

# Terms and Conditions of Sale

The following terms and conditions (“**Terms and Conditions of Sale**”) are effective July 1, 2014 and are applicable to all sales made by Albina Pipe Bending Co., Inc. DBA Albina Co., Inc., an Oregon corporation (“**Albina**”) to you (“**Buyer**” or “**you**”) whether placed through the phone, the website, by letter, fax or email, or via purchase order, unless otherwise specified.

**1. Buyer’s Acceptance of Terms:** If there is any inconsistency between these Terms and Conditions of Sale and terms and conditions contained in any other document submitted by Buyer or exchanged by Albina, these Terms and Conditions of Sale shall control even if Buyer's documents expressly limit acceptance to use of Buyer's terms and conditions. These Terms and Conditions of Sale constitute the entire agreement between the parties as to any particular purchase by Buyer of Albina’s products.

**2. Price and Payment Terms:** All prices quoted by Albina are F.O.B. Albina. Albina’s payment terms are Net 30 days from date of invoice, unless otherwise indicated on the invoice. Buyer shall pay interest on all late payments at the lesser of the rate of [1.5%] per month or the highest rate permissible under applicable law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Buyer may not reduce any payment by any alleged discounts or other deductions without Albina’s prior written consent. Buyer understands that Albina’s products are custom-made for Buyer and that Buyer necessarily incurs time and costs with respect to preparing such products for Buyer. Consequently, Buyer understands and agrees that once it has placed an order, Buyer shall be responsible for full payment of such order, regardless of whether it later determines it does not need or want such product(s).

**3. Title.** Risk of loss or damage and title for products will pass upon delivery to Buyer or its designee. Where permitted by law, Buyer hereby grants to Albina a security interest in products sold until full payment is received. Buyer authorizes Albina to file a UCC financing statement to perfect this security interest at any time.

**4. Taxes:** All sales are made subject to all applicable local, State, Federal, use, sales and excise taxes, the amount of which Buyer agrees to pay.

**5. Inspection.** Buyer shall carefully inspect all products and shipping documents promptly upon delivery of products. No claim for shortage or damage will be valid or enforceable against Albina unless Buyer gives Albina written notice specifying in detail the nonconformity or defect within 72 hours from the date that Buyer receives the products. Buyer shall supply such reasonable documentation as to any loss as Albina may request. If any Products are non-conforming and provided that the non-conformity was not caused by Buyer or due to misuse or handling after Albina delivered the Product to Buyer, Albina will, at Albina’s option, (i) replace the non-conforming products at no additional charge to Buyer or (ii) reimburse Buyer for amounts Buyer paid for such non-conforming products.

**6. Severability:** If any provision of these Terms and Conditions of Sale shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, this provision shall not affect any other provision or provisions contained in these Terms and Conditions of Sale.

**7. No Waiver:** None of the provisions of these Terms and Conditions of Sale shall be (a) deemed to have been waived unless such waiver shall be set forth in writing signed by Albina, or (b) subject to modification or waiver by course of performance, course of dealing, or usage of trade.

**8. Disclaimer of Warranties.** ALBINA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**9. Limit of Liability.** ALBINA WILL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, CONTINGENT, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE OR USAGE, COST OF SUBSTITUTE PRODUCTS, ADDITIONAL COSTS INCURRED BY BUYER, OR CLAIMS OF BUYER'S CUSTOMERS OR THIRD PARTIES. ALBINA’S TOTAL LIABILITY TO BUYER FOR DAMAGE OR LOSS ARISING OUT OF, OR IN ANY WAY RELATED TO, THE SALE OF PRODUCTS HEREUNDER, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR ANY OTHER CAUSE (“**CLAIM**”) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR PRODUCTS WITH RESPECT TO WHICH SUCH CLAIM RELATES.

**10. Returns; Cancellations.** Buyer is subject to a 15% restocking fee on all returned products. If Buyer cancels an order more than 48 hours after the order was placed for any reason other than Albina’s inability to meet the specifications, Buyer is subject to a 15% cancellation charge. In addition to the above charges, any materials that can’t be returned for full or partial refund, buyer is responsible to compensate Albina for all costs associated with the cancellation

**11. Force Majeure.** Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control, except for payment obligations.

**12. Indemnification.** Buyer agrees to defend, indemnify, and hold harmless Albina and its affiliates, or their respective officers, directors, employees, shareholders, agents, successors, or assigns from all liabilities, claims, and expenses, including attorney's fees, that arise from Buyer's (a) breach of these Terms and Conditions of Sale; (b) use of any products. Albina reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Buyer, in which event Buyer will cooperate with Albina in asserting any available defenses.

**13. Governing Law; Venue; Attorney’s Fees.** These Terms and Conditions of Sale shall be governed by, and any dispute arising hereunder shall be determined in accordance with, the laws of State of Oregon, without giving effect to conflict of laws principles. Buyer and Albina irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts sitting in Washington County, Oregon. In addition to other remedies, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorney’s fees and expenses in the enforcement action or any appeal. In any suit or action arising out of or related to these Terms and Conditions of Sale, the prevailing party shall be entitled to recover the costs and fees (including without limitation reasonable attorney fees) incurred by such party or parties in such suit or action, including without limitation any appellate proceeding.