



MODERN INFRASTRUCTURE
MADE IN AMERICA

TERMS & CONDITIONS OF SALE OF PRODUCTS

JM Eagle appreciates your business. The terms and conditions of JM Eagle's sale of products ("Terms") are as follows:

- 1. APPLICABILITY:** A quote issued by JM Eagle ("Quote") is an invitation to the buyer to make an offer at the quoted price. A Quote is not an offer. The buyer makes an offer only by the delivery of a Purchase Order ("Order") to JM Eagle. Subject to the Section 2 below, an accepted Order (incorporated herein solely to identify the goods ordered, quantity, and delivery requirements, and not to incorporate any terms and conditions contained therein), Order Confirmation (as described in Section 2), these Terms, and any other ancillary agreement signed by both parties (such as a Non-Cancelable Order Acknowledgment) comprise the full, final and entire agreement between JM Eagle and the buyer. Any executed Non-Cancelable Acknowledgment shall supersede any conflicting term in the Buyer's Order, including any governing-terms provision, and shall constitute the Buyer's express assent to these Terms. In the event of a conflict among the contract documents, the following order of precedence shall govern the relationship between JM Eagle and Buyer in all respects: (i) any executed Non-Cancelable Acknowledgment; (ii) these Terms; (iii) the Order Confirmation; and (iv) the Order (solely as to the incorporated terms).
- 2. ACCEPTANCE OF ORDERS:** JM Eagle is under no obligation to accept any Order, even if the Order reflects the terms of the Quote and is delivered by the Order By date in the applicable Quote. An Order is only accepted by a formal written acknowledgement ("Order Confirmation") by an authorized JM Eagle representative. JM Eagle's acceptance of that Order is expressly and strictly conditional upon the buyer's acceptance of these Terms in their entirety. Any term in the Order that conflicts with, is additional to, or purports to supersede these Terms, including without limitation any provision asserting that buyer's terms and conditions shall control, is hereby rejected. JM Eagle's issuance of an Order Confirmation shall not constitute acceptance of any conflicting term in the Order. JM Eagle hereby provides advance notice of objection, pursuant to California Commercial Code Section 2207(2)(c), to any term in any Order or adjusted, amended, or revised Order issued by buyer that conflicts with, is additional to, or purports to supersede these Terms, including without limitation any provision asserting that buyer's terms and conditions shall control. No such term shall become part of any contract between the parties. The Order Confirmation indicates the date by which pricing expires ("Ship By Date"). Accordingly, the Ship By Date is an integral part of the agreement.
- 3. FREIGHT AND SHIPPING:** Unless the Order expressly stipulates otherwise, title, assumption of risk and shipping costs are FOB shipping point (INCOTERMS 2020) and delivery is the responsibility of the buyer. JM Eagle and the Buyer may agree to other title, assumption of risk, freight, shipping or delivery terms in the Order.
- 4. CREDIT:** All orders and shipments are subject to the credit approval of JM Eagle. JM Eagle reserves the right, at any time, not to fulfill orders placed by a non-approved Buyer or to require advance payment or other security.
- 5. TERMS OF PAYMENT:** Payment terms, including any discount for prompt payment, will be specified in JM Eagle's quote, and its invoice related to the Order. Any upfront discount must be incorporated in the Order. Any discount for prompt payment will be given only if payment to JM Eagle is U.S. postmarked on or before the discount date shown on the invoice. All payments shall be made by Buyer without setoff. Buyer is responsible for payment of any tax or other charge imposed by governmental authorities upon the sale, production, or shipment of the products being sold in the Order.
- 6. LATE PAYMENT PENALTIES:** Buyer shall pay interest on late payments at the lesser rate of 1.5% per month or the highest rate permissible under applicable law. Buyer shall reimburse JM Eagle for all cost incurred in collecting late penalties, including attorney fees.
- 7. WARRANTIES AND LIMITATION OF LIABILITY:** JM Eagle's Extended, Limited and Standard Warranties are incorporated by reference into these Terms, as further provided at jmeagle.com/document/warranty-information. In no event shall JM Eagle or the buyer be liable for consequential, incidental, exemplary or special damages, notwithstanding any other provision of these Terms or any other document that forms part of the final agreement. Further, JM Eagle's maximum aggregate liability related to an Order is the aggregate purchase price of the product identified in that Order.
- 8. CLAIMS:**
 - A)** Unless agreed otherwise in the applicable Order, all claims for damage or shortage in transit shall be handled with the carrier by Buyer and JM Eagle will not be liable for any damage or shortage caused by a carrier.
 - B)** All other claims under these Terms or in connection with the sale of products must be made within a reasonable time of discovery. Product may only be returned with the prior written consent of JM Eagle, subject to our internal processes, including the completion and delivery of a returned goods memorandum.
 - C)** If a buyer purchases products for resale, Buyer shall notify JM Eagle immediately of any claim by Buyer's customer so that JM Eagle has an opportunity to investigate. JM Eagle shall have no obligation to honor any settlement made by Buyer with its customer without JM Eagle's prior written consent.
- 9. ORDER CANCELLATION:** In the event of non-acceptance or repudiation by Buyer of an acknowledged Order, JM Eagle may seek remedies as provided by applicable law.
- 10. RETURNED GOODS:** The buyer must obtain written approval before returning any products to JM Eagle. On authorized returns of conforming goods, Buyer shall be responsible for return freight charges and a handling charge of up to 25%, and will be credited at the invoiced price. No credit shall be allowed for products returned which are found not to be in first class resaleable condition after testing, count and inspection by JM Eagle.
- 11. FORCE MAJEURE:** JM Eagle shall not be liable for a delay or non-performance, be deemed to have breached this agreement, or be in default of any of its obligations if JM Eagle has been delayed or prevented from doing so by conditions or circumstances beyond its reasonable control. Such conditions or circumstances include an Act of God (e.g., fire, flood, inclement weather, epidemic, or earthquake); war, act of sabotage or terrorism (such as chemical or biological warfare), loss of electrical power, inability to obtain material, inability to organize delivery, labor dispute, lockout, strike, embargo; governmental acts, orders, or restrictions; or the failure of third persons.
- 12. END-WARNING OBLIGATIONS:** Buyer agrees to deliver to the end user JM Eagle's Limited Warranty and Limitation of Liability together with all product warnings.
- 13. INDEMNIFICATION.** The buyer indemnifies, defends and holds JM Eagle harmless against (including its directors, officers, employees and agents) from any claim or demand related to the installation or use of the Product (that is not primarily caused by product defect), any breach of the agreement for the sale of JM Eagle product (including these Terms), and any environmental, property or toxic tort claims.
- 14. GOVERNING LAW:** These Terms shall be governed by the laws of the state of California, without any regard to the conflict principles.
- 15. AMENDMENTS:** JM Eagle reserves the right to unilaterally revise these Terms, from time to time.