

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 at 205 North Walker Street, West Memphis, Arkansas 72301. Purchaser agrees that these Master Terms and Conditions of Sale ("Terms") control and that if Purchaser has their own terms and conditions that the Purchaser's terms and conditions are waived. In the event of any conflict between these Terms and any terms and conditions of Purchaser, these Terms control. This sale is contingent upon Purchaser's agreement to these Terms.

2. Shipping. Newberry and Purchaser agree this sale is F.O.B. shipping point.

3. Delayed Shipments. If shipment is delayed at the request or due to the fault of Purchaser beyond the mutually agreed ship date, as established prior to the tank entering production, beginning 14 days after the agreed shipping date, or first of the following month, whichever occurs first, the following fees and remedies will apply:

- Delayed shipments will be invoiced, less freight.
- A handling and storage fee of One Percent (1.0%) of the invoice total per month, or portion thereof.
- If after 120 days, unless extended by Newberry in writing, shipment remains delayed through no fault of Newberry, the sale shall be voidable at Newberry's sole discretion, and Newberry may, at its option, resell the tank(s) and retain from the proceeds an amount equal to Newberry's damages, including, without limitation, losses resulting from Purchaser's failure to effect shipment or delivery, storage fees, costs of sale, and any other damages incurred by Newberry as a result of Purchaser's breach of its obligations.

4. Payment Terms. Purchaser shall make payments in accordance with the terms contained on a Schedule A which are incorporated herein by reference. 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. If a deposit is required, orders will remain in an "On Hold" status until the deposit is received.

5. Credit and Cancellation. 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. Purchaser grants to Newberry a continuing, first priority security interest in the tank(s). Newberry shall have the right 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.

6. Liens and Security Filings. Purchaser authorizes Newberry to file a mechanics lien, or alternatively, a copy of these Terms, to perfect Newberry's security interest, if applicable. Purchaser authorizes Newberry to file UCC financing statements and amendments without Purchaser's signature. At Newberry's request, Purchaser 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, and Newberry shall have all rights and remedies available under Article 9 of the UCC. Purchaser will promptly notify Newberry of any change in Purchaser's name, address, organizational structure, or the name or address of any person granting a security interest under these Terms.

7. Force Majeure. Newberry shall use commercially reasonable 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, cyberattacks, raw material shortages, and domestic or foreign governmental acts, regulations, or trade restrictions.

8. Taxes. 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.

9. **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. ANY MODIFICATION OR ALTERATION OF THE PRODUCT(S) MANUFACTURED OR SOLD BY NEWBERRY, WITHOUT THE PRIOR WRITTEN CONSENT OF NEWBERRY, VOIDS ALL EXPRESS AND IMPLIED WARRANTIES. 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).

10. **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.

11. Mediation. In the event of any dispute, claim, or controversy arising out of or relating to these Terms, the parties agree to first attempt to resolve the matter through good-faith negotiation. If negotiations fail, the parties agree to submit the dispute to non-binding mediation before a mutually agreed mediator in West Memphis, Arkansas. Each party will bear its own costs of mediation and share equally the mediator's fees. If mediation does not resolve the dispute, either party may pursue any remedies available under applicable law. If the matter remains unresolved after mediation, the matter 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.

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

13. Entire Agreement. These Terms, together with Schedule A, constitute the entire agreement between the parties and supersedes all prior representations, understandings, and the terms of Purchaser's purchase order, if any.

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

15. Costs. Purchaser agrees to indemnify and reimburse Newberry for all legal and collection fees, court costs, and any other costs incurred to collect delinquent invoices.

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

17. Infringement. If any of the goods are to be furnished to Purchaser's specification, Purchaser shall indemnify, defend, and hold harmless Newberry and its successors and assigns, from and against any and all claims, liabilities, damages, losses, costs, and expenses (including attorneys' fees) arising out of or relating to any actual or alleged infringement or misappropriation of any patent or other proprietary right in connection with the production, sale, or use of such goods. This indemnity shall survive termination or expiration of this Agreement.

18. Installation. 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. Further, because the tank, equipment, and piping on your order will be subjected to vibrations and motion during shipment, Newberry will not be responsible for seepage or leaks at any threaded connections. Newberry takes all necessary steps to minimize vibrations in transit but cannot guarantee that seepage will not occur. Re-tightening on site by others is recommended and may be required.