

CLAIMS, WARRANTIES, AND LIMITATIONS OF LIABILITY.

Any claim by buyer for defective goods and imperfect manufacture, improper goods, or for any cause is waived unless notice thereof is received by Seller within ten (10) days after delivery of any shipment. Failure of Buyer to give such notice within such period shall constitute an unqualified acceptance of the goods delivered pursuant to this agreement and a waiver by Buyer of all claims with respect thereto. The Seller and Buyer agree that notwithstanding the form (e.g. contract, tort, or otherwise) in which any claim may be asserted or legal or equitable action may brought against Seller or Buyer, Seller shall in no event be liable for damages which exceed an amount which is equal to the total amount paid or payable to Seller by Buyer pursuant to this agreement for the goods which gave rise to the said claim or legal or equitable action. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR ANY INDIRECT DAMAGES SUCH AS, BUT NOT LIMITED TO, EXEMPLARY OR PUNITIVE DAMAGES. SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND THE IMPLIED WARRANTY OF MERCHANTABILITY. BUYER'S EXCLUSIVE REMEDY AND SELLER'S SOLE LIABILITY ON ANY CLAIM OR LEGAL OR EQUITABLE ACTION, WHETHER CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO REIMBURSEMENT OF BUYER'S ACTUAL COST OF THE GOODS WHICH GAVE RISE TO THE SAID CLAIM OR LEGAL OR EQUITABLE ACTION; HOWEVER, IN NO EVENT SHALL SELLER BE LIABLE FOR INDEMNIFICATION OF BUYER ON ACCOUNT OF ANY CLAIM OR EQUITABLE ACTION ASSERTED AGAINST BUYER FOR ANY OTHER OR FURTHER DAMAGES WHATSOEVER WHETHER DIRECT OR INDIRECT.

5. CONTINGENCIES.

Seller shall not be liable to Buyer or any other person for any failure or delay in the performance of any obligation under this agreement due to events beyond its reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, sabotage, strikes, lockouts, labor disputes, labor shortages, work stoppages, transportation embargoes or delays, failure or shortage of materials, suppliers of machinery, acts of nature, death, disability, acts of regulations or priorities of the federal, state or local governments or branches or agencies thereof, or failure to take goods as ordered due to any such events except that Buyer shall be liable for such delay or failure with respect to goods already in transit or specially made or printed for buyer which are not readily salable without loss to Seller. When the events operating to excuse performance shall cease, this agreement shall continue in full force until all deliveries have been completed.