

CALPIPE INDUSTRIES, INC., BOLLARD DIVISION
TERMS & CONDITIONS OF SALE

The following terms and conditions (the "**terms and conditions**") govern the sale of products and any related services (collectively, the "**Products**") by Calpipe Security Bollards, a division of Calpipe Industries, Inc. ("**Calpipe**") to its customers ("**Buyer**"). Calpipe reserves the right to change these terms and conditions without notice.

Acceptance. These terms and conditions and the terms and conditions on this form's face constitute the entire contract for sale of the Products by Calpipe (the "**Contract**") and supersede any prior course of dealing, custom of usage, custom or trade, course of performance, prior invoicing terms and conditions, purchase orders, contracts or agreements, whether written or oral. By placing an order with Calpipe or by accepting shipment of merchandise from Calpipe, Buyer expressly accepts all of these terms and conditions, whether additional to or different from those contained in Buyer's purchase order or any other form or document previously or hereafter supplied by Buyer to Calpipe. Buyer will be deemed to have assented to these terms and conditions unless Calpipe receives Buyer's notice of objection within 10 days of Buyer's receipt of this Contract or prior to delivery or other performance of Buyer's purchase order, whichever occurs earlier.

Price and Payment. Products shall be charged at prices specified on the invoice. Buyer shall bear all applicable federal, state, municipal and other government taxes as well as license fees and other charges, however designated, levied on the sale and/or delivery of the Products. Prices do not include such taxes, fees or charges.

Payment for orders shall be in accordance with the terms in effect at the time the order was placed. Unless otherwise specified: (a) for orders charged at \$5000.00 or less, Buyer shall pay in full prior to shipment; and (b) for orders charged at more than \$5000.00, Buyer shall pay 50% of the amount when the order is placed and shall pay the remaining balance within 30 days of the date of invoice. All orders over \$5000.00 are subject to Calpipe's approval of Buyer's credit pursuant to the terms and conditions of Calpipe's Application for Credit. To secure full payment and compliance, Calpipe hereby retains, and Buyer grants to Calpipe, a security interest in the Products, and Buyer agrees to execute any additional documents necessary to perfect such security interest. If Buyer fails to make timely payment for the Products, the unpaid amount shall bear interest at the rate of 1.5% per month, not to exceed the maximum rate permitted by law, and Calpipe, at its discretion, may delay or stop future deliveries, repossess the Products, and/or terminate this Contract. For orders that require prepayment (in whole or in part), Buyer may pay by credit card or check if Buyer provides a copy of such check via fax or email to Calpipe prior to mailing.

Delivery and Risk of Loss. Title to, and all risk of loss or damage with respect to, the Products shall pass to Buyer upon delivery by Calpipe to a carrier at Calpipe's warehouse. Calpipe reserves the right without penalty to deliver prior to requested delivery dates and to deliver in installments, each to be separately invoiced and paid when due without regard to subsequent deliveries.

Buyer shall promptly notify Calpipe, within 7 days of receipt of the Products, of any claimed shortages or rejection as to any delivery. Such notice shall be in writing and shall be reasonably detailed, stating the grounds for any such rejections. Failure to deliver such notice within such time shall be full acceptance of such delivery.

Calpipe shall not be liable for any shipment delays beyond the reasonable control of Calpipe which affect Calpipe or any of Calpipe's suppliers including, but not limited to, delays caused by: (i) unavailability or shortages of goods or services from Calpipe's suppliers; (ii) severe weather events, natural disasters, and acts of war or terrorism; (iii) acts or omissions of Buyer; (iv) fire, strike, riot, or governmental interference; (v) unavailability or shortage of materials, labor, fuel, or power through normal commercial channels at customary and reasonable rates; (vi) failure or destruction of plant or equipment arising from any cause whatsoever; or (vii) transportation failures.

ALL DELIVERY DATES ARE ESTIMATES. CALPIPE SHALL NOT BE LIABLE FOR ANY LOSSES OR PENALTIES IF ESTIMATED DELIVERY DATES ARE NOT MET.

Storage. If for any reason Buyer is unable to receive the Products as scheduled, Calpipe may elect to store the Products at Buyer's risk and expense. Buyer shall pay Calpipe a storage fee of \$35 per day for the period from 10 business days until 90 business days after the scheduled shipment date, after which time the remaining balance due on the purchase price of the stored Product shall be immediately due and payable. **Risk of loss or damage with respect to stored Products shall pass to Buyer beginning 10 days after the scheduled shipment date.** At its sole discretion, Calpipe may elect to terminate storage and require removal of the Products upon 30 days' notice to Buyer.

Change Orders. Buyer may make a written request for changes in drawings, designs of, or specifications for, Products, but acceptance of any requested change shall be (i) at Calpipe's sole discretion, (ii) made in writing with Calpipe's signature, and (iii) upon such terms and conditions as Calpipe may require. If any such change causes an increase or decrease in the cost of the Products or in the time required for performance, an equitable adjustment shall be made and this Contract shall be modified accordingly.

Returns.

- **Custom Products:** Products that are custom-made, modified, or otherwise specially produced or acquired for Buyer are **not returnable**.
- **Non-Defective Products:** Within 60 days of invoice date and subject to Calpipe's prior written authorization, Buyer may return non-defective, non-custom Products.

When returning Products, Buyer must comply with all of Calpipe's return merchandise authorization procedures and requirements. All accepted returns shall be subject to a 35% restocking fee plus further reductions if the Products are damaged. Buyer shall be responsible for all freight and other charges associated with returning the Products.

- **Defective Products:** During the warranty period and pursuant to the terms of Calpipe's warranty, Calpipe shall decide, at its option, to repair or replace defective Products. If Calpipe replaces the Products or repairs the Products at a Calpipe location, Buyer shall be responsible for all freight and other charges associated with returning the Products. If Calpipe repairs the Products onsite, Buyer shall be responsible for labor charges and travel costs associated with repairing the Products.

Installation and Maintenance. Buyer shall strictly adhere to all installation, use and maintenance instructions for the Products. Unless otherwise agreed, Buyer shall be solely responsible for proper installation of the Products. **In the event that Buyer fails to properly install, use or maintain the Products, Calpipe's warranty shall be void.**

Warranty. Calpipe warrants that the Products are free of defects in material and workmanship for a period of 12 months from the time of shipment. BUYER'S SOLE REMEDY FOR BREACH OF THIS WARRANTY IS LIMITED, AT CALPIPE'S OPTION, TO REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCTS OR, IF REPAIR OR REPLACEMENT IS NOT POSSIBLE, THE REPAYMENT OF THE PURCHASE PRICE UPON THEIR RETURN. The original 12-month warranty period shall remain in effect irrespective of any repair or replacement of a defective Product. It shall be the duty of Buyer to inspect and test the Products upon delivery. Calpipe shall not be liable under this warranty for defects caused by misuse, abuse, negligence, fair wear & tear, improper installation or repair or alteration not authorized by Calpipe, lack of proper maintenance, or a force majeure event. This warranty is solely to Buyer as the first commercial purchaser of the Products. NO OTHER WARRANTY IS EXPRESSED OR IMPLIED BY CALPIPE, AND CALPIPE DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Buyer acknowledges that it is satisfied the Products are suitable for Buyer's intended purpose. In purchasing the Products, Buyer relies entirely on its own judgment; any advice, recommendation, information, assistance or service provided by Calpipe staff with respect to the Products and their purchase, installation, application and use is given in good faith and does not indicate any expertise on behalf of Calpipe. Calpipe shall not be responsible or liable in any way for such advice, recommendation, information, assistance or service.

Limitation of Liability. CALPIPE'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE OR STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL IN NO EVENT: (A) EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS, OR PORTION THEREOF, WHICH GIVES RISE TO THE CLAIM; OR (B) INCLUDE INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DAMAGES ATTRIBUTABLE TO THIRD PARTY CLAIMS, OR DAMAGES FOR LOST PROFITS OR LOSS OF USE. CALPIPE SHALL NOT BE LIABLE FOR PENALTIES OR LIQUIDATED DAMAGES OF ANY KIND. BUYER MAY NOT BRING ANY ACTION ARISING OUT OF THIS CONTRACT, REGARDLESS OF FORM, MORE THAN 1 YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

California Law and Arbitration. This Contract (and any agreement that incorporates it) shall be governed by California law without regard to choice of law provisions. Disputes regarding this Contract or the Products shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and shall be held in Los Angeles, California. Buyer shall pay for Calpipe's costs and expenses incurred in any action or arbitration that relates to the Products. If any action at law or in equity is necessary to enforce or interpret the terms of these terms and conditions, the prevailing party shall be entitled to fees and costs of suit, including reasonable attorneys' and expert witness fees and costs.

Proprietary Information. Buyer shall consider all materials and information furnished by Calpipe to Buyer in the course of bidding, negotiating and/or performing this Contract to be confidential and proprietary to Calpipe, and shall not disclose any such materials or information to any person or use such materials or information for any purpose other than performing this Contract without Calpipe's prior written permission.

General. Unless otherwise specified, all quotations are valid for 30 days subject to Calpipe's approval of Buyer's credit. If the Products are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding on Calpipe unless specifically agreed to by Calpipe in writing. This Contract is the final, complete and exclusive agreement of the parties with respect to the Products and shall supersede all prior understandings and agreements. No prior, contemporaneous or future agreement or understanding, whether written or oral, shall contradict, modify, supplement, or explain the terms and conditions contained herein. Any waiver by Calpipe of one or more of the provisions of this Contract shall not constitute a waiver of the remaining terms and conditions or any future defaults hereunder. It is the intention of the parties that the terms of this Contract shall be enforceable to the fullest possible extent, regardless of any partial invalidity or unenforceability, and that no failure or delay by either party in exercising or enforcing any right hereunder shall operate as a waiver thereof or preclude any other exercise or enforcement of rights hereunder. Neither party may assign this Contract without prior written consent, except that Calpipe may assign this Contract to any affiliate.

ALL ORDERS ARE EXPRESSLY LIMITED TO BUYER'S ACCEPTANCE OF THESE TERMS. A COPY OF THE CALPIPE TERMS AND CONDITIONS IS AVAILABLE AT CALPIPE.COM. CALPIPE OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.