



PHOENIX

WIRE AND CABLE CORP.

Terms and Conditions of Sale

Unless otherwise specifically agreed to in writing and signed by an authorized representative of Phoenix Wire And Cable Corporation (“PWC”), all orders received by PWC are subject to the following Terms and Conditions of Sale. Any and all purchasers of goods and/or services from PWC are herein referred to as “Buyer or Buyers”.

1. Acceptance – Acceptance of Buyer’s order by PWC shall be deemed to have occurred upon receipt by PWC of the Order Acknowledgement for such order signed on behalf of Buyer without any modification by Buyer. Any different or additional terms proposed by Buyer in the Order Acknowledgement shall constitute a counteroffer by Buyer, which offer is deemed to be rejected by PWC unless acceptance of such new offer is evidenced in a writing signed by a duly authorized representative of PWC. These Terms and Conditions shall apply to all of Buyer’s orders, irrespective of any terms and conditions set forth in Buyer’s purchase orders or other business forms, and together with the Order Acknowledgement constitute the entire agreement between the parties with respect to the subject matter hereof (the “Agreement”). These Terms and Conditions may not be modified except by written agreement signed by both Buyer and an authorized representative of PWC. These Terms and Conditions supersede all previous Terms and Conditions and are subject to change at any time by PWC without prior notice.

2. Order Acknowledgement - Prices and delivery dates stated on the Order Acknowledgement shall prevail in the event of a discrepancy between it and Buyer’s written order. Stock material is subject to prior sale.

3. Prices - Prices and charges per applicable quotation are stated in U.S. dollars unless otherwise noted and are subject to any price adjustment necessitated by PWC’s compliance with any act of government, laws or regulations. Buyer’s order is subject to the Price Adjustment Policy set forth on the Order Acknowledgement: 1) Firm Except Metals: All shipments will be invoiced at the prices agreed to on the Order Acknowledgement except for adjustments either upward or downward as set forth on the Order Acknowledgement; provided, however, if the shipment is deferred by Buyer beyond two months from date of the Order Acknowledgement, shipments will then be invoiced at PWC’s price in effect on the date of shipment; 2) Firm Price: All shipments will be invoiced at the prices agreed to on the Order Acknowledgement and are not subject to change on date of shipment; provided, however, if the shipment is deferred by Buyer beyond two months from date of the Order Acknowledgement, shipments will then be invoiced at PWC’s price in effect on the date of shipment; or 3) Price in Effect: All shipments will be invoiced at PWC’s price in effect on the date of shipment.

4. Taxes - Any tax or other governmental charge upon the production, sale, shipment, or use of the product which PWC is required to pay or collect from Buyer shall be paid by Buyer unless, prior to shipment, Buyer has furnished PWC with a tax exemption certificate acceptable to the appropriate taxing authority. Unless specifically identified on the face of an invoice, invoices include no federal, state, or local property, license, privilege, sales, use, excise, gross receipts or other like tariffs which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the products, their sale, value, or use, or any service(s) performed in connection therewith. Buyer agrees to indemnify, pay or reimburse any such taxes or tariffs which PWC, PWC’s vendors, suppliers or subcontractors are required to pay, accumulative with other penalties or fees thereto.

5. Payment - Pro rata payments may be due as shipments are made. If shipments are delayed by Buyer, payments are due from the date when PWC is ready to ship. If fabrication is delayed by Buyer, payment then due shall be made based on the contract price and percent of completion. Products held for Buyer shall be at the risk of and the expense of Buyer.

6. Terms of Payment - Domestic Shipments - Net 30 (Credit Approval Required); Export Shipments - Unless otherwise approved by PWC’s Credit Department, all export sales must be secured by a confirmed irrevocable letter of credit or wire transfer of funds. Both of the above must be in U.S. dollars and issued by a national banking association with a branch in Georgia and/or a correspondent bank of such a national banking association with a branch in Georgia.

7. Risk of Loss, Damage, or Delay - The risk of loss and title to the product will pass from PWC to Buyer upon Major U.S. entry, shipment from U.S. factory or U.S. warehouse location, as applicable pursuant to Section 20 below. PWC shall not be obligated to perform under this Agreement, and shall not be liable for any damages (including, but not limited to, consequential, indirect, exemplary, special or punitive damages or damages for lost profits) in connection with such nonperformance, when PWC’s ability to perform is impeded, restricted or affected by strikes, work stoppages or other action by workmen, any act or omission by a governmental authority or by Buyer, insurrection or riot, war, terrorism, embargo, railcar shortage, wreck or delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities from usual sources under usual terms, breakdown in the manufacturing process, disruption in the supply chain, acts of God and/or nature or any other cause beyond the reasonable control of PWC, whether similar or dissimilar to any of the aforementioned causes. In the event of a delay in performance due to any such cause, PWC may postpone its performance by such length of time as may be reasonably necessary.

8. Cancellation / Default - Orders may not be cancelled or modified, either in whole or in part, after PWC has received the signed Order Acknowledgement from Buyer without PWC’s written consent and then may be subject to a payment of a reasonable and proper cancellation charge that will reimburse PWC for applicable costs incurred by virtue of the order, including cost of materials and a reasonable allowance for profit. NON-STOCK AND SPECIAL MADE-TO-ORDER PRODUCTS AS IDENTIFIED ON THE ORDER ACKNOWLEDGEMENT ARE NOT SUBJECT TO CANCELLATION BY BUYER UNDER ANY CIRCUMSTANCES.

PHOENIX WIRE and CABLE CORP.

1255 Buford Highway, Suite 202 * Suwanee, GA 30024

Office: 770-904-4135 * Fax: 770-904-4139

E-mail: pwc@phoenixwc.com * Web Page: www.phoenixwc.com



PHOENIX

WIRE AND CABLE CORP.

9. Warranty - PWC warrants the PWC products for a period of one year after the date that such products are received by Buyer. Such warranty shall provide that: (i) all PWC products, including all materials and workmanship of such products, conform to the specifications, and are new, merchantable, and free from defects in materials and workmanship; and (ii) all PWC products shall be fit and suitable for the purpose intended.

Buyer shall give written notice to PWC of any breach of warranty that occurs within the one (1) year warranty period specified above. Upon receipt of such notice, PWC shall provide directions to Buyer with respect to the return, replacement or repair of the PWC products, including, but not limited to, where such products should be returned and by what carrier. All charges for such returns, repairs and, if applicable, redelivery shall be borne by PWC so long as Buyer complies with PWC's directions hereunder. EXCEPT AS PREVIOUSLY SET FORTH IN THIS SECTION 9, PWC MAKES NO EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING ANY PRODUCT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY.

10. Limitation of Liability - Neither party shall be liable for any consequential, indirect, exemplary, special or punitive damages or damages for lost profits. The remedies of Buyer set forth herein are exclusive, and the liability of PWC with respect to any contract or sale, or anything done in connection therewith, whether in contract, in tort, under any warranty, or otherwise, shall not exceed the price of the product or part on which such liability is based. Responsibility is limited to the cost of the product and does not include the cost of any labor charges. PWC shall have no responsibility or liability with respect to: 1) matters not reported in writing within one year of the date of receipt at the order's destination (as set forth on the Order Acknowledgement); 2) failure or damage due to misapplications, abuse, improper installation or abnormal conditions of use; 3) products damaged in shipment or otherwise damaged through no fault of PWC; 4) expenses incurred by Buyer for installation of products prior to discovery of the alleged defect or expenses incurred in an attempt to correct the same; 5) expenses incurred by Buyer for removal of non-conforming products and the expense of installation of replacement products; or 6) failure or damage which cannot conclusively be proven to have proximately and solely resulted from a defect in materials or workmanship.

11. Indemnification and Hold Harmless - Buyer assumes responsibility and liability for any claim or action based on or arising out of injuries, including death, to persons or damages to or destruction of property, sustained or alleged to have been sustained in connection with or to have arisen out of or incidental to the performance of this Agreement by Buyer, its agents and employees, and its subcontractors, their agents and employees, regardless of whether such claims or actions are founded in whole or in part upon alleged negligence by PWC, PWC's representatives, or the employees, agents, invitees, or licensees thereof. Buyer further agrees to indemnify and hold harmless PWC and its representatives, and the employees, agents, invitees, and licensees thereof in respect of any such matters and agrees to defend any claim, suit or action brought against PWC, PWC's representatives, and employees, agents, invitees, and licensees thereof, unless such claims or actions are founded in whole or in part upon the alleged gross negligence or willful misconduct of PWC, PWC's representatives, or the employees, agents, invitees, or licensees thereof. IT IS THE EXPRESS INTENT OF THE PARTIES THAT PWC MAY BE INDEMNIFIED FOR CHARGES ARISING FROM ITS OWN NEGLIGENCE, HOWEVER ALLEGED, WHETHER CONCURRENT, CONTRIBUTORY OR SOLE.

12. Patents - Since products sold by PWC may not be manufactured by it but could be sold under their respective manufacturer's brand or trade names, PWC disclaims all warranties against patent infringement. It shall, however, if given prompt notice by Buyer of any claim of patent infringement with respect to any product sold hereunder, use commercially reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may customarily give with respect to such product.

13. Governing Law - This Agreement, the relative rights and obligations of the parties arising out of or relating to this Agreement and any other matter referred to in this Agreement, and the terms and provisions of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia, without giving any effect to any choice or conflicts of law provision or rule that would result in the application of the laws of another jurisdiction.

14. Forum Selection - In partial consideration, the parties expressly and irrevocably waive any and all objections they may have to the jurisdiction and/or venue concerning the litigation of claims arising from or relating to this Agreement. The parties expressly agree that only state or federal courts in Atlanta, Georgia, Fulton County shall have exclusive jurisdiction to settle any and all disputes arising from or relating to this Agreement. The parties irrevocably waive any objection they may have to (a) any proceedings being brought in any such court as is referred to in this clause and (b) any such proceedings being brought in an allegedly inconvenient forum. The parties expressly and irrevocably agree that a judgment in any proceeding brought in the state or federal courts in Atlanta, Georgia, Fulton County shall be binding upon the parties and may be enforced in the courts of any other jurisdiction.

15. Error, Mistake or Assignment - PWC reserves the right to correct any clerical or stenographic error made in the preparation of quotations, order acknowledgements or invoices. Corrections shall be considered as binding amendments to the original contract of sale. This Agreement is not assignable without the prior written consent of PWC. Any attempt to assign any of the rights, duties or obligations of this Agreement without such consent shall be void. Buyer acknowledges that Buyer has read this Agreement, understands it and agrees to be bound by its Terms and Conditions.

PHOENIX WIRE and CABLE CORP.
1255 Buford Highway, Suite 202 * Suwanee, GA 30024
Office: 770-904-4135 * Fax: 770-904-4139
E-mail: pwc@phoenixwc.com * Web Page: www.phoenixwc.com



PHOENIX

WIRE AND CABLE CORP.

16. Severability - If any provision or provisions of this Agreement, or parts thereof, shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and this Agreement shall be interpreted to effect the original intent of the parties as closely as possible. If any provision in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

17. Reels - Non-returnable wooden and steel reels are used whenever possible and are normally included in the sales price of the wire. Returnable steel reels are loaned for transportation and installation purposes only and remain the property of PWC. All returnable steel reels are subject to the following terms: 1) Deposit: A deposit is required for each returnable steel reel loaned by PWC, and such deposits are charged as a separate item and invoiced to Buyer at time of shipment. 2) Refund of Deposit: A full refund of Buyer's deposit will be made when reels are returned in good condition within one (1) year from date of shipment. Reels returned after one (1) year from date of shipment or in poor condition may be subject to a reduced credit.

18. Tolerance on Shipping Lengths and Quantity - All PWC products will have shipping tolerances as detailed below, unless otherwise set forth on the Order Acknowledgement: Authorized Stock Products: -10 + 10%; Made-to-Order Products: -10 + 10%; Special Orders or Lengths: As shown on the Order Acknowledgement. Tolerance percentages are applicable to individual lengths. Customer is responsible for paying any overages within the above tolerances. Claims for shipping shortages must be received by PWC within fifteen (15) days from date of invoice.

19. Cutting and Wood Lagging Charges - In most circumstances, cutting charges are included in the product price; however, additional charges may be assessed to Buyer by PWC. Where cutting charges apply, the number and cost will be indicated in the quotations and the Order Acknowledgement to Buyer. Wood lagging will be applied to wooden or steel returnable reels if requested. This nonrefundable charge is extra and is dependent upon the size of the shipping reel. Please consult your local PWC sales office for details and pricing. All additional charges for cutting and lagging will be charged as separate items and invoiced to Buyer at time of shipment.

20. Delivery and Transportation - F.O.B. Major U.S. entry, U.S. factory or U.S. warehouse location, as applicable (as set forth on the Order Acknowledgement) - for all shipments to destinations in the Continental U.S. served by common carrier unless otherwise specified in writing. Orders will be shipped either freight prepaid and allowed, freight collect, billed to a third party or with freight charges prepaid and charged to Buyer. Buyer is responsible for material identification, footage count and visual inspection for damage upon receipt of shipment. Claims for freight charge or allowances of any kind will not be considered unless received in writing within fifteen (15) days from receipt of goods.

21. Certified Test Reports and Certificates of Compliance - The price for Certified Test Reports (CTR's) which includes the cost to perform necessary tests, collect the data, publish the original test report and maintain reports on file for a minimum of five years will be charged to Buyer if requested after the Order Acknowledgement is received.

22. Returns - Permission must be obtained in writing from PWC before any product is returned in the form of an approved Returned Material Authorization (RMA) number. A restocking charge, plus freight, will be assessed for authorized returns of standard stock material in saleable condition. Unless otherwise agreed to in writing by PWC, all returns of products by Buyer shall be for credit against future purchases only. NON-STOCK AND SPECIAL MADE-TO-ORDER PRODUCTS AS IDENTIFIED ON THE ORDER ACKNOWLEDGEMENT ARE NOT SUBJECT TO RETURN BY BUYER UNDER ANY CIRCUMSTANCES.

PHOENIX WIRE and CABLE CORP.
1255 Buford Highway, Suite 202 * Suwanee, GA 30024
Office: 770-904-4135 * Fax: 770-904-4139
E-mail: pwc@phoenixwc.com * Web Page: www.phoenixwc.com