



Johns Manville

CANADIAN TERMS AND CONDITIONS

These are the Terms and Conditions of sale for Johns Manville Canada Inc. ("Seller"). There are no other terms of sale unless Seller agrees in writing to different terms with you, the "Purchaser" of Seller's products:

1. **ACCEPTANCE OF ORDERS.** Seller's offer to sell products to Purchaser or acceptance of Purchaser's order is expressly conditioned upon Purchaser's acceptance of these Terms and Conditions ("Terms"). Purchaser's acceptance, use or holding of Seller's products for 10 days after shipment also establishes Purchaser's acceptance of these Terms. Seller expressly rejects and objects to all new, different or additional terms of sale submitted by Purchaser. Seller also reserves the right to select its own customers and the right to reject any order.
2. **PRICES, TAXES.** All prices are subject to change without notice. Unless otherwise specified, orders will be shipped and invoiced at the price in effect at the time of shipment, and price adjustments for products in transit or in Purchaser's inventory will not be allowed. Any tax or other charge on the production, sale or shipment of the products imposed by federal, provincial or local governmental authorities will be added to the price to be paid by Purchaser.
3. **TERMS OF PAYMENT.** Subject to the approval of Seller's credit department, terms of payment are those in effect for product sales as of the date of shipment. Purchaser is also responsible for amounts due under No. 11 below.
4. **DELIVERY.** As product sales are F.O.B. Seller's place of shipment, Seller shall have no liability for delays, damage, or delivery failures occurring after the product is delivered to the carrier. Purchaser is solely liable for demurrage charges assessed at the destination. Product shortages and visibly damaged or defective products must be reported to Seller within 10 days of delivery. Purchaser may not withhold payment on uncontested product deliveries.
5. **TITLE AND RISK OF LOSS; SECURITY INTEREST.** Title to and all risk of loss or damage to the products vests in Purchaser at the time Seller delivers the products to the carrier regardless of any shipping and insurance arrangements made by Seller on Purchaser's behalf. However, Seller reserves, until full payment is received, a purchase money security interest in each product delivered.
6. **RETURNS.** Product returns will be accepted only after Purchaser receives Seller's prior written approval as follows: a) For returns authorized due to Purchaser's rightful rejection or justifiable revocation of acceptance of the products, Seller will pay for reasonable commercial charges for the product return and, in addition, will at Seller's option, refund or credit the full purchaser price upon return of the products. No request for returns based on damaged or defective products will be approved unless received within the time periods set forth in No. 4 and No. 7; b) Where Seller determines, in its sole discretion, to accept returns for the convenience of Purchaser, the products are to be returned to the point of shipment at Purchaser's expense, properly packed. Seller will issue a credit for the quantity of product received at Seller's shipping point in re-salable condition, as determined by Seller in its reasonable discretion, less: i) 20% of the original purchase price for handling and reconditioning; or, if greater, ii) the actual charges incurred.
7. **LIMITED WARRANTY; SPECIFICATIONS.** All products sold are subject to the following limited warranty: Seller warrants that for a period of one year from the date of shipment the product will be free from defects in material and workmanship and is manufactured in all material respects to Seller's product specifications. Note: Seller's products may vary in details of design and construction from descriptions in any literature or from any sample, display or other model inspected by Purchaser. SELLER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Every claim under this limited warranty shall be deemed waived unless in writing and received by Seller within 10 days of delivery if visibly damaged or defective, and, otherwise, within 30 days after the defect to which each claim relates is discovered, or should have been discovered, but in no event longer than 1 year after product shipment.
8. **LIMITATION OF REMEDY.** PURCHASER'S EXCLUSIVE REMEDY AND THE LIMIT OF SELLER'S LIABILITY FOR BREACH OF THE LIMITED WARRANTY SET FORTH IN NO. 7 WHETHER BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, SHALL BE, AT SELLER'S OPTION, REPAIR OR REPLACEMENT WITH A LIKE QUANTITY OF NONDEFECTIVE PRODUCT OR REFUND OF THE PURCHASE PRICE, PLUS REASONABLE COMMERCIAL CHARGES INCURRED FOR APPROVED RETURNS UNDER NO. 6 ABOVE.
9. **NO RECOVERY OF CONSEQUENTIAL OR SPECIAL DAMAGES.** SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. ADDITIONALLY, CONSEQUENTIAL AND SPECIAL DAMAGES SHALL NOT BE RECOVERABLE EVEN IF THE REPAIR OR REPLACEMENT OR REFUND REMEDY FOR SELLER'S BREACH OF ITS LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON.
10. **FORCE MAJEURE.** Seller shall not be liable, nor deemed in default hereunder, for any failure or delay in delivering the products or in the performance of its other obligations to Purchaser hereunder, caused by or arising out of, a) compliance in good faith with any applicable foreign or domestic governmental regulation or order of whatever nature or whether foreign, federal, state or local; b) all acts of God (such as, but not limited to, floods, fires, or tornadoes); c) strikes and other labor trouble; d) delays or nonperformance by suppliers (or other third parties) of raw materials, power or other needed supplies or services; e) delays or nonperformance by transporting carriers; and/or f) any other cause, contingency, or circumstance not subject to the reasonable control of Seller affecting the performance of Seller's obligations hereunder. Seller shall determine in good faith the extent to which it can reasonably control a cause, contingency, or circumstance affecting its performance obligations. 1/2% per month (being 18% per annum) or the highest lawful rate.
11. **DEFAULT.** In the event of Purchaser's default, Purchaser agrees to pay all costs and expenses, including reasonable legal fees and disbursements, incurred by Seller in the event Seller reasonably anticipates a default by Purchaser, whether involving collecting payments due or otherwise enforcing these Terms. Purchaser also agrees to pay Seller simple interest on unpaid amounts from due date at the lesser of 1-1/2% per month (being 13% per annum) or the highest lawful rate.

12. **SEVERABILITY.** If any of these provisions are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms shall be unaffected.

13. **MODIFICATION OR TERMINATION.** These Terms, together with the specific order provisions contained on Seller's order are the entire agreement between the parties with respect to this order. This cancels and supersedes all previous agreements, confirmations, and terms of sale, oral or written. No waiver or modification of these Terms shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. Additional or different terms submitted by anyone other than Seller are specifically rejected and shall be deemed to be of no effect.

14. **GOVERNING LAW; JURISDICTION.** This Agreement is governed by, and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable thereto.

15. **QUEBEC.** The parties hereto declare that they have requested that these present and all related documents be drafted in the English language.
Les parties ont demandé que cette entente ainsi que tous les documents que s'y rattachent soient rédigés en anglais.

16. **DOMESTIC SALE OF GOODS.** The Seller and Purchaser agree that domestic sale of goods laws shall apply to this order and not the "International Sale of Goods Act".