

CONDITIONS

All orders are accepted and all sales are made subject only to the provisions of the written contract between us under which the order is placed, or if no such contract exists, subject only to the terms on the face hereof and to the following provisions.

1. **Delivery and Freight: Risk of Loss.** Title to and all risk of loss of all goods sold hereunder shall pass to Buyer upon delivery f.o.b. Concrete Block Insulating Systems ("CBIS") plant to an agent of the Buyer including a common carrier, notwithstanding any prepayment or allowance of freight by CBIS. If CBIS pays freight CBIS shall have the right to select the carrier, routing and means of transportation, provided that Buyer may make an alternate selection and pay CBIS additional costs, if any.
2. **Freight, Weights and Orders.**
 - (a) Whenever CBIS is to pay freight, CBIS shall have the right initially to designate routing and means of transportation. If Buyer requires a more expensive routing and/or means of transportation Buyer shall reimburse CBIS for any cost involved. CBIS SHALL NOT BE LIABLE FOR ANY DELAY IN TRANSPORTATION HOWEVER OCCASIONED.
 - (b) CBIS' invoice weights, volumes, sizes and tares shall be treated as prima facie correct except that in case of bulk shipments by carload, tank car or otherwise carrier's weight shall be accepted as conclusive.
 - (c) Buyer's orders are not binding upon CBIS until accepted in writing by an authorized employee at CBIS' offices.
3. **Examination, Suitability and Claims.** Buyer shall examine and test each shipment of goods promptly upon delivery to Buyer and before any part of the goods has been changed from its original condition and Buyer hereby waives all claims for any cause after any part of the goods has been treated, processed or changed in any manner (except for reasonable test quantities). Buyer assumes sole responsibility for determining whether the goods are suitable for their contemplated use (whether or not such use is known to CBIS). Buyer waives all claims in which CBIS is not notified in writing within thirty (30) days after delivery of the goods or in respect of goods disposed of or returned without CBIS' consent.
4. **Warranties, Remedies and Limitations.**
 - (a) CBIS warrants to the Buyer that at the time of delivery the goods sold hereunder will conform substantially to the description on the face hereof. CBIS' liability and Buyer's remedy under this warranty are limited in CBIS' discretion to replacement of goods returned to CBIS which are shown to CBIS' reasonable satisfaction to have been nonconforming or to refund of the purchase price, or, if not paid, to a credit in the amount of the purchase price. Transportation charges for the return of nonconforming goods to CBIS and the risk of loss thereof will be borne by CBIS only if returned in accordance with written instructions from CBIS.
 - (b) CBIS warrants that the goods will not in and of themselves infringe any patent of the United States or Canada. CBIS' liability under this warranty is conditioned upon Buyer's giving prompt written notice of any claim of patent infringement made against Buyer, all information available to Buyer in respect of the claim, and Buyer's granting CBIS exclusive control of its settlement and/or litigation. CBIS may discontinue without liability delivery of the goods if in CBIS' opinion their manufacture, sale or use would constitute patent infringement. If the use or resale of the goods is finally enjoined CBIS shall at CBIS' option (i) procure for buyer the right to use or resell the goods previously delivered, (ii) replace such goods with equivalent noninfringing goods, (iii) modify them so they become noninfringing but equivalent, or (iv) refund the purchase price (less a reasonable allowance for use, damage, and obsolescence). CBIS makes no warranty against patent infringement resulting from the manufacture, use or sale of the goods, if made to Buyer's specifications or from use of the goods in combination with other matter or in the operation of any process, and if a claim, suit or actions is based thereon the Buyer shall defend, indemnify and save harmless CBIS therefrom.
 - (c) CBIS warrants to Buyer that it will convey good title to the goods sold hereunder. CBIS' liability and Buyer's remedy under this warranty are limited to the removal of any title defect or, at the election of CBIS, to the replacement of the goods or any part thereof which are defective in title; provided, however, that the rights and remedies of the parties with respect to patent infringement shall be limited to the provisions of paragraph (b) above.
 - THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES OF BUYER FOR ANY BREACH OF WARRANTY SHALL BE LIMITED TO THOSE PROVIDED HEREIN AND FOR DELAY OR NONDELIVERY WHICH IS NOT EXCUSABLE TO THE PURCHASE PRICE OF THE GOODS IN RESPECT OF WHICH THE DELAY OR NONDELIVERY IS CLAIMED TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES INCLUDING, WITHOUT LIMITATION, INCIDENTAL OR CONSEQUENTIAL DAMAGES. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR THIS LIMITATION WILL BE BINDING UPON CBIS UNLESS IN WRITING, SIGNED BY A DULY AUTHORIZED OFFICER OF CBIS.
5. **Prices, Credit and Payment.**
 - (a) Buyer shall pay for goods, according to the terms of payment as specified on the face hereof or those terms specifically quoted to the Buyer in writing. Pro rata payments shall become due as deliveries are made. Prices are subject to change without notice, however, on orders accepted for shipment within thirty (30) days, prices in effect at the time of acceptance will apply unless shipment is delayed beyond thirty (30) days, in which event prices in effect at the time of shipment will apply.
 - (b) If Buyer shall fail to fulfill the terms of payment, or if CBIS at any time shall have any doubt as to the Buyer's financial responsibility, CBIS without liability to Buyer may decline to make further shipments except against cash or satisfactory security.
 - (c) If CBIS is prevented from revising prices or from continuing any price already in effect by any action of government or by compliance with any request of government. CBIS may cancel this contract or any undelivered portion thereof without liability to Buyer upon written notice of such terminate to Buyer.
6. **Price and Payment Terms.** The price for Product will be specified in Seller's invoice. If payment is not received by Seller when due, any outstanding amount shall bear interest at the monthly rate 1.5% (18% per year) payable on the first day of default and on the first day of every month thereafter until paid in full. Buyer also shall pay to Seller on demand all expenses, including reasonable legal fees, incurred by Seller in protecting or enforcing any of its rights.
7. **Taxes, Duties and Excises.** In the absence of satisfactory evidence of exemption supplied to CBIS by Buyer, Buyer shall pay in addition to the price of the goods all taxes, duties, excises or other charges for which CBIS may be responsible for collection or payment to any government (national, state or local) upon, measured by or relating to the importation, exportation, production, or any phase or part of the production, storages, sales, transportation and/or use of the goods identified on the face thereof.
8. **Force Majeure.**
 - (a) Buyer acknowledges that the goods called for hereunder are to be specially manufactured by CBIS to fulfill this contract and delivery dates are based on the assumption that there will be no delay due to causes beyond the reasonable control of CBIS.
 - (b) CBIS shall not be charged with any liability for delay or nondelivery when due to delays of suppliers, production problems, acts of God or the public enemy, compliance with applicable foreign or domestic court order or government regulation, order or request whether or not it proves to be invalid, fires, riots, labor disputes, unusually severe weather, or any other cause beyond the reasonable control of CBIS. During the period when deliveries are affected by the matters identified in this paragraph, CBIS may omit delivery during the period of continuance of such circumstances and the contract quantity shall be reduced by the quantity so omitted, but this contract shall remain otherwise in effect. CBIS shall endeavor to allocate any available goods among all Buyers including its own divisions, departments and affiliates in such a manner as it considers fair.
9. **Assignment and Nonwaiver.**
 - (a) This contract is not assignable or transferrable by Buyer whether voluntary or by operation of law in whole or in part, without the prior written consent of CBIS.
 - (b) CBIS' failure to insist upon strict performance of any provision hereof shall not be deemed to be a waiver of CBIS' rights or remedies or a waiver by CBIS of any subsequent default by Buyer in the performance or compliance with any of the terms hereof.
10. **Separate Contract.** Each delivery shall stand and may be recovered for as a separate and independent contract. If Buyer fails to fulfill the terms of the order, purchase, or payment under this or any other contract with CBIS, CBIS without prejudice to other lawful remedies may at its option defer further shipments hereunder until such default is made good, treat such default as a breach of this entire contract or terminate this contract.
11. **Compliance with Fair Labor Standards Act.** CBIS hereby certifies that all goods sold hereunder which are produced or manufactured in the United States of America are produced in compliance with Sections 6, 7 or 12 of the Fair Labor Standards Act of 1938, as amended (29 U.S. Code 201-219), or of any order of the Administrator issued under section 14 of said Act. All requirements as to the certificate contemplated in the October 26, 1949 amendments to the Fair Labor Standards Act of 1938 shall be considered as satisfied by this certification.
12. **Royalties, Miscellaneous.** The purchase of equipment from CBIS confers no license, express or implied, under any patents. When goods identified on the face hereof include goods suitable for use according to CBIS' patents, a royalty (amount obtainable upon request) is included in the purchase price. Goods identified on the face hereof may vary according to CBIS' established limits, sizes and tolerances in effect at the time of delivery in respect to such goods. ANY ADVICE FURNISHED BUYER CONCERNING THE USE OF THE GOODS SHALL REPRESENT CBIS' BEST JUDGMENT IN THE CIRCUMSTANCES BUT IS ACTED UPON AT BUYER'S SOLE RISK.
13. **Entire Contract and Construction.**
 - (a) The contract between Buyer and CBIS in respect of the goods identified on the face hereof consists in its entirety of the terms and conditions appearing on the face and back of this document in lieu of all others, and supersedes all previous communications, representations, or agreements either oral or written, between the parties hereto with respect to the subject matter hereof. No modification shall be effected by the acknowledgement or acceptance of Buyer's purchase order forms or other documents containing terms or conditions different from or in addition to those contained herein.
 - (b) Acceptance or use by Buyer of any goods delivered hereunder shall be an acceptance of these as the only terms and conditions applying to the purchase and sale of said goods unless other terms and conditions be agreed to in writing signed by both parties specifically referring to the contract.
 - (c) This contract shall be interpreted in accordance with and the construction thereof shall be governed by the laws of the Commonwealth of Massachusetts. Captions as used in these terms and conditions are for convenience of reference and shall not be deemed or construed as in any way limiting or extending the language of the provisions to which such captions may refer.

800-628-8476 or 508-867-4241
Order Fax: 508-867-5702

CONCRETE BLOCK INSULATING SYSTEMS, INC.

P.O. Box 1000 • Freight House Road • West Brookfield, MA 01585

www.cbisinc.com • Email: korfil@cbisinc.com

Member of NCMA and EPSMA

