

FYFE CO. LLC TERMS AND CONDITIONS – PRODUCTS (USA)

1. **Applicable Terms.** These terms and conditions govern the sale of Tyfo Products (“Products”) by Fyfe Co. LLC (“Fyfe”) to Customer as outlined in Fyfe’s quotation (“Order”). All terms and conditions contained in any other oral or written communication, including Customer’s request for proposal(s) or Customer’s purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and will not be binding on Fyfe, whether or not they would materially alter this document, and Fyfe hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. These terms and conditions, together with the Order, comprise the complete and exclusive statement of the agreement between the parties (the “Agreement”) with respect to the sale of the Products and supersede any terms contained in Customer’s documents (including any technical specifications) unless any such Customer document is separately signed by an authorized officer of Fyfe. Customer’s receipt and acceptance of the Products shipped shall be conclusive evidence of its agreement to these terms and conditions. If Customer declines these terms and conditions, this order shall be cancelled and shall become null and void and no obligations will be owed to Customer by Fyfe.
2. **Validity.** Unless stated otherwise, quotations by Fyfe are valid for a period of 30 days. Thereafter, quotations are subject to confirmation before acceptance. The prices quoted by the Fyfe are only for the supply of those Products specified in the quotation and do not apply to any other, lesser, or additional goods supplied by the Fyfe unless specified in writing by Fyfe prior to supply.
3. **Taxes.** The amount of any sales, excise or other taxes, duties or governmental charges (collectively, “Taxes”), if any, applicable to the sale of the Products will be added to the purchase price and will be paid by Customer unless Customer provides Fyfe with an exemption certificate acceptable to the Taxing authorities. Any Taxes which Fyfe may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the Products will be for the account of the Customer, who will promptly pay the amount thereof to Fyfe upon demand.
4. **Payment.** Customer agrees to pay for the Products in full within thirty (30) days after the date of Fyfe’s invoice unless provided otherwise in the Quote. In the event Customer fails to make any payment to Fyfe when due, Customer’s entire account(s) with Fyfe will become immediately due and payable without notice or demand. Customer will be charged 1.5% interest per month, compounded monthly, on all amounts not received by the due date. If Customer disputes Fyfe’s invoice, only the disputed portion(s) may be withheld from payment, and the undisputed portion(s) shall be paid.
5. **Delivery.** Delivery shall be Ex Works (Incoterms 2010) as applicable, unless other delivery terms have been specifically agreed in writing between the parties. Fyfe assumes no liability for Products which are not timely picked up at Fyfe’s plant by Customer or Customer’s carrier. If the parties arrange for delivery by Fyfe, the cost thereof, including any special packing or special handling caused by Customer’s requirements or requests, will be added to the purchase price. Fyfe reserves the right to make delivery in installments and each such installment shall be paid for as invoiced. Delivery dates are only indicative and will be observed as far as the circumstances reasonably permit. Fyfe reserves the right to ship Products in advance of the scheduled delivery date unless Customer specifically requests in writing that shipments not be made prior to the scheduled date. If Customer causes or requests a shipment delay, or if Fyfe ships or delivers the Products erroneously as a result of inaccurate, incomplete or misleading information supplied by Customer or its agents or representatives, storage and all other additional costs and risks will be borne solely by Customer. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining deliveries and shall not give rise to any liability on the part of Fyfe. Any claims for Products damaged or lost in transit (“Transit Losses”) must be made by Customer to the carrier and reported to Fyfe within one business day following delivery to Customer.
6. **Title and Risk.** Unless expressly agreed otherwise in writing, title and risk of loss passes to Customer at the time Products become available for pick-up. Fyfe assumes no liability for Products which are improperly handled, stored or damaged in transit.
7. **Returns.** Upon Fyfe’s prior written approval, which may be withheld in Fyfe’s sole discretion, Customer may return Products purchased under this Agreement. Any authorized return will be subject to payment of a restocking charge and will be allowed only if the subject Product: (i) is in new condition, suitable for resale, and (ii) has not been used, installed, modified, altered or damaged. The restocking charge for authorized returns will be no less than (x) 25% of the purchase price, net of any freight charges included in the purchase price, plus (y) 100% of freight costs incurred by Fyfe. Customer is responsible for the payment or reimbursement of return freight charges. Returns will be shipped F.O.B. Fyfe’s location. Fyfe may, but will not be obligated to, treat any cancellation of an accepted order as an authorized return.
7. **Technical Advice.** Unless expressly agreed otherwise, Fyfe assume(s) no liability for any technical advice given or results obtained therefrom, all such advice being given and accepted at Customer’s risk. Customer shall be responsible for making its own tests and verifications before applying such technical advice or using and operating the Products.
8. **Disclaimer of Liability.** Fyfe is not liable for Products improperly handled, stored or damaged in transit or installation. Fyfe is not liable for Products not timely picked up by Customer or Customer’s carrier.
9. **Warranty.** For a period of one (1) year from date of shipment of the Products, Fyfe warrants title and that Products sold hereunder shall conform to Fyfe’s standard specifications for Products of the kind being sold and shall be free of material defect subject in each case to Customer’s proper use and maintenance of the Products while the Products are in Customer’s possession or ownership. As installation conditions and experience and techniques differ greatly, Fyfe excludes any warranty of any kind, express or implied, with respect to the results which can be achieved by Customer in its use of the Products. Except as specifically provided herein, Fyfe excludes any warranty of any kind, express or implied, with respect to the Products sold hereunder as to merchantability, fitness for a particular purpose or any other matter with respect to the Products whether used alone or in combination with other products.

Effective August 1, 2017

10. Claims. Any claim for shortage or for damage incurred in transit of Products must be made within ten (10) days after Customer's receipt of the Products. All other claims, including claims for alleged defective Products, must be made within ten (10) days after Customer learns of the facts on which such claim is based, but in no event later than thirty (30) days after Customer's receipt of the Products. All claims not made in writing and received by Fyfe within the time periods specified above shall be deemed waived. No claim will be allowed or returned Products accepted if the Products have been treated or processed in any manner, except upon proof satisfactory to Fyfe of the existence of a latent defect not ascertainable before treating or processing and then only if such proof is submitted within ten (10) days after such defect becomes apparent. As a condition precedent to commencing a judicial proceeding, a party shall first submit its claims to non-binding mediation through and in accordance with the rules of the American Arbitration Association. In case of litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

11. Limit of Liability. Fyfe's liability for any and all losses or damages to Customer resulting from defective Products or from any other cause shall be limited in all cases to the purchase price of the particular Products with respect to which losses or damages are claimed plus any transportation charges paid by Customer for shipment of the Products to Customer, OR, at Fyfe's option, its liability shall be limited to the repair or replacement of defective or damaged Products. Transportation charges for the return of Products shall be paid by Fyfe only if such return is requested by Fyfe and Fyfe agrees in writing to such return of the Products. Fyfe shall in no event be liable for any special, indirect or consequential (including, but not limited to, lost profits) damages or punitive damages arising out of or relating to this Order. Customer assumes responsibility for and shall defend, indemnify and hold Fyfe harmless from liability for any personal injury and/or property damage arising out of the handling, possession or use of the Products by the Customer. Fyfe is not responsible for any failures of the Products and/or equipment after leaving Fyfe's facility.

12. Set-off and Back Charges. Customer will not be entitled to set-off any amounts due to Customer against any amount due to Fyfe from Customer. Fyfe will not be responsible for any back charges unless approved in writing in advance by an authorized representative of Fyfe.

13. Remedies of Fyfe. Any of the following will constitute an event of default which will enable Fyfe, at its option and without liability to Customer, to cancel any unexecuted portion of this or any other order and to exercise any other right or remedy expressed herein or otherwise available at law or in equity: (i) the failure of Customer to make any payment required hereunder when due ("Payment Default") or to perform any other term or condition contained herein; (ii) the insolvency of Customer or its failure to pay its debts as they mature, an assignment by Customer for the benefit of its creditors, the appointment of a receiver for Customer or for the materials covered by this order, or the filing of any petition to adjudicate Customer bankrupt; (iii) a failure by Customer to provide adequate assurance of performance within ten days after a justified demand by Fyfe; or (iv) if Fyfe, in good faith, believes that Customer's prospect of performance under this Agreement is impaired. All rights and remedies of Fyfe herein are in addition to, and will not exclude, any rights or remedies that Fyfe may have at law or in equity. In the event of a Payment Default, Fyfe shall have the right to enter Customer's premises where the Products are stored in order to take possession of and remove the Products. Fyfe's election of any remedy or remedies in the event of a default by Customer will not preclude Fyfe from exercising any other remedy or remedies available to Fyfe for the same or any other default. If it becomes necessary to incur any expense for collection of any overdue account, Fyfe's collection charges, including attorneys' fees and expenses, will be added to the balance due and Customer will pay all such charges together with interest thereon from the date incurred in accordance with Section 3.

14. Force Majeure. Deliveries may be cancelled by Fyfe without liability in case of Act of God, war, riots, fire, explosion, flood, strike, lockout, injunction, inability to obtain fuel, power, raw materials, labor, containers, or transportation facilities, accident, malfunction of machinery or apparatus, national defense requirements, or any cause beyond the reasonable control of Fyfe, which prevents or hinders the manufacture or shipment of the Products or of a material upon which the manufacture of the Products is dependent. If, because of any such circumstance, Fyfe is unable to supply the total demand for the Products, Fyfe may allocate its available supply among itself and all of its customers, including those not under contract, in an equitable manner. Except to the extent of cancellation of deliveries or allocation of supply hereunder, the contract shall remain unaffected.

15. Equal Employment Opportunity. To the extent applicable to Fyfe's activities under this Agreement, Fyfe shall comply with the following laws and regulations: Executive Order 11246 (and its implementing regulations at 41 C.F.R. part 60); the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-250); and Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations at 41 C.F.R. 60-741); and the equal employment opportunity clauses within each of the above regulations, as applicable, are included by reference in this Agreement.

16. Miscellaneous. No part of this Agreement may be changed or cancelled except by a written document signed by Fyfe and Customer. As used in this Agreement, "including" and its variants mean "including without limitation" and its variants. No course of dealing or performance, usage of trade or failure to enforce any term will be used to modify the Agreement. The headings used in this Agreement are for general ease of reference and are not a part of this Agreement. If any of these terms is unenforceable, such term will be limited only to the extent necessary to make it enforceable, and all other terms will remain in full force and effect. Customer may not assign this Agreement without Fyfe's prior written consent. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed to any third party. A waiver of the terms and conditions or breaches of this Agreement shall not operate as a subsequent waiver. Notwithstanding completion or termination of this Agreement for any reason, all representations, warranties, limitations of liability, and indemnification obligations contained in this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.