

# NORTH AMERICAN BUILDERS SUPPLY

## TERMS AND CONDITIONS

1. Complete Agreement. These Terms and Conditions (Terms) are incorporated by reference and made an integral part of the Quote, Order, shipping request, or similar request with Seller and Buyer. In these Terms, Seller means, collectively, North American Builders Supply, as applicable, and their affiliates, and Buyer means, collectively, the persons or entities listed on the Quote and Order. These Terms represent the final and complete agreement of the parties, and these Terms apply to all, including future, sales of goods and services by Seller, as far as not modified or excluded by express written agreement by an officer of Seller. Buyer is deemed to have accepted the Terms at each time he/she/it places an order with Seller or executes a Quote, Order, shipping request, or similar request with Seller. Buyer's only opportunity to reject the Terms is to not place an order with Seller or execute a Quote, Order, shipping request, or similar request with Seller. Any terms and conditions contained in Buyer's documentation, *including, but not limited to, his/her/its' Quote, Order, shipping request, or similar request*, shall not be binding on Seller, unless such terms and conditions explicitly state the intent to modify these Terms and are consented to in writing by an officer of Seller. The forgoing provision applies despite Seller's actual or constructive knowledge of existing contradictory terms and conditions.
2. Quote and Order.
  1. Seller shall initially provide Buyer with a written estimate (the Quote) of the goods Buyer intends to purchase (the Goods). Such Quote shall be good for three (3) days from the date noted on the Quote, unless agreed to otherwise in writing by Seller and Buyer.
  2. Buyer shall accept the Quote via execution of the Quote or execution of a separate, formal purchase order, job summary, or agreement (in each such case, the Quote becoming an Order, and a separate, formal purchase order, job summary, or agreement also an Order). In the event of any conflicting terms between a Quote and an Order, the terms of the Order shall control. **Buyer shall be responsible to Seller for ensuring the accuracy of the terms required by Buyer on any Order, including any applicable submitted specifications, and for giving Seller any necessary information relating to the Goods or related services to enable Seller to perform these Terms.**
  3. Seller's employees or agents are not authorized to make any representations or warranties concerning the Goods or related services, unless confirmed by an officer of Seller in writing. In entering into these Terms, Buyer acknowledges that it does not

rely on, and waives any claim for breach of any such representations or warranties which are not so confirmed. Any advice or recommendation given by Seller, its employees, or its agents to Buyer, including advice as to storage, application, or use of the Goods or related services, is followed or acted upon entirely at Buyer's own risk, and, accordingly, Seller shall not be liable for any such advice or recommendation.

4. Seller reserves the right, and Buyer agrees that Seller may, allocate and/or substitute items available to it in the market for the Goods at the time of the Order. In the case of such allocation and/or substitution, Buyer may refuse such allocation and/or substitution at the time of delivery or pick-up, as applicable, and shall no longer have any obligations to remit the Purchase Price to Seller; if Buyer accepts delivery or picks up such allocations and/or substitutions, or accepts such allocations and/or substitutions in writing prior to delivery or pick-up, Buyer shall be deemed to have accepted such allocations and/or substitution as if they were the originally-ordered Goods.
5. Any typographical, clerical, or other error or omission, determined in Seller's sole judgment in any sales literature, Quote, price list, Order, invoice, or other document or information issued by Seller shall be subject to correction without any liability on the party of Seller.
- 3.
4. Cancellation of Order. NO ORDER MAY BE CANCELLED OR CHANGED BY BUYER, EXCEPT BY SELLER'S EXPRESS WRITTEN CONSENT. If Seller does not consent in writing to Buyer's cancellation of the Order, Buyer shall remain liable for the full payment of the Purchase Price, and shall continue to be subject to the late fees and interest provisions contained herein. If the Order provides for Goods which are subject of a special order, such that the Goods are not part of Seller's existing product range or inventory, then Seller shall be entitled to cancel the Order without any liability whatsoever to Buyer if the Seller is unable to manufacture the requested special order Goods in accordance with Buyer's provided specifications. If Buyer makes any voluntary arrangement with its creditors, becomes subject to an administration, goes into liquidation, an encumbrancer takes possession of assets, a receiver is appointed over Buyer, if Buyer ceases to or threatens to cease to carry on business, or Seller takes the reasonable view that any of the aforementioned events is likely to occur and notifies Buyer accordingly, then without prejudice to any other right or remedy available to it, Seller shall be entitled to cancel the Order without any liability to Buyer.
5. Delivery. Buyer may indicate on the Order whether the Goods are to be picked up at Seller's place of business or delivered to Buyer. Buyer acknowledges that Seller's products (and/or the materials used in the production of the products) are purchased on the market, and can therefore be subject to delays in deliveries or supply shortages, and Seller shall not be liable to Buyer in any way for any delays in Goods availability or delivery. Seller shall have the right, in its sole discretion, to schedule and reschedule all delivery and pick-up dates. SELLER SHALL NOT BE LIABLE, IN ANY WAY, TO BUYER FOR DELAYS IN EXPECTED DELIVERY DATES, PICK-UP DATES, SHIPPING DATES, LEAD TIMES, OR THE LIKE.

Any statements, written or oral, by Seller regarding delivery dates, pick-up dates, shipping dates, lead times, or the like, shall not be binding on Seller, and shall only constitute a non-binding estimate. Time for delivery or pick-up shall not be of the essence. The Goods may be delivered by Seller in advance of the estimated delivery date on the Quote only upon giving reasonable notice to Buyer. Buyer shall have an agent at the location for delivery of the Goods on the delivery date. In the case Buyer fails to have an agent at the location for delivery of the Goods on the delivery date, Seller may, in its sole option, still deliver the Goods, and Seller shall have no liability for such delivery without Buyer's agent present. Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract, and the Seller may invoice separately for each installment. Failure by Seller to deliver any one or more of the installments, or any claim by Buyer in respect of any one or more installments, shall not entitle Buyer to treat the Terms, including, but not limited to, the Order, as a whole, as repudiated. Buyer may elect to pick up the Goods from Seller once notified by Seller that the Goods are ready for delivery or pick-up. Once notified by Seller that the Goods are ready for delivery or pick-up, and if Buyer indicates it wishes to pick-up the Goods or fails to respond to Seller's notification, Seller may elect, in its sole discretion, to (i) deliver the Goods to Buyer as provided for herein, or (ii) Buyer shall have twenty one (21) days from Seller's original notification that the Goods are ready for delivery or pick-up (Storage Period) in which to pick up the Goods from Seller. Seller shall not be responsible for the Goods after the Storage Period, and Goods remaining with Seller after the Storage Period may (i) be subject to a storage fee assessed by Seller, or (ii) taken back into Seller's inventory and no longer be available to Buyer.

6.

Risk of Loss and Title to Goods. Risk of loss or damage to the Goods shall pass to Buyer at: (i) in the case of delivery of the Goods somewhere other than the Seller's, when Seller tenders delivery of the Goods to Buyer, Buyer's agent, or a carrier, as applicable; (ii) in the case Buyer, Buyer's agent, or a carrier, is designated to pick-up the Goods from Seller, at the time Seller notifies Buyer that the Goods are available for pick-up. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, title to the Goods shall not pass to Buyer until Seller has received in readily available, cleared funds or cash, payment in full of all amounts owed from Buyer to Seller (including, but not limited to, the Purchase Price, any interest, late fees, or storage charges owed pursuant to these Terms, and any other amounts owed from Buyer to Seller for other goods and/or services). Until such time as title for the Goods passes to Buyer pursuant to the terms and conditions hereof, Buyer shall hold the Goods as Seller's fiduciary agent and bailee, and shall keep the Goods separate from the goods of Buyer and third parties, properly stored, protected, insured, and identified. Buyer hereby irrevocably authorizes Seller or its representatives to enter upon any of Buyer's premises to search for the Goods, repossess the Goods, and, if Seller so chooses, resell the Goods.

7.

Shortage and Non-Conforming Goods Claims. Any claim for a shortage of Goods or that such delivered or picked-up Goods are non-conforming must be made to Seller in writing within one (1) business day of the date of the delivery or pick-up of the Goods (a Claim). A failure to provide Seller notice of the Claim within one (1) business day of the date of the delivery or pick-up of the Goods shall constitute Buyer's complete acceptance of the Goods

in the manner, amount, and conformity delivered. Should Buyer timely submit a Claim to Seller, Seller shall have a commercially reasonable period of time in which to remedy such Claim. Buyer shall give Seller reasonable access to his/her/its facilities or relevant job site in order to inspect the Goods in order to remedy the Claim. A failure of Buyer to provide Seller reasonable access to his/her/its facilities or relevant job site shall constitute a waiver of the Claim, and Seller shall not be liable to Buyer for any shortages in or non-conformity of the Goods in such event.

8.

Purchase Price and Payment.

1.

The Purchase Price shall be the price for the Goods listed on the Order. In the event no price for the Goods is listed on the Order, the Purchase Price shall be the price listed on Seller's standard price list current as of the date of the Order. The Purchase Price shall not include taxes, levies, or charges against the Goods and/or related services, nor shall it include freight, delivery, or transportation charges or taxes, and Buyer shall be responsible for the payment of all taxes, levies, or charges against the Goods and/or related services, and freight, delivery, and transportation charges and taxes.

2.

Seller shall provide Buyer an invoice, detailing all charges and amounts then due and owed from Buyer to Seller, including, but not limited to, the Purchase Price, any applicable storage fees, interest, transportation charges, delivery charges, late fees (the Invoice). All Invoices are due and payable within thirty (30) days following Seller's delivery of the Invoice to Buyer, or pursuant to any other payment terms listed on the Order. The time of payment of the Invoice shall be of the essence of these Terms.

3.

If Buyer fails to make any Invoice payment when due hereunder, Seller shall be entitled, cumulatively, to all rights and remedies available to it, and, without limitation, the following rights and remedies:

1.

All amounts due under the Invoice shall be charged a late fee equal to one 50/100th percent (1.5%) of the total amount due under the Invoice, until payment in full of the Invoice is received by Seller;

2.

All amounts due under the Invoice shall bear interest at a rate equal to eighteen percent (18%) per year of the total amount due under the Invoice, or the maximum rate of interest allowed under applicable law, whichever is greater, until payment in full of the Invoice is received by Seller;

3.

Seller shall be entitled to apply any payments from Buyer in proportion to various Invoices, to some Invoices, to a single Invoice, to some Goods, to a single Goods, or however Seller deems fit, in its sole discretion;

4. Seller may decline to fulfill other Orders or Quotes, or stop delivery or pick-up on the current Order;

4. **IN THE EVENT BUYER FAILS TO REMIT INVOICE PAYMENT WHEN DUE PURSUANT TO THE TERMS HEREOF, IN ADDITIONAL TO ALL OTHER RIGHTS AND REMEDIES OF SELLER, WHICH SHALL BE CUMULATIVE, BUYER SHALL BE LIABLE TO SELLER FOR ALL COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS. THIS FEE SHIFTING PROVISION IS IN ADDITION TO, AND NOT AN AMENDMENT OR RESTRICTION, OF THE ATTORNEY FEE PROVISION CONTAINED IN SECTION 13.I HEREOF.**

9.

10. Indemnification.

1.

If the Goods are to be manufactured, or any process is to be applied to the Goods, by Seller in accordance with a specification submitted by Buyer, Buyer shall indemnify Seller against all loss, damages, costs, and expenses (including reasonable attorneys' fees and costs) awarded against or incurred by Seller in connection with or paid or agreed to be paid by Seller in settlement, of any claim for infringement of any patent, copyright, design, trade mark, or other intellectual property rights of any person which results from Seller's use of such specification submitted by Buyer.

2.

Once risk of loss of the Goods has transferred to Buyer, Buyer shall indemnify Seller against all loss, damages, costs, and expenses (including reasonable attorneys' fees and costs) arising out of any claim relating to or arising out of the Goods.

11.

12. **DISCLAIMER OF ALL WARRANTIES. SELLER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, WRITTEN, OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND SUITABILITY. AS TO ANY GOODS SUBJECT TO A MANUFACTURER'S WARRANTY, SUCH MANUFACTURER'S WRITTEN WARRANTY SHALL BE THE ONLY WARRANTY APPLICABLE TO SUCH GOODS, AND BUYER SHALL BE ENTITLED TO LOOK ONLY TO MANUFACTURER IN THE EVENT OF ANY DEFECT IN, PROBLEMS WITH, OR FAILURE OF THE GOODS.**

13.

Return of Goods. Goods may not be returned. Notwithstanding the forgoing, Seller may, in its sole discretion, accept the return of certain Goods on a case-by-case basis, **but in such case of Seller's acceptance of the return of certain Goods, Seller shall be entitled to assess a Return and Restocking Fee, the amount of which is to be determined in Seller's sole discretion after reviewing the actual cost to Seller of the return and restocking of the Goods.**

14.

Lien upon the Goods. Buyer agrees to take any and all necessary steps to assist Seller in perfecting a lien upon the Goods, including, but not limited to, the following: (1) Buyer will provide accurate information to Seller relating to the location where the Goods will be used or consumed; (2) the name and address of any general contractors Buyer is working with; (3) Buyer will provide Seller with a copy of any contract or agreement with any general contractors Buyer is working with to supply the Goods; and (4) Buyer will supply Seller with such other information or assistance as is requested by Seller to perfect, protect, and enforce its liens on the Goods. Buyer, as an inducement for Seller to sell and deliver the Goods, expressly represents and covenants to Seller that the Buyer has not done, and will not do, anything, directly or indirectly, which has, or will have, the effect of releasing, waiving, or surrendering the lien rights of Seller prior to full payment of the Purchase Price, and any interest, late fees, or storage fees incurred in addition thereto.

15.

**LIMITATION ON LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER DISCLAIMS ANY LIABILITY TO BUYER FOR ANY CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES, PROPERTY DAMAGE, ALL DAMAGES FOR LOSS OF USE, LOSS OF PROFITS OR INCOME, LOSS OF TIME OR INCONVENIENCE, AND ANY AND ALL OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, FORESEEN OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE SALE AND USE OF THE GOODS DESCRIBED HEREIN. SELLER'S TOTAL LIABILITY TO BUYER SHALL BE LIMITED TO THE PURCHASE PRICE OF THE GOODS LISTED ON THE QUOTE.**

16.

General.

1.

These Terms as they apply to current Orders may not be modified, except in writing and executed by the party against whom such modification is being charged. **Seller may modify these Terms, for future Orders, by updating these Terms as they appear on Seller's website. Buyer's only opportunity to reject modified Terms shall be to not place an order with Seller or execute a Quote, Order, shipping request, or similar request with Seller after Seller has modified the Terms as they appear on Seller's website.**

2.

Upon written, advance request, Seller shall provide to Buyer evidence of its insurance.

3.

These Terms, and the transactions contemplated or covered by these Terms, shall be governed by and construed in accordance with the laws of the State of Illinois.

4.

Customer shall take all reasonable precautions when handling, dealing with, transporting, treating, and further manufacturing the Goods.

5.

The Order may reference or incorporate Quotes, which shall be deemed to include the Quote in the Order, and be made a part of the final Order.

6. Seller's failure to insist upon strict performance of these Terms shall not constitute of waiver of that or any other provision of these Terms or any of Seller's rights under these Terms, nor shall it constitute a waiver by Seller of any subsequent default by Buyer in the performance of the these Terms. No actual waiver by Seller of any default by Buyer in the performance of these Terms shall be considered a waiver of any subsequent default of the same or any other provision.
7. If any provision of these Terms is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other terms, clauses, or provisions of these Terms shall not be affected thereby.
8. Any dispute arising out of, under, or in connection with these Terms, or the transactions contemplated or covered by these Terms, shall be referred to, adjudicated, and settled exclusively in the Circuit Court of Kendall County, Illinois, and all parties hereto consent to jurisdiction and venue in such court. The United Nations Convention on the International Sale of Goods shall not apply to these Terms, or the transactions contemplated or covered by these Terms.
9. Any notice required or permitted to be given by either party to the other under these Terms shall be in writing (whether by mail, overnight currier, fax, e-mail, or any other mode of communication in writing), addressed to the other party pursuant to the addresses listed on any documentation provided by the parties to each other.
10. Buyer may not assign or transfer these Terms and the transactions contemplated or covered by these Terms, unless agreed to in writing by Seller. Seller may assign or transfer these Terms and the transactions contemplated or covered by these Terms upon notice to Buyer. These Terms and the transactions contemplated or covered by these Terms shall inure to the benefit of each party's permitted assigns, permitted transferees, legal representatives, and heirs.
11. Except for payment obligations, neither party shall be liable or be deemed to have defaulted under these Terms by reason of any delay in performing, or any failure to perform, any of the obligations under these Terms by force majeure, including, but not limited, an act of God, fire, act of terrorism, war, civil commotion, insurrection, international sanctions or boycotts, sudden material shortages, import or export regulations or embargoes, power failure or breakdown in machinery, labor disputes of whatever nature (whether involving employees of Seller or Buyer, or employees of third parties').
12. **ATTORNEYS' FEES. IN THE EVENT OF ANY CONTROVERSY CONCERNING THE ENFORCEMENT OR INTERPRETATION OF THESE TERMS, AND/OR THE TRANSACTIONS CONTEMPLATED BY OR COVERED BY THESE TERMS, THE PREVAILING PARTY IN ANY SUCH CONTROVERSY, WHETHER OR NOT SUIT OR OTHER PROCEEDINGS ARE ACTUALLY COMMENCED, SHALL BE**

**ENTITLED TO RECOVER FROM THE OTHER PARTY ITS REASONABLE ATTORNEYS' FEES, CONSULTANTS' FEES, EXPERTS' FEES, AND OTHER COSTS AND EXPENSES INCURRED IN CONNECTION WITH SUCH CONTROVERSY.**

13.

**WAIVER OF JURY TRIAL. BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, HIS/HER/ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THESE TERMS, AND/OR THE TRANSACTIONS CONTEMPLATED BY OR COVERED BY THESE TERMS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BUYER, THAT SELLER NOR ANY PERSON ACTING ON BEHALF OF SELLER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BUYER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR SELLER TO ENTER INTO THESE TERMS AND THE TRANSACTIONS CONTEMPLATED BY OR COVERED BY THESE TERMS, AND THAT SELLER HAS RELIED ON THIS WAIVER ENTERING INTO THESE TERMS AND THE TRANSACTIONS CONTEMPLATED BY OR COVERED BY THESE TERMS.**