

Fintube LLC
General Terms and Conditions of Sale

1. TERMS OF SALE. No order is binding on Seller until accepted by Seller in writing. Seller's acceptance of Buyer's purchase order is expressly made conditional on Buyer's assent to these terms. These terms supersede any preprinted general terms and conditions appearing in Buyer's general terms and conditions, all prior proposals, negotiations and communications, oral or written, between the parties with respect to the same. These terms may not be modified by any course of dealing or performance or usage of trade between the parties. These terms may be amended only by written document signed by an authorized representative of each party. Seller's agents shall have no authority to bind Seller.

2. PRICES.

2.1 All prices are listed in U.S. Dollars, F.O.B. Seller's factory.

2.2 Due to the extreme cost fluctuations in the metals market, the prices contained in Seller's proposal are subject to review and acceptance by Seller at the time of receipt of Buyer's purchase order. Seller will notify Buyer of any price changes so that the purchase order can be amended. Receipt of a purchase order does not constitute Seller's acceptance. Seller will accept purchase orders (in writing) via its Sales Order Acknowledgement document.

2.3 In order to lock in steel pricing, Seller requires Buyer's release to procure materials at time of order acceptance by Seller. Said release may be accompanied by a corresponding progress payment due and payable at time of order acceptance. Should Buyer not release Seller to procure material, increases in material cost will be to Buyer's account. Any changes by Buyer after the release to procure this material which results in additional costs incurred will be to Buyer's account and may cause changes in shipping schedules.

2.4 Progress payments may also be required for credit approval.

2.5 Unless stated in writing, Buyer is responsible for any costs associated with freight and overseas packaging.

3. PAYMENT TERMS.

3.1 Acceptance of Buyer's order is subject to satisfactory credit arrangements. Upon prior notice to Buyer, Seller may require payment on different terms, including confirmed irrevocable letter of credit, cash in advance or sight draft. Progress payments may apply under varying circumstances.

3.2 Invoices where open account terms are allowed, payment delays beyond agreed terms may result in interest charge at the rate of 18% per annum, or the maximum rate allowed by law, whichever is lower.

3.3 All payments shall be made in U.S. Dollars.

3.4 No payment made by Buyer shall be paid in the form of cash or any bearer instrument nor shall any payment be paid by Buyer to any individual or entity other than Seller. For payments by wire transfer, Seller will provide to Buyer all information necessary to make such payment, including the name and location of the financial institution and the name and number of the bank account.

4. TAXES AND DUTIES. Buyer is responsible for payment of any and all taxes

(including VAT), duties or tariffs imposed by any nation, federal, state, local or other jurisdiction or taxing authority in connection with or related to the parties' contract.

5. DELIVERY.

5.1 All shipping dates and schedules are approximate and are quoted based on actual and timely receipt of raw materials in conformity with the specifications. For all goods whose ultimate destination will be the United States, delivery terms are "F.O.B. Seller's Tulsa facility." For all goods whose destination is outside of the United States, delivery terms are "Ex-Works".

5.2 Seller may make partial shipments. Each shipment will be considered a separate and independent transaction, and may be invoiced separately. Seller may withhold production and partial shipments of goods if Buyer has failed to timely pay any invoice. Buyer shall pay all freight charges for delivery of the goods. Seller may charge Buyer a reasonable amount for any storage of the goods due to Buyer's change in the delivery or shipment date and invoice Buyer accordingly.

5.3 Seller anticipates submitting its general arrangement drawings for Buyer's approval within two (2) to three (3) weeks after written acceptance of formal purchase order.

6. WARRANTIES.

6.1 Seller warrants that goods it manufactures pursuant to specifications provided by Buyer shall be manufactured in accordance with such specifications, and such goods manufactured by Seller shall be free from defects in Seller supplied material and workmanship under normal use and conditions for a period of 12 months from the date of shipment (or notification of readiness to ship).

6.2 Seller warrants that goods of its own design and fabrication will perform in accordance with the performance specifications contained in Seller's quotation while the goods are in a clean condition and are being properly operated within the stated design limits of such goods. Seller does not warrant any performance of goods manufactured pursuant to Buyer's design and such goods are sold to Buyer on the express understanding that Seller does not warrant that such goods are fit for Buyer's purposes.

6.3 Seller's warranties are subject to the following additional limitation and conditions: (A) hydraulic and thermal performance is contingent on uniform flow and temperature distribution of the gas stream entering subject equipment. Uniform flow distribution is achieved at recommended hydraulic diameters upstream and downstream of obstructions, per generally accepted fluid flow principles. (B) Expected performance shown on equipment data sheets is based on nominal geometry and industry standard performance correlation factors. Variations in performance due to permitted fin geometry tolerance and correlation factor error range may occur. (This section applies only to Kentube Engineered Products product line.)

6.4 Seller's obligations to remedy defective materials or workmanship is limited to Seller's option to either repair or replace the defective goods or refund or credit the purchase price as to the goods affected. No allowance shall be granted for repairs or alterations made by Buyer without Seller's prior written consent. No "in and out" charges shall be allowed regarding the expense of removing and replacing the defective goods.

6.5 Seller's warranties do not apply to goods requiring replacement because of normal wear and tear, corrosion or erosion.

6.6 These warranties shall be voided as to any part of the goods that have been subject to abuse, misuse, improper installation (to the extent not installed by Seller), operation or maintenance, accident, negligence, use other than as designed or intended, or modification not specifically authorized by Seller.

6.7 Seller shall defend any suit or proceeding brought against Buyer to the extent such is based on a claim that any Seller designed goods constitute an infringement of a United States patent directly caused by the goods if notified promptly in writing and Buyer allows Seller to control, and cooperates with Seller in, the defense of any related settlement negotiations. Seller's obligations to defend is limited to actions ending in a final and binding judgment and does not include defending the appeal of any final judgment. If goods are held to constitute an infringement and the use of said goods is enjoined, Seller, shall, at its option and expense, procure for Buyer (1) the right to continue using said goods, or (2) replace same with non-infringing goods, or (3) modify it so it becomes non-infringing or (4) return said goods for a credit equal to the portion of the previously paid purchase price allocable to the useful remaining life of the goods. The foregoing states the entire liability of Seller for patent infringement by said goods. Seller's obligations under this Section 6.7 shall not apply to any expense or loss resulting from infringements of patents, copyrights, or trademarks arising from Seller's compliance with Buyer's designs or specifications.

6.8 Unless otherwise agreed in writing by Buyer and Seller, Seller makes no warranty or representation that the goods will conform to any federal, state or local laws, regulations, codes or standards.

6.9 The warranties set forth above do not apply to products, components, accessories, parts or attachments manufactured by other manufacturers; such being subject to the manufacturer's warranty, if any. To the extent not prohibited by the manufacturer's warranty, Seller shall pass through to Buyer such manufacturer's warranty.

6.10 Seller's warranties do not extend to Buyer's specifications relating to the goods or any goods furnished from Buyer's designated suppliers.

6.11 THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND WAIVED. THESE WARRANTIES CONSTITUTE SELLER'S SOLE AND EXCLUSIVE WARRANTY FOR DEFECTIVE GOODS AND FOR PATENT INFRINGEMENT AND CONSTITUTE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE GOODS AND FOR PATENT INFRINGEMENT.

7. PROPRIETARY INFORMATION. All drawings, data, inventories, procedures, quotations and other technical information, if any, supplied by Seller shall remain the property of Seller and shall be held in confidence by Buyer. Buyer shall not reproduce, use or disclose such information to others without Seller's written consent.

8. GOVERNING LAW. The rights, obligations and remedies of Buyer and

Seller, the interpretation of the parties' contract and the sale of goods shall be governed by Oklahoma law, without regard to any principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the parties' contract.

9. **ARBITRATION.** Any dispute arising under or in connection with the parties' contract or the sale of goods shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The dispute shall be resolved by one neutral arbitrator who shall have no affiliation with either Buyer or Seller and shall be selected by the American Arbitration Association office in Dallas, Texas. The arbitration proceedings shall be held in Tulsa, Oklahoma. Nothing in this Section 9 will prevent Seller at any time from seeking any equitable, injunctive and/or similar relief in any court.

10. **SUSPENSION AND TERMINATION.** Buyer's purchase order once accepted may not be terminated or suspended by Buyer without prior approval of and arrangement with Seller. In the event of any termination "for Buyer's convenience," Buyer agrees to pay for all work performed to the date of termination, for all costs which can not be avoided as a result of the termination (such as third party cancellation charges) and a cancellation fee equal to 20% of the cancelled portion of the purchase price.

11. **LIMITED LIABILITY AND DAMAGES.** Under no circumstances shall Seller be liable for any consequential, incidental, special, punitive or exemplary damages as defined by the law governing the parties' contract, nor for any loss of anticipated profits, loss of revenue, loss of production, loss of business opportunity, loss of use of equipment or any installation, system or facility into which Seller's goods may be located. Notwithstanding any other provision of the parties' contract to the contrary, Seller's total cumulative liability arising out of or in relation to the design, manufacture, sale and servicing of the goods furnished pursuant to the parties' contract, including liability for default, indemnity, rework, re-performance, or replacement, under any cause of action, whether in tort, contract or otherwise at law, shall not exceed a cumulative sum of the purchase price paid by Buyer regardless of cause and whether any such liability arises by reason of negligence or breach of duty (whether statutory or otherwise) on the part of the Seller, its affiliated companies and subcontractors, and its and their officers, directors, employees and agents, and Buyer will hold all such entities and persons harmless from and against any and all such liability in excess of this amount.

12. **FORCE MAJEURE.** Any failure of performance by either Seller or Buyer shall not constitute default hereunder or give rise to any claim for damages or otherwise, if, and to the extent caused by, an act, event or occurrence beyond the reasonable control of, and not resulting from the fault of the party claiming the protection of this section (an event of "Force Majeure") including, but not limited to: unusually severe weather conditions, fires, flood, earthquakes, quarantine, blockade, labor disputes, strikes, governmental authority, war, sabotage, explosions, epidemics, lightning, injunctions, insurrection, civil strife, or any other similar events.

Upon the occurrence of any event of Force Majeure, the affected party shall (a) within four (4) business days advise the other party of such event and (b) diligently

pursue all reasonable efforts to minimize the effect of any such event of Force Majeure on the production of the goods or the payment for the goods, as the case may be, and to restore such party's liability to perform hereunder. To the extent that any event of Force Majeure actually delays Seller's ability to perform hereunder, Seller shall be entitled to an equitable adjustment to the schedule and the price.

13. TESTING. Any testing of the goods by Buyer shall be at Buyer's expense and shall be made when the goods are new, clean and undamaged and shall be made within three months of the date of delivery. A report of any such test detailing the test procedure and disclosing all results shall be furnished to Seller at Buyer's expense. All workmanship, material and goods requirements shall be deemed to have been met in the absence of a contrary report within three months of delivery.

14. ENGINEERING AIDS. The rating instructions and theoretical surface tables in Seller's engineering manual are intended to be used as aids in rating heat exchange equipment and cannot be considered a substitute for tests by Buyer of the effects of finning on Buyer's particular heat exchanger design. (This section applies only to Kentube Engineered Products and Kentube Finned Products product lines.)

15. INSURANCE. Seller shall have the right to maintain insurance in accordance with its normal practice; i.e., Seller may utilize prevailing insurance policies, including deductibles and/or self-insured retentions associated with those policies. If Seller, in its ordinary course of business, self-insures for any of the risks set forth above, then Seller may self-insure such risks under the parties' contract.

16. EXPORT CONTROL - FOR NON-DOMESTIC SHIPMENTS. Any sale made under the parties' contract shall at all times be in strict conformity with all relevant export control laws and regulations. Buyer will not make any disposition by way of trans-shipment, re-export, diversion or otherwise of the goods, except as such laws and regulations may expressly permit (with Buyer bearing full responsibility for obtaining any required export licenses or other permits), and no such disposition or transfer will be made other than to the ultimate country of destination specified in the parties' contract. Buyer will furnish, upon request, proof that the goods have been entered, and will remain in, the specified destination country. Buyer hereby agrees to indemnify, defend and hold harmless Seller and its employees from and against any and all claims, demands, damages, costs, penalties and fines arising in connection with any alleged breach by Buyer or its agents of this Section.

17. BUYER- SUPPLIED TUBES OR PIPES. (This section applies only to Kentube Engineered Products and Kentube Finned Products product lines.) When Buyer supplies bare tube or pipe:

17.1 Seller's quotation is based on receiving Buyer's pipe or tube in straight lengths with surfaces readily cleanable by our standard belt-sanding methods. Should Buyer's pipe or tubing arrive in any other condition requiring extra preparation, Seller will advise Buyer before finning of any estimated additional charges.

17.2 If alloy pipe or tube is received with mid-welds that have been stress-relieved, it will be necessary for Seller to perform an extra grinding operation to remove the scale which is formed by the heat treating process. Seller will request Buyer's approval of the additional charge for this operation before performing the work.

17.3 In many cases, spare tubes are required to cover shipping damage and

finning spoilage. Buyer should contact Seller for estimates of the quantity of spare tubes required before ordering the tubes. In other cases, Seller may be required to accept overrun of tubes or pipe from Buyer-designated suppliers, such tubes or pipe shall be billed and paid for by Buyer at the fair market value and shall be shipped to Buyer by Seller with the completed order. Spare tubes (other than drop-off pieces from over-length tubes) shall be shipped with the completed job unless otherwise specified by Buyer. Drop-offs from cutting over-length tubes furnished by Buyer shall be scrapped unless other disposition is agreed on by shipping date.

17.4 Buyer must ensure that all truckload quantities are shipped in open-type flat-bed trucks with sufficient blocking to enable Seller to unload by forklift or overhead crane.