

Markin Tubing, LP

Terms and Conditions of Sale

1. **Buyer's Acceptance.** The order as herein acknowledged supersedes and cancels all previous understandings and proposals between the Seller and Buyer with respect to this order. No modification of this order will be binding upon the Seller unless the same is evidenced in writing signed by the Seller. The Buyer's receipt of this acknowledgment without prompt written objection thereto shall constitute an acceptance by the Buyer of all the terms and conditions set forth herein.
2. **Force Majeure.** The Seller shall not be liable for delays in shipment or impossibility of performance due to fires, strikes, acts of God, accidents, delays in transportation, to procure supplies and raw materials, or other contingencies beyond its control.
3. **Claims for Defects.** Claims for defective material must be made within thirty (30) days after receipt of material by Buyer. Material that is found defective when in the possession of Buyer may be replaced, repaired or credited at Seller's option. **IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE INVOICE VALUE OF THE DEFECTIVE MATERIAL AND SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.**
4. **Tooling.** Tooling will be invoiced at quoted prices and will be held for Buyer's exclusive use. Such tooling will remain in the possession and control of the Seller. In the event Buyer desires to remove tooling there will be an additional charge to cover the cost of relocation. In the event of no reorder for a period of two (2) years, Seller may scrap such tooling after reasonable notice to Buyer. Other than normal wear and tear, any maintenance costs for tooling will be at the expense of Buyer. Any changes in tooling made at Buyer's request will be paid for by Buyer.
5. **Cancellation and Changes.** Orders cannot be canceled or modified or releases held up by the Buyer after the tubing is in process, except with Seller's consent. Any changes in the order, to be effective, must be made in writing by Buyer and may have an impact on price and delivery schedule. Such changes shall be agreed upon between the parties before work is commenced on the changes.
6. **Prices.** All orders will be billed at the price in effect at the time of shipment.
7. **Taxes.** The Seller shall not be liable for payment of any taxes with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any of the materials or services supplied under this order. The Buyer shall promptly pay the amount of any taxes levied by any government entity to the Seller upon demand but may in lieu of such tax payments issue a tax exemption certificate acceptable to the appropriate taxing authority.
8. **Drawback.** Where the materials described herein are to be exported, the Seller specifically reserves to itself all rights to drawback of duty or taxes paid on materials entering into the manufacture of the materials exported, to which right the Buyer disclaims all interest, and agrees to furnish the Seller with proof of exportation and all documents necessary to obtain payment of such drawbacks and to cooperate with the Seller in obtaining such payment.
9. **Patent Indemnity.** The Buyer shall defend at Buyer's expense and pay costs and damages awarded in any suit brought against the Seller for the infringement or contributory infringement of any patent: a) by any article made or furnished hereunder to Buyer's specifications or plans; b) by the use of such article; or c) by the performance of any process if the Buyer has actively induced performance or such process. Likewise, Seller shall indemnify and defend Buyer against any judgment for damages and costs awarded in any suit brought against the Buyer on account of infringement of any patent for the articles supplied by the Seller under this order. Both parties agree to promptly notify the other of the commencement of any such suit.
10. **Transportation and other charges.** All transportation and other charges, in addition to the mill price, shall be for the account of the Buyer.
11. **Producing or Shipping Point.** Seller reserves the right to produce and ship all or any part of the materials covered hereby from any of its plants or from any plant or plants other than the plant or plants designated on the face of this order. Seller's price or prices at such producing or shipping point plant shall apply; provided, however, that if such applicable price or prices, excluding any and all transportation or other charges are higher than those at the plant designated on the face of the order, and if the tubing has not been in process, Buyer may cancel the portion of this order to which such higher prices apply by giving written notice thereof to Seller within ten (10) days after receipt of notice of such higher prices.
12. **Credit and Payment.** The Buyer shall promptly pay all invoices when due. The Seller reserves the right to modify or withdraw credit terms at any time without notice and to request guarantees, security or advance payment of the amount of credit involved.
13. **Permissible Variations.**
 - a) Material to be within the limits and sizes published by the Seller and subject to Seller's standard variations for rolling.
 - b) Seller reserves the privilege of shipping overages or underages of weight, length, size and or quantity in accordance with Seller's standard practice.
14. **Limited Warranty.** Seller warrants only that the material to be supplied will conform to the mutually agreed upon requirements of the order and Seller will convey good title thereto and that the material will be delivered free from any security interest or other lien or encumbrance of which the Buyer at the time of placing this order has no knowledge. **THERE ARE NO WARRANTIES OF MERCHANTABILITY NOR OF FITNESS OF SAID MATERIAL FOR ANY PARTICULAR PURPOSE NOR IS THERE ANY OTHER WARRANTY EXPRESSED OR IMPLIED EXCEPT AS HEREIN SET FORTH.**
15. **Default in Payment.** In the event Buyer shall fail to make payments to Seller, when due on this or any other order between Buyer and Seller, the Seller may defer further shipments until such payments are made, or may, at its option, cancel any unshipped balance.