



## **Argo Fine Imports**

### Order Confirmation / Terms & Conditions of Sale

Goods sold to customer (Buyer) will be confirmed with an Order Confirmation from our company (Seller). The Order Confirmation will confirm the verbally transacted contract between Buyer and Seller. By accepting delivery of Goods from Seller, Buyer agrees to be bound by the Terms of Sale unless otherwise set forth in a separate written agreement signed by Seller and Buyer. These Terms of Sale supersede all prior agreements, proposals and discussions between the parties with respect to the purchase and sale of the Goods other than a written agreement signed by both parties. The situs of acceptance of the purchase order is Louisiana, and the construction, performance and interpretation of this Agreement shall be determined by the laws of the State of Louisiana, USA, without reference to the choice of law, conflicts of law, or principles of any other state or country which might otherwise be applied.

#### GENERAL

Buyer acknowledges and agrees that the availability, timeliness of delivery, and price of the herein-described goods is contingent upon events, including, but not limited to, strikes, fires, ocean freight rates, duties, and other levies beyond Seller's control against which Seller does not impliedly or expressly warrant; and that price and delivery time may change as a result of these contingent events and that these contingent events may make the goods herein described unavailable.

#### CLAIMS AND REINSPECTION

Claims for shortages, defects, nonconforming goods or errors in shipment must be made in writing within 5 days after receipt of shipment, except that notice of claims based on moisture content must be given to Seller within 72 hours after receipt of shipment. All defects ascertainable at the time of giving notice shall be stated with particularity or deemed waived. Buyer shall within 15 days following the date of completion of delivery, furnish to Seller in support of a claim, a detailed proof of claim in writing, including all material facts upon which claim is made.

If Buyer's claim is based upon the grade or quality of the goods, or any portion thereof, Buyer shall accept delivery of and pay for, in accordance with the terms of the agreement, the portion of the goods in respect to which no claim is made, and shall hold intact and properly protect for a period of 30 days, for inspection by Seller or its authorized agent, the portion of goods in respect to which claim is being made hereunder.

Any reinspection of the goods shall be conducted and governed by IWPA standards and guidelines. The rules and standards of the IWPA, including any 10-day or other time limitation for the assertion of acknowledgement of claims or for requests for inspection, shall govern and shall be the basis for final settlement. The findings of that association shall be binding upon the parties in the event of litigation or arbitration. The expenses of the inspection and survey shall be borne by Seller if the item complained of is found to deviate from IWPA standards and guidelines, if no deviation is found, the expense shall be borne by Buyer.

All claims for shortage or damage related to shipments must be supported by written statement of Buyer or its agent, stating unit count, piece tally, seal number of the railcar if boxcar shipment and car numbers and initials, if any. If the shipment is a rail car and its seals have been broken or changed, there shall be a report of the transportation agent at destination, or by written statement the transportation agent was requested to make such a report and declined to do so. In cases of a complaint involving measurements and/or tally, the entire shipment shall be kept intact for inspection.

Buyer agrees that Buyer's exclusive remedy shall be to return the goods to Seller and to obtain repayment of the purchase price, or, at Seller's option, Seller may repair nonconforming goods, deliver replacement goods or refund the purchase price. Under no circumstances are goods to be returned to Seller unless Buyer has written permission of Seller to do so. A claim that goods are non-conforming shall not entitle Buyer to deduct any sum from any invoice unless such claim has been allowed in writing. Buyer agrees that no labor expense or any other consequential damages of any kind shall be recoverable from Seller for mis-delivery, non-delivery, defect or nonconformity of the goods, regardless of whether arising out of a contract, warranty or negligence, strict liability or other tort.

#### STATUTE OF LIMITATIONS

No litigation or arbitration by Buyer concerning the sale shall be commenced later than one year after the date of shipment.

#### MOLD

Seller makes no representation or warranty of any kind, express or implied, with regard to the existence or nonexistence of mold on the goods. Buyer is encouraged to examine goods received.

#### SELLER'S LIABILITY

Seller is a supplier and not the manufacturer of the goods and disclaims any warranty, express or implied, as to the quality or fitness of the goods for any particular purpose. Any claim of defect in the goods should be directed to the manufacturer. Seller will cooperate in processing any such claim. Any liability of Seller is limited to the cost of replacing defective and/or nonconforming goods at the point of delivery as specified in Seller's Order Confirmation. In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), shall Seller's cumulative liability to buyer exceed the purchase price for the specific goods giving rise to the claim or case of action.

#### ASSUMPTION OF LIABILITY, WARRANTY & FURTHER HANDLING

Buyer assumes all risks and liabilities resulting from the use of the shipped goods. Seller neither assumes nor authorizes any person to assume for Seller any liability in connection with the sale or use of the goods.

Unless the goods are subject to an express written limited or full warranty provided by seller, the goods are sold "As Is, With All Faults", without recourse, and Seller does not make, and hereby expressly disclaims, any and all representations and warranties of any kind whatsoever, express or implied, including but not limited to any warranties of or as to merchantability or fitness for a particular purpose.

Buyer shall indemnify, defend and hold harmless Seller, its affiliates and their representative officers, employees, representatives and agents from and against, any and all claims, losses, liabilities, costs and expenses (including attorneys' fees) arising out of or resulting from the use, handling, manufacture, processing, alteration, distribution, sale or marketing of the Goods, or any other action or inaction with regard to the Goods, in each case after the delivery thereof to Buyer; provided however, that Buyer shall not be liable to Seller for damages directly caused by the sole negligence of Seller.

#### FORCE MAJEURE

Seller is not responsible for loss or damages resulting from loss of merchandise at sea, or failure to make shipment within the specified time or to ship at all, when such failure is due to fire, strike, boycott, flood, earthquake, windstorm, war, riot or revolution, act of terrorism, government restriction or prohibition. In the event of force majeure, both Buyer and Seller will attempt to overcome it and keep each other informed of progress. If a force majeure event continues for one month, Buyer and Seller will attempt to continue with the agreement. Failing agreement, Seller may terminate the agreement.

#### SHIPMENT

Shipment shall mean shipment according to the specified week of shipment in the contract. If Seller fails to make shipment within the agreed period of time because of force majeure it shall notify Buyer at once. If Seller fails to make shipment within the agreed period for any other reason it shall notify Buyer and confirm adjusted ship dates with Seller in writing. If Buyer does not respond within time specified in the notice Seller may cancel the contract. In the event of delay of the arrival of the carrying vessel due to causes beyond Seller's control, Buyer is bound to still accept the goods.

#### CANCELATION

Buyer warrants that Buyer is solvent and that Buyer is able to pay the purchase price for goods purchased. Seller may cancel because of any arbitrary deductions made by Buyer or failure to comply with contract terms in respect to any shipment, including prior shipments, because of any transfer or change in Buyer's business, Buyer's insolvency, suit by other creditors, failure of Buyer to meet any financial obligations to Seller, impairment of Buyer's credit worthiness, or unfavorable credit reports made to Seller through usual channels of credit information, unless, Buyer shall pay cash in advance of receiving the shipment to be made. Seller shall retain the right to renegotiate price or cancel in the event of force majeure, mill insolvency, or other causes beyond Seller's control. No waiver by Seller of any breach of any term or

condition of any contract between Buyer and Seller shall constitute waiver of any subsequent or other breach of such provisions.

#### ARBITRATION

Any controversy or claim arising out of or related to any contracts between Buyer and Seller or breach thereof shall be settled by arbitration under the applicable Rules of the American Arbitration Association, or under the rules of any other organization providing arbitration services which may be agreed upon by the parties, with the place of arbitration being the State of Louisiana, Parish of Jefferson. Judgment may be entered upon the arbitration award. In connection with any arbitration proceeding, each party shall pay (a) one-half of the arbitrator's fees and any administrative charges associated with the proceeding, and (b) all of its own attorney and other professional fees and costs.

#### COLLECTION

Buyer agrees that if the Seller extends credit to Buyer and it becomes necessary for Seller to place unpaid amounts in the hands of an attorney, or collection agency, Buyer will pay any and all costs of collection, including, but not limited to, reasonable attorney fees and any court costs necessary to collect the past due balance. In the event that Seller determines, at any time in its sole discretion, that the credit of Buyer or of any person providing credit support for Buyer's obligations is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any agreement or instrument supporting Buyer's obligations, Seller shall have the right, among any other rights provided by applicable law, to declare immediately due and payable any and all amounts owed by Buyer to Seller, whether under these Terms of Sale or otherwise, and to suspend and/or terminate further delivery to Buyer of any order until credit arrangements satisfactory to Seller in its sole judgment have been established. In the event an invoice is over 30 (thirty) days past due, Buyer agrees to pay a service charge of the current Wall Street Journal Prime Rate plus 1-1/2% per month, calculated from the original invoice due date.

#### CHANGES IN DUTY AND/OR FREIGHT RATES

Any changes, after date of the contract, in rate of duty, United States import taxes, or valuations by United States Customs, shall be for the account of Buyer unless otherwise specified. Any change in freight rates between contract date and bill of lading date above and beyond the negotiated price shall be for the account of Buyer.

#### DETENTION

Goods are sold subject to inspection by USDA, or by any other United States Government Department, Bureau or Agency with jurisdiction over them. If the goods or any part of them are detained by the United States government and not released for entry after reasonable efforts have been made by Seller to remove such detention, it is understood that Seller is not required to make a replacement of the merchandise and that the contract in regard to the detained and unreleased merchandise shall then become void and Seller shall be released of all responsibility and liability except that Seller must either refund the purchase price, if paid, plus freight charges, insurance and other expenses incurred by Buyer in connection with the transaction, or at Seller's discretion provide the same material from another source.

#### MISCELLANEOUS

If any provision of these Terms of Sale is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired, and the parties shall use their best efforts to substitute a valid, legal and enforceable provision, which, insofar as practical, implements the purpose of these Terms of Sale.

Any additional, inconsistent or different terms or conditions contained in Buyer's purchase order or other documents submitted by or on behalf of Buyer at any time, whether before or after the date hereof, shall be deemed a material alteration and not a rejection of these Terms of Sale, and are hereby expressly rejected by Seller.

No waiver of any provision of these Terms of Sale by Seller will be valid unless the same is in writing and signed by Seller. Seller reserves the right to unilaterally modify any portion of these Terms of Sale without prior notice effective immediately upon posting at the Argo Fine Imports website ([www.argofineimports.com](http://www.argofineimports.com)). The current version of these Terms of Sale and any modifications supersede all prior versions of these Terms of Sale and is available at the Argo Fine Imports website ([www.argofineimports.com](http://www.argofineimports.com)) or upon request.

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