



## FUTURE PIPE INDUSTRIES

# General Terms and Conditions of Sale

### 1. DEFINITIONS

The following terms shall have the meanings hereby assigned to them:

"Company" shall mean:	FUTURE PIPE INDUSTRIES, INC., a Texas Corporation located in Houston, Texas, U.S.A.
"Buyer" shall mean:	Any person, company, or governmental entity that places an order for Products with the Company.
"Products" shall mean:	The Goods and/or the Services as applicable.
"Goods" shall mean:	The items listed in the Special Terms.
"Services" shall mean:	Any installation or engineering service listed in the Special Terms. Engineering services may include preparation of drawings and design calculation such as stress analysis, surge/hydraulic analysis/support design.
"General Terms" shall mean:	These General Terms and Conditions of Sale.
"Special Terms" shall mean:	The Special Terms and Conditions applicable to the order, which, at a minimum, shall include the Products purchased, quantities, prices, and destination information.
"Payment" shall mean:	Amounts actually received by the Buyer for the Products.
"Uncontrollable Force"	This term shall have the meaning given in Section 15 of the General Terms.

### 2. SCOPE OF THE GENERAL TERMS

By placing an order for the Products, the Buyer is deemed to have accepted the General Terms without variance, except that a duly authorized officer of the Company may agree with the Buyer on different terms, which will then be included in the Special Terms section. Any deviations from the General Terms as well as any other terms shall not be effective unless agreed upon in writing, included in the Special Terms or any addenda thereto, and signed by both the Company and the Buyer.

### 3. SPECIFICATIONS AND STANDARDS

The Goods are manufactured and the Services supplied in accordance with the Specifications and Standards designated under the Special Terms. Manufacturing tolerances shall be the length stated  $\pm 1$ ". Any exact lengths requested to lesser tolerances shall carry manufacturing surcharges as identified in the Special Terms.

### 4. QUOTATION AND ORDERS

Acceptance of the Company's offered quotations shall be binding on the Company only if made by the Buyer in writing within the deadlines specified therein. Orders placed without prior quotations from the Company shall not be binding unless accepted by the Company in writing.

Oral orders and any variations thereto must be confirmed in a signed writing by the Buyer and delivered to the Company no later than seven (7) days from the date of the oral order or variation. In the absence of such confirmation, the Company shall not be liable for any errors concerning the orally delivered information. Upon the Company's request, the Buyer shall, within seven (7) days, confirm in a signed writing any faxed orders or variations and in the absence of such confirmation shall not be responsible for any errors resulting from any illegibility or omissions from the faxed order or variation.

The Company reserves the right to cause the Goods or Services under any order to be supplied by any of its manufacturing plants or plants of affiliated companies, provided that Company's exercise of this right shall not entitle Company to impose any charges on Buyer over and above the charges stated in the Special Terms.

### 5. VARIATION OF ORDERS

The Company will consider requests of Buyer's for the variation of its orders for the Goods, provided, that: (a) the request is issued before manufacturing of the Goods affected by such variation has commenced; (b) the Company may accept or reject any variation in its sole discretion; and (c) no acceptance of a variation shall be binding unless stated in a writing signed by the Company, which writing shall state any revisions to the price. If the variation is accepted and would change the quantities ordered, the Company will maintain the same unit prices stated in the Special Terms only if the variation does not exceed plus or minus ten percent (+/-10%) of the Products total order quantity. The Company reserves the right to require Buyer to confirm the order as varied, including all terms related thereto, prior to commencement of manufacturing.

**6. TERMS OF PAYMENT**

Unless otherwise stated in the Special Terms, Payment of all amounts due from Buyer over and above any deposit paid to the Company, shall be made in full on or before 30 days (30) days after the date Buyer takes title to the Goods or, with respect to Services, thirty (30) days after the date Company has completed the Services invoiced. Payment shall be made by check or electronic transfer to an account specified by the Company in the Special Terms. In the event that Payment is not made by the due date stated above, the Company shall at its sole discretion, be entitled to charge interest on any outstanding account at the rate of 1.5% per month (or, if such rate would violate the laws of any applicable jurisdiction, such lower lawful rate as is allowed in such jurisdiction), and shall also be entitled to avail itself of any additional remedies allowed by law, including but not limited to cessation of manufacturing of Goods or provision of Services until after Payment of outstanding amounts is received. In all circumstances, the Company reserves the right to request information from the Buyer regarding the establishment of credit, to require payment of a cash deposit prior to commencement of manufacturing, to require the Buyer to provide an irrevocable and confirmed Letter of Credit issued by a major bank acceptable to Buyer or other credit arrangements acceptable to the Company in its sole discretion, and to require partial payments thereunder as may be specified in the Special Terms.

In the event any dispute arises with respect to delivered Goods or Services, Buyer shall make Payment of all undisputed amounts in accordance with the immediately prior paragraph. In the event that the dispute or any part thereof, is resolved in the Company's favor, the Buyer shall pay interest on the withheld payment due to Company at the rate specified in the immediately prior paragraph to compensate the Company for delay in receiving the payment.

Payment shall be made by irrevocable and confirmed Letter of Credit issued by a major recognized bank and shall allow partial payments. In the event that shipping costs are the responsibility of the Buyer and the Buyer has not provided shipping details within fifteen days of notification, the Company shall, at its sole discretion, and at the Buyer's expense, deliver the goods to a nominated forwarding agent against cargo receipt.

The Company shall maintain a purchase money security interest in the products for any portion of the purchase price for which Payment is not made timely and shall retain this interest until Buyer has paid the full purchase price.

**7. PRICES**

Unless otherwise stated, prices are given in United States Dollars.

Prices are valid for the period stated in the Special Terms and are based on the current cost associated with the manufacturing of the Goods. In the event of increases in the costs related to shipping of the Goods, the Company reserves the right to receive an upward adjustment of its prices in order to be compensated for such additional costs of performance. Any such request for adjustment shall include a specification of the additional costs incurred and a detailed explanation of the basis for the adjustment.

**8. DELIVERY**

No later than thirty (30) days after the date the Company's quotation has been accepted and/or a sales contract signed, whichever occurs earlier, the Buyer shall provide Company with any additional details concerning the delivery schedule not inconsistent with the schedule or delivery dates stated in the Special Terms.

The Company shall deliver the Products to Buyer and Buyer shall take delivery of the Products in accordance with the schedule contained in the Special Terms. Goods shall be tendered to Buyer's shipper, or buyer's duly designated representative, at the location specified in the Special Terms. Buyer shall be permitted to inspect all Goods tendered for delivery and delivery shall be deemed to occur with respect to all Goods except rejected Goods.

Where the point of delivery is Buyer's site and delivery of the Goods is made by the Company on heavy trucks or trailers, Buyer shall provide free access to the point of delivery and, unless otherwise specified in the Special Terms, shall provide equipment and labor in order to carry out off loading.

No claims may be filed against the Company with respect to accepted Goods, except claims concerning defects that could not be identified at the time of delivery and acceptance. From the point and time of delivery onwards, the Products shall be handled at the sole risk of the Buyer.

In the event the Buyer fails to take delivery in accordance with such schedule, the Buyer shall, nevertheless, be required to make Payment for the Goods of which Buyer failed to take delivery as though such Goods were delivered. Buyer shall pay to the Company a storage fee for the Products of which it failed to take delivery at daily rates as the Company may in due course specify. In the event of such delay in acceptance of delivery, the Buyer shall catch-up with all delayed deliveries in order to return to the delivery schedule. The Buyer shall in no event delay taking delivery of any Goods for a period exceeding thirty (30) days from the applicable delivery date.

**9. INSPECTION AND TESTING**

The inspection and testing of the Products shall be carried out in accordance with the Specifications and Standards designated under the Special Terms. In the event the Buyer requests the Company to provide assistance in resolving problems, and the problem is found not to have been caused by the Company, the Company shall have the right, in its discretion, to charge the Buyer for such costs plus allocable overhead as the Company deems fair and reasonable.



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### 10. THE BUYER'S DEFAULT

The following shall constitute events of default by the Buyer:

- 10.1 Failure to make Payment as and when due.
- 10.2 Failure to accept delivery in accordance with the Special Terms.
- 10.3 Involvement in financial difficulties as evidenced by: (i) Buyer's commencement of a voluntary case under Title 11 of the United States Code as from time to time in effect, or by its authorizing, by appropriate proceedings of its board of directors, general partners or other governing body, the commencement of such a voluntary case; (ii) by its filing an answer or other pleading admitting or failing to deny the material allegations of a petition filed against it commencing an involuntary case under said Title 11, or seeking, consenting to or acquiescing in the relief therein provided, or by its failing to controvert timely the material allegations of any such petition; (iii) by the entry of an order for relief in any involuntary case commenced under said Title 11; (iv) by its seeking relief as a debtor under any applicable law, other than said Title 11, of any jurisdiction relating to the liquidation or reorganization of debtors or to modification or alteration of the rights of creditors, or by its consenting to or acquiescing in such relief; (v) by the entry of an order by a court of competent jurisdiction finding it to be bankrupt or insolvent, ordering or approving its liquidation, reorganization or any modification or alteration of the rights of its creditors, or assuming custody of, or appointing a receiver or other custodian for all or a substantial part of its property, and such entry or order shall not be vacated or stayed within ninety (90) days; (vi) by the filing of a petition under Title 11 which shall not be vacated within ninety (90) days; or (vii) by its making an assignment for the benefit of, or entering into a composition with, its creditors, or appointing or consenting to the appointment of a receiver or other custodian for all or a substantial part of its property.
- 10.4 The termination, for any reason, of the irrevocable letter of credit for the benefit of the Company, or of any other credit arrangements between Buyer and the Company hereunder, or any material change in the creditworthiness of the Buyer.

In the event of a default that the Buyer does not cure within fifteen (15) days after the occurrence thereof, without waiver of all other rights and remedies to which the Company may be entitled, the Company reserves the right to cease all deliveries.

### 11. REJECTED PRODUCTS

The Company will grant a credit in favor of the Buyer for the price of rejected and returned Goods only if the defect is detected by the Buyer upon delivery and if defective products are returned to the Company on the same truck that delivered them (with respect to delivery to Buyer's site), provided always that alleged defects are ascertained, accepted, and confirmed by the Company. Replacement items will be provided under the same terms and conditions as the replaced defective Products and will be invoiced accordingly. A credit for Services shall be issued at the Company's sole discretion.

### 12. PRODUCTS RETURNED FOR CREDIT

No Product shall be returned to the Company for credit without the prior written consent of a duly authorized officer of the Company. Any items returned without prior written consent, shall be returned solely at the Buyer's risk. All Products returned shall be subject to inspection and acceptance by the Company's Quality Assurance Group before any credit may be made to the Buyer.

### 13. LIMITED WARRANTY

The Company issues the following limited warranty. The Goods shall be manufactured in accordance with the Specifications and Standards designated under the Special Terms, and shall be free from defects, manifest or latent, in manufacturing, workmanship, or materials. This limited warranty shall extend for a period of twelve (12) months from the date of shipment or, in case of delay in taking delivery by the Buyer, from the date shipment was scheduled to occur. This limited warranty expressly does not apply to any Goods which, during the limited warranty period: (i) were installed without the supervision or instruction of Company's authorized representative; (ii) were used with any thread compound other than TFC#15 or Company's approved equivalent for makeup of pipe joints; (iii) were physically damaged, excepting ordinary wear and tear from use for purposes within the scope of the Specifications and Standards; (iv) were used for purposes outside the scope of the Specification and Standards, or were otherwise mistreated or abused; (v) were repaired or altered by any party other than the Company without the Company's express prior written consent. In the event Buyer becomes aware of any defect covered by the limited warranty, the Buyer shall take reasonable actions to mitigate its losses, shall promptly inform the Company of the limited warranty claim, and shall permit the Company prompt and sufficient access to allow the Company to investigate the alleged defect and its causes, and any failure of Buyer to take these actions shall cause the limited warranty to become void with respect to the allegedly defective Goods. Notwithstanding the foregoing, with respect to any Goods used in chemical/waste disposal services or systems, the limited warranty shall expire upon completion of the installation period, including acceptance testing of the product, or for a period of one (1) year from the date of purchase, whichever occurs first. The Company reserves the right to make revisions from time to time to the design or contents of its Goods and such revisions shall not extend, renew, or otherwise modify the limited warranty granted herein.

The Company warrants that Services are supplied to the highest prevailing standards in the industry. The Company's liability under this limited warranty shall be limited to the provision of necessary additional installation work with respect to installation Services, and to the rectification or replacement of the drawings/analysis with respect to engineering Services, in each case as the Company shall, in its sole discretion, deem appropriate.

**IN NO EVENT SHALL THE COMPANY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING ENVIRONMENTAL DAMAGE OR REMEDIATION CLAIMS, WHETHER OR NOT CAUSED BY THE NEGLIGENCE OR FAULT OF THE COMPANY. IT IS EXPRESSLY AGREED THAT THIS LIMITED WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. TO THE FULL EXTENT ALLOWED BY LAW, THE COMPANY DISCLAIMS ANY WARRANTY TO ANY PERSONS OTHER THAN BUYER.**



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Pursuant to the limited warranty, within a reasonable time after receiving Buyer's notice of a claim thereunder and at no additional cost to the Buyer, the Company shall investigate the claim and promptly, in its sole discretion, remedy, repair, replace on site, or provide a replacement item for any defective Goods.

**14. LIMITATION UPON LIABILITY**

Under no circumstances shall the Buyer seek or recover any consequential or punitive damages in connection with the purchase of any Goods or Services from the Company.

In the event any entity other than Buyer makes any claim against the Company that arises from the Buyer's negligence in the handling or installation of any Goods, or use of any Goods for any purpose not consistent with the Specifications, the Buyer agrees to indemnify the Company for any losses, including any damages, amounts paid in settlement, and reasonable legal fees and costs. In the event the Company receives such a claim, it will provide timely notice thereof to Buyer.

**15. FORCE MAJEURE**

The Buyer shall not be considered to have breached any obligation hereunder to the extent that a failure to perform its obligations is due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance beyond the reasonable control of the Company and which prevents the Company from performing its obligations hereunder. "Uncontrollable Force" may include and is not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, or restraint by court order or public authority. Nothing contained herein shall be construed to require the Company to settle any strike or labor dispute in which it may be involved.

**16. NO WAIVER BY THE COMPANY**

The waiver by the Company of a breach of any provision of these General Terms shall not constitute a waiver of any other provisions or of a subsequent breach of same provision.

**17. AMENDMENT OF GENERAL TERMS OR SPECIAL TERMS**

No amendment of the General Terms or the Special Terms shall be effective unless stated in a written agreement executed by the Buyer and the Company.

**18. REVISIONS OF GENERAL TERMS**

The Company reserves the right to amend or restate, from time to time, any or all of the provisions of these General Terms. Amended or restated General Terms will be binding upon the Buyer only with respect to orders which have been placed after the amendment or restatement becomes effective.

**19. DISPUTES, APPLICABLE LAW, JURISDICTION, WAIVER OF SOVEREIGN IMMUNITY BY NON-FEDERAL GOVERNMENTAL ENTITIES**

Prior to instituting any legal proceedings, and for a period not to exceed thirty (30) days, the parties shall endeavor to resolve in good faith any dispute that arises out of the interpretation, construction, or performance of the General Terms or the Special Terms.

No claim arising from or relating to any transaction hereunder shall be filed in any court except a court with jurisdiction over the subject matter in Texas. Buyer hereby submits to the personal jurisdiction of all such courts solely with respect to such claims. Any dispute arising from or relating to any transaction hereunder shall be determined, and the General Terms and Special Terms shall be construed, in accordance with the laws of Texas.

If the Buyer is a governmental entity other than the United States Government or agency thereof, such governmental entity waives its sovereign immunity solely with respect to the transactions hereunder.

**20. PROPRIETARY RIGHTS**

The Company retains for itself all proprietary rights in and concerning all designs, engineering details and data concerning the Goods and Services it sells.

**21. TAXES**

Any taxes or charges which the Company may be required to pay or collect under any existing or future law upon or applicable to the sale, purchase, lease, furnishing, manufacture, processing, transportation, delivery, storage, use or consumption of the Goods or Services shall be for the account of Buyer.

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