

# TERMS AND CONDITIONS OF SALE

## **WARNING:**

**PROPOSITION 65 COMPLIANCE STATEMENT:** It is the responsibility of this business to warn its customers and employees that products sold or used on its premises may contain chemicals known to the State of California to cause cancer or birth defects. Material Safety Data Sheets (MSDS) available upon request.

**Assembly Bill AB-1953:** This lead free law applies "To any pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption." Buyer understands that products sold by Irvine Pipe & Supply, Inc. ("Seller") that contain brass may or may not be approved for potable water systems. **Buyer is responsible to inform Seller's sales staff if product is for potable water use.** For more information, visit: [www.dtsc.ca.gov/PollutionPrevention/LeadInPlumbing.cfm](http://www.dtsc.ca.gov/PollutionPrevention/LeadInPlumbing.cfm) or Google "Assembly Bill AB1953".

**GENERAL:** Each sale by Irvine Pipe & Supply, Inc. ("Seller") will be subject to the following Terms and Conditions and Buyer expressly acknowledges and agrees herewith. Seller specifically rejects any different or additional terms and conditions in Buyer's purchase documents.

**RETURNS:** All returned products must be returned within 60 days of receipt of product and at Buyers expense. Returns must be accompanied by the original Sales Order or Invoice and must be clean, in original packaging and in resalable condition. All returned products are subject to a minimum **20% restocking/handling charge.** All tool sales are final.

All special order (non-stock) products are subject to Vendor's Terms & Conditions and may be non-returnable. All fabricated and/or special made products are non-returnable.

Any applicable return freight charges to the Vendor are the responsibility of the Buyer.

In some cases, credit/refund will not be issued to Buyer until Seller receives credit from the Vendor. No cash refunds in excess of \$50.00.

**CANCELLATIONS:** Buyer's cancellation of any special order/non-stock products (or stocked products with quantities above Seller's normal stock levels) will subject the Buyer to any and all costs incurred by Seller.

**SHORTAGES, ERRORS & DAMAGE CLAIMS:** Buyer must notify Seller of any shortages, errors and/or damaged products within three (3) days of receipt of product. Claims for damaged porcelain china products (toilets, urinals, lavs, etc.) must be made within one (1) day of receipt of product. Failure of Buyer to object within these limits shall constitute acceptance by Buyer of such products.

**SHIPMENTS:** All products are shipped F.O.B., point of shipment. Risk of loss will transfer to the Buyer upon tender of products to Buyer, Buyer's representative or Common Carrier. Claims of products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of products to Buyer, Buyer's representative or Common Carrier.

**WARRANTIES:** THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. SELLER MAKES NO EXPRESSED OR IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS PURCHASED BY THE BUYER.

**LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY, PROPERTY DAMAGE, REPUTATION, LOSS OF PROFITS OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD (OR RENTED) BY SELLER. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE (OR RENTAL RATE) OF THE DEFECTIVE PRODUCT(S). NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS", "WHERE IS", AND "WITH ALL FAULTS".

**INDEMNIFICATION:** The Buyer shall, at its own expense, apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller makes no promise or representation that the products or services will conform to any Federal, State or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller. Seller shall not be responsible for any claims, losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the product(s). Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

**RECOMMENDATION BY SELLER:** Buyer acknowledges that Seller does not make and specifically negates, renounces and disclaims any representations, warranties and/or guaranties of any kind or character, expressed or implied, with respect to: (a) the products sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose; (b) the maintenance or other expenses to be incurred in connection with the products; (c) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers and employees or; (d) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes, any person to assume for it, any other obligation in connection with the sale of its products and/or rendering of its services. Any recommendations made by Seller concerning the use, design, application or operation of the products shall not be construed as representations or warranties, expressed or implied. Failure by Seller to make recommendations or give advice to Buyer shall not impose any liability upon Seller.

**DELAYS OF PRODUCT:** Seller will make a good faith effort to complete delivery of the product(s) as indicated by Seller, but Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay. Seller, at its sole discretion, may terminate this agreement without penalty or obligation to Buyer.

**TERMS & PAST DUE ACCOUNTS:** Buyer agrees to pay for the products according to the Seller's payment terms (see other side). In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to a service charge of 1-1/2% per month (18% per annum).

**SECURITY INTEREST / TITLE TRANSFER:** Buyer agrees that Seller retains full and sole title to all products until Seller receives full payment. Seller may exercise any and all rights and remedies to recover its security interest including, but not limited to, legal action, application of mechanics lien laws, and/or repossession of product(s) from Buyer's premises or its agent's.

**ATTORNEYS' FEES:** If Buyer fails to deliver full and timely payment for any products, Seller may incur certain fees and costs (including, but not limited to, attorneys' fees) associated with protecting its interest and enforcing its rights under the terms of such sale of its products. Buyer shall reimburse Seller for any such fees and costs incurred by Seller regardless of whether litigation actually ensues.

**GOVERNING LAW:** The sale of any products to Buyer and any dispute arising out of or related thereto shall be governed by the laws of the state of California without regard to principals of conflicts of law.

**JURISDICTION/VENUE:** Buyer and Seller agree that any proceeding (litigation, arbitration, mediation, etc.) shall only be brought and maintained in Orange County, California, and Buyer and Seller hereby expressly waive any claim based upon forum non conveniens.

**RETURN CHECK FEE:** All returned checks (NSF) are subject to a \$20.00 fee each.

**SEVERABILITY:** In the event any Section, or any sentence within any Section, is declared to be void or unenforceable, such sentence or Section shall be deemed severed from the remainder of the Terms and Conditions and the balance of the Terms and Conditions shall remain in full force and effect.

**ENTIRE AGREEMENT:** This document constitutes the entire, complete, and exclusive agreement between Buyer and Seller with respect to the subject matter hereof and contains all the agreements and conditions of sale. All transactions will be governed solely by the Terms and Conditions contained herein.