

## Red Deer Ironworks USA - Terms & Conditions

### General terms (applies to all orders)

- 1. Acceptance** — ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON BUYER'S ASSENT THERETO. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER.
- 2. Changes** — Orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery. Buyer may not cancel this order unless such cancellation is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of this order by Buyer which is permitted by Seller.
- 3. Delivery, claims, delays** — All sales are Seller's shipping point, at Buyer's sole risk and expense, unless otherwise noted. If Shipping and Handling Charges are quoted or invoiced, they will include charges in addition to actual freight costs. Delivery of the goods to the carrier chosen by Seller, in Seller's sole reasonable discretion, at Seller's shipping point, said delivery being completed when the goods have been loaded on the means of transport provided by the carrier chosen by Seller, shall constitute delivery to Buyer and Buyer shall bear all risk of loss or damage in transit. However, Seller reserves the right, in its discretion, to determine the exact method of shipment. Seller reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries.

Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages, defects or damages and shall hold the goods for Seller's written instructions concerning disposition. If Buyer shall fail to so notify Seller within three (3) days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by the Buyer and Buyer waives any and all claims for shortages, defects, or damages related to the ordered goods. Buyer shall pay all costs, at Buyer's sole cost and expense, of any pre-shipment inspections.

Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including, without limitation, unsuccessful reactions, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies

or power at current prices. No credit will be given for returns except upon prior written approval of Seller and no special or custom goods, materials, or equipment may be returned.

In the case of export sales, Buyer shall pay the costs arising from or related to customs formalities as well as all duties, taxes, and other charges payable upon export and agrees to obtain at Buyer's sole risk and expense any applicable import license or other official authorization, and to carry out all applicable customs formalities for the import of the goods and for their transit through any country.

- 4. Pricing** — Prices provided are in US currency and are subject to change and Buyer shall be solely responsible for and shall pay any and all present or future local, state, or federal taxes applicable in said territory or jurisdiction. Current prices may be discussed via telephone with Seller where Buyer requires this information prior to placing an order. Seller only guarantees US Domestic price quotations which have been made in writing, said price guaranty expires on the 30<sup>th</sup> calendar day after the date indicated on the written quotation unless otherwise noted to the quote. For guarantee information regarding quotations outside the US, please contact your local distributor. When placing your order, please reference our quoted prices or our pro forma number. If you place your order by phone, we will confirm our current price at that time.
- 5. Warranty** - The Company's products are guaranteed to be free from defects in material and/or workmanship and to perform as advertised when properly installed, used, and maintained in accordance with written instructions. Failure to adhere to and/or comply with operation manual instructions will void all associated warranty obligations. Should any part(s) prove defective within six (6) months from date of purchase, conditioned upon Buyer's completion of Seller's warranty claim form providing all reasonable and applicable detail related to the defect and following Seller's warranty claim procedures in all material respects, it (they) will be replaced F.O.B. our factory, or branch, without charge provided the defective part(s) is returned to our factory or branch transportation charges prepaid.

RDI will not be responsible for, and Buyer hereby waives, any and all claims for labor charges, loss, or **consequential damage** of any kind or character caused by defective parts or for charges incurred in the replacement or repair of defective parts by Buyer. This warranty does not apply when damage is caused by improper use or installation including and not limited to careless handling, including that by freight companies, and improper installation or use may void all warranties.

The forgoing states the Seller's entire liability for any claim to damages whatever, and is made by Seller and accepted by Buyer in lieu of all other warranties, obligations, or liabilities expressed or implied, the same being expressly waived by Buyer and disclaimed by Seller hereby. UNDER NO CIRCUMSTANCE CAN THE TOTAL LIABILITY OF RDI EXCEED 1% OF THE CONTRACT PRICE AS DEFINED BY THE RELEVANT PURCHASE ORDER.

The aforementioned warranties shall not apply to (a) any product which has been altered or changed after receipt by Buyer without Seller's authorization; (b) any failure of the product to conform to such warranties as a result of improper maintenance, installation or service, operation, or use contrary to furnished instructions; (c) the transportation or improper

storage of such items; or (d) any abuse, misuse, neglect or negligence of Buyer or its end users. It is understood and agreed that the product shall be used in connection with and as components of a larger system, and that such inclusion into the larger system does not and shall not constitute an unauthorized alteration or change in the product, provided that the design and implementation of such inclusion into the larger system is in conformity with specifications.

The express warranties set forth in this Section 6 are the only warranties made by Seller to Buyer with respect to the products purchased hereunder. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO PRODUCTS SOLD PURSUANT TO THIS AGREEMENT AND ATTACHMENTS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, USE, OR PERFORMANCE OF PRODUCT.

**6. Buyer's Representations and Indemnity** — Buyer represents and warrants that it shall use all products ordered herein in accordance with Paragraph No. 8 "Buyer's Use of Products", and that any such use of products will not violate any applicable law or regulation. Buyer agrees to indemnify and hold harmless Seller, its employees, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its officers, agents, employees, successors or assigns, by Buyer's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other third parties, arising out of, directly or indirectly, the use of Seller's products, or by reason of Buyer's failure to perform its obligations contained herein. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving Seller's products which results in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements, reports and tests made by Buyer or made available to Buyer by others. The furnishing of such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller. Buyer further agrees that in the event of any loss, injury or damage, Buyer shall not itself, nor permit others to, dismantle, test or examine any of the goods sold or provided by Seller without giving Seller sufficient advance written notice, in no event less than fifteen (15) days, to be present and allowing such presence of Seller or its agents.

**7. Patent disclaimer** — Seller does not warrant that the use or sale of the products delivered by Seller hereunder will not infringe the claims of any United States or other patents covering the product itself or the use thereof in combination with other products or in the operation of any process.

**8. Buyer's Use of Products** - The improper installation or application of the goods; their use with improper wiring, piping, or ventilation; improper system design or engineering; inadequate inspection or testing; the lack of regular careful

maintenance of both the goods and any equipment in connection with which the goods are used; the employment of insufficient or unqualified personnel; the lack of careful supervision, proper warnings, operating instructions, and safety precautions: the exposure of the goods to excessive heat, moisture, dust, dirt, corrosion, or any other deleterious condition, each constitutes a hazard which can result in loss of life, serious personal injury, heavy property or business damage, and buyer agrees with seller to itself take and require others to take all reasonable measures to avoid each such hazard. Buyer agrees to notify its customers or users of the product(s), as the case may be, of these warnings, and to deliver to its customers or users of the product(s) all written warnings provided with each product by Seller.

**9. Product Returns** - Goods may be returned for credit with Seller's advance written consent, said consent to be in Seller's sole reasonable discretion. Any returned items may be subject to a twenty percent (20%) restocking & processing fee and must be returned at Buyer's sole cost and expense to Seller at Seller's location indicated on Seller's written consent, within thirty (30) days of purchase.

Buyer must obtain RMA (Return Material Authorization) identification prior to returning any purchased material back to the Seller. Buyer will bear all freight costs to return material back to the Seller's factory or such other location indicated by Seller.

**10. Order cancellation** – The orders are non-cancellable unless agreed to in writing by the Seller. The Buyer will be responsible for all costs incurred by Seller arising from pre-manufacturing or manufacturing of any material, prior to receipt of notice of cancellation. After such cancellation, Buyer's materials and any completed product, if any, may be delivered to Buyer, at Buyer's sole cost and expense, only after all sums owed to Seller, including but not limited to the costs described herein, have been paid in full.

**11. Miscellaneous** — Seller's failure to strictly enforce any term or condition of this order or to exercise any right arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right thereafter. All rights and remedies under this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The paragraph headings herein are for convenience only; they form no part of the terms and conditions and shall not affect their interpretation. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.

**12. Force Majeure** - In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, or any other cause beyond the reasonable control of the party invoking this section, such party's performance shall be excused, and the time for the performance shall be extended for the period of delay or

inability to perform due to such occurrences, provided that such party shall use its best efforts to mitigate the effects of such occurrences, and such party shall give prompt written notice to the other party thereof. However, if such inability to perform continues for thirty (30) days, the other party may terminate this Agreement without penalty and without further notice.

**13. Nonbinding Mediation** - Subject to Section 16 (Injunctive Relief) below, no court action or arbitration with respect to any disputes may be commenced until the matter has been submitted to mediation in Houston, Texas or as mutually agreed. Either party may commence mediation by providing a written request for mediation to the other party, setting forth the subject of the dispute or the relief requested. The parties agree to participate in the mediation in good faith, and to share equally in the costs of mediation. Neither party may commence arbitration or litigation with respect to the matters submitted to mediation until the completion of the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first.

**14. Binding Arbitration** - Subject to Section 13 (Nonbinding Mediation) and Section 16 (Injunctive Relief), any dispute arising out of or related to this Agreement, which cannot be resolved by mediation, must be settled by binding arbitration. If not thus resolved, the dispute must be referred to a sole arbitrator selected by the parties within fifteen (15) days of the notice of arbitration. If the parties are unable to agree upon an arbitrator, the American Arbitration Association ("AAA") will select a Houston, Texas based arbitrator who is well qualified in commercial transaction disputes. The arbitration will be governed by the United States Arbitration Act, and judgment on the award may be entered in any court having jurisdiction. The proceedings will be conducted in Houston, Texas pursuant to such rules. The costs of arbitration, including the fees and expenses of the arbitrator, will be shared equally by the parties unless the arbitration award provides otherwise. The arbitrator may determine issue of arbitrability, but may not award punitive damages or limit, expand, or otherwise modify the terms of this Agreement. The arbitrator's decision must follow the plain meaning of the relevant documents, and is binding. The arbitrator must render a written and reasoned opinion setting forth both findings of fact and conclusions of law. The parties, their representatives, other participants, and the arbitrator must hold the existence, content and result of arbitration in confidence, except as such disclosure may be necessary for the purpose of recording or otherwise acting upon the arbitrator's award. ARBITRATION MUST BE COMPLETED AND AN AWARD RENDERED BY THE ARBITRATOR NO LATER THAN 120 DAYS FROM THE APPOINTMENT OF AN ARBITRATOR.

**15. WAIVER OF JURY TRIAL-BOTH PARTIES WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THIS AGREEMENT OR THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT. ANY SUCH DISPUTES SHALL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.**

**16. Injunctive Relief** - Either party may, at its sole discretion and at any time during the dispute resolution process, seek injunctive relief in any court of competent jurisdiction including, but not limited to, preliminary injunctive relief.

**17. Applicable Law** - This Agreement will be governed and construed in accordance with the law of the State of Texas, USA, excluding its conflict of laws rules. If any dispute shall arise between the parties concerning conflicting Terms and Conditions language, and one of the parties is a corporate resident of foreign country who is a signatory to the United Nations Convention on Contracts for the International Sale of Goods ("CISG"), for purposes of resolving the conflict the CISG shall apply.

**18. Attorney's Fees and Interest** - Parties agree to pay all reasonably incurred legal expenses, including attorney's fees incurred by the prevailing party in the prosecution or defense of any claim arising out of or related to this Agreement. The parties also agree to pay all reasonably incurred legal expenses, including attorney's fees incurred in collecting on a final judgment. The parties also agree that interest will accrue at 6% per annum (.5% per month), beginning 30 days after the invoice becomes due or, if that amount is against the jurisdictional law, the maximum amount allowed under the applicable law.

**19. Export Compliance** - Seller's products are subject to US export laws, rules, treaties, regulations, and international agreements. All individuals who access seller's website assume the responsibility of abiding by the US export laws, rules, treaties, regulations, and international agreements along with applicable foreign laws when transferring, selling, importing, exporting, re-exporting, deemed exporting, diverting, or otherwise disposing of such products. By reviewing Seller's terms and conditions, you represent and warrant you are not in a sanctioned country nor are you an individual or an entity whose access to this website is restricted by US export laws, rules, treaties, regulations, and international agreements, and agree to indemnify, defend, and hold Seller harmless from any and all claims, losses, and damages arising from or related to your breach of the forgoing representation.