

Warranty Form for Rubber Expansion Joints

- 1. DEFINITION:** "Document" shall refer to these General Terms and Conditions and the Purchase Order, Invoice, or Delivery Ticket, as the case may be, printed on the face hereof.
- 2. DELIVERY:** Time is of the essence in this transaction, and if delivery of conforming Product(s) or performance of conforming services is not completed by the time(s) promised, Buyer reserves the right, in addition to its other rights and remedies, to cancel this order, to reject such Product(s) or services in whole or part on reasonable notice to Seller, and/or to purchase substitute Products or services elsewhere and charge Seller with any loss incurred. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk.
- 3. PRICE:** Buyer shall not be billed at prices higher than stated herein unless authorized in writing by Buyer. Seller agrees to notify Buyer of any price reduction made in Products or services covered by this Document subsequent to the date hereof and prior to delivery or performance and agrees that any such reduction will be applicable to this Document.
- 4. TERMS:** This sale is limited of these terms and conditions. Any additional or different terms or conditions proposed by you are rejected unless we expressly agree there to in writing. A contract embodying all and only these terms and conditions shall be formed by (i) delivery of materials or goods ("Product(s)") or performance of services and (ii) acceptance of such Product(s) or services by buyer. References to this document shall, unless the context otherwise requires, include any contract resulting from this Document. No modification of this document shall be effective without our written consent. No course of prior dealings, no usage of trade, and no course of performance shall be used to modify, supplement, or explain any terms used in this Document.
- 5. PAYMENT:** All payments are due pursuant to the payment term on the face of this Document.
- 6. TERMINATION:** Buyer expressly reserves the right, in the event that this Document is issued pursuant to a prime contract with the Government or to a subcontract thereunder, to terminate the work under this Document at any time by written or telegraphic notice to Seller stating the extent and effective date of such termination, in which event the rights and obligations of the parties hereto shall be determined in accordance with the termination provisions applicable to such Government contract.
- 7. CONTINGENCIES:** Failure of either party to perform hereunder, except for the payment of money, in whole or in part, occasioned by act of God, act of the public enemy, fire, explosion, perils of sea, flood, drought, war, riot, sabotage, terrorism, accident, embargo, government priority, requisition or allocation, or any circumstance of like or different character beyond the reasonable control of the party so failing to perform, shall not subject said party to any liability to the other party for such period of time and to the extent that such contingency precludes performance.
- 8. WARRANTIES:**
- (a) Seller makes NO WARRANTY WHATSOEVER, except as to title, with respect to any Product(s) manufactured and/or designed to Buyer's own specifications (other than mere dimensions), and Buyer shall, at its own expense, indemnify, defend and hold Seller harmless from and against any claim, suit, or expense which shall be asserted or brought against Seller by reason of its manufacture or sale of such Product(s).
 - (b) Seller makes NO WARRANTY WHATSOEVER concerning any Product(s) manufactured by others, but will extend to Buyer any warranties respecting such Product(s) as made by the manufacturer of such Product(s). Seller will repair or replace any Product(s) manufactured by Seller which prove defective within one (1) year from the date of shipment if such defects are due to defective workmanship of Seller's employees, provided that the Product(s) has or has been (i) properly assembled and utilized in accordance with Seller's design thereof and instructions relating thereto AND (ii) returned to the Seller at Buyer's expense. This warranty shall be voided by any changes made in the Product(s) prior to or in connection with their assembly or use.
 - (c) EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED ABOVE THERE ARE NO WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHICH EXTEND BEYOND THE DESCRIPTION OF THE PRODUCT(S) ON THE FACE HEREOF NO WARRANTIES OF REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF SELLER SHALL BE EFFECTIVE TO VARY OR EXTEND THE ABOVE REFERENCED EXPRESS WARRANTIES OR ANY OTHER TERMS HEREOF.
 - (d) In no event shall Seller be liable for consequential, incidental, or special damages resulting from or in any matter related to the Product(s), the design, use, or any inability to use the Product(s), including without limitation, damages arising out of or in any manner relating to the delivery of the Product(s), or any delay with respect to delivery of the Product(s). The sole and exclusive remedy with respect to any defective Product(s) manufactured by Seller shall be repair, correction, or replacement thereof pursuant to the "WARRANTY" provisions above. Should the Product(s) prove so defective, however, as to preclude the remedying of warranted defects by repair or replacement. Buyer's sole and exclusive remedy shall be the refund of the purchase price of the defective Product(s) involved, upon return of the Product(s) to Seller.
 - (e) Seller warrants that the use or sale of any Product(s) delivered hereunder, or any part thereof, except any Product(s) produced to Buyer's drawings or specifications, does not infringe any adverse valid existing patent. Seller shall indemnify, defend, and hold harmless Buyer, Buyer's customers, users of the Product(s), and any of their successors and assigns, from and against any and all liability, damage, loss, cost, or expense incurred in connection with any claim, suit, or action for actual or alleged infringement of any such patent, arising out of or in connection with the use or sale of such Product(s).
- 9. LOSS IN TRANSIT:** Title and risk of loss in transit shall pass to Buyer upon delivery to (i) Buyer or (ii) a carrier, where shipment is made F.O.B. Seller's shipping point.
- 10. ASSIGNMENT:** Either party's assignment of this Document, of any interest herein, or of any money due or to become due hereunder without the prior written consent of the other party shall be void, unless such assignment is made to an affiliate of the assigning party.
- 11. INDEPENDENT CONTRACTOR:** In performing any services hereunder, each party is and undertakes performance hereof as an independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation, exclusive liability for the payment of all Federal, State, and local Unemployment and Disability Insurance and all Social Security and/or other taxes and contributions payable in respect of such persons from and against which liability each party agrees to indemnify, defend, and hold harmless the other part.
- 12. MANNER OF PERFORMANCE:**
- (a) Each party shall comply with all laws, regulations, and/or other requirements of local, state, and federal governments in connection with its manufacture or delivery of any Product(s) or performance of any services hereunder, including without limitation, those pertaining to financial capability responsibility and security for pollution damage and the price production sale, or delivery of the Product(s) or services. Specifically, but not by way of limitation, each party agrees to comply with Executive Order 11246 regarding equal employment opportunity, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1972, the Occupational Safety and Health Act, the Fair Labor Standards Act, the Americans with Disabilities Act, and all regulations promulgated pursuant to any of the above.
 - (b) If this order involves the presence of either party on the other party's premises, such party comply with all safety, health, and security laws, regulations, and the other party's policies and shall take all necessary precautions to prevent injury or damage to persons or property while so engaged.