

Terms & Conditions of Sale

- 1. PAYMENT TERMS:** All invoices are due within the terms of sale on each invoice. Any amounts not paid when due shall bear a late payment fee which shall be calculated as interest at the rate of 2.50% percent or the maximum legal rate, whichever is less, per month on the past due amount, which shall be added to the amounts owed under the invoice and any future invoices until paid in full. ALL COSTS OF COLLECTION are the responsibility of the buyer, irrespective of litigation.
- 2.** Title and risk of loss shall pass FOB the carrier at Sellers's "Point of Shipment."
- 3. COMPLETE AGREEMENT:** Seller's Order Acknowledgment, and terms incorporated therein by reference or written amendment, contains the entire contract between Buyer and Spartan Mat LLC and/or Spartan Composites LLC. Prior negotiations or representations between the parties that are not reflected in the Order Acknowledgment are NOT part of the agreement. Any different or additional items or conditions proposed by Buyer in variance form the terms of this Order Acknowledgement are rejected by Seller, unless accepted in writing by Seller.
- 4. LIMITATION OF WARRANTY:** Seller warrants that the Goods delivered shall conform to the grade and quantity specified in the Order Acknowledgment. If the Order includes goods which have been fabricated in accordance with shop drawings approved or supplied by Buyer, those goods are warranted to be in substantial conformance with the drawings. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
- 5. NONCONFORMING GOODS:** All ascertainable defects or nonconformities in the goods shall be described with particularity, in writing or by transmitted photographs, within 5 days of delivery, or will be deemed waived. All nonconforming goods must be held intact at the delivery point for inspection by Seller or Seller's agent. Under no circumstances are goods to be returned to Seller unless Buyer has written permission from Seller to do so. Seller shall replace or refund Buyer for non-conforming goods. Buyer has no right of offset.
- 6. BUYER'S EXCLUSIVE REMEDY.** SELLER'S LIABILITY AND BUYER'S REMEDY SHALL BE LIMITED TO THE REPLACEMENT OF NONCONFORMING GOODS WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY REJECTION BY BUYER. AT SELLER'S OPTION, SELLER MAY REPAIR THE NONCONFORMING GOODS, DELIVER REPLACEMENT GOODS OR REFUND BUYER'S PURCHASE PRICE. BUYER AGREES THAT NO COST FOR LABOR, DELAY, OR ANY OTHER CONSEQUENTIAL DAMAGES OF ANY KIND SHALL BE RECOVERABLE FROM SELLER FOR DELIVERY, NONDELIVERY, SALE OR USE OF GOODS REGARDLESS OF WHETHER ARISING OUT OF CONTRACT, WARRANTY, OR NEGLIGENCE, STRICT LIABILITY OR OTHER TORT.
- 7. LIMITATION ON ACTIONS:** NO ACTION OR SUIT TO ENFORCE BUYER'S RIGHT'S OR REMEDIES ARISING FROM THIS SALE SHALL BE COMMENCED LATER THAN ONE YEAR FROM THE DATE OF SHIPMENT.
- 8. FORCE MAJEURE.** In the event of any delay in Seller's performance due to fire, explosion, strike, or other difference with a workman, shortage of utility, facility, material or labor, delay in transportation, breakdown or accident, compliance with or other action taken to carry out the intent or purpose of any law or regulation, or any cause beyond Seller's reasonable control, Seller shall have such additional time within which to perform this agreement as may be reasonably necessary under the circumstances and shall have the right to apportion its production among its customers in such manner as Seller may consider to be equitable.
- 9. JURISDICTION, VENUE AND FEES.** This agreement is governed by the laws of Arizona and that any party to any contract with Spartan Mat and Spartan Composites submits to the personal jurisdiction of the State and Federal Courts located in Maricopa County, Arizona, accordingly.