

# Wheatland Tube Company

A DIVISION OF JOHN MANEELY COMPANY

## TERMS & CONDITIONS

1. This quotation is subject to change without notice. Acceptance of this quotation shall not impose any duties on Seller until approved by Seller at Seller's General Office, Sharon, PA. Approval by Seller is expressly made conditional upon assent by Buyer to all the following Terms and Conditions. Buyer's assent to these Terms and Conditions shall be conclusively presumed from Buyer's receipt of Seller's acknowledgment of Buyer's order without prompt written objection thereto or from acceptance by Buyer of all or any part of the material order. No terms or conditions other than those stated herein, whether contained in Buyer's purchase order, shipping release, or elsewhere, shall be binding upon Seller, and Seller hereby expressly objects to any such terms. None of the Terms and Conditions contained in this quotation may be waived, added to, modified, superseded, or otherwise altered except by written instrument signed by Seller and delivered by Seller to Buyer. Each shipment and delivery shall be subject to the approval of Seller's Credit Department.

2. Prices charged for the material covered hereby shall be Seller's prices in effect at the time of shipment.

3. All delivered prices or prices with freight allowed are based upon prevailing freight rates and transportation charges, and if these are increased or decreased, such prices on all unshipped tonnage shall be increased or decreased accordingly. Cash discounts apply only on the mill price of the material. Seller shall have the option of shipping freight collect.

4. Seller shall not be responsible for spotting, switching, or drayage charges at destination. Any excises, levies, or taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sales, purchase, delivery, storage, processing, use, consumption, or transportation of any of the materials or services covered hereby, shall be for the account of Buyer, and Buyer agrees to pay the amount thereof to Seller upon request.

5. In the event that Seller's performance is delayed, interfered with, or prevented by war, fire, strike, flood, acts of God, shortages of material, fuel, or power, delay in transportation, equipment breakdowns, riot, theft, differences with workmen or employees, or accident, or by any law, order, regulation, or requisition of any governmental agency or body, or any other cause beyond the control of Seller, Seller shall, as respects any portion of Seller's performance unperformed by reason of such occurrence, at its option, be relieved from further responsibility, whether or not such cause is operative at the time of Seller's approval of Buyer's order. In the event Seller elects to complete its performance, the time of Seller's performance shall be extended for such period as may be necessary to enable Seller to make delivery after such cause has been removed, and Seller shall have the right to apportion its production among its customers (including Seller's regular customers not then under contract) and Seller's own departments and divisions in any manner Seller deems equitable.

6. LIMITED WARRANTY: Seller agrees to replace or allow credit, at its option, for material found to be defective within a reasonable time, but in no event more than one year after receipt by Buyer, but will not be liable for any labor, expense, or damage resulting from the use of such material or in connection therewith. No claim will be recognized unless presented to Seller in writing within a reasonable time, but in no event more than one year, after receipt of material by Buyer and unless Seller is promptly afforded a reasonable opportunity to inspect such material after such claim has been presented. Material shall not be returned to Seller unless Seller authorizes such return by prior written notice to Buyer.

7. The remedies provided for in paragraph 6 hereof are exclusive and Seller's liability shall not under any circumstances exceed the purchase price of the material. Seller shall not be liable to Buyer or to anyone else for any claims or for any damages whatsoever, whether direct, indirect, special, consequential, or incidental, except to the extent provided for herein.

8. THERE ARE NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN. ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES WHICH MIGHT OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY SPECIFICALLY EXCLUDED.

9. BUYER REPRESENTS AND WARRANTS TO SELLER THAT THE MATERIAL IS BEING PURCHASED FOR RESALE OR FOR COMMERCIAL USE AND THAT ANY WARRANTIES GIVEN HEREUNDER ARE NOT SUBJECT TO THE REQUIREMENTS OF THE MAGNUSON-MOSS WARRANTY-FEDERAL TRADE COMMISSION IMPROVEMENT ACT, 15 U.S.C. SECTION 2301 et seq. ANY WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, ARE MADE TO BUYER ONLY, AND TERMINATE UPON TRANSFER OF THE MATERIAL TO ANY OTHER PERSON FOR ANY PURPOSE WHATSOEVER.

10. Material shall be within the limits and sizes manufactured by Seller and shall be subject to Seller's standard manufacturing practices.

11. Material purchased on the basis of weight is subject to customary quantity variations recognized by trade practice.

12. Where Buyer wishes to inspect, inspection and acceptance shall be made before shipment.

13. Title to material and risk of loss of the goods shall pass to Buyer when loaded for shipment at Seller's mill. Carriers are responsible for goods lost or damaged in transit and consignee must immediately notify the carrier in writing of such loss or damage.

14. If the terms and conditions of Buyer's order require a patent indemnity and the material covered by such order is to be made in accordance with Seller's specifications, Seller agrees to defend any suit or proceeding brought against Buyer on a claim that the materials or any part thereof constitute an infringement of any patent of the United States, provided Seller is promptly notified in writing of any such suit and given full authority, information, and assistance from the Buyer for the defense of same, and Seller agrees to pay all damages and costs awarded against Buyer in any such suit. Buyer warrants that the making, use, or sale of goods supplied to Buyer's specifications will not infringe any claim of any United States patent whatsoever, and Buyer agrees to indemnify Seller against judgment and costs for infringement of any such claim, including Seller's legal expenses.

15. Material shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

16. These Terms and Conditions contain the entire agreement of the parties and are made without any oral warranties, conditions, or agreements.

17. Any contract between Seller and Buyer pursuant to these Terms and Conditions shall be governed by the Uniform Commercial Code in effect in Pennsylvania on the date of Seller's acknowledgment.

### WHEATLAND TUBE COMPANY

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