

WATSON BOWMAN ACME, CORP.
TERMS AND CONDITIONS OF SALE

AGREEMENT: These Terms and Conditions of Sale are referred to herein as the "Terms." Each contract document, together with any schedules, exhibits or other documents incorporated by reference by such contract document shall be deemed to incorporate by reference therein the Terms (collectively referred to herein as the "Contract"). Each product referred to in the Contract is referred to below as a "Product." The Contract contains the entire and exclusive agreement between the parties regarding the sale and purchase of each Product referenced in the Contract. Unless otherwise expressly provided in a contract document, if any term, condition or other provision contained in any schedule, exhibit or other document expressly incorporated herein by reference is in any way inconsistent with or creates an ambiguity concerning the terms of the contract document or these Terms, the contract document or these Terms shall control. Seller shall not be bound until Buyer's written acceptance is received at Seller's general sales office, Amherst, New York, and said acceptance is approved by Seller's Credit Department. If Seller's Credit Department rejects the order, any down payment shall be refunded. Buyer's acceptance must be received by the Seller within 45 days of the date of this offer and must be limited to the terms of this offer, and no agreement or other understanding in any way modifying any of the terms and conditions of this offer will be binding upon Seller unless made in writing and signed by Seller's authorized representative. After acceptance, Buyer's order or any part thereof may be terminated only upon Seller's written consent and upon payment for all work completed and in process.

SHIPMENT: Unless otherwise stated herein in writing, any Product or item which is the subject of the Contract is sold F.O.B. place of shipment, transportation collect, and the cost of transportation shall be borne by Buyer. If the items covered by this offer require a special carton or method of packing other than bulk packing, or if Buyer requests special packing, Buyer shall pay any additional costs of such packing.

RISK OF LOSS: Seller's responsibility for the items covered by this offer shall cease upon Seller's putting such items in the possession of the carrier and Buyer shall bear all the risk of loss or delay in transit. Seller shall not be responsible for loss of or damage to any of Buyer's goods or patterns in its possession by fire or other casualties beyond its reasonable control, and the same are held at Buyer's risk. It is the responsibility of Buyer to carry all forms of insurance which it deems necessary.

DELIVERY: Seller shall use commercially reasonable efforts to ship any Product covered by this Contract on or before the shipping date specified in this Contract or in a subsequent writing signed by Seller. However, Seller shall not be liable for loss or damage resulting from any delay or failure to make delivery of any Product due to acts of God, war, acts of terrorism, riot, civil commotion, sabotage, governmental action, quarantine, embargo, strikes, labor disputes, fire, flood, epidemic, transportation shortages or delays, material shortages, labor shortages, drawing review or approval by Buyer of third parties, or other causes or contingencies beyond the reasonable control of Seller. If, when any Product is ready for shipment, shipment is delayed through no fault of Seller, Buyer agrees to accept title to and make payment for any such Product as if shipped by Seller on the date they were available for shipment. Buyer further agrees to pay all storage, handling and other additional costs occasioned by such delay.

PRICES: All prices herein stated or heretofore quoted or agreed upon are subject to adjustment to Seller's prices in effect at time of shipment.

ESCALATION CHARGES: Once Seller manufactures a Product(s) for a specific order, and title transfer does not take place on or before the acknowledged shipment date due to Buyer's refusal of such transfer of title, a 10% escalation charge (minimum \$500) will be added to the Product(s). If Seller is unable to meet the acknowledged shipment date due to failure of Buyer to provide approved shop drawings to Seller by the acknowledged due date, a 10% escalation charge (minimum \$500) will be applied to the order. Any taxes which Seller may be required to pay or collect, under any applicable law upon or with respect to the sale, purchase, delivery, storage, use or transportation of any item covered by this offer, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Buyer, who shall promptly pay the amount thereof to Seller upon demand.

TERMS OF PAYMENT: Terms of payment shall be shown in the Contract. Unless otherwise expressly provided herein, payment shall be due 30 days from the date of each invoice, without discount. Any cash discount which may be expressly provided herein applies only to the sale price of the Product(s) at the shipping point, and does not apply to any charges made for taxes, storage, loading, or transportation. All accounts not paid within (30) days from the date of invoice shall be charged one and one-half (1-1/2%) per month service charge or the maximum amount allowed under applicable law, together with all collection costs, including attorney's fees in the amount of twenty-five percent (25%) of the amount due. If in Seller's judgment reasonable doubt exists as to Buyer's financial responsibility, or if Buyer is past due in payment of any amount owing Seller, Seller reserves the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, or stop any material in transit, until Seller receives payment of all amounts, whether or not due, owing to Seller, or adequate assurance of such payment.

WARRANTY/LIMITATION OF LIABILITY: Seller warrants that the Watson Bowman Acme brand Product(s) shall be free from manufacturing defects for a period of one (1) year from the date of installation. Note: *Installation date is limited to no more than six months after invoicing date.* Seller shall have no obligation under this warranty if Buyer subjects materials to improper conditions (Refer to Watson Bowman Acme Corp.'s Technical Product Data Sheets at www.wbacorp.com). **EXCEPT AS OTHERWISE SET FORTH HEREIN, SELLER MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, BY FACT OR LAW INCLUDING, WITHOUT LIMITATION,**

ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. Seller's responsibility and obligation under this warranty shall become effective only upon payment in-full for the Product(s) furnished by Seller. **SELLER'S TOTAL LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE CONTRACT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO EITHER REPLACEMENT OR REPAIR OF THE DEFECTIVE PRODUCT WITHOUT CHARGE TO BUYER, F.O.B. JOBSITE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR ANY OTHER DAMAGES, LOSSES OR EXPENSES OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING OUT OF THE STORAGE, HANDLING, INSTALLATION, USE, INABILITY TO USE, OR UNAUTHORIZED REPAIR OF ANY ITEM OFFERED BY SELLER HEREUNDER.** It is further agreed and understood that the price stated for the Product(s) is consideration for the limitation of Seller's liability hereunder.

CLAIMS AND RETURNS: Seller may refuse to recognize any claim for under or improper shipment unless such claim is received in writing by Seller within ten days after receipt of shipment by Buyer. Seller shall either replace or allow credit for the price of any Product which upon notice and investigation shall prove to Seller's satisfaction to have been under or improperly shipped. No item may be returned to Seller for any reason, except upon its prior written consent. No returns will be considered after six (6) months from the original ship date.

PERMISSIBLE VARIATIONS: All Product(s) shall be furnished subject to the customary manufacturing and commercial variations and practices of Seller. Seller reserves the privilege of shipping underages or overages of quantity in accordance with its customary practices.

TOLERANCES AND VARIATIONS: All Product shall be subject to tolerances and variations consistent with usual trade practices regarding dimension, straightness, section, composition and mechanical properties and normal variation in surface and internal conditions and quality and shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

COMPLIANCE WITH LAWS: The manufacture, sale and shipment of any Product covered by Buyer's order shall be subject to all applicable federal, state and local laws and regulations.

APPLICABLE LAW: The Contract shall take effect and be construed in accordance with the laws of the State of New York, USA, including its provisions of the Uniform Commercial Code, but excluding its conflict of laws principles and the provisions of the United Nations Convention on Contracts for the International Sale of Goods and the United Convention on the Limitation Period in the International Sale of Goods, as amended.

CANCELLATION: Buyer understands any Product to be provided by Seller is of a specialty nature and specifically for their project. Upon receipt of written notice of cancellation, Seller shall stop all performance hereunder except as otherwise directed by Buyer, and Buyer shall pay to Seller: (A) the agreed unit price for acceptable Product(s); (B) the costs incurred by Seller directly connected with acceptable Product(s) not delivered and work not completed prior to the date of cancellation; plus (C) thirty (30) percent to the cost referred to in (B) in lieu of profit; and such other costs, including cancellation charges under subcontracts, provided, however, that under no circumstances shall the total cancellation payment referenced herein exceed the total price for Buyer's order.

DISCLAIMER: Any use of Seller's materials, literature or advice is not a substitute for the sound professional judgment of the user, and cannot anticipate all conditions or variables for any given project. Consequently, Seller makes no warranty, either express or implied, as to the accuracy or completeness of such materials, literature or advice and shall not be liable for, and Buyer shall assume all risks of and responsibility for, all materials, literature and advice, and the results to be obtained therefrom. Seller reserves the right to make any changes according to technological progress or further developments. It is the Buyer's responsibility and obligation to carefully inspect and test any incoming Product(s). Performance of the Product(s) described herein should be verified by testing and carried out only by qualified experts. It is the sole responsibility of Buyer to carry out and arrange for any such testing. Reference to trade names used by other companies is neither a recommendation, nor an endorsement of any product and does not imply that similar products could not be used.

ALLOCATION: In the event of Seller's inability, for any reason, to supply quantities of Product contemplated by the Contract, Seller may allocate its available supply among its purchasers, including departments and divisions of Seller, on such basis as Seller may deem fair and practical without liability to Buyer for any failure of performance that may result therefrom.

ASSIGNMENT: The Contract shall bind and inure to the benefit of the successors and assigns of the respective parties. In order that the parties may fully exercise their rights and perform their obligations arising under the Contract or these Terms, any provisions of the Contract or the Terms that are required to ensure such exercise or performance (including any obligation accrued as of the termination date) shall survive the termination of the Contract or the Terms.

MISCELLANEOUS: Failure by either party to exercise any right it has under the Contract on one occasion shall not operate or be construed as a waiver by such party of its right to exercise the same right on another occasion or any other rights it has. Any waiver must be in a writing signed by the waiving party. In the event that any provision of the Contract shall be adjudicated to be invalid or unenforceable, it is the parties' intent that the remaining provisions of this Contract will remain in full force and effect, and the affected provision or portion thereof will be deemed modified so that it is enforceable to the maximum extent permissible to reflect as closely as possible the economic intentions of the parties as evidenced from the provisions of the Contract. Nothing in the Contract shall be construed as creating any direct or beneficial right in or on behalf of any third party.