

SALES TERMS AND CONDITIONS
(Quotes and Invoice)

The relationship between any buyer or purchaser as described in any sales or purchase instruments or agreements entered (collectively "Buyer") with Cresline-Northwest, LLC, Cresline Plastic Pipe Co., Inc. and Cresline-West, Inc., and their affiliated and related companies, subsidiaries, officers, directors, employees and agents (collectively "Seller") for the purchase of any goods, materials, merchandise, services, items or products (collectively "Goods") covered thereby is conditioned upon the terms and conditions contained in this instrument, the invoice and subsequent invoices, as they may be amended and supplemented from time to time (collectively "Agreement"). Any additional or different terms or conditions proposed by Buyer are objected to and will not be binding upon nor of force or effect on Seller unless specifically accepted in writing and signed by an authorized representative of the Seller.

1. **Terms of Acceptance.** If Seller accepts Buyer's order or offer, it does so provided Buyer agree only to the terms and conditions of this Agreement, all of which are accepted by Buyer; and this Agreement supersedes Buyer's order from, if any; and supersedes and cancels all prior communications between the parties. This Agreement shall become a binding contract either when signed and delivered by Buyer to Seller and accepted in writing contemporaneously with the order by Seller, or at Seller's option, when Buyer shall have given to Seller specifications, delivery dates, shipping instructions or instructions to bill and hold as to all or any part of the Goods herein described, or when Buyer has received delivery of the whole or in any part thereof, or when Buyer has otherwise assented to this Agreement.

2. **Representations, Limited Warranties and Disclaimers.** Seller represents and warrants the Goods shall be free of rot, rust, electrolytic corrosion and defects in material and workmanship for limited warranty period of one (1) year after delivery or as otherwise provided for in Seller's product literature for the particular Goods in question, which literature is made a part hereof. Seller's complete responsibility for its warranty is limited to the furnishing of sufficient goods to replace defective Goods. SAID EXPRESSED WARRANTIES ARE THE SOLE WARRANTIES PROVIDED AND SELLER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OR MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. SELLER HEREBY DISCLAIMS ALL INDEMNITIES AND PROVISIONS FOR ASSESSMENT OF ATTORNEY FEES AND EXPENSES.

3. **Examination of Goods.** Buyer shall make an examination as to quantity of any Goods delivered hereunder immediately upon receipt and failure of Buyer to give notice of any claims within 30 days after receipt of such Goods shall be an unqualified acceptance of such Goods and a waiver of Buyer of all claims with respect thereto. No claim of any kind, whether as to Goods delivered or for non-delivery of Goods, shall be greater in amount than the purchase price of the Goods in respect of which such claim is made.

4. **Standard Discounts.** Standard discounts will apply to all less than truckload orders.

5. **Truckload Discounts.** Pipe and fittings orders will earn the truckload discount on any combination of products with a minimum weight of 18,000 pounds. PVC-DS orders meeting the truckload requirements outlined on Seller Form No. 562, which is made a part hereof, will also earn the truckload discount.

6. **Freight.** Orders of \$15,000.00 or more at net price will be freight prepaid allowed on PVC pipe or combined orders of PVC, PE, or CPVC pipe. Orders of \$6,000.00 or more at net price will be freight prepaid allowed on PE or CPVC pipe. Orders of less than \$15,000.00, or \$6,000 on PE or CPVC pipe only orders, at net price will be freight prepaid and billed. Excess freight charges, resulting from special customer requested routings, will be billed.

7. **Minimum Order.** For stocking distributors, no invoice will be issued in a net amount of less than \$300.00. For non-stocking distributors, no invoice will be issued for a net amount of less than \$15,000.00. Any order received below the minimum net will automatically be processed and billed at the minimum charge.

8. **Defective or Non-conforming Goods.** If any Goods are defective or does not otherwise conform, Buyer shall give Seller written notice of such defect or non-conformity and reasonably opportunity to cure, which opportunity shall be a minimum of 30 days after written notice of defect or non-conformity has been received by Seller.

9. **Seller's Right to Reject, Rescind or Cancel.** Seller shall have the right to rescind all or part of any offer, order or this Agreement if: (a) Buyer breaches or fails to perform any of its obligations under the contract; (b) Buyer becomes insolvent; (c) proceedings are instituted by or against Buyer under any federal or state bankruptcy of insolvency laws; (d) Buyer ceases operations; or (e) Seller determines in its full discretion that it elects to reject, cancel or rescind.

10. **Buyer's Cancellation.** With all orders being individually entered and processed immediately upon receipt, Seller reserves the right to charge back to the customer costs incurred from either cancellation or any changes on the order.

11. **Buyer's Additions.** Seller reserves the right to consider order add-ons as separate and new orders subject to this Agreement.

12. **Shortage Claims.** All claims for shortages must be made within 30 calendar days of date of shipment. All claims for damages or shortages resulting from shipment handling must be made to the carrier.

13. **Returned Goods.** No returned Goods from any source will be accepted by Seller, without written approval, together with shopping instructions, from Seller. If permission is granted, the returned Goods will be subject to a 20% handling charge plus freight cost. Non-standard items or fabricated items are not returnable.

14. **Deductions and Set-off.** Buyer shall have no right of deduction or set off against sums due Seller for Goods which have either been delivered or which Seller has undertaken to deliver.

15. **Payment Terms.** Net 30 days; or 2% cash discount on invoices dated 1st – 15th, inc. if paid on or before 25th of said month, and for invoices dated 16th thru end of month if paid on or before 10th of the following month. Buyer agrees to pay the net amount as set forth on the invoice. Buyer shall assume, in addition to the purchase price, all taxes, however designated, levied or based on such price of the Goods or on this Agreement, including, but not limited to, state and local sales, use, privilege or excise taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by Seller in respect of the foregoing, exclusive, however, of taxes on net income. Unpaid delinquent balances will be assessed a late fee charge of eighteen percent (18%) per month, and will continue to accrue each month on unpaid balances until paid in full.

16. **Indemnification.** To the fullest extent permitted by law, BUYER SHALL DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, SUBROGATION CLAIMS BY BUYER'S INSURERS, CAUSES OF ACTION, CONTROVERSIES, LIABILITIES, FINES, REGULATORY ACTIONS, SEIZURES OF EQUIPMENT, LOSSES, COSTS, EXPENSES (INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERT WITNESS EXPENSES AND LITIGATION EXPENSES) (HEREINAFTER COLLECTIVELY, "CLAIMS"), ARISING FROM OR IN CONNECTION WITH CLAIMS ASSERTED AGAINST SELLER FOR ANY DAMAGE, ENVIRONMENTAL

LIABILITY, PATENT AND/OR INTELLECTUAL PROPERTY INFRINGEMENT RESULTING FROM:

1. INJURY, DEATH, LOSS, PROPERTY DAMAGE, DELAY OR FAILURE IN DELIVERY OF THE GOODS OR ANY OTHER CLAIMS, WHETHER IN NEGLIGENCE, TORT, CONTRACT, OR OTHERWISE, RELATING TO THIS AGREEMENT;
2. THE SPECIFICATIONS PROVIDED BY BUYER;
3. THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES;
4. THE GOODS;
5. BUYER'S BREACH OF THIS AGREEMENT; AND/OR
6. BUYER'S USE, MODIFICATION OR ALTERATION OF THE GOODS

Notwithstanding the foregoing, Buyer has no indemnity obligation to Seller with respect to any Claims that result solely from the negligence of Seller and this indemnity provision does not purport to indemnify Seller solely for its own negligence, but rather for the negligence or conduct, whether sole or concurrent, of Buyer. Buyer, for itself and its insurers, expressly waives any and all limitations or liability caps, if any, on Buyer's contribution liability to Seller, and any and all statutory or common law lien rights or Claims against Seller arising from any applicable workers compensation or disability acts, which Buyer might or could assert against Seller or Seller's insurers in the event of the personal injury or death of Buyer's employees, representatives or servants. Without limiting the foregoing, Buyer, for itself and its insurers, also waives any Claims, liens or other rights it may have as a result of being subrogated to any rights of its employees, representatives or servants. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR OR HAVE ANY DUTY FOR INDEMNIFICATION OR CONTRIBUTION TO THE OTHER PARTY FOR ANY CLAIMS FOR STATUTORY OR COMMON LAW INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, TREBLE OR LIQUIDATED DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, REVENUE, PROFIT, BUSINESS OPPORTUNITIES AND THE LIKE, DEPRECIATION OR DIMINUTION IN VALUE, EVEN IF THE PARTY HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES

17. **Waiver and Severability.** This Agreement shall be deemed to be separable. If any part thereof is held to be invalid for any reason, the other terms and conditions hereunder shall remain in full force and effect. Seller's waiver of any breach, or failure to enforce any of this Agreement, shall not be deemed to affect, limit or waive

Seller's right thereafter to require compliance with this Agreement.

18. **Force Majeure.** Seller shall have no liability or obligation to Buyer of any kind, including, but not limited to, any obligation to deliver Goods as a result of causes, conduct or occurrences beyond Seller's reasonable control, including, but not limited to, commercial impracticability, fire, flood, act of war, terrorism, civil disorder or disobedience, act of public enemies, problems associated with transportation (including car or truck shortages), acts or failure to act of any state, federal or foreign governmental or regulatory authorities, labor disputes, strikes, or failure of suppliers to make timely deliveries of materials, goods or services to Seller.

19. **Termination.** Seller may at its full discretion at any time terminate any order related to this Agreement in whole or in part by written notice to Buyer.

20. **Alternative Dispute Resolution.** Any and all disputes, complaints, controversies, claims and grievances arising under, out of, in connection with, or in any manner related to this Agreement or the relationship of parties hereunder shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The obligation to arbitrate shall extend to any affiliate, subsidiary, officer, employee, shareholder, principal, agent, trustee in bankruptcy or guarantor of a party making or defending any claim hereunder. Any decision and award of the arbitrator shall be final, binding and conclusive upon all of the parties hereto and said decision and award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana, before one (1) arbitrator who shall be an attorney who has substantial experience in commercial law issues. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Indiana (not including the choice of law rules thereof). However, neither party shall institute an arbitration, or any other proceeding to resolve such disputes between the parties before that party has sought to resolve disputes through direct negotiation with the other party. If disputes are not resolved within three (3) weeks after a demand for direct negotiation, the parties shall attempt to resolve disputes through mediation conducted in Evansville, Indiana. If the parties do not agree on a mediator within ten (10) days, either party may request the American Arbitration Association to appoint a mediator who shall be an attorney who has substantial experience in commercial law issues. If the mediator is unable to facilitate a settlement of disputes within forty-five (45) days, the mediator shall issue a written statement to the parties to that effect and the

aggrieved party may then seek relief through arbitration as provided above. The fees and expenses of the mediator shall be split and paid equally by each of the parties. In the event of any arbitration between the parties hereto involving this Agreement or the respective rights of the parties hereunder, the party who does not prevail in such arbitration shall pay all the prevailing party's reasonable attorneys' and experts' fees, costs and expenses incurred by the prevailing party in resolving said matter. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving two (2) or more parties. Notwithstanding said Rules, each party shall be permitted and limited to a single deposition of such opposing party and its expert witness(es) at opposing party's place of business, which deposition(s) shall not exceed our (4) hours each in duration. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures as provided for elsewhere in this Agreement, in aid of the arbitration proceedings, or to enforce the arbitration award, but not otherwise. Any such application to a court shall not be deemed incompatible or a waiver of this provision. The arbitrator shall be required to make written findings of fact and conclusions of law to support its award. Except as may be required by law, neither a party nor an arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. By execution of this Agreement, the parties consent to the jurisdiction of the American Arbitration Association and waive any objection which either party may have to any proceeding so commenced based upon improper venue or forum non conveniens.

21. **Interpretation.** All rights granted to Seller herein shall be in addition to and not in lieu of Seller's rights by operation of the law. No modification of this Agreement or any other provision of the contract shall be valid unless in writing and signed by Seller. Should any of this Agreement or any other provision of the Agreement be declared by a court of competent jurisdiction to be invalid, such judgment shall have no effect on the remaining provisions. This Agreement shall inure to the benefit of and be binding upon both Buyer and Seller, their legal representatives, successors and assigns, except as limited herein below. **IN THE CASE OF CONFLICT BETWEEN THIS AGREEMENT AND ANY OTHER INSTRUMENT ENTERED BY THE BUYER AND SELLER, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL PREVAIL.**