

MASTER TERMS AND CONDITIONS OF SALE

1. This order shall not be binding on Newberry Tanks & Equipment, LLC ("Newberry") until the issuance and acknowledgement of a written purchase order or acceptance of a Schedule A Quotation or Sales Order in writing and transmitted to Newberry's plant located at 205 North Walker Street, West Memphis, Arkansas 72301.

2. Unless otherwise specifically stated herein, delivery of tank(s) to common carrier or licensed trucker selected, arranged or employed by Purchaser shall constitute delivery to Purchaser, and risk of loss or damage in transit (including vacuum or pressure loss) shall be borne by Purchaser. Otherwise, Newberry will accept the risk of loss or damage in transit until delivery to Purchaser, except as described herein. However, because the tank, equipment and piping on your order will be subjected to vibrations and motion during delivery, Newberry will not be responsible for seepage or leaks at any threaded connections. Newberry takes all necessary and reasonable steps to minimize vibrations in transit with the use of bracing. However, we cannot guarantee that seepage will not occur. Re-tightening on site by others is recommended and may be required.

3. Newberry will invoice Purchaser on the earlier of the date of shipment of the tank or one day after the mutually agreed upon ship date, as agreed to prior to the tank going into production.

4. If shipment of any item to the buyer is delayed at the request or fault of Purchaser, the tank and related equipment shall be held by Newberry until release, at the risk and expense of Purchaser. A monthly handling fee of \$250 will also be invoiced for shipments delayed by Purchaser more than 30 days, along with a monthly storage fee equal to:

- Two and one-half percent (2.5%) of the invoice total for shipments delayed 30 to 120 days
- Five percent (5%) of the invoice total for shipments delayed more than 120 days

A refurbishing fee may be charged for tanks stored for an extended period of time.

5. Purchaser shall make payments in accordance with the terms contained on a Schedule A which are incorporated by reference herein. Any cash discount which may be expressly provided for applies only to the sale price of the goods at the shipping point and does not apply to any charges made for transportation or any other fees. Payments made by credit card may be assessed a 3% convenience fee to offset third party bank charges.

6. Newberry, in its sole discretion, reserves the right to revoke, or modify, any credit extended to Purchaser. Newberry shall have the right to cancel and refuse to complete this order if at any time, Purchaser does not comply with the terms and conditions as set forth herein, or if Purchaser becomes bankrupt or insolvent before delivery. Newberry shall have the rights to require Purchaser to post security for any and all payments due if a doubt arises as to Purchaser's ability to make prompt payments. If such requested security is not posted, Newberry shall have the right to cancel such order. Products are project-specific, and cancellations may be subject to a cancellation fee.

7. Purchaser authorizes Newberry to file a mechanics lien, or alternatively, a copy of this Agreement to perfect Newberry's security interest, if applicable. At Newberry's request, Purchaser additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Newberry's security interest in the tank(s). Purchaser will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Newberry is required by law to pay such fees and costs. Purchaser irrevocably appoints Newberry to execute documents necessary to transfer title if there is a default. Newberry may file a copy of this Agreement as a financing statement. If Purchaser changes Purchaser's name or address, or the name or address of any person granting a security interest under this Agreement changes, Purchaser will promptly notify Newberry of such change.

8. Newberry shall use commercially reasonable best efforts to meet the anticipated delivery date. However, Newberry shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond Newberry's control, including without limitation strikes, lockouts, fires, embargoes, war or other outbreak of hostilities, acts of God, inability to obtain shipping space, machinery breakdowns, delays of carriers or suppliers, pandemics, and domestic or foreign governmental acts or regulations.

9. All taxes and excise of any nature whatsoever, now or hereafter, levied by governmental authority, whether federal, state or local, either directly or indirectly upon the sales of any material covered hereby or upon the subject matter hereof or upon transportation charges, shall be paid and borne by Purchaser, unless prohibited by law. The foregoing shall not apply to any taxes the payment or collection of which by Newberry is excused by reason of delivery to Newberry of valid tax exemption certificates.

10. **LIMITATION OF WARRANTY.** NO WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, IS MADE UNLESS THE SAME IS EXPRESSLY SET FORTH HEREIN. NEWBERRY TANKS ARE GUARANTEED TO BE FREE FROM DEFECTIVE WORKMANSHIP AND MATERIAL FOR A PERIOD OF ONE (1) YEAR. HOWEVER, NEWBERRY WILL NOT BE LIABLE FOR ANY DAMAGES OR CONTINGENT EXPENSES RESULTING FROM SUCH DEFECTS. NEWBERRY'S ONLY OBLIGATION IS FOR REPAIR OR REPLACEMENT WHICH IS FURTHER LIMITED AS EXPRESSED HEREIN AS TO COST. NEWBERRY TANKS ARE NOT GUARANTEED AGAINST CORROSION. IN NO EVENT SHALL NEWBERRY BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO PURCHASER'S USE OR INABILITY TO USE THE TANK(S), HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF NEWBERRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NEWBERRY'S LIABILITY FOR ALL DAMAGES EXCEED THE ORIGINAL PURCHASE PRICE OF THE TANK(S).

11. TANK(S) IN THIS AGREEMENT ARE DESIGNED FOR ATMOSPHERIC PRESSURE. PROPER VENTING REQUIRED. NOT DESIGNED FOR OVER THE ROAD USE. PURCHASER AGREES THAT THE TANK(S) PURCHASED FROM NEWBERRY WILL ONLY BE USED FOR THE PURPOSES DESIGNED.

12. Newberry maintains the following policies for returns and allowances:

(a) All claims for damaged material must be reported in writing within thirty (30) days from the date of invoice. Newberry is not liable for back charges on replacement of defective material.

(b) All claims for damaged material must be made before the material is removed from the delivery site.

(c) No returns will be allowed on specially ordered merchandise.

(d) Any assessments against Newberry for returned out-of-stock merchandise will be passed on to Purchaser.

(e) No credit will be given for any materials not purchased through Newberry.

(f) No credit will be given for discounted material.

(g) Pick up returns by Newberry's truck will be made only as can be scheduled with regular deliveries, and Purchaser will be charged a reasonable fee for such pick up.

(h) Merchandise returned for a cash refund must be accompanied by a purchase invoice; no cash refund will be given to any Purchaser who owes a balance on such Purchaser's account.

(i) All returned merchandise must be in good condition and inspected by the proper authority before any credit will be given, and all returned merchandise shall be subject to reasonable handling charges.

13. At the option of Newberry, any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration held in West Memphis, Arkansas, in accordance with the rules of the American Arbitration Association, and judgment upon any award thereon may be entered in any court having jurisdiction.

14. This contract shall be governed by and construed according to the laws of the State of Arkansas.

15. This contract constitutes the entire agreement between the parties and all prior representations and understandings, which include certain Schedule A's, to this Master Terms and Conditions of Sale have been incorporated herein and the terms herein supersede the terms of the Purchaser's purchase order, if any.

16. Interest at the maximum rate allowed under Arkansas law will be charged on all past due invoices.

17. Purchaser agrees to indemnify Newberry for all legal and collection fees and costs incurred to collect delinquent invoices.

18. Set-Off. Buyer authorizes Newberry to apply toward payment of any monies that become due Newberry hereunder any sums which may now or hereafter be owed to buyer by Newberry.

19. Patent Infringement. If any of the goods are to be furnished to buyer's specification, buyer agrees to indemnify Newberry and its successors and assigns, against all liabilities and expenses resulting from any claim of infringement of any patent or other proprietary right in connection with the production of such goods.

20. Purchaser shall be solely responsible for conforming with industry recommended practices/guidelines relating to the installation and maintenance of the tank(s) as well as compliance with state and local laws, including but not limited to construction and maintenance of secondary containment facilities and other applicable laws.