

## TERMS AND CONDITIONS OF SALE

**Terms:** These Terms and Conditions constitute a binding contract between you ("Customer") and MBA Building Supplies, Inc. and its affiliates (collectively, "Seller") and are referred to herein as either "Terms and Conditions" or this "Agreement". These Terms and Conditions are subject to change without prior notice. The Terms and Conditions of sale are limited to those contained herein. Any additional or different terms or conditions in any form delivered by Customer are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. This Agreement supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof. This Agreement contains the entire understanding of the parties with respect to the matters contained herein. Upon acceptance of orders, either oral or written, from Seller to provide products ("Products"), Customer agrees to be bound by and accepts these Terms and Conditions unless Customer and Seller have signed a separate, later written agreement which specifically modifies these terms, in which case the additional or different terms of the separate agreement will govern. Any information regarding products, services or data, in whatever form provided, whether written, oral or electronic, does not constitute part of the agreement between Seller and Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions.

**Pricing Information:** Prices are subject to change at any time by Seller without notice to Customer. Customer shall pay the price in effect at time of shipment. All sales are F.O.B. Seller's facility, freight pre-paid, unless otherwise agreed in writing. Prices do not include federal, state, or local taxes or tariffs, all of which shall be borne by Customer (whether now or hereinafter levied). Customer will be responsible to pay directly to all jurisdictions, any sales and use taxes where Seller is not authorized to collect such taxes and has not invoiced such taxes to Buyer. Customer agrees to indemnify and save Seller harmless for any such taxes or charges.

**Orders:** Any order changes requested by the Customer must be approved in writing by the Seller prior to production. Changes received after production are the responsibility of the Customer. Products cannot be returned and orders, once accepted, cannot be cancelled without Seller's prior written consent. Seller cannot guarantee that it will be able to fulfill Customer's orders.

**Credit Terms:** Orders are subject to the approval of Seller's Credit Department and policies. Cash payment: 1% 10 days; net 30 days after shipment unless otherwise agreed in writing. A finance charge of 1- ½% per month (an annual rate of 18%) may be charged on all past due accounts, and Customer shall pay Seller all costs incurred in collecting any past due amounts from Customer, including court costs and attorney fees. If the foregoing charges exceed that rate which is the maximum permitted by law, such charges shall be the highest allowable lawful rate. If, in the opinion of Seller, the financial condition of Customer at any time fails to justify the terms of payment specified, Seller reserves the right to require full payment or other adequate assurance of performance from Customer. Seller reserves the right to suspend any shipments until such payment or adequate assurance of performance has been received. A purchase money security interest is retained in the Products to secure payment in full. Customer authorizes Seller to file a financing statement reflecting such security interest, and, if requested, Customer will record such purchase money security interest on its books. Checks or payments, whether full or partial, received from or for the account of Customer, and regardless of any writings, notations, statements or documents, shall be applied by Seller against any amounts owed by Customer with full reservation of all Seller's rights, without an accord and satisfaction of Customer's liability.

**Risk of Loss:** For all shipments, title to Products and risk of loss or damage pass from Seller to Customer upon delivery to carrier. Shipping and delivery dates, if any, are approximate and are not guaranteed. Seller shall not be responsible for any damages or penalties whatsoever, whether direct or indirect, incidental, special or consequential resulting from Seller's failure to deliver or delay in delivery for any reason. Delay in the delivery of Products hereunder shall not relieve Customer of its obligations to accept and pay for products.

**Warranties:** Seller warrants to Customer only that Products shall be free from defects in material and workmanship for a period of one year from the date of delivery, subject to Seller's standard practices, manufacturing variations and commercial variations. Seller makes no other representations or warranties to Customer regarding the Products and expressly disclaims all other implied or express warranties, including all warranties of merchantability and fitness for a particular purpose. This warranty does not apply to any Product to the extent it has been subject to (1) other than normal wear and tear, or (2) improper installation, alteration, modification, or repair, tampering, negligence, abuse or accident, or (3) improper storage. Liability is limited to, at Seller's option, repair or replacement (in the form originally shipped) of any defective Product or issuance of a credit equal to the purchase price of defective Product. Any claim for breaches of warranty must be made by Customer immediately (and in no event later than five days) after delivery of Products to the first destination to which they are shipped. Products alleged to be defective must be returned, freight prepaid, within thirty (30) days to Seller with the return authorization number, obtained from Seller, clearly marked on the outside of the return container. Unless Customer notifies Seller in writing of any nonconformities within five days of delivery of Products, Customer shall be deemed to have accepted the Products without qualification and cannot thereafter reject any Products. Once used, Products are deemed to be fully conforming to this Agreement. The above warranty shall constitute Customer's exclusive remedy with respect to the Products furnished hereunder. In no event shall Seller be liable or responsible to Customer or any other person for any special, indirect or consequential losses or damages, whether based on contract, tort, strict liability or other theory of law, even if Seller shall have been advised of the possibility of any such loss or damages, all such damages and claims being specifically disclaimed. In no event shall Seller's liability exceed the purchase price of defective Product.

**Force Majeure:** Seller will not be responsible for and no liability shall result to Seller for any delays in delivery or in performance which result from any circumstances beyond Seller's reasonable control, including, but not limited to, shortages of labor, energy or materials, Product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, embargo, acts of God or acts or laws of any government or agency.

**Indemnification:** Customer agrees to indemnify and hold harmless Seller from any and all claims or liabilities asserted against Seller in connection with the manufacture, sale, delivery or repair of any Products furnished by Seller, arising in whole or in part out of or by reason of the failure of Customer, its agents, servants, employees or customers to follow instructions, warnings or recommendations in connection with such Products (including but not limited to failure to comply with any industry standards) or by reason of the failure of Customer, its agents, servants, employees or customers to comply with all applicable Federal, state and local laws applicable to the installation and use of the Products (including but not limited to all building codes and the Occupational Safety and Health Act of 1970), or by reason of the negligence of Customer or its agents, servants, employees or customers.

**Governing Law:** These Terms and Conditions, and any sale of Products hereunder will be governed by the laws of the State of Illinois, without regard to conflicts of laws rules. Any litigation will be brought exclusively in Cook County, Illinois, and Customer consents to the jurisdiction of the federal and state courts located therein, submits to the jurisdiction thereof and waives the right to change venue. Customer further consents to the exercise of personal jurisdiction by any such court with respect to any such proceeding. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Seller under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity. Customer is responsible for compliance with the US Export Administration Regulations.

**Miscellaneous:** Seller may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products or assign the right to receive payments, without Customer's consent. Customer may not assign these Terms and Conditions, or any of its rights or obligations herein without the prior written consent of Seller. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. No failure of Seller to exercise any right or remedy under this Agreement or otherwise available to Seller or to insist upon strict compliance by Customer with respect to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Seller's right to demand exact Customer compliance with the terms hereof, unless such waiver is in writing executed by Seller. The relationship between Seller and Customer is that of independent contractors and not that of employer/employee, partnership or joint venture. If any term or condition of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof or the whole of this Agreement. Notices provided under this Agreement must be given in writing and shall be deemed received one day after such notice is sent by courier or recognized overnight carrier (signature required), postage prepaid. Any delay or failure by Seller to exercise any right or remedy will not constitute a waiver by Seller to thereafter enforce such rights.