible.

RELATIONSHIP OF PARTIES: Seller shall at all times be an independent contractor with respect to the Goods and Services and not an agent or employee of Buyer. Any services provided by Seller shall be carried on by Seller according to its own methods subject only to specifications and agreements outlined in this Agreement or pursuant to related work orders or contracts executed by Buyer. Seller shall have full and exclusive control of Seller's employees engaged in the performance of any Services or the manufacture or delivery of any Goods.

INSPECTION: All Goods and Services shall be subject to inspection and approval by Buyer within a reasonable time after delivery to ensure compliance with plans and specifications at all times, but such approval shall not relieve Seller of its sole responsibility for the proper performance of the Services. The right to perform such inspections shall not be construed as a reservation by Buyer of the right to control Seller's work.

RESPONSIBILITIES OF SELLER: Time is of the essence with this contract. Seller shall: (1) Perform the Services diligently and complete the Services and deliver the Goods in accordance with the provisions of this Agreement and all applicable work orders; (2) Maintain the jobsite free of waste material and rubbish and clear the jobsite upon completion of the contracted Services; (3) Provide all necessary safeguards for protection and maintenance of the Services performed; and (4) Repair and restore or replace (at the option of the Buyer) any real or personal property belonging to Buyer which Seller may damage or destroy while performing the Services and provide all accessories or parts required for the use of any Goods by Buyer at no additional charge. Seller performs the Services at its OWN RISK. The safety of all persons employed by Seller, and/or any other person who enters upon Buyer's premises for reasons relating to Services shall be the sole responsibility of Seller. Seller shall maintain good order among its employees and shall not employ any unfit person or anyone not skilled in the Services assigned to him. Seller shall take all reasonable measures and precautions for the safety of its employees and subcontractors so as to prevent injuries to any person who enters upon Buyer's premises, and shall comply with all applicable provisions of Federal, State and local safety laws. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect against any conditions on Buyer's premises. Seller shall confine all equipment and its personnel to that area of Buyer's premises where the Services are to be performed and to any other area which Buyer may permit Seller to use. Pursuant to the provisions of the Occupational Safety and Health Act of 1970 ("OSHA"), Seller shall furnish its employees place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm to its employees and shall comply with all pertinent standards promulgated under OSHA. It is specifically understood that these duties shall be the exclusive responsibility of Seller. Buyer shall have no responsibility to ensure that Seller provides a safe working environment and/or complies with occupational safety and health rules, but Buyer maintains Material Safety Data Sheets requires by OSHA and has them available in its engineering and/or personnel office for inspection and copying by Seller. Seller is responsible for inspecting and complying with the MSDS requirements and for making all other necessary inquiries or investigation in order to ensure a safe workplace. Seller shall inform its employees of and require their compliance with Buyer's emergency response plan.

INDEMNITY: Seller shall be responsible to the fullest extent permitted by applicable law to indemnify, defend and hold harmless Buyer, from and against any and all claims, losses, suits, damages, expenses, and costs (including attorneys fees) arising from (1) any breach or violation of any of the terms of this Agreement, including any warranty or guarantee; (2) sickness, disease, death, or injury to any person or persons; and (3) injury to property (including the loss of use thereof) of the Buyer, or others arising out of or in any way connected with Seller's Goods or performance of Services; provided, however, that Seller shall have no obligation to indemnify Buyer for claims or losses described in clause (2) and/or (3), above that arise solely from the negligence or misconduct of Buyer. Seller agrees to defend and indemnify the Buyer from and against all claims, damages, actions or causes of action at law or in equity, together with all expenses and attorneys' fees incident to any infringement or claimed infringement of any patent(s) and/or license(s) arising from the use or sale of the Goods. In the event that, Seller provides to Buyer any Goods or process to be utilized by Buyer subsequent to Seller's completion of the Services, Seller shall, at its sole expense, provide to Buyer upon final payment a paid-up, irrevocable royalty-free nonexclusive license to operate said Goods and/or perform said processes. In the event that Seller is unable to secure license, Seller shall, at its sole expense, modify the Goods so as to render them non-infringing or shall remove said Goods and replace them with Goods which shall not infringe upon any licenses or patents provided they continue to meet the specifications of this Agreement.

INSURANCE: Seller shall maintain and require its subcontractors to maintain in effect throughout the entire term of this Agreement, insurance coverage (under an "occurrence" policy form) with an insurance company(ies) and in an amount satisfactory to Buyer in its sole discretion insuring (a) Seller's indemnity obligations under this Agreement; (b) Workers compensation for occupational diseases and for injuries sustained by or death resulting to employees of Seller or its subcontractors as required by law; and (c) Seller's and/or Buyer's liability for any property damage, bodily injuries or death sustained by any persons or persons, including employees of Seller, which was in any manner caused by, arising from, or related to the Goods or the Services performed by Seller and/or the condition of Buyer's land, buildings, equipment or vehicles, regardless of whether the alleged injury or damage was caused or alleged to be caused in whole or in part by the conduct of Buyer. Said policy shall name Buyer as additional insured(s) on the policies for occurrences arising from or related to the Goods and Services, unless otherwise agreed in writing by Buyer. All policies of insurance shall waive any and all rights of subrogation against Buyer. Prior to the commencement of any Services, Seller shall furnish certificates of insurance satisfactory to Buyer (or if Buyer so directs, copies of the actual insurance policies) from each insurance carrier providing that the insurance will not be canceled, non-renewed or modified until the expiration of at least sixty (60) days after written notice of such cancellation or change has been received by Buyer.

DEFAULT; REMEDIES: The following shall constitute Events of Default by the Seller: (i) failure to complete the Services or deliver the Goods within the time specified or within the quality guaranteed in this Agreement or related order; (ii) failure to comply with any provisions of this Agreement including the breach of any warranty or guarantee; or (iii) adjudication of Seller as bankrupt or Seller's making a general assignment for the benefits of creditors, or appointment of a receiver on account of Seller's insolvency. In the Event of Default, Buyer may immediately, without prejudice to any other right or remedy it may have, at law or equity, (1) terminate the relationship with Seller or any pending orders with Seller, or at its sole option and without liability to Seller, suspend the Services or delivery of Goods and/or exclude Seller from Buyer's premises until Seller furnishes satisfactory evidence that such default has been cured; (2) take possession of any samples and materials of the Buyer held by Seller; (3) finish the Services or correct any non-conformity at Seller's expense by whatever method Buyer deems expedient; (4) reject, repair, or replace the non-conforming Goods or Services or procure the same or similar Goods or Services from another source, in which case Seller shall be liable to Buyer for any additional costs or expenses incurred by Buyer; or (5) require Seller to correct or cure any non-conformity at Seller's expense. Seller agrees to cooperate with Buyer in any way reasonably required to complete the Services or purchase replacement Goods. In such case, Buyer shall pay for that portion of the Services previously completed by Seller, subject to the terms and provisions above. In addition to its other remedies, Buyer shall have a right of set-off and may withhold from time to time out of monies due Seller, amounts sufficient fully to compensate Buyer for any loss or damage resulting from any default or breach by Seller. As an alternative, Buyer may, in its sole discretion, extend the delivery or completion schedule or waive any deficiencies in performance, provided, however, that no such waivers or extensions shall be binding unless in writing and signed by Buyer. Buyer shall have the right at any time to require adequate assurances of Seller's performance.

WARRANTIES AND GUARANTEES: Seller warrants that it has clear title to all Goods furnished and that they are free of all liens and encumbrances. Unless otherwise specified in writing by Buyer all Goods provided by Seller during the term of this Agreement shall be new. In addition to all warranties prescribed by law or given by Seller, all Goods and Services shall be of good quality, shall conform to the requirements of this order, the Buyer's specifications, and any approved samples, shall be merchantable and fit for the Buyer's intended use, and shall be free from defects in design, material, and workmanship. All Services provided by Seller will be performed by qualified and competent personnel in a professional manner using the highest standards of quality and workmanship. In the event that Seller encounters unknown or latent conditions which could impair the performance or quality of the Goods or Services Seller shall give immediate notice of the nature of such condition to Buyer. Seller shall obtain from sub-contractors and vendor's all available warranties and guarantees with respect to design materials, workmanship, equipment, and supplies furnished for the benefit of Buyer. Should a subcontractor or vendor seek to defend on grounds Seller committed error, Buyer may enforce the warranty against Seller and Seller shall resolve all such issues with subcontractor or vendor. This warranty shall survive acceptance of Goods or Services.

CHANGES AND EXTRAS: Buyer reserves the right to make changes to Services or Goods upon written order to Seller. Before proceeding with any Services involving possible claims for extra compensation, Seller shall submit in writing to Buyer, a detailed proposal related to the projected increase or decrease occasioned by such contemplated change and shall secure from Buyer's purchasing agent, a written order describing such Goods and fixing Seller's compensation. If Buyer and Seller cannot promptly agree on the change in price and/or that the matters under discussion constitute a change in Services, Buyer may, at its sole discretion, order Seller to proceed under protest in accordance with interpretation of the matter in dispute. Buyer and Seller will then continue to negotiate an agreement. Seller shall not make any changes in the Goods (regardless of net cost effect) without the prior written consent of Buyer.

LIENS: Seller shall pay, satisfy and discharge all mechanics', suppliers', material men's and other liens, and all claims, obligations and liabilities which may be asserted against Buyer or its property by reason of, or as a result of, any acts or omissions of Seller relating to the performance of Services governed or controlled by this Agreement.

SUBLETTING AND ASSIGNING: Seller shall not assign any contract and/or purchase order or sublet any part of the Services to be performed on Buyer's premises without the written consent of Buyer's purchasing agent. In the event that such consent is given, it shall not relieve Seller from any of the obligations of this Agreement or of any contract, order or agreement (whether written or oral) between Buyer and Seller. Any transferee or subcontractor shall be considered the agent of Seller and, as between the parties hereto, Seller shall be and remain liable as if no such transfer or subletting had been made.

LABOR RELATIONS: Seller shall promptly undertake all reasonable efforts to prevent or resolve any strikes or other labor disputes among its employees or the employees of its subcontractors. If such a dispute occurs, Seller shall take all reasonable actions to minimize any disruption of the performance of the Services. Seller shall immediately advise Buyer in writing of any possible labor dispute, which may affect the performance of the Services.

COMPLIANCE WITH LAWS: Seller in the performance of this Agreement, will comply with all applicable federal, state and local laws, codes, regulations or ordinances, including all environmental laws and the provisions of the Fair Labor Standards Act of 1938, all applicable Equal Opportunity requirements including those set forth in Executive Order 11246, the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, and regulations promulgated there under. Seller will not discriminate against any person because of race, creed, color, national origin, religion, age or sex in any term or condition of employment in violation of any state or federal laws. Seller shall give all notices, required by laws bearing on the performance of the Services or employment practices of Seller. It will be the duty of Seller to obtain, at its sole expense, all necessary permits and licenses prior to commencement of the Services. Copies of all such permits and licenses shall be available to Buyer upon request. If the Services involve or require the Seller to transport or dispose of any material or waste, prior to beginning Services Seller shall furnish Buyer with copies of all applicable or required permits and licenses, and must notify Buyer in writing of the final and any interim destination of the material or waste, including in such notice verification that the place of disposal is validly authorized and permitted to accept the material or waste.

TAXES: Seller shall pay all contributions, taxes and premiums payable under Federal, State and local laws measured upon the payroll of employees engaged in the performance of Services under this Agreement, including FICA and unemployment compensation premiums, and all excise, transportation, occupational and other taxes applicable to receipts under this Agreement and on all Goods or Services furnished.

CHOICE OF LAW; SUBMISSION TO JURISDICTION: This agreement shall be governed by the laws of the State of Texas. Seller hereby submits to the jurisdiction of the federal and state courts located in Smith County, and agrees that any claim, suit, or action arising hereunder shall be subject to the exclusive jurisdiction and venue of the federal or state courts located in Smith County.

WAIVER: Any failure by Buyer to enforce any of the terms or conditions of this Agreement shall not constitute a waiver by Buyer and shall not affect or impair such terms or conditions in any way, or the right of Buyer at any time to avail itself of such remedies for any breach of such terms or conditions. If Buyer exercises its right to avail itself of any remedy for a breach, Seller will remain liable to Buyer for any and all costs and attorney fees associated with seeking and recovering such relief. Buyer's approval or consent to any action proposed by Seller shall not be considered agreement to the propriety, fitness or usefulness of the proposed action, and shall not affect Seller's obligation to strictly comply with this Agreement and all related orders.

ENTIRE AGREEMENT; MODIFICATION: This Agreement, together with any other specifications of Buyer, constitutes the entire agreement between parties with respect to the Goods and Services. No representation, promise or term not set forth herein has been or may be relied upon by Seller. No other terms or conditions, and no agreement or understanding in any way modifying or amending the terms and conditions herein stated, shall be binding upon Buyer unless made in writing and signed by Buyer.

FORCE MAJEURE: Other than as set forth herein, neither party shall be liable for delays in performance caused by Acts of God, strikes or labor disturbances, nor for other delays in performance due to any contingency beyond its control. In the event of any such occurrence, the period for the party's performance affected thereby shall be extended for such period as reasonably required under the circumstances.