

## TERMS & CONDITIONS OF SALE

1. The Terms and Conditions contained herein are the exclusive terms and conditions for the sale of products and components (collectively the "Products") from **essef, LLC.**, an Ohio limited liability company ("essef") to you, its Customer. Customer agrees that the terms and conditions stated herein and, to the extent not stated herein but contained on any essef invoice, constitute the final, complete, exclusive expression of the agreement between essef and Customer. In the event that any Customer form, purchase order or any other document submitted by Customer contains terms and conditions in addition to or different from the terms and conditions herein or from any essef invoice, Customer agrees, by so submitting its purchase order or other form or document, by receiving an order acknowledgment or by accepting any Products essef, that such new or additional terms are rejected and that the language of the essef terms and conditions control. Any and all new or additional terms contained on any Customer document (whether provided to essef prior or subsequent to the delivery of these Terms and Conditions) are hereby expressly and completely rejected. Acceptance of Customer's order for Products is expressly limited to these terms and conditions.
2. Orders become effective only when accepted and approved by essef. essef's acceptance is expressly made conditional on the Customer's assent to the terms and conditions contained herein and to the terms and conditions of any quotation or proposal issued by essef to the Customer, and essef agrees to furnish the Products covered by the order only upon such terms and conditions.
3. Orders, shipments, and terms of payment are subject to the approval of essef's credit department. Invoices shall be issued when Products are shipped. Terms of payment are net 30 days unless otherwise agreed by essef. Payment must be made in USA Dollars. essef reserves the right to restrict or alter the terms of payment prior to time of shipment if, in essef's opinion, Customer's financial condition or other circumstances do not warrant shipment on the terms originally specified. Any sums not paid within the specified net terms are subject to a service charge of 1.5% per month. No discount will be allowed to any Customer having an overdue balance. Any discounts previously granted to any Customer who fails to pay an essef invoice when due will be immediately forfeited and lost. Any discount forfeited or lost due to untimely payment of any invoice will be billed to Customer, which shall be immediately due and payable. Customer will pay all costs, collection agency commissions, expenses and all reasonable attorney fees incurred in the collection of any past due sums. By submitting an order or taking receipt of essef Products, Customer consents to the exclusive jurisdiction of the state and federal courts located in the State of Ohio. Customer shall be deemed to have accepted the Products shipped by essef within ten (10) days after delivery to the customer. After acceptance, Customer shall not be entitled to reject the Products. essef reserves the right to refrain from performing any work on any of Customer's orders should any of Customer's account(s) be or become past due.
4. Products are sold FOB essef's plant and title and risk of loss shall pass to Customer upon delivery to the carrier. essef is not responsible for any loss or damage incurred in transit and any claim must be made by the Customer. essef shall provide reasonable assistance in the filing of any claim, at the request of the Customer. In the event essef is forced to delay delivery of goods to the initial carrier, due to any action or request of the Customer, risk of loss shall pass to Customer upon the date essef would have otherwise delivered the goods to the initial carrier and, in which case, Customer agrees to pay all reasonable storage and insurance charges specified by essef. In the event any Product is returned with authorization, risk of loss shall remain upon the Customer until the goods are delivered to essef's plant and accepted by essef. Customer agrees to indemnify and hold harmless essef from any loss of or damage to the goods or consequence thereof, sustained while the risk of such loss or damage remains upon Customer.
5. Shipment dates are provided based on current inventories and production plans and delivery and shipment dates are estimated dates only. essef shall not be responsible for, and no allowance will be made, for any partial or total failure to deliver or for any delay incurred caused by accidents, delays in transportation, fires, explosions, floods, earthquakes, or other acts of nature, riots, strikes, or other causes beyond essef's reasonable control. essef may decline to deliver, accept for cash, or stop goods, in transit, whenever for any reason doubt as to your financial responsibility develops or may arise.
6. All Product prices quoted by essef are based on the current price at the time of such quote. essef reserves the right, upon written notice to Customer, to increase Product price to reflect current prices in effect at the time of Product delivery to the Customer. Customer reserves the right to cancel its order in the event that Customer does not accept any such price increase, provided that Customer notifies essef in writing within ten (10) days from the time Customer receives said notice of price increases. Prices quoted do not include any applicable sales use excise or other tax. essef may add such tax to the invoice or may, at its option, require Customer to pay such tax directly to the taxing authority. essef reserve the right to correct prices on any order due to typographical or mathematical errors.
7. Orders for non-standard Products, such as modified Products or Products produced to Customer's specifications, are not cancelable and not returnable without essef's prior consent. Should cancellation consent be given, essef reserves the right to recover all direct costs incurred as a result of such cancellation. Orders for standard Products are non-cancellable unless essef shall consent in writing, and provided Customers pays a minimum charge of 15% of the invoiced amount, the cost of any special or specific parts manufactured or purchased by essef to fulfill Customer's order, all sales expense incurred by essef, plus all transportation and carrier charges incurred incident to the cancellation.
8. Returns of compliant Products may be returned at the customer's request only upon the approval of essef, pursuant to the essef MRA policy (available at [www.essef.com](http://www.essef.com)). Returned Products must be in re-sellable condition and in their original packaging. No cash refunds will be provided for returned Products. essef will issue a credit memorandum for any authorized Product return. Said credit memorandum will have no cash value and shall expire one (1) year after issuance. Authorized returns not accompanied by a new order of greater or equal value shall be subject to a restocking fee of 25% of the original sale price.
9. essef warrants to Customer that the Products will be free from defects in material and workmanship for the following periods of time from date of shipment from its facility: Residential sizes 7"-13" diameters - **10 years**; Light Commercial sizes 14"-24" diameters - **5 years**. **The complete terms**

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of the **esef Limited Warranty**, which are incorporated into these Terms as if fully re-written, is available at [www.esef.com](http://www.esef.com). Any warranty claim is contingent upon receipt of written notification by Customer to esef within the warranty period. The determination as to whether a Product is defective shall be in esef's sole and exclusive discretion. Any warranty claim is further subject to Customer's return of Products to a destination specified by esef, per the esef RMA policy. No credit be allowed for the return of Products without written authorization.

**NO EMPLOYEE, REPRESENTATIVE OR DISTRIBUTOR IS AUTHORIZED TO CHANGE THE FOREGOING WARRANTIES IN ANY WAY OR GRANT ANY OTHER WARRANTY ON BEHALF OF esef. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY esef IN CONNECTION WITH THE MANUFACTURE OR SALE OF ITS PRODUCTS. THE LIABILITY OF esef, WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY, OR OTHERWISE, SHALL NOT EXTEND BEYOND ITS OBLIGATION TO REPAIR OR REPLACE, AT ITS OPTION, ANY PRODUCT OR PART FOUND BY esef TO BE DEFECTIVE IN MATERIAL OR WORKMANSHIP. esef SHALL NOT BE LIABLE FOR COST OF REMOVAL OR INSTALLATION AND/OR SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE.**

Whether based on any Warranty claim or otherwise, esef will not, in ANY event, be liable for any loss of profit, interruption of business or any other special, consequential or incidental damages suffered or sustained by Customer. esef's total maximum liability to Customer in respect of the manufacture and sale of Products is limited to the Warranty stated herein and, if any claim by Customer is based on a theory other than the Warranties, then the damages are limited to the total monies received by esef from Customer for the particular Products described in Customer's order which are determined to be defective. The total maximum liability for scheduled orders that are drawn down against each month will be the monthly total of the affected order or the total value of the items affected, whichever is the less.

10. esef shall have no responsibility or liability for any assistance, suggestions or technical advice given Customer concerning dimensions, handling, installation, testing, storage, use or placement in service of any Product sold to Customer. Any such assistance, suggestion or technical advice is merely an accommodation to Customer.

11. No employee, agent, or representative of esef has the authority or power to add, waive, or amend these terms and conditions unless first authorized in writing by an officer of esef.