

# VINYLTECH TERMS & CONDITIONS OF SALE



Vinyltech Corporation is hereinafter referred to in these Terms and Conditions of Sale (“Terms”) as “Vinyltech” and the customer or person or entity purchasing goods or services (collectively referred to as “Goods”) from Vinyltech is referred to as the “Buyer”. Buyer acknowledges that these Terms to Vinyltech, along with any attachments, price lists, schedules, quotation, acknowledgments, or invoice from Vinyltech relevant to the sale of the Goods (collectively, “Attachment”), and all documents incorporated by specific reference into these Terms or any Attachment, constitute the complete and exclusive statement of the terms of the Agreement governing all sales of Goods by Vinyltech to Buyer (“Agreement”), regardless of whether or not Buyer or Vinyltech expressly make reference to these Terms in any documentation related to any such sale. Buyer’s acceptance of the Goods will manifest Buyer’s assent to these Terms without variance or addition. Vinyltech hereby objects to and rejects any terms in Buyer’s purchase order or other Buyer documents that are different than or in addition to these Terms, and such terms shall not constitute any part of the Agreement between Buyer and Vinyltech. Any Attachment is incorporated herein by reference. Vinyltech reserves the right in its sole discretion to refuse orders.

**1. PRICES.** All Vinyltech prices are based on written, authorized Vinyltech quotes while they remain in effect for the duration set forth in the quote. Fixed price quotes are void and invalid after the quote expiration date and the price of Goods are then subject to change without notice and the prices invoiced will be those in effect at the time of shipment.

**2. ORDER ACCEPTANCE.** No order placed with Vinyltech shall be considered accepted until acknowledged in writing by Vinyltech. Vinyltech reserves the right to accept or reject any order. The Terms and Conditions stated herein constitute the entire terms and conditions of sale between the parties. A price quote by Vinyltech does not constitute the acceptance of an order.

**3. CANCELLATION.** In the event of Buyer cancellation of standard orders prior to shipment, orders shall be subject to liquidated damages for the cost of labor, storage, and overhead, in the amount of ten percent (10%) of sales price. Nonstandard orders, custom-produced Goods, special orders, Northern Pipe Products Goods for resale, and purple pipe orders that are cancelled by Buyer shall be subject to liquidated damages for the cost of labor, materials, storage, packaging, overhead and profit, in the amount of one hundred percent (100%) of sales price.

**4. SHIPMENT AND DELIVERY AND FREIGHT.** Vinyltech will use reasonable efforts to meet the requested shipment schedule, but not guarantee a delivery time, and assumes no liability for additional costs or damages resulting from late deliveries. Unless otherwise stated, all shipments are F.O.B Shipping Point with transportation prepaid by Vinyltech and allowed to jobsite or Buyer’s stocking location, whichever applies, provided jobsite is legally and physically accessible to interstate freight carriers operating under I.C.C. and state D.O.T. regulations. Additional freight charges shall be paid by Buyer for less-than-truckload (LTL) shipments, Stop-over/Drop shipments, delays caused by Buyer or Buyer’s customer and demurrage.

**5. EXAMINATION AND RECEIPT OF GOODS.** All claims for damage in transit or shortage or shipping errors shall be noted on Bill of Lading, which shall be signed by Buyer or Buyer’s customer/agent, and the carrier (truck driver). Buyer or Buyer’s customer/agent shall be responsible for making a careful and complete examination of the Goods at time of delivery and unloading to assure that the shipment is accurate according to the Bill of Lading and quantities ordered and that the Goods are received in good condition with no damage. Vinyltech will not accept or honor claims for shipping damage or quantity shortages or shipping errors that are not properly documented on the Bill of Lading as described in this Section 5.

**6. RETURNS.** Buyer must obtain written approval from Vinyltech before returning any Goods to Vinyltech. Unauthorized returns may be scrapped at Buyer's expense. Ownership of authorized returns will pass to Vinyltech upon receipt at Vinyltech's factory. Vinyltech will determine acceptability of returned Goods for resale. Credit will be issued on resalable Goods only. A restocking charge of twenty-five (25%) percent and freight costs both ways for the returned Goods shall be charged to the Buyer.

**7. TERMS OF PAYMENT.** Unless otherwise specified by Vinyltech, terms are net thirty (30) days from the date of Vinyltech's invoice in U.S. currency. Vinyltech has the right, among other remedies, either to terminate the Agreement and/or purchase order with Buyer or to suspend further performance under this Agreement, any other agreements and/or purchase orders with Buyer in the event Vinyltech fails to receive any payment when due, which other agreements and/or purchase orders Buyer and Vinyltech hereby amend accordingly to incorporate these Terms, or if Vinyltech otherwise deems itself insecure. Buyer shall be liable for all expenses, including attorneys' fees and other litigation costs, relating to the collection of past due amounts. In the event Buyer fails to make any payment to Vinyltech when due, Buyer's entire account(s) with Vinyltech shall become immediately due and payable without notice or demand by Vinyltech. If any payment owed to Vinyltech is not paid when due, it shall bear interest at a rate to be determined by Vinyltech, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Vinyltech, cash payments or security satisfactory to Vinyltech may be required by Vinyltech for future deliveries and for Goods delivered up to that point. If such cash payment or security is not provided, in addition to Vinyltech's other rights and remedies, Vinyltech may discontinue deliveries. Buyer hereby grants Vinyltech a purchase money security interest in all Goods sold to Buyer by Vinyltech, which security interest shall continue until such Goods are fully paid for in cash, and Buyer

(a) upon Vinyltech's demand, will execute and deliver to Vinyltech such instruments as Vinyltech requests to protect and perfect such security interest, and

(b) authorizes Vinyltech to execute and file such instruments as are necessary or useful to protect and perfect such interest. No Goods furnished by Vinyltech to Buyer shall become a fixture as a result of such Goods being attached to realty.

**8. LIMITED WARRANTY.** Vinyltech warrants to the Buyer that the Goods are free from defects in materials and workmanship and that the Goods are manufactured in accordance with industry standard material specifications. It is the Buyer's or Buyer's customer's responsibility to carefully inspect and/or test the product to insure that it performs satisfactorily for its intended use. Every claim under this warranty shall be deemed waived unless made in writing and received by Vinyltech within thirty (30) days of the date the defect was discovered and one (1) year of the date of the shipment of the Goods. Vinyltech makes no other representation or warranty of any kind, except for our standard warranty, express or implied, in fact or in law, including without limitation, the warranty of merchantability or the warranty of fitness for the above. The limit for our liability for failure of any of the Goods to meet the foregoing warranty shall be the re-supply of a like quantity of non-defective Goods for any material returned to us within one year of shipment and found to be defective by Vinyltech, and Vinyltech shall have no other liability except the one mentioned above. In no event shall Vinyltech be liable for any alleged negligence, breach of warranty, strict liability, incidental or consequential damages, or any other theory, other than the liability set forth above. This warranty is void if the Goods are damaged by the carrier or Buyer, or Buyer's customer. This warranty is void if the spigot end of Vinyltech's pipe is over-inserted past the stop mark.

**9. LIMITATION OF LIABILITY.** Vinyltech shall not be liable for damages caused by delay in performance, or non-performance, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), and in no event shall Vinyltech's liability to Buyer and/or its buyers exceed the price paid by Buyer for the specific Goods provided by Vinyltech giving rise to the claim or cause of action, and Buyer shall indemnify Vinyltech for any damages in excess thereof. In no event shall Vinyltech's liability to Buyer and/or its customers extend to include direct, indirect,

special, incidental, consequential, or punitive damages, all of which are waived by Buyer and as to which Buyer shall indemnify Vinyltech. The term “consequential damages” as used in these Terms shall include, but not be limited to, fines, penalties, loss of anticipated profits, business interruption, loss of use of revenue, cost of capital, loss or damage to property or equipment, loss of reputation, or illness. Further, Buyer shall indemnify and hold Vinyltech harmless from any liability to Buyer, Buyer’s employees, workers, contractors or any other persons arising out of Buyer’s or any other persons’ use of Goods. Vinyltech shall not be responsible for any losses or damages sustained by any party as a result of improper installation, improper use or storage of Goods, or improper design of pipe systems or failure on the part of the design engineer or installer or end-user to properly de-rate the allowable design (or operating) pressure when the operating temperature exceeds 73.4 deg F (23 deg C). Buyer shall defend, indemnify and hold harmless Vinyltech and its directors, officers, employees, shareholders, subsidiaries, affiliates and agents against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney’s fees) arising out of or in connection with any injury to, damage to, death to or loss of any persons or property, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use or repair of Goods by Buyer. This Section 9 shall survive the termination of this Agreement.

**10. TAXES.** Any current or future tax or any charge of any nature imposed by any governmental or taxing authority that is or becomes payable by reason of the production, transportation, sale, storage, processing, use, consumption or delivery of Goods sold to Buyer, other than taxes based on Vinyltech’s net income or profit, will be for Buyer’s account and will either be added to the price of Goods and paid for by Buyer or billed to Buyer separately and paid for by Buyer, as Vinyltech may elect in its sole discretion.

**11. ASSIGNMENT.** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Vinyltech, and any such assignment, without such consent, shall be void.

**12. FORCE MAJEURE.** Vinyltech shall not be liable for damage resulting from delay in performance or for non-performance, directly or indirectly caused by circumstances beyond the reasonable control of the party affected, including, but not limited to acts of God, fires, acts of the Devil, explosions, floods, war, acts of or authorized by any government commission, agency or jurisdiction, accident, labor or storage trouble, or inability to obtain material, equipment or transportation. Quantities so affected may be eliminated from the Agreement without liability, but the Agreement shall remain otherwise unaffected. Vinyltech shall have no obligation to purchase supplies of the Goods specified herein to enable it to perform this Agreement.

**13. GOVERNING LAW.** These Terms shall be governed by and construed and interpreted in accordance with the laws of the State of Arizona, without regard to its conflict of law principles. Buyer and Vinyltech agree that the proper venue for all actions arising in connection with these Terms shall be deemed exclusively proper only in state or federal courts in Maricopa County, Arizona and the parties agree to submit to such jurisdiction or at Vinyltech’s sole election, to binding arbitration before a single arbitrator pursuant to the American Arbitration Association’s Commercial Dispute Resolution Procedures, with such arbitration to take place in Maricopa County, Arizona.

**14. MISCELLANEOUS.** All rights and remedies of Vinyltech in these Terms are in addition to, and not in lieu of, any rights or remedies that Vinyltech may have at law or in equity. These Terms supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms.