

# TIMPTE SALES ORDER TERMS AND CONDITIONS

1. The terms and conditions set out herein along with the products, specifications and pricing set forth by Timpte, Inc. ("Timpte") on the Sales Order Form delivered contemporaneously herewith (the "Order Form") and as designated by the specific order number identified on the first page of said Sales Order Form are, collectively, hereinafter referred to as the "Order". THIS ORDER IS EXPRESSLY MADE CONDITIONAL ON DEALER'S ASSENT TO THE TIMPTE LIMITED WARRANTY AND ALL OF THE TERMS AND CONDITIONS SET OUT HEREIN AND IN THE ORDER FORM. The terms of this Order as prepared by Timpte and provided to the Dealer, specifically including, without limitation, the Standard Specifications and Optional Equipment set forth on the face of the Order Form, as well as the terms and conditions of the Timpte Limited Warranty and these Timpte Sales Order Terms and Conditions may not be amended or modified except to the extent any such amendment or modification is expressly agreed to in advance of the date on which the duly executed Order is delivered by Dealer to Timpte and is set forth in a separate written amendment that is signed by a duly authorized sales manager, officer or employee of Timpte and is attached to the Order as an exhibit on the date such Order is actually received by Timpte. Any variations in the terms of this Order or the Timpte Limited Warranty are hereby objected to and rejected. As used herein "Dealer" shall mean the person, firm, or entity identified as the Dealer and whose name and address appear on the face of the Order Form.
2. Unless otherwise stated on the Order Form, the delivery dates specified are estimates only and shall not be binding on Timpte unless approved in a written amendment conforming to the requirements of Paragraph 1 above. Timpte shall not be liable for any damage or loss to Dealer resulting from delays caused by inability of Timpte to procure materials or merchandise, from delays caused by strikes, fires, acts of God, governmental action or regulation, or from other causes beyond the control of Timpte. Timpte shall have the additional right, in the event of the happening of any of the aforementioned contingencies, at its option, to cancel this contract or any part hereof without any resulting liability to Dealer.
3. Timpte shall not be responsible for and Dealer agrees to assume all risk of loss for its motor vehicles, trailers, semi-trailers, or the contents thereof left with Timpte and caused by fire, theft, or other casualty not caused by Timpte's gross negligence. The risk of loss to all articles sold Ex Works (as that term is defined in the Incoterms rules 2010) Timpte's address as specified on the Order Form shall pass to Dealer upon Timpte's notification to Dealer that the product is ready for pickup. The risk of loss to articles sold Ex Works any other address designated in the Order Form shall pass to Dealer when they reach such destination specified in the Order Form, notwithstanding Dealer's failure to take or accept delivery from the carrier. Timpte and Dealer agree to cooperate fully with each other in making and collecting any claim for damage in transit.
4. Timpte reserves the right to make delivery installments. In such event, all installments shall be separately invoiced, and payment shall be due on delivery, without regard to past or future deliveries. The late delivery of any installment shall not relieve Dealer from its obligation to accept future deliveries. If Dealer does not fulfill its obligations hereunder, or if its credit or financial responsibility becomes impaired, as Timpte determines, at its sole discretion, Timpte may (a) refuse to make further deliveries until Dealer fulfills its obligations or corrects such impairment or (b) terminate this contract and take any and all action provided for under this Order or otherwise available at law or equity.
5. Unless Timpte (i) notifies Dealer that full or partial payment is due in advance or within a shorter period of time, or (ii) agrees in writing to other terms, with or without interest, as specified by Timpte, payment shall be due in full without offset as follows: for articles invoiced from the 1st through the 15th of the month, payment is due by the 20th of the following month, Net 20th Prox; for articles invoiced from the 16th through the 31st of the month, payment is due by the 5th of the month that follows the subsequent month, Net Second 5th. Timpte will invoice Dealer at the time the article has been completed and is ready for shipment, as determined by Timpte. If the purchase price is not paid when due, Dealer agrees to pay interest on the unpaid balance at the rate of Sixteen Percent (16%) per annum (but in no event more than the highest lawful rate), plus all reasonable costs of collection, including reasonable (not less than fifteen percent (15%) of the unpaid balance of the purchase price) attorney's fees.
6. Unless otherwise stated on the reverse side hereof, all prices are Ex Works, Timpte's Facility in David City, Nebraska. In the event that the Order Form designates delivery Ex Works any address other than Timpte's Facility in David City, Nebraska then Dealer agrees to pay freight rates for transport of the equipment from Timpte's Facility in David City, Nebraska to the designated delivery location. Freight prices quoted in the Order Form are based on the freight rates in existence at the date of the Order, and any changes in freight rates in effect on shipment date shall result in a corresponding change in price for which Dealer is responsible. Dealer shall pay switching and transportation charges in addition to actual freight.
7. Dealer shall pay any and all present or future sales, use, and similar taxes on all articles furnished pursuant to the Order in addition to the price herein specified.
8. All sales of products hereunder are subject to the terms of the applicable Timpte Warranty for such products in effect on the date of delivery to Dealer. The remedies provided in such Warranty are exclusive, and performance under such Warranty shall constitute the complete obligation of Timpte with respect to the quality of such products. THE WARRANTIES CONTAINED IN TIMPTE'S WARRANTY ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY, WHETHER WRITTEN, ORAL, OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE), TIMPTE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO THE MERCHANTABILITY OR AS TO FITNESS OF THE GOODS FOR ANY PARTICULAR USE OR PURPOSE.
9. IN NO EVENT SHALL TIMPTE BE LIABLE TO THE DEALER, DEALER'S PURCHASER, OR ANY OTHER PERSON FOR ANY DAMAGES (SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHERWISE) FOR BREACH OF WARRANTY, FAILURE OR DELAY IN MAKING DELIVERY, OR FOR ANY OTHER REASON WHATSOEVER, WHETHER ARISING FROM BREACH OF WARRANTY OR OTHERWISE, EXCEPT AS SPECIFICALLY SET FORTH IN APPLICABLE TIMPTE WARRANTY.
10. This agreement shall be governed by and constructed in accordance with the laws of the State of Nebraska. DEALER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN THE STATE OF NEBRASKA, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY TRANSACTIONS ARISING HEREFROM.
11. Timpte certifies that the articles manufactured by it were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and of the Regulations and Orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof.
12. Returns of merchandise must be authorized and accompanied by a copy of Timpte's invoice. All returns, unless defective, are subject to Ten Percent (10%) handling charges and all transportation costs.
13. In the event that any paragraph or provision within a paragraph should be held ineffective, the parties agree that the remaining provision in such paragraph and the remaining paragraphs of this agreement shall remain in full force and effect.
14. **A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with a loan of money or grant or extension of credit (if any is made respecting the goods sold hereunder), or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with a loan of money or grant or extension of credit, must be in writing to be effective.**