



## FILL-RITE STANDARD TERMS AND CONDITIONS OF SALE (Orders)

The following Terms and Conditions (the “Terms”) are applicable to the sale and/or provision of all goods supplied and/or services rendered (“Goods”) by The Fill-Rite Company (“Fill-Rite”) to any purchaser thereof (“Buyer”).

**GENERAL:** These Terms, together with any quotation, proposal, acknowledgement, or invoice from Fill-Rite, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Fill-Rite to Buyer, unless otherwise agreed by Fill-Rite in writing. These Terms supersede all other communications, negotiations, and all prior oral or written statements, regarding the subject matter hereof.

**ACCEPTANCE and LIMITATIONS:** Except as otherwise agreed to in writing by Fill-Rite, acceptance of this order is predicated upon the following terms and conditions and any additional and/or different terms of Buyer’s purchase order documents referenced therein, whether printed in Buyer’s purchase order or other documents or otherwise conveyed, are rejected and shall not become a part of this order. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Fill-Rite, to the extent they modify, add to, or detract from the order, shall not be binding on Fill-Rite. Order fulfillment or actions toward fulfillment does not constitute acceptance of Buyer’s terms and conditions. Fill-Rite reserves the right in its sole discretion to refuse orders.

**ASSIGNMENT:** The rights of Buyer hereunder shall neither be assignable nor transferable without the prior written consent of Fill-Rite.

**PRICE and TERMS OF PAYMENT:** The price of the goods sold pursuant to these Terms shall be based upon Seller’s prices in effect at the time of order entry; if shipment of the goods is completed within 30 days for orders shipping to US and Canada and 60 days for orders shipping to all other countries. Unless otherwise provided, the price is based on the Terms of Delivery shown in the confirmation. If shipment of the goods is not completed within 30 days of order entry, then Fill-Rite will issue a new quotation with Seller’s prices then in effect, which will be shown on the confirmation. If the order is for more than one unit of Goods, the Goods may be shipped in a single lot or in several lots at the discretion of the Seller, and each shipment shall be paid for separately. Seller may require full or partial payment or payment guarantee in advance of shipment whenever, in its sole opinion, the financial condition of Buyer so warrants. Unless otherwise agreed by Fill-Rite in writing, the terms of payment shall be net thirty (30) days from date of invoice. The Buyer shall make all payments in US dollars. If Buyer delays shipment, payments based on date of shipment shall become due as of the date when ready for shipment. If Buyer delays completion of manufacture, Fill-Rite may elect to require payment according to percentage of completion. Goods held for Buyer shall be at Buyer’s risk and storage charges may be applied at the discretion of Fill-Rite. Accounts past due shall bear interest at the highest rate lawful to contract for but if no limit is set by law, such PAST DUE INTEREST SHALL BE 1.5% PER MONTH. Fill-Rite reserves the right to withhold shipment or to require other adequate assurances of performance of Buyer’s payment obligations as Fill-Rite in its discretion may require, notwithstanding any order confirmation issued by Fill-Rite. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. Buyer waives their rights to set off against claims it may have against Fill-Rite and shall not withhold payment for any reason without the prior written consent of Fill-Rite.

**INSOLVENCY OF BUYER:** If any proceeding is initiated by or against Buyer under any bankruptcy or insolvency law, or in the judgment of Fill-Rite the financial condition of Buyer, at the time the Goods are ready for shipment, does not justify the terms of payment specified, Fill-Rite reserves the right to require full payment in cash prior



to making shipment. If such payment is not received within fifteen (15) days after notification of readiness for shipment, Fill-Rite may cancel the order of any unshipped item and require payment of reasonable cancellation charges.

**TAXES:** Unless otherwise agreed by Fill-Rite in writing, prices quoted do not include freight, insurance, installation costs, special packaging or any sales, use, excise, VAT, or similar taxes. Taxes imposed by any federal, state, county, city, or municipal law on the Goods in locations where Fill-Rite collects and remits such taxes will be added to the invoice unless a fully completed and executed tax exemption certificate is received by Fill-Rite with the order.

**CANCELLATION, TERMINATION OR MODIFICATION:** Customer order may be cancelled, terminated, or modified only upon Fill-Rite's written consent. If all or part of the order is terminated, Buyer, in the absence of a contrary written agreement with Seller, shall pay termination charges based upon expenses and costs incurred in the production of the Goods to the date such cancellation is accepted by Seller, plus a reasonable profit, except that any Goods completed on or prior to Seller's acceptance of such cancellation shall be accepted and paid for by Buyer.

**SHIPPING, TITLE AND RISK OF LOSS:** Unless Buyer and Fill-Rite agree otherwise in writing: (a) Goods will be packaged as Fill-Rite may deem proper for protection against normal handling, and extra charges will be made for preservation, waterproofing, crating, export boxing and similar added protection of goods; (b) routing and manner of shipment will be at Fill-Rite's discretion. Buyer assumes all risk of loss based on the Terms of Delivery/Incoterms in the confirmation and shall procure insurance to cover all such risk of loss. Buyer shall inspect the Goods upon receipt. Claims for shortages will be deemed to have been waived if not made in writing within ten (10) days after the receipt of the Goods in respect of which any such shortage is claimed. A claim for loss or damage in transit must be entered with the carrier and prosecuted by Buyer. Acceptance of Goods from a common carrier constitutes a waiver of any claims against Fill-Rite for delay or damage or loss.

**DELIVERY AND DELAYS:** Except as otherwise agreed to in writing by Fill-Rite, in the absence of exact shipping instructions, Fill-Rite will use its discretion regarding the best means of shipment and on or near the date defined in Fill-Rite's order acknowledgement. No liability will be accepted by Fill-Rite for so doing. Time of delivery is an estimate only and is based upon the receipt of all information and necessary approvals. The shipping schedule shall not be construed to limit Fill-Rite by making commitments for materials or in fabricating articles under this order in accordance with Fill-Rite's normal and reasonable production schedule. Fill-Rite may make partial shipments to Buyer and Buyer shall pay for the shipped portion of the order. Fill-Rite shall not be liable for damages or delays in delivery or failure to manufacture or deliver due, directly or indirectly, to (a) causes beyond its reasonable control; (b) acts of God, acts of Buyer, acts of any civil or military authority, fires, strikes, labor disputes, earthquakes, floods or other weather conditions, accidents, epidemics, wars, riots or other civil disturbances, or delays in transportation; or (c) delays or defaults by Fill-Rite's suppliers or subcontractors or other inability to obtain necessary labor, fuel, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. No provision for liquidated damages for any cause shall apply under this order. The buyer shall accept delivery within fourteen (14) days after receipt of notification of readiness for shipment. In the event Buyer does not accept delivery within that time, Fill-Rite shall have the right to charge Buyer for storage at its standard rate per month or any part thereof. Delivery dates cannot be altered by Buyer without Fill-Rite's prior written consent. Any extension of the delivery date by Buyer will be subject to storage charges as determined by Fill-Rite, interest charges, and any applicable price increases.



A GORMAN-RUPP COMPANY

**TECHNICAL ADVICE AND RECOMMENDATIONS, DISCLAIMER:** Buyer represents that the Goods sold hereunder are fit for Buyer's actual or intended use and the Buyer placed no reliance on the Seller's skill or judgement in selecting suitable Goods. Installation of the Goods shall be Buyer's responsibility. Buyer represents that the use and installation of the Goods shall conform to the Seller's instructions and all applicable government requirements.

**REMEDIES AND LIABILITY LIMITATIONS:** UNDER NO CIRCUMSTANCES SHALL FILL-RITE HAVE ANY LIABILITY (WHETHER BY WAY OF INDEMNITY OR BREACH OF CONTRACT OR STATUTORY DUTY OR BY REASON OF TORT) FOR ANY LIQUIDATED, DIRECT, INDIRECT, COLLATERAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OR FOR LOSS OF PROFITS, OR FOR ACTUAL LOSSES OR FOR LOSS OF PRODUCTION OR PROGRESS OF CONSTRUCTION, WHETHER RESULTING FROM DELAYS IN DELIVERY OR PERFORMANCE, BREACH OF WARRANTY, NEGLIGENT MANUFACTURE OR OTHERWISE AND WHETHER FORESEEABLE OR UNFORESEEABLE OR KNOWN OR UNKNOWN. Except as otherwise provided by law, the aggregate total liability of Fill-Rite in connection with the performance of this order, whether for breach of contract or warranty, negligence, or otherwise, shall in no event exceed the purchase price of the Goods or Service in respect to which damages are claimed.

Buyer agrees to indemnify and hold harmless Fill-Rite from all claims by third parties more than these limitations and from all claims resulting from any act or omission of Buyer.

Since the compliance with the various Federal, State and Local laws and regulations concerning occupational health and safety and pollution are affected by the use, installation and operation of the Goods and other matters over which Fill-Rite has no control, Fill-Rite assumes no responsibility for compliance with those laws and regulations, whether by way of indemnity, warranty or otherwise.

The right of subrogation against Fill-Rite Company and all its assigns, affiliates, employees, insurers, and underwriters, to the extent permitted by law, is waived.

**WARRANTY:** Unless otherwise agreed in writing by the parties, Fill-Rite's standard warranty shall apply and take precedence over all other documents. Further, THE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO FILL-RITE AND WHETHER OR NOT FILL-RITE'S GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY FILL-RITE FOR BUYER'S PURPOSE OR USE. Fill-Rite's standard warranty is publicly available on Fill-Rite's website at [www.fillrite.com/support/warranty](http://www.fillrite.com/support/warranty) as it may be amended from time to time.

**OTHER RIGHTS & REMEDIES:** In addition to the rights and remedies conferred upon Fill-Rite herein, Fill-Rite shall have all rights and remedies conferred at law and in equity and shall not be required to proceed with the performance of any order if Buyer is in default in the performance of such order or any other contract or order with Fill-Rite.

**GOVERNING LAW:** These Terms and any order hereunder shall be construed in accordance with the laws in the state of Seller's point of shipment (Indiana and/or Kansas), without regard to conflicts of law principles. Any dispute arising hereunder shall be resolved in the federal or state courts of the State of Indian or Kansas, as applicable. The rights and obligations of Fill-Rite and Buyer shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods.

**FAIR LABOR STANDARDS:** Fill-Rite represents that any Goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

# **FILL-RITE**

**A GORMAN-RUPP COMPANY**

**EXPORT REGULATIONS:** The marketing, sale, use, export, and release of the Goods are subject to applicable export laws and regulations of the United States and other countries. Buyer agrees to comply with all such applicable laws and regulations, including without limitation, U.S. Export Administration Regulations, regulations of the U.S. Office of Foreign Asset Control, the U.S. Foreign Corrupt Practices Act and comparable laws and regulations of other countries. Buyer shall be responsible for any breach of this Section.

**WAIVER OF JURY TRIAL:** EACH OF FILL-RITE AND BUYER IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS OR ANY ORDER HEREUNDER.

**RETURNS:** Goods may be returned only after being specifically authorized in writing by Fill-Rite. Transportation charges must be prepaid by Buyer unless otherwise noted by Seller in the authorization to return goods. All goods authorized for return are subject to Seller's inspection and acceptance, and a minimum handling charge equal to twenty (20%) of the original net price of the returned items will be assessed, unless noted in the Seller's authorization to return goods.

**MISCELLANEOUS:** These Terms may be amended only as agreed to by Fill-Rite in writing. The section titles in these Terms are for reference only and shall not limit or restrict the interpretation or construction of the Terms. Fill-Rite's failure to insist, in any one or more instances, upon Buyer's performance of any of the Terms, or to exercise any rights conferred by the Terms, shall not constitute a waiver of any such right to insist upon such performance or exercise such rights in the future. The partial or complete invalidity of any one or more provisions of these Terms shall not affect the validity or continuing force and effect of any other provision.