

## ISCO Canada, Inc. dba ISCO-AH McElroy

### Terms and Conditions of Sale

**Order Acceptance:** All orders are subject to the approval and acceptance by an authorized representative of Seller. Your order, when shipped by us, shall be the complete contract between us, subject to and incorporating therein, the terms and conditions set forth herein, and any provisions contained in your order that are inconsistent with or contrary to the terms and conditions set out herein shall be inapplicable and invalid and are hereby expressly rejected by us. In any event, your acceptance of the goods or service shall confirm your acknowledgement of and agreement to Seller's terms and conditions of sale.

**Cancellation:** Any order that is in the process of production or shipment is not subject to cancellation, deferment of delivery, or change of specification without the written approval of an authorized representative of Seller.

**Freight Conditions:** Unless specifically stated that freight is allowed, all orders shall be F.O.B shipping point. Title to the goods and risk of loss shall pass to the Buyer, Buyer's representative, or common carrier at the F.O.B. shipping point and Seller shall have no responsibility for any damages or losses attributable to any carrier transporting the goods from the F.O.B point to final destination. When freight is allowed, the prices are F.O.B. from the shipment point, with freight allowed to specified destination. The point or origin of the shipment, the method of transportation, and the routing of shipments are at the discretion of Seller.

**Price and Payment Terms:** Unless otherwise stated herein, the Price, Transportation, and Taxes for the products will be as agreed upon and documented in the Order Acknowledgement which has been sent to and accepted by the BUYER. If there is an increase in raw materials or transportation costs prior to completion of the order, the additional cost will be borne by BUYER and reflected in a revised Order Acknowledgement, which shall be forwarded to BUYER. Price does not include third party testing, which will be the sole expense of BUYER. All invoices are due net 30 days, with all past due accounts subject to a service charge of 1.5% per month (18% annually).

**Performance and Delivery:** All promises as to the date of shipment are made in good faith and as an estimate only, and therefore cannot be guaranteed. Accordingly, Seller shall not be liable to Buyer for any delay in delivery. BUYER will promptly unload any release transportation equipment furnished or arranged for by SELLER. BUYER is solely liable for detention and demurrage charges assessed at the destination. Product shortages and visibly damaged or defective products must be reported to SELLER within 10 days of delivery. BUYER may not withhold payment on uncontested product deliveries. SELLER reserves the right to ship, and BUYER agrees to accept and pay for quantity within 10% plus or minus of the quantity ordered.

**Inspection and Return Policy:** After delivery the products are to be inspected immediately. Located defects need to be submitted in writing to SELLER within 24 hours after delivery. Please note kind and extent of defect. Claims later cannot be acknowledged. Buyer shall not return any goods without obtaining prior written authorization from an authorized representative of the Seller. Goods returned for credit must be in new condition and will be subjected to a minimum twenty-five percent (25%) restocking charge, F.O.B Seller shipping location. Only standard stocking items with a standard part number are eligible for return. Non-standard items, items shipped direct from

a manufacturer, or specialty-made goods will not be accepted for return.

**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 BUYER.

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 one year after product shipment.

In the event Seller performs any pipe joint fusing services for or on behalf of Buyer, Seller warrants, for a period of ninety (90) days following the date a fused pipe joint was made, that any such joint will not fail to the extent caused by the faulty workmanship of Seller. Buyer's sole and exclusive remedy against Seller for a breach of this warranty shall be at Seller's option, either to return to Buyer the amounts paid for such services, or for Seller to re-perform the allegedly defective services. Any technical advice or assistance furnished by SELLER to BUYER with respect to the selection or use of the products delivered to BUYER hereunder will be given and accepted at BUYER'S sole risk, and SELLER will have no liability whatsoever for the use of, or results obtained from, such advice or assistance.

THE WARRANTIES SET FORTH ABOVE ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND BUYER ACKNOWLEDGES THAT EXCEPT FOR SUCH LIMITED WARRANTIES, THE GOODS AND SERVICES ARE PROVIDED "AS IS." SELLER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, WITHOUT LIMITATION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED UNDER ANY "SALE OF GOODS" LEGISLATION OR OTHERWISE, OF ANY KIND, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE WARRANTIES ALLEGEDLY ARISING FROM ANY TRADE USAGE OR FROM ANY COURSE OF DEALING OR PERFORMANCE.

**Buyer Warranty and Representation:** Buyer warrants that it has not relied on any representation made by Seller which has not been stated expressly in writing or upon any descriptions, illustrations or specifications contained in any marketing or other publicity material produced by Seller. Further, Buyer acknowledges that to the extent Seller has made any representation which is not otherwise expressly stated in writing, the Buyer has been provided with an opportunity to independently verify the accuracy of any such representation.

**Indemnification:** Buyer shall indemnify, defend and hold harmless Seller and its agents and employees from and against any cause of action, suit, claim, damage, loss and expense, including attorney's fees, (including without limitation the personal injury, death or damage to property of any third person) arising out of or in connection with the sale, transportation, installation, application, use or repair of the goods by Buyer, whether caused in part by the concurrent and/or contributory negligence of Seller or its agents, employees or suppliers. The

provisions of this paragraph shall survive the consummation of any sale or other transaction between Buyer and Seller.

**Limitation of Liability:**

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY BODILY INJURY OR PROPERTY DAMAGE, OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS, OR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR LIQUIDATED DAMAGES INCURRED BY BUYER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS OR PROFITS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR ANY OTHER CAUSE OF ACTION, ARISING OUT OF OR IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE GOODS SOLD BY SELLER. SELLER'S TOTAL LIABILITY, IF ANY, ARISING OUT OF OR IN CONNECTION WITH ANY GOODS OR SERVICES SOLD UNDER THIS AGREEMENT, FOR CLAIM(S) OF ANY NATURE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICES RELATED TO THE CLAIM.

THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**Taxes:** Prices do not include any present or future federal, provincial, state, local or foreign taxes unless specifically stated. It is the responsibility of Buyer to assume all taxes. When applicable, taxes may be added to the purchase price and be paid by Buyer unless Buyer furnishes a tax-exemption certificate in a form agreeable to the respective authority.

**Export and Import Restrictions, Licenses and Permits:** As applicable, Buyer agrees to comply with all export and import control laws and regulations concerning the export, import, re-export and re-import of Seller's goods, technology and documentation, including without limitation, the laws and regulations administered by the US Department of Commerce, US Treasury Department, US Department of State and the Canadian Department of Foreign Affairs, Trade and Development Canada. Buyer shall be responsible for obtaining and paying for any permits, licenses, or other governmental authorization(s) necessary for the importation of any goods into the designated country of importation, and it shall comply with all laws and regulations thereof.

**Anti-Corruption.:** Buyer acknowledges that it is not the agent of Seller and represents and warrants that it has not and covenants that it will not pay anything of value to any government official in connection with the resale of any goods in contravention of the Foreign Corrupt Practices Act, Corruption of Foreign Public Officials Act, or any other anti-corruption legislation.

**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 BUYER 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 and 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 circumstances affecting its performance obligations.

**Severability:** If any provision hereof is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision hereof is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

**Non-Waiver:** The waiver by Seller of any breach of any provision contained herein shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained herein.

**Governing Law:** These terms and conditions, and any order subject thereto, shall be deemed to have been entered into in the province of Manitoba, and all matters arising out of or relating to it shall be governed by and construed in accordance with the laws of Manitoba and the federal laws of Canada applicable therein without giving effect to principles of conflicts of laws. Buyer and Seller irrevocably attorn and submit to the exclusive jurisdiction of the Manitoba courts situated in the City of Winnipeg and waive objection to the venue of any proceeding in such court or that such court provides an inconvenient forum. The *United Nations Convention on Contracts for the International Sale of Goods* (the "Convention") and any other legislation applying the terms of the Convention within a particular jurisdiction are hereby expressly disclaimed with respect to this agreement between Buyer and Seller.

**English Language:** The parties confirm that it is their wish that this contract be drawn up in the English language only; les parties aux présentes confirment leur volonté que ce contrat soit rédigé en langue anglaise seulement.

**Entire Agreement:** These terms and conditions shall constitute the complete agreement between Buyer and Seller, and no change in or modification of the same shall be binding upon Seller unless the change or modification shall be in writing, consented to and approved by a duly authorized representative of Seller. **UNLESS EXPRESSLY AGREED IN WRITING BY ISCO, NO OTHER TERMS AND CONDITIONS OTHER THAN THOSE SET OUT HEREIN SHALL FORM A PART OF ANY AGREEMENT BETWEEN THE PARTIES, AND ANY PROVISIONS CONTAINED IN ANY ACKNOWLEDGEMENT, INVOICE, FORM, CONTRACT, TERMS AND CONDITIONS, OR ANY OTHER COMMUNICATION FROM VENDOR THAT ARE INCONSISTENT WITH OR IN ADDITION TO THIS AGREEMENT WILL HAVE NO FORCE OR EFFECT.**