

TERMS AND CONDITIONS OF SALE Unless otherwise expressly provided in writing signed by Seller with respect to a particular sale, all sales of products ("Products") are made in accordance with, subject to, and expressly conditioned upon, the following Terms and Conditions of Sale ("TCS"): **1. ACCEPTANCE** - Any quotation by Seller is intended as a current price listing, which may be changed pursuant to Section 2 below, as well as notice to the buyer ("Buyer") of the TCS. Such a quotation does not constitute an offer and shall not be an Acceptance or Confirmation document as contemplated under Section 2-207 of the Uniform Commercial Code, as amended ("UCC"). Buyer's purchase order, oral or written, regardless of any contrary wording or terms, will constitute an offer to purchase Seller's Products pursuant to the TCS. To the extent the Buyer has made an offer to purchase, it is expressly agreed that Seller's acceptance is expressly conditioned on the Buyer's assent to the TCS. All Buyer's terms and conditions in addition to or in conflict with those contained herein are hereby rejected and will be void. Buyer's order confirmation and/or receipt of Products as acknowledged on the front of this form, shall constitute acceptance of the TCS. Buyer's objections, if any, to these TCS must be made in writing prior to the earlier of Buyer's submission of its Purchase Order to Seller or delivery of Product, whichever occurs first. **2. PRICES** - All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions which are not part of the original price quotation. All prices shall be as specified by Seller or if no price has been specified, shall be Seller's price in effect at the time of delivery. Prices are exclusive of all excise, sales, use and other taxes, duties and charges, imposed by any Federal, state, municipal or other governmental authority, all of which taxes shall be paid by Buyer. If such taxes are not included on the invoice for such products but are later charged to Seller, Seller may separately invoice Buyer for them at a later date. **3. TERMS OF PAYMENT** - Unless otherwise expressly stated in writing, payment is due upon receipt of material. Seller reserves the right at any time to require full or partial payment in advance, or to revoke any credit previously extended, if in Seller's exclusive judgment, Buyer's financial condition does not warrant proceeding on the terms specified. Overdue payments shall be subject to finance charges computed at a periodic rate of 1 1/2% per month (18% per year) or the highest rate permitted by law, whichever is lower. In the event of Buyer's default on the terms stated herein, Buyer agrees to pay Seller all costs of collection including reasonable attorney's fees. Amounts owed by Buyer with respect to which there is no dispute shall be paid without set off for any amounts which Buyer may claim are owed by Seller regardless of any other disputes which may exist. All returned checks are subject to a \$40.00 charge for each occasion that such check is returned. No acceptance, deposit or banking of funds by Buyer shall constitute an accord and satisfaction, regardless of any notations such as payment in full placed on the check, remittance, or accompanying correspondence by the Buyer. **4. DELIVERY** - Unless otherwise specified, all sales are F.O.B. Seller's warehouse, and the time of delivery shall be the time when the product is ready for pickup at that location by Buyer or for delivery to Buyer. Seller shall not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's control, including, without limitation, wars, terrorist attacks, acts of nature, unavailability of supplies or sources of energy, riots, fires, floods, epidemics, lockouts, strikes and slow downs, delays

in delivery by our suppliers, or acts or omissions of Buyer. In the event of delay due to any such cause, time for delivery shall be extended for a period equal to the duration of the delay and Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, because of any such event, Seller is unable to supply the total demand for the Products, Seller may allocate its available supply, without obligation to purchase similar Products from other sources, among itself and all of its customers, including those not under contract, on such basis as it determines to be equitable, exercising its sole and independent discretion. If, as a result of any such event, any scheduled delivery is delayed for a period in excess of five (5) weeks, Seller may, at its option, by written notice to Buyer, cancel that and all future deliveries without further liability or obligation of any kind. In the event Seller has space available and chooses to make accommodation, Products on which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller with such storage costs charged to Buyer, provided, however, that Buyer shall remain liable for any insurable or other risk of loss. Buyer shall also be liable for all cost and expenses incurred by Seller in holding or storing Products for Buyer at Buyer's request.

5. SHIPMENT AND ACCEPTANCE OF PRODUCTS - Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charge. Buyer is conclusively presumed to have inspected and accepted the Products unless Buyer notifies Seller in writing of incorrect, unspecified or missing Product, or other basis for nonacceptance of Product within one business day following Buyer's receipt or, in the event of latent defects, within one business day following the date when Buyer should have discovered such defects exercising reasonable due diligence. Unless specific written instructions to the contrary are supplied by Buyer and accepted by Seller, methods and routes of shipment will be selected by Seller, but Seller will not assume any liability in connection with shipment nor be deemed a common carrier or its agent. All shipments will be insured at Buyer's expense and made at Buyer's risk, and Buyer shall be responsible for making all claims with carriers, insurers, warehousemen and others for misdelivery, non-delivery, loss, damage or delay. Shipping and/or completion dates are approximate and are based on prompt receipt of all necessary information and approvals from Buyer. Unless Buyer notifies Seller in writing that an earlier shipment is not acceptable, Seller may ship the Products prior to any contract shipping date.

6. TITLE AND RISK OF LOSS - Subject to Paragraph 4 and to Seller's right to stop delivery of products in transit, title to and risk of loss for Products shall pass to Buyer upon the earlier of Delivery to Buyer, as defined herein, or to a common carrier for shipment to Buyer.

7. SECURITY INTEREST - As security for the full and prompt payment of all amounts and obligations owing by Buyer to Seller hereunder, Buyer grants to Seller a security interest in all Products supplied by Seller to Buyer hereunder and all proceeds thereof (collectively "Collateral"). Such security interest is and will continue to be a first-priority security interest in the Collateral whether by virtue of the priority accorded purchase-money security interests under the applicable provisions of the UCC or otherwise. Buyer will take all actions Seller deems necessary or desirable to perfect such security interest and maintain its first priority. Buyer irrevocably authorizes Seller to file financing statements and amendments thereto in such places as Seller deems necessary or desirable (without Buyer's signature where permitted by the UCC). Upon request of Seller, Buyer will execute and deliver to Seller a separate security agreement under which

Buyer grants to Seller a security interest in the Collateral, and any such separate security agreement shall control. If the Products will be inventory in Buyer's hands, Buyer agrees that Seller may notify others claiming security interests in Buyer's inventory of Seller's purchase-money security interest prior to supplying any Products to Buyer. If Buyer fails to pay or perform when due any amount or obligation owing to Seller hereunder or if Buyer becomes insolvent, or is subject to any bankruptcy or insolvency proceeding, then Seller may declare all amounts and obligations owing to Seller hereunder immediately due and payable and Seller shall have the rights and remedies of a secured party under the UCC.

8. CANCELLATIONS AND RETURNS - Orders which have been accepted may be cancelled only with Seller's prior written consent and upon terms that will fully indemnify Seller against loss. Products are not in any event to be returned to Seller for credit without prior written authorization, and such returns are subject to a 25% restocking charge.

9. INSTALLATION - Seller assumes no obligation to install any Products sold or to place them in working order at any location, property or project.

10. SPECIFICATIONS - All Products are subject to Seller's standard tolerances for specifications. Seller reserves the right to make substitutions and modifications in the specifications of any Products provided that such substitutions or modifications do not materially affect the performance of the Products or the purpose for which they are intended to be used. Seller expressly disclaims any and all responsibility for design and/or specification of the Products or the buildings into which they may be incorporated.

11. LIMITATION OF WARRANTIES - All claims for non-conforming or defective Products must be made in writing within one business day after delivery to Buyer, and any claims not made within that period shall be deemed waived and released. Seller's sole responsibility with respect to such claims shall be to assist Buyer with the processing of Manufacturer's Warranty Claims. In no event shall Seller be liable either for any labor incurred to repair, remedy or install any such replacement Products or for any lost profits, loss of good will, or any special, indirect, incidental, or consequential damages due to any cause whatsoever. No suit or action shall be brought against Seller more than one year after any related cause of action has accrued. THE FOREGOING CONSTITUTES SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY WITH RESPECT TO PRODUCTS SOLD BY SELLER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. SELLER DISCLAIMS ALL OTHER WARRANTIES, ORAL, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT SELLER IS NOT LIABLE FOR ANY LOST PROFITS, LOSS OF GOOD WILL, OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

12. RELEASE AND DELIVERY WAIVER - As to any Products sold and/or delivered hereunder, Buyer releases Seller from any liability arising hereunder for personal injuries, known or unknown, and damage to property real or personal caused by or arising from the Products sold and/or delivered hereunder and agrees not to sue Seller under any theory of strict liability or tort, negligence, contract or otherwise for any claim or demand for personal injuries and property damage which in any manner arises out of the sale, use, application, transportation or otherwise of the Products sold and/or delivered hereunder. The foregoing disclaimers of warranty and disclaimer of liability shall be binding upon Buyer

and any successors in title, project owners, product end-users, assigns, transferees, and other third parties. In connection with the delivery of any Products, Seller expressly disclaims responsibility for damage to driveways, lawns, sprinkler systems, gardens, septic tanks, drainfields and/or existing landscaping as a result of job site deliveries. By executing a delivery ticket and/or accepting Product delivery, the property owner, contractor, subcontractors, and suppliers, acknowledge that they are authorized both to accept delivery and release the Buyer from and against any damage to any of their property caused by the weight of any truck, rooftop delivery operations or otherwise. The Buyer hereby waives any and all claims for damages which may be made during the delivery of Seller's Products.

13. INDEMNIFICATION - Buyer hereby agrees to indemnify and hold Seller harmless from any and all property damages or personal injury claims, awards or judgments including all fines, penalties and attorneys' fees of any kind arising from Seller's sale and/or delivery of the Products under this agreement. Buyer's obligation to indemnify Seller includes, without limitation, indemnification of Buyer against third party claims relating to property damage or personal injury incident to the delivery, staging or storage of any Products onto or in driveways, parking lots, roofs, buildings or other properties.

14. JURY TRIAL WAIVER - BUYER HEREBY WAIVES ITS RIGHT TO A JURY TRIAL AS TO ANY AND ALL ISSUES RELATING TO THE INTERPRETATION AND/OR ENFORCEMENT OF THIS AGREEMENT.

15. MECHANIC'S LIENS - Buyer shall furnish to seller, upon request, all information necessary and/or relevant for Seller to evaluate, give notice of, or enforce lien rights, and any other statutorily required information necessary to enable Seller to enforce a lien. Seller's request for this information shall be construed to create a duty on the part of Buyer to Seller to distribute, publish and supplement this information. It is agreed by Buyer, that should Buyer fail to provide information necessary for Seller to perfect its lien rights, Buyer hereby waives any defenses, substantive or procedural, related to Buyer's failure to provide to Seller the requested lien information. In the event Buyer fails to provide such information, Buyer agrees to pay Seller's attorney's fees and costs should litigation occur and subsequently results in Seller being unable to enforce lien rights due to Buyer's failure to perform hereunder. To further secure payment of this invoice, Seller expressly reserves its rights to deliver any preliminary notices of lien or identification and/or to record or deliver any statutorily required notices of lien in order to create, perfect and/or enforce Seller's mechanic's lien rights to secure payment for Products sold to Buyer.

16. GENERAL - These TCS set forth the entire agreement and understanding between the parties on the subject matter hereof and supersedes all prior discussions and negotiations between them. Neither of the parties shall be bound by any other conditions or definitions with respect to the subject matter hereof, unless set forth in a written modification, signed by a duly authorized representative of the party against whom any waiver, change, modification, extension or discharge of these TCS are sought. A judicial or administrative declaration in any jurisdiction of the invalidity of any one or more of the provisions hereof or any portion thereof shall not invalidate the remaining provisions of the TCS in any jurisdiction, nor shall such declaration have any effect on the validity or interpretation of these TCS outside that jurisdiction. The Seller's failure to enforce any right under any provision of these TCS shall not be deemed a waiver of the right to enforce that provision in the future.