



STANDARD TERMS AND CONDITIONS OF SALE FOR JMM PVC PIPE PRODUCTS

- 1. DEFINITION OF JMM:** The term "JMM" shall mean J-M Manufacturing Company, Inc.
- 2. WARRANTY:** JMM warrants that its products are manufactured in accordance with its applicable material specifications and are free from defects in workmanship and materials using JMM's specifications as a standard. Every claim under this warranty shall be deemed waived unless made in writing and received by JMM within thirty (30) days of the date the defect was discovered and within one (1) year of the date of shipment of the product. JMM MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- 3. LIMITATION OF LIABILITY:** The limited and sole and exclusive remedy for any breach of the above warranty by JMM shall be the re-supply of a like quantity of non-defective product, regardless of whether the defect was latent or obvious. JMM shall have no such liability except where the damage or claim results solely from breach of the warranty. OTHER THAN THE LIMITED LIABILITY EXPRESSLY SET FORTH HEREIN, JMM SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES FOR ANY ALLEGED NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER CLAIM.
- 4. AFFIDAVITS:** Orders requiring affidavits or certificates of compliance must so state when orders are placed with JMM.
- 5. PRICING:**
- A). Price Protection:** All JMM prices are based on written, authorized JMM quotes while they remain in effect. Each quote is valid and in effect only for the duration set forth in the quote. **B). Product Availability:** All prices are subject to inventory availability at the time of order placement. JMM shall have no liability in the event of insufficient inventory to satisfy an order at the time it is placed. **C). Escalation on Expired Orders:** JMM reserves the right to escalate prices on expired orders to the current market pricing or to the original pricing, whichever is higher. **D). Changes to Order:** Order quantities may be increased within thirty (30) days after acceptance by JMM, subject to the following maximum dollar limits: 10% on any one item and/or 5% of the total dollar value of the original order, whichever is less. Prices of the "add-on changes" will be at the original order prices plus any escalation(s). **E). FOB:** All prices are based on FOB JMM local service plant. Except as set forth in Sections 19, 20 and 22, JMM shall pay all shipping costs.
- 6. TERMS OF PAYMENT:** Less 1.5% 10th prox net 15th prox - on PVC Product shipments 1st thru 15th.
Less 1.5% 25th prox net 30th prox - on PVC Product shipments 16th thru end



**STANDARD TERMS AND CONDITIONS OF SALE
FOR JMM PVC PIPE PRODUCTS**

of the month. In all other instances terms are standard unless otherwise specified. The cash discount shall apply to net material value after deducting transportation, but before additions or deductions for taxes, special packaging or other charges. The cash discount will be given only if payment to JMM is U. S. postmarked on or before the discount date shown on the invoice. JMM reserves the right to change these terms at any time upon thirty (30) days written notice.

**7. LATE PAYMENT
CHARGE:**

Any payment received by JMM after the due date shall be subject to a late payment charge or 1.5% per month (18% per year) until the outstanding balance, including accrued late payment charge, is paid in full.

8. BUYER'S SOLVENCY:

Buyer represents that it is not insolvent as that term is defined in the Uniform Commercial Code. In the event Buyer becomes insolvent before delivery of Pipe Products, it will so notify JMM in writing. Buyer's failure to so notify JMM shall be construed as reaffirmation of Buyer's solvency at the time of delivery.

**9. ASSIGNMENT OF
LIEN RIGHTS:**

Buyer unconditionally assigns to JMM any lien rights that it may have, whether as a vendor or otherwise, to secure payment of monies owed to Buyer by reason of Buyer's sale of Pipe Products to a third party. Such assignment shall be limited in amount to the unpaid balance(s) owed by Buyer to JMM for such Pipe Products and shall remain in effect only for so long as such balance(s) shall remain unpaid. Buyer hereby appoints JMM as its attorney-in-fact to execute and record such documents as are necessary to effect said assignments and/or to enforce said lien rights.

**10. RISK OF LOSS OR
DAMAGE:**

Risk of loss or damage shall rest on Buyer upon JMM's delivery of Pipe Products to the carrier at JMM Plant or location. All claims for damage or shortage in transit shall be handled with the carrier by Buyer. If damage or shortage is noted on arrival, Buyer and/or receiver must make a detailed note on the Bill of Lading before signing it, and immediately notify the carrier so that an inspector for the carrier may check the damaged material or shortage. Carrier must sign Bill of Lading with noted damage.

11. CREDIT:

Without exception, all orders and shipments are subject to the written approval of JMM's Credit Department.

**12. ACCEPTANCE OF
ORDERS:**

No order placed with JMM shall be considered accepted until acknowledged in writing by a duly authorized representative of JMM. The terms and conditions stated herein constitute the entire Terms and Conditions of Sale between the parties. Any contrary or additional terms or conditions shall be



**STANDARD TERMS AND CONDITIONS OF SALE
FOR JMM PVC PIPE PRODUCTS**

void and have no force or effect unless specifically approved in writing by an authorized officer or general manager of JMM.

13. APPROVAL OF

CUSTOMER:

JMM reserves the right to refuse orders placed by Buyer for a particular customer if

the customer is not approved by JMM's Credit Department or JMM's Claims Department. JMM shall have the absolute right to refuse direct shipment to any such customer. In the event Buyer wishes to sell to such customer, Buyer may purchase JMM's product from JMM and, in turn, sell such product to the customer from Buyer's inventory.

14. TAXES:

Any tax or other governmental charge upon production, sales, or shipment of the Pipe Products imposed by federal, state, municipal, or other authorities shall be added to the price and must be paid by Buyer, regardless of whether such tax or charge is included on the initial invoice to Buyer. Tax Exemption Certificates for states into which pipe is being shipped must be on file with JMM's Customer Service Center. Otherwise, all local taxes of state into which pipe is shipped will be charged. These taxes will be shown on the invoice.

15. FORCE MAJEURE:

JMM shall not be liable for any delay or default in delivering products where occasioned by any cause of any kind or extent beyond the control of JMM including without limitation: armed conflict or economic dislocation resulting there from; embargos; shortage of labor, raw materials, fuel, energy, production facilities or transportation; labor difficulties; civil disorders of any kind; action of civil or military authorities (including priorities and allocations); fires; floods, earthquakes, accidents and acts of God.

16. RETURNED GOODS:

Buyer must check with its JMM representative and obtain written approval before returning any Pipe Products to JMM. Unauthorized returns may be scrapped with no credit to the Buyer's account. Ownership will pass to JMM upon receipt of materials at JMM's factory, but only if return is per JMM's written approval. On authorized returns, Buyer shall be credited at the invoiced price or the prevailing price, whichever is lower, on Pipe Products that are accepted for return less a handling charge of up to 25% and the outgoing freight. Buyer shall be responsible for any incoming freight charges. No credit shall be allowed for Pipe Products returned which are found not to be in first class resalable condition after testing, count and inspection by JMM.

17. ORDER

CANCELLATION:

In the event of non-acceptance or repudiation by Buyer of an acknowledged

order, JMM's remedies shall be as provided by applicable law, except that under Uniform Commercial Code Section 2-708(2), Buyer shall have no



**STANDARD TERMS AND CONDITIONS OF SALE
FOR JMM PVC PIPE PRODUCTS**

right to any credit for payments or proceeds of resale, and Buyer and JMM liquidate and stipulate the profit and reasonable overhead which JMM would have made from full performance by Buyer to be 25% of the contract price.

**18. CUSTOMER RECEIPT
OF GOODS:**

Any type damaged, over shipped, or under shipped must be noted on Bill of Lading to be signed by customer or customer's authorized representative (See no. 10).

**19. TRUCKLOAD
DEFINITION:**

a. A truckload (TL) quantity is the lesser of either the minimum weight that can be shipped as a truckload via common or contract carrier at the shipping location. Anything less than a TL quantity and greater than a "small order" is a LTL quantity.

b. The Buyer may elect to ship a lesser quantity, 15,000 pounds of PVC BLUE BRUTE, or 10,000 pounds of all other PVC, as a full truckload via common or contract carrier from shipping location if Buyer pays any applicable freight penalty.

c. Shipments of orders containing pipe materials supplied from different shipping locations shall be treated as TL, LTL or small orders, depending on the weight or volume of each individual shipment.

d. On a multi-truckload order, Buyer may ship only one LTL quantity at the truckload price on the order, either to start or finish the project.

20. SMALL ORDERS:

The following small order policy shall apply: Any order less than 2,000 lbs. for plastic pipe products and fittings shall be deemed a small order and shall be billed at the highest list price in effect at the time of shipment (no discount applicable). Actual freight paid to be charged to Buyer. All shipments are F.O.B. shipping point.

**21. POOL CAR
SHIPMENTS:**

Any LTL orders pooled by JMM plants shall be priced individually as LTL orders.

**22. TRANSPORTATION
ALLOWANCES:**

a. All shipments except "small orders" are F.O.B. shipping point with transportation prepaid by JMM and allowed to jobsite or Buyer's stocking location whichever applies, provided such jobsite is legally and physically accessible to interstate freight carriers operating under I.C.C. regulations. [Additional freight charges shall apply to "LTL"



**STANDARD TERMS AND CONDITIONS OF SALE
FOR JMM PVC PIPE PRODUCTS**

shipments and shipments from remote plants.]

b. Stop-over/Drop Shipments/Demurrage: All additional freight charges for Stop-Over, Drop Shipment and Demurrage allowed by I.C.C. regulations shall be charged to the Buyer's account.

23. CLAIMS:

JMM shall be responsible for settlement of distributor-customer claims only if such claims have been submitted to JMM for prior investigation and determination of settlement. JMM shall have no obligation to honor any settlement made by distributor with its customer without prior written consent of JMM.

**24. UCC SELLER
RIGHTS OF JMM:**

JMM shall have all rights and remedies of a seller under Article 2 of the Uniform Commercial Code, as in effect from time to time in New Jersey.

25. GOVERNING LAW:

The terms and conditions hereof shall be governed by the laws of the State of New Jersey, without regard to its conflicts of law principles. Any and all disputes arising out of or relating to this agreement are subject to the exclusive jurisdiction of the state or federal courts located in Essex County, New Jersey, or, at JMM's sole election, to binding arbitration before a single arbitrator pursuant to the American Arbitration Association's Commercial Dispute Resolution Procedures, with such arbitration to take place in Essex County, New Jersey.

26. ADMINISTRATION:

Except where expressly noted herein to the contrary, JMM reserves the right to revise these standard terms and conditions of sales without notice at any time.