



PM RECOVERY INC. - SALES CONTRACT **GENERAL TERMS AND CONDITIONS**

1. **ACCEPTANCE:** Acceptance of the goods identified in this Sales Contract in whole or in part, or any other act of Buyer signifying acceptance of the goods identified in this Sales Contract, shall constitute an unconditional acceptance of all the terms and conditions set forth herein.
2. **INTEREST:** Buyer shall pay interest on overdue invoices at the rate from time to time charged by Seller.
3. **TAXES:** All prices quoted on the face hereof are exclusive of any city, state or federal taxes.
4. **ACCELERATION:** If Buyer shall fail to pay any amount due under this or any other sales contract with Seller or any invoice issued by Seller, then, at the option of Seller, the payment of any sum specified hereunder shall be accelerated, and the same shall become due and payable immediately, regardless of whether delivery of the materials has been tendered by Seller.
5. **DELIVERY AND TENDER:** (a) Delivery to Buyer's F.O.B. point shall constitute delivery to Buyer. Risk of loss shall pass to Buyer upon delivery. (b) Any shipment made within twenty (20) days before or after the dates specified for delivery in the contract shall constitute a good tender. (c) Partial deliveries, in reasonable quantities, may be made by Seller to Buyer hereunder. (d) Seller may deliver and Buyer agrees to accept as good delivery hereunder that quantity of each item specified on the face hereof plus or minus 10%. (e) In case of export, risk of loss shall pass to Buyer on delivery to overseas carrier.
6. **FORCE MAJEURE:** Delivery shall be subject to and contingent upon strikes, labor difficulties, riot, war, governmental interference or embargoes, fires, floods, accidents, acts of God, force majeure, shortages of fuel, power, materials or supplies, transportation delays or any other cause beyond the control of Seller. Seller's obligations are subject to restrictions imposed from time to time by government regulation, order or directive. In the event of such delay, Seller shall have the option to extend the time for delivery for a period equal to the number of days of such delay, *provided, however,* that in the event that such delay shall exceed sixty (60) days, then Seller shall have the right to cancel this contract, in writing, without further liability or responsibility on the part of either party, it being understood that the right of canceling shall be the sole and exclusive right of Seller in such event. Seller shall not be required to allocate among its customers in case of shortage.
7. **SEPARABILITY:** Each of the provisions of this Sales Contract, and of these Terms and Conditions, is separate. In the event that any of the said provisions hereof shall, for any reason, be held to be void or unenforceable, the remaining provisions shall remain in full force and effect, and shall control.
8. **ASSIGNMENT:** Any purported assignment of this contract by Buyer without Seller's written consent shall be void.
9. **DISCLAIMER OF WARRANTIES:** All warranties express or implied, **including without limitation the implied warranties of merchantability and fitness for a particular purpose or use, are hereby excluded and disclaimed.** There are no warranties which extend beyond the description on the face hereof. If Seller shall furnish technical advice or assistance with respect to the use of the goods sold hereunder, it shall be given without charge to Buyer, and shall be given and accepted at the sole risk of Buyer, and Seller shall not be responsible or liable for the advice given or the results thereof. Buyer assumes all risks and liability resulting from the use of the goods, including any change in their composition or form, or the use of the same in combination with other substances.
10. **LIABILITY OF SELLER:** **In no event shall Seller be liable for loss of prospective profits, nor for indirect, incidental, special or consequential damages of Buyer, even if aware of the possibility that such damages may accrue,** under any theory of liability, including without limitation any claim for contract, warranty, tort, negligence or any combination of the foregoing or otherwise. In the event of a breach or repudiation of this contract by Seller, the aggregate amount of recovery, judgment, or award which may be obtained by Buyer against Seller hereunder shall not exceed the purchase price of the goods described on the face hereof and actually paid to Seller hereunder. The right to recover said purchase price of the goods actually paid shall be and constitute the sole and exclusive remedy of Buyer hereunder.
11. **CLAIMS AND ALLOWANCES:** Seller shall not be liable for customary variations from specifications. Claims of any kind or nature (except for latent defects) are barred and waived unless made in writing prior to processing or altering the goods in any manner whatsoever, and in no event unless made in writing delivered to Seller within twenty (20) days after delivery of the goods. Claims for latent defects are barred and waived unless made in writing delivered to Seller within sixty (60) days after delivery of goods. Buyer shall make a thorough examination and quality control test of each shipment promptly after arrival of the goods, and in any event before the goods are used, processed, or altered in any manner whatsoever whether by Buyer or its designee. Buyer shall give immediate written notice to Seller of any claims for defects or inferior quality, or any other condition giving rise to a claim, and shall afford Seller reasonable opportunity to examine and test the goods. Pending such examination and testing by Seller, the goods shall not be used, processed, or altered in any manner whatsoever, and if Buyer shall use, process, or alter the goods, this shall constitute an unqualified acceptance of the goods and waiver of claims with respect thereto, and Seller shall not be liable to Buyer in respect to the goods. Failure to follow strictly the procedures established by this Section 11 shall constitute a waiver of any claim of defect. Any claim shall affect only that portion of any delivery claimed to be defective and shall not affect the balance of the goods covered by this contract. Any delivery not in dispute shall be paid for as due without set-off or counterclaim, regardless of any claim relating to any other delivery or undelivered materials.



12. **CONFIRMATION:** Orders or special instructions shall not be binding on Seller until accepted or confirmed in writing by Seller. Orders shall be deemed dated as of such confirmation, and all dates of delivery shall be calculated from such date.
13. **CONTROLLING PROVISIONS:** This sales contract form and these terms and conditions shall supersede any provisions, terms or conditions contained in any confirmation, order or other writing which may have been given or sent by or on behalf of Buyer to Seller. Reliance by Buyer on any oral representations or statements not included herein is hereby expressly disclaimed, and any and all oral representations or statements made by the parties heretofore are merged herein and the rights of the parties shall be governed exclusively by the express provisions, terms and conditions hereof.
14. **ARBITRATION:** Any dispute, controversy, or claim arising out of or relating to this contract or the performance hereof or the goods delivered hereunder shall be referred to, and determined and settled by, arbitration in accordance with the Rules of Practice and Procedure then obtaining of the American Arbitration Association, or the Institute of Scrap Recycling Industries, Inc., at Seller's option, sitting in New York City. Buyer and Seller hereby consent and submit to the jurisdiction of the Supreme Court of New York and agree that the said Court may issue such orders or judgments as may be necessary to compel arbitration hereunder, or to enforce any award made by the arbitrators. Buyer and Seller further agree that any process, notice, application or motion to such Court or a Judge thereof may be served outside the State of New York by registered mail or by personal service or in any other manner permitted by the Civil Practice Law and Rules of the State of New York.
15. **LIMITATION OF ACTIONS:** No action or arbitration shall be commenced by Buyer against Seller for any recovery hereunder more than one (1) year after the cause of action, or the right to arbitrate, has accrued.
16. **MODIFICATIONS AND WAIVER:** No modification of this contract shall be binding unless in writing signed by both parties; no waiver by either party of any default shall be deemed a waiver of any subsequent default.
17. **RETURN OF CONTAINERS:** Upon mutual agreement, shipping materials shall be returned by Buyer in good order and condition within sixty (60) days of delivery, to the address indicated on the invoice, freight collect. Buyer shall pay for all damaged shipping materials, or those not so returned, upon receipt of Seller's invoice therefor.
18. **LAW CONTROLLING:** This contract shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. The parties intend that such law shall govern performance, breach and any alleged breach hereunder, and Buyer and Seller **expressly agree that the UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY** to the transaction memorialized in the contract.
19. **COLLECTION COSTS:** Buyer shall pay to Seller reasonable costs of collection for money due and unpaid, including reasonable attorneys' fees.
20. **LATE CHARGES:** If Buyer defaults in the timely payment of any amount due under the contract, Buyer shall be liable for, and shall pay to Seller upon demand, and from time to time, if applicable, a late charge on such delayed payment at a rate equal to the lesser of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law.