



## VICTAULIC BERMAD TECHNOLOGIES

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## TERMS AND CONDITIONS OF SALE

**General.** All products and services (collectively, the “**Products**”) offered for sale and sold or furnished by Victaulic-Bermad, LLC (“**Seller**”) to the entity or individual purchasing the Products (“**Buyer**”) shall be in accordance with these Terms and Conditions of Sale (these “**Terms**”). Seller and Buyer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”. These Terms constitute the sole and entire agreement between the Parties and are the only basis upon which Seller offers to sell the Products to Buyer. Buyer’s receipt of the Products shall conclusively evidence Buyer’s unconditional acceptance of these Terms. Any terms and conditions in Buyer’s purchase order or other similar documents (“**Order**”) that are inconsistent with or attempt to add to or modify these Terms are expressly rejected by Seller, and Seller’s acknowledgement of Buyer’s Order, failure to object to any terms and conditions, or commencement of work shall not constitute Seller’s acceptance of Buyer’s terms and conditions. Modification of these Terms may only occur by way of a separate written agreement duly executed by an authorized representative of each Party.

**Acceptance and Price.** All offers by Seller are valid for the period identified in the offer and subject to all terms and conditions contained in the offer. Seller’s acceptance of Buyer’s Order is subject to credit approval. The prices offered by Seller apply only to the specific quantities, specifications, delivery schedules, and terms and conditions set forth in Seller’s offer, and revisions to any provision of Seller’s offer may be subject, at Seller’s sole discretion, to escalation of prices. All prices, discounts, and minimum orders are in accordance with Seller’s established price list and are subject to change without notice. All Products will be invoiced at the price prevailing at the time of shipment. All prices are calculated based on Ex Works (Incoterms® 2010) and are stated in United States Dollars. Unless otherwise stated in writing, prices do not include sales, use, excise or similar taxes or duties, which Buyer agrees to pay directly or, if Seller is required to pay, reimburse Seller.

**Payment.** Subject to Seller’s approval of Buyer’s credit, payment terms are net thirty (30) days from date of invoice in United States Dollars. Buyer hereby waives any right of setoff against amounts due to Buyer from Seller. All amounts not paid by Buyer on the due date bear interest payable at a rate equal to the lesser of (a) one and one-half percent (1.5%) of the outstanding balance per month, or (b) the maximum interest rate permitted under applicable law, from the due date until Seller receives payment. Buyer hereby grants Seller, and agrees to execute any document necessary to perfect, a security interest in the Products as security for its obligations under these Terms. Buyer shall also be liable to Seller for any expenses incidental to collection of past due amounts, including reasonable attorney fees and court costs.

**Shipping; Title.** All Products will be packed and packaged in accordance with Seller’s standard commercial methods. Any nonstandard or special packing or packaging requested by Buyer shall be at Buyer’s sole expense. Unless agreed otherwise by Seller in writing, all Products will be delivered Ex Works (Incoterms® 2010), and title in, risk of loss, and the right of possession to the Products passes to Buyer upon Seller’s delivery to the carrier. If Seller prepays shipping, insurance, or other related charges, Buyer agrees to promptly reimburse Seller for such charges. All claims for breakage, loss, delay, or damage should be made by Buyer to the carrier with Seller’s reasonable assistance, as appropriate. Unless otherwise agreed in writing, the Products will be shipped by the method and via carrier of Seller’s choice freight prepaid and billed. Shipping charges may not reflect net transportation cost paid by Seller. Products held by Seller beyond the delivery date at Buyer’s request will be invoiced on date of completion and subject to charges for warehousing and other expenses incident to delay.

**Exportation.** Shipment of the Products and delivery of technical information under Buyer’s Order is subject to all laws, rules, and regulations which govern export, re-export, or otherwise pertain to export controls of the United States and the country of Buyer. The Parties each agree to provide to the other in a timely manner such information and assistance as may reasonably be required in connection with securing any required authorizations or licenses. Buyer shall indemnify and hold Seller harmless from any claims or liability arising from Buyer’s failure to comply with all such laws, rules, and regulations. Any Order accepted by Seller which cannot be fulfilled due to law or regulations or Seller’s inability to obtain any required export license, may be cancelled by Seller without liability or further obligation to Buyer.

**Delivery Schedule; Force Majeure.** Shipping dates are approximate, and require prompt receipt of all necessary Buyer-furnished information and materials, if applicable. Any delay or failure of Seller to perform its obligations under Buyer’s Order shall be excused if such delay or failure is the result of an unforeseeable event or occurrence beyond the reasonable control of Seller, including, but not limited to, acts of God, actions by any governmental authority, delays of suppliers or subcontractors, fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, utilities, materials, labor, equipment, transportation, or court injunction. If a force majeure event occurs, Seller shall have the right to cancel the Order or extend the delivery date for a period equal to the time lost by reason of delay plus such additional time as may be reasonably necessary to overcome the effect of the delay.

**Inspection.** All products must be inspected within five (5) days of delivery and any claim for corrections in shipment must be made immediately to Seller. If any damage is discovered, Buyer must file a claim with the carrier and provide notice to Seller of the claim.

**Modification, Cancellation and Returns.** Buyer’s Order is not subject to cancellation or change without Seller’s prior written consent and then only upon Buyer’s acceptance of cancellation charges to compensate Seller for all costs and losses caused by such cancellation or changes. Seller, in its sole discretion, reserves the right to cancel any sale without liability to Buyer upon Seller’s refund to Buyer of any monies already paid by Buyer. Returns for credit will only be accepted on new and unused Products and following Seller’s advance written consent. Orders for non-standard (i.e. non-cancellable/non-refundable) Products may not be returned for credit or refund. Credit will be issued only to the original Buyer following Seller’s receipt and inspection of the Products, transportation charges prepaid by Buyer, and based on prices prevailing at the time of return, or invoiced price, whichever is lower, subject to deduction for handling and costs incurred to restore the Products to salable condition.

**Limited Warranty.** Seller warrants that the Products conform to Seller’s published specifications and will be free from defects in materials and workmanship under normal conditions of use and service for a period of twelve (12) months from the date of original shipment to Buyer (the “**Warranty Period**”). If any Product proves to be non-conforming or defective within the Warranty Period, Buyer shall notify Seller and Seller will, at Seller’s discretion, either send a representative to the installed Product location or instruct Buyer to return the Product to Seller, transportation charges prepaid. Seller, upon confirming such non-conformity or defect, will, at its sole option, repair or replace the defective Product, or issue Buyer a credit for the original price paid by Buyer for the defective Product. In the event Seller sends a representative to the installed Product location, and Seller determines the issue with the Product is not covered

under warranty, Buyer will be responsible for reimbursing Seller for travel expenses incurred and service repair costs at Seller's then current rates. This warranty does not apply to any Products that, upon examination by Seller, are found to have been (a) mishandled, misused, abused, or damaged, (b) altered or repaired without Seller's prior written approval, or (c) improperly stored, installed, operated, or maintained in a manner inconsistent with Seller's instructions. This warranty does not apply to design errors due to inaccurate or incomplete information supplied by Buyer or its representatives.

Such repair, replacement, or credit by Seller shall be Seller's sole obligation and Buyer's exclusive remedy for non-conforming or defective Products. Seller shall not be liable for any return or claim received after the expiration of the Warranty Period. Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the Products. Seller will pass through to Buyer any transferrable warranties provided to Seller on third-party manufactured products.

THIS WARRANTY, INCLUDING THE REMEDIES SET FORTH HEREIN, IS EXCLUSIVE TO BUYER, CANNOT BE TRANSFERRED OR ASSIGNED, AND IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS INTENDED OR GIVEN. IN THE CASE OF PRODUCTS OTHER THAN THOSE OF SELLER'S OWN MANUFACTURE, SELLER MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED.

**Limitation of Liability.** Notwithstanding any other provision herein, under no circumstances shall Seller be liable for any consequential, special, incidental, indirect, multiple, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under Buyer's Order, including, without limitation, loss of use, loss of revenues, or loss of profits, whether based upon breach of Buyer's Order, warranty, negligence, infringement or any other type of claim, and whether arising in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Seller's total liability arising from or related to Buyer's Order, including, but not limited to, its liability for indemnity, defense, and hold harmless obligations under Buyer's Order, is limited to no more than the amount paid by Buyer to Seller under Buyer's Order, and Buyer agrees to indemnify Seller for any excess amounts. To the extent that this limitation of liability conflicts with any other provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this clause.

**Designs, Dimensions and Weights; Manufacture.** All designs and specifications of Products shown in Seller's catalog are subject to change without notice. Shipping weights and dimensions listed in Seller's catalog are as close to actual as practicable but are not guaranteed. Seller is not liable for any claims based on a discrepancy between actual weights or dimensions and listed data. All clerical errors are subject to correction. Seller retains the right to subcontract work to be performed under Buyer's Order or assign Buyer's Order to a parent, subsidiary, or affiliate company of Seller or to any successor of Seller.

**Proprietary Rights.** Seller shall retain all right, title, and interest in and to any data, information, designs, tools, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, products, know-how, processes,

techniques, and the like used or developed by Seller, its employees, and its subcontractors in connection with Buyer's Order. Buyer agrees that Seller retains all proprietary rights in and to all products, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to the Products, and that no right or license is conveyed by Seller to Buyer to manufacture, have manufactured, modify, import or copy such Products.

**Confidentiality.** Buyer acknowledges that all technical materials, drawings and other similar information or documentation provided by Seller to Buyer, whether prepared by or for Seller, contains trade secrets and/or confidential information of Seller, and Buyer agrees to keep such information and documentation confidential, not directly or indirectly disclose such information or documentation to any third party, and to use such information and documentation other than as necessary and appropriate in connection with the Products.

**Indemnification.** Buyer agrees to indemnify, defend, and hold Seller, its officers, directors, employees, agents, representatives, subsidiaries and affiliates, and successors and assigns, harmless from and against any and all liabilities, losses, expenses (including attorney's fees and consequential and incidental damages), liens, claims, demands, and causes of action arising out of any injury (including death) to any person or damage to any property in any way connected with any act or omission of Buyer, its agents, employees or subcontractors.

**Governing Law and Venue.** These Terms shall be governed by the laws of the State of Delaware, exclusive of conflict of laws principles which would direct the application of the substantive law of another jurisdiction. The Parties agree that the sole and exclusive venue for the resolution of any and all disputes arising from or relating to these Terms is in the Delaware Chancery Court or the United States District Court for the District of Delaware, and further waive personal service of process, provided that process is served by certified, registered mail, and any jurisdiction or venue defenses otherwise available.

**Independent Contractor.** Neither Party is, nor should be deemed to be, an employee, agent, co-venturer, or legal representative of the other for any purpose. The Parties shall act as independent contractors at all times, and the employees of one shall not be deemed to be employees of the other.

**Waiver; Remedies.** Seller's waiver of or failure to enforce any Term, or any rights with respect thereto, is not a continuing waiver or a waiver of any other rights, or of any material breach or failure of performance of Buyer. The remedies herein reserved or created for Seller shall be cumulative, and additional to any other or further remedies provided at law or in equity. Buyer shall pay all Seller's costs and expenses, including attorney fees, incurred by Seller in exercising any of its rights or remedies hereunder or enforcing any of the Terms.

**Severability; Survival.** If any term, condition, or provision herein is invalid, ineffective, or unenforceable under applicable laws, then the remainder of the terms, conditions, and provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated. The Parties agree that the provisions of these Terms intended to survive the expiration, termination or completion of Buyer's Order shall so survive, including, without limitation, the following: Limited Warranty; Indemnification; and Limitation of Liability.