

Terms and Conditions of Sale for CertainTeed Piping Systems

1. **Acceptance Of Orders/Terms:** All orders are subject to acceptance by CertainTeed Corporation ("CT") at its Valley Forge, Pennsylvania, headquarters, and CT reserves the right to reject any order. Possession of a price list does not constitute an offer to sell. Acceptance of any order by CT is expressly conditioned on Customer's assent to the terms and conditions set forth herein ("Terms") and the waiver by Customer of any terms and conditions contained in any order form, confirmation, or any other communication of Customer, whether previously or hereafter delivered to CT, which either add to, differ from, modify, conflict with or are otherwise inconsistent with any term or condition herein. CT hereby gives notice of its objection to any additional or different terms or conditions in any such order form, confirmation or communication. Customer's failure to object in writing to these Terms prior to the earlier of Customer's acceptance of the products ordered or fifteen (15) days after delivery hereof to Customer will constitute agreement by Customer to these Terms.
2. **Product Changes:** CT reserves the right to discontinue the manufacture or sale of any product at any time or to alter, modify or redesign its products.
3. **Price:** All prices are subject to change without notice. The price charged will be the price in effect at the time of shipment. Should any governmental action or request prevent CT from implementing any price or continuing any price already in effect, CT may cancel Customer's order or any part thereof.
4. **Taxes/Duties:** All federal, state or local sales, use or other taxes, and all duties, import fees or other assessments imposed on materials sold hereunder, or on the manufacture, sale or delivery thereof, shall be for Customer's account.
5. **Credit Approval:** Customer credit approval is required prior to any shipment. If CT determines at any time that Customer's financial condition does not justify the extension of credit to Customer, then CT may require cash payments in advance or other satisfactory security prior to delivery.
6. **Packaging/Shipping/Risk of Loss:** Costs for special packaging and/or handling requested by Customer will be billed to Customer. Shipping terms are F.O.B: CT's plant. Unless otherwise specified by Customer in writing, CT shall select the method of shipment and direct shipment of materials to the address of Customer. In the event of any general freight increase or any governmental ruling or regulation that results in increased freight costs, CT may, without any advance notice, invoice Customer for such additional costs. Title to, and the risk of loss, damage or shortage of, such materials shall pass to Customer upon delivery to the carrier regardless of notice to Customer. CT assumes no responsibility for insuring shipments unless specifically agreed to in writing by CT, in which case Customer shall be invoiced for the cost of insurance.
7. **Delivery:** Quoted shipping and/or delivery dates are based on estimates at the time of quotation. CT will use its best efforts to meet such shipping and/or delivery dates, but CT shall not be liable for any direct or indirect costs or damages, including without limitation incidental or consequential damages, resulting from late deliveries. For orders with indefinite delivery dates, CT shall have the right to manufacture or procure the materials covered thereby and hold such materials for Customer's account pending receipt of definite shipping instructions. Except as expressly provided otherwise herein, Customer agrees to purchase, and will be charged for, all material ordered.
8. **Claims/Remedies:**
 - A. **Claims Procedure:** Upon delivery, shipments must be inspected by Customer for damage, loss or shortage prior to acceptance from the carrier. If damage, loss or shortage exists with respect to any shipment and it is not concealed, Customer shall secure a notation of such damage, loss or shortage from the carrier on the freight bill or delivery receipt. If damage, loss or shortage is concealed, Customer must notify the carrier within 15 days, hold the merchandise for its inspection and secure a signed report from the carrier acknowledging the damage, loss or shortage. No claims for damage, loss or shortage will be allowed unless they are accompanied by an inspection report or signed delivery receipt noting such damage, loss or shortage signed by a representative of the carrier and forwarded to the CT National Sales Manager within 30 days of the invoice date. Any claims for damage, loss or shortage should also be filed by Customer with the carrier in writing immediately upon receipt of the materials. In no event shall CT be liable for damage or loss to a shipment caused by any carrier. Claims that tender of performance by CT does not otherwise conform shall be effective only if CT shall be notified by Customer in writing of the nonconformity within 30 days of the invoice date describing the nonconformity in reasonable detail and specifying the order, shipment or invoice number. If such notice shall be given on a timely basis and the nonconformity does exist, CT shall have a reasonable opportunity to cure same.
 - B. **Remedies:** THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND THE SOLE AND EXCLUSIVE OBLIGATION OF CT IN CONNECTION WITH CLAIMS RELATING TO MANUFACTURING DEFECTS ARE CONTAINED IN THE WARRANTY SET FORTH AS SECTION 13. THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND THE SOLE AND EXCLUSIVE OBLIGATION OF CT FOR ANY BREACH OF CONTRACT CLAIM THAT MATERIALS DELIVERED DO NOT OTHERWISE CONFORM TO THE ACCEPTED ORDER SHALL BE EITHER THE RETURN OF CONSIDERATION PAID BY CUSTOMER TO CT RELATED TO THE BREACH, OR UPON CT'S ELECTION, THE DELIVERY OF CONFORMING PRODUCTS TO CUSTOMER. WITH RESPECT TO CT'S NONCOMPLIANCE WITH ANY OTHER OBLIGATION OF CT HEREUNDER, THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND THE SOLE AND EXCLUSIVE OBLIGATION OF CT WILL BE AS CT IN ITS DISCRETION WILL DETERMINE AS FOLLOWS: (1) CT MAY ELECT TO CURE SUCH NONCOMPLIANCE WITHIN A REASONABLE PERIOD OF TIME, OR (2) IF CT FAILS TO CURE SUCH NONCOMPLIANCE, CUSTOMER MAY RECOVER AN EQUITABLE AMOUNT NOT TO EXCEED SUCH CHARGES AS WERE PREVIOUSLY PAID TO CT BY CUSTOMER HEREUNDER. CUSTOMER WAIVES ALL OTHER REMEDIES, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE REMEDIES OF SPECIFIC PERFORMANCE AND REPLEVIN. ANY ACTION BROUGHT BY CUSTOMER IN CONNECTION WITH CT'S PERFORMANCE HEREUNDER MUST BE COMMENCED WITHIN SIX (6) MONTHS AFTER SUCH CAUSE OF ACTION ACCRUES OR IT WILL BE DEEMED WAIVED. CT'S LIABILITY TO CUSTOMER, REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED AMOUNTS PAID BY CUSTOMER TO CT FOR THE PRODUCTS INVOLVED, AND CUSTOMER RELEASES CT FROM ALL CLAIMS AND LIABILITIES IN EXCESS OF THIS LIMITATION. IN NO EVENT SHALL CT BE RESPONSIBLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND.
 9. **Payment:** All invoices, whether partial or in full, shall be due and payable in full by Customer net 30 days from the date of shipment unless otherwise agreed to in writing by CT. All past due, unpaid balances will bear a service charge of the lesser of one and one-half percent (1 1/2%) per month or the maximum interest rate permitted by applicable law. If Customer (i) becomes insolvent, files or has filed against it a petition in bankruptcy, makes any assignment for the benefit of creditors, or has a receiver or trustee appointed for it or its property, (ii) takes action to liquidate or otherwise cease doing business as a going concern, (iii) undergoes a change in ownership, (iv) fails to provide adequate assurance or security for credit extended, or (v) takes any other action that CT determines in its sole discretion adversely impacts the conditions under which credit was extended, then all amounts outstanding from Customer hereunder shall at CT's option become immediately due and payable. ALL PAYMENTS, WHETHER UNDER THE STANDARD PAYMENT TERMS OR OTHERWISE, SHALL BE CONSIDERED RECEIVED BY CT AS FOLLOWS: (A) FOR PAYMENTS BY CHECK, WHEN THE CHECK IS RECEIVED AT CT'S DESIGNATED PAYMENT LOCATION, AND (B) FOR PAYMENTS BY ELECTRONIC FUNDS TRANSFER, THE BUSINESS DAY IMMEDIATELY PRECEDING THE DAY ON WHICH THE FUNDS ARE IMMEDIATELY AVAILABLE TO CT. Customer shall pay all undisputed invoices regardless of any dispute that may exist as to other delivered or undelivered goods. With respect to any disputed invoice, Customer shall pay all amounts not in dispute. Customer expressly waives the right to assert any offset or counterclaim with respect to amounts due under any invoice issued by CT hereunder.
 10. **Cancellation/Change Orders:** Orders for Standard Products may only be revised or canceled by Customer prior to the date of loading at the place of shipment, and only with CT's prior consent. Orders for nonstandard or custom produced pipe and/or fittings may only be revised or canceled by Customer prior to the commencement of production, and only with CT's prior consent.
 11. **Nonstandard Products:**
Definition: Any product not shown in the most recent edition of CT's published sales literature and/or price lists.
 12. **Returned Materials:** Nonstandard or custom produced pipe and/or fittings may not be returned. Other material may only be returned with the prior approval of the CT National Sales Manager. Material returned without this authorization will not be accepted. A 25% restocking charge and freight costs of returned material (and out-freight if applicable) will be charged to the account of the Customer. All returned materials must arrive at the point of return designated by CT in saleable condition, as determined by CT's Quality Control Department before any credit will be issued.

13. Warranty/Limitation of Liability:

- A. **Standard Product Warranty:** CT only warrants to replace, without charge, those of its pipe and fitting products proven to have manufacturing defects within 6 months of the date of delivery thereof; provided, however, that CT has first been given an opportunity to inspect the product alleged to be defective in order to determine if it meets CT's specifications and if the handling, installation, and operating conditions have been satisfactory and in accordance with acceptable practices. Products sold by CT which are manufactured by others are warranted only to the extent and limits of the warranty of the manufacturer. Owing to the widely varying conditions under which CT's products are installed and used, CT cannot be and is not bound, and no person is authorized to bind CT, by any further warranty whatsoever.
- B. **Nonstandard Product Warranty:** CT only warrants to replace, without charge, those non-standard pipe products proven to have manufacturing defects with respect to dimensional requirements within 6 months of the date of delivery thereof; provided, however, that CT has first been given an opportunity to inspect the product alleged to be dimensionally defective in order to determine if it meets CT's dimensional specifications. Products sold by CT which are manufactured by others are warranted only to the extent and limits of the warranty of the manufacturer. Owing to the widely varying conditions under which CT's products are installed and used, CT cannot be and is not bound, and no person is authorized to bind CT, by any further warranty whatsoever.
- C. **Solvent Weld Pipe Disclaimer for Both Standard and Nonstandard Products:** Because CT cannot be assured that solvent weld pipe will be installed by persons fully acquainted with the proper assembly and installation techniques involved and the limitations upon such techniques caused by variations in installation conditions, CT DOES NOT WARRANT AND WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY EXPENSES, DAMAGES, OR LOSSES WHATSOEVER CONNECTED WITH OR ARISING FROM OR CAUSED BY THE FAILURE OF ANY SOLVENT WELD JOINT OR BY DEFECTIVE SOLVENT USED IN MAKING ANY SUCH JOINT. This disclaimer does not apply to factory-made solvent welds.
- D. **Threaded Pipe Disclaimer:** Claims sent to CT for pipe which fails to thread properly into a purchased coupling supplied by a manufacturer other than CT, or which leaks upon threading into said coupling, must be accompanied by the coupling in question in order for CT to properly evaluate the claim. CT WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY EXPENSES, DAMAGES, OR LOSSES WHATSOEVER CONNECTED WITH OR ARISING FROM OR CAUSED BY AN OUT-OF-SPECIFICATION COUPLING.
- E. **Disclaimer/Limitation of Liability:** THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CT BE RESPONSIBLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY EXPENSE FOR REMOVAL OR REINSTALLATION RESULTING FROM ANY DEFECT, INCLUDING ANY DIMENSIONAL DEFECT INVOLVING NONSTANDARD PRODUCTS. SOME JURISDICTIONS DO NOT ALLOW

THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OF ANY EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. THE WARRANTY PROVIDED BY CT GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. NO FIELD REPRESENTATIVE, DISTRIBUTOR OR DEALER OF CT IS AUTHORIZED TO MAKE ANY CHANGE OR MODIFICATION TO THESE WARRANTIES.

14. **Excused Performance:** CT shall not be liable for nor be deemed to be in default of these terms on account of any failure to perform its obligations or attempt to cure any breach thereof if CT has been delayed or prevented from doing so by any cause or condition beyond CT's reasonable control. If CT determines that its ability to supply the total demand for the products, or obtain any or a sufficient quantity of any material used directly or indirectly in the manufacture of the products, is hindered, limited or made impracticable, CT may allocate its available supply of the products or such material (without obligation to require other supplies of any such products or material) among itself and its customers as CT determines in its sole discretion without liability for any failure of performance which may result therefrom. Delivery suspended or not made by reason of this action shall be canceled without liability, but these terms shall otherwise remain unaffected.
15. **Fair Labor Standards Act:** CT hereby certifies that the materials sold hereunder that were produced in the United States were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.
16. **Change In Terms and Conditions of Sale:** The terms and conditions contained herein constitute the entire agreement between CT and Customer and supersede any and all prior representations, agreements or understandings, whether oral or written, relative to the materials delivered hereunder. No course of dealing or usage of trade shall be relevant to supplement or explain any of these terms or conditions. No modification of these terms and conditions shall be effective unless made in writing and executed by CT.
17. **General:** This agreement shall not be assigned by Customer without the prior written consent of CT, and any assignment made without such consent shall be null and void. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to its conflicts of law provisions. The courts located in Pennsylvania shall have exclusive jurisdiction of all matters relating to or arising out of any sale of materials by CT to Customer hereunder, and Customer hereby consents to the jurisdiction of such courts. Any action brought by Customer in connection with CT's performance hereunder must be commenced within one year after such cause of action accrues or it will be deemed waived.

CertainTeed

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