

## TERMS AND CONDITIONS OF SALE

All sales of goods or services based upon quotations provided by J. D. Sales Company, Inc. (hereinafter referred to as "Seller") are made subject to the terms and conditions below. These terms and conditions apply to all purchases made by any purchaser of goods and services based on quotations provided by Seller (hereinafter referred to as "Buyer").

It is mutually agreed between Buyer and Seller that the terms and conditions contained herein constitute the entire complete and exclusive agreement and understanding between Buyer and Seller and supersede all other agreements, oral or written, heretofore made between Buyer and Seller relating to the subject matter contained herein and if Buyer presents a Purchase Order with other terms and conditions the terms and conditions expressed herein will control. No understanding, promise or representation, and no waiver, alteration, addition to, or modification of, any provision hereof, shall be binding upon Seller unless agreed to in writing by Seller's CEO or CFO. The terms set forth herein shall apply to each and any purchase as if set forth separately for each order. In the event that any provision of the Purchase Order is found to be invalid by a court of competent jurisdiction, all remaining provisions of the Purchase Order shall remain in full force and effect.

Further, Seller solely serves as Representative or Distributor of various Manufacturers of finished goods. As such, Seller expressly passes on to Buyer any and all terms and conditions of the various Manufacturers of the purchased goods. In no instance, express or implied, are the applicable Manufacturers' terms and conditions represented invalidated by these terms and conditions herein and any applicable Manufacturer's terms and conditions shall control where there is any conflict.

Additionally, Seller is a vendor only and not a contractor, and therefore is expressly not bound by any contract provisions or agreement pertaining to payment between Buyer and any third party, including but not limited to the general contractor, owner of the project, and any subcontractors. Payment for any goods or services purchased by Buyer from Seller shall exclusively be controlled by the provisions of these Terms & Conditions, and no retention terms or other terms between Buyer and any other third party shall apply.

**QUOTATIONS, ORDERS, AND PRICING.** All quotations are based on the best available information at the time of creation, and are only valid for 30 days before expiration, unless otherwise specified, subject to extension only on review of the Seller, and subject to revision on notice.

Any reference to plans and specifications shall apply only to the applicable technical portions of the plans and specifications. On plan and specification work, all material is supplied per the approved submittals which shall determine ultimate responsibility and scope of Seller's obligations. In the absence of an approved submittal, Buyer assumes ultimate responsibility that the material supplied adheres to Buyer's project requirements and specifications.

All prices are denoted in United States Dollars and exclusive of any applicable taxes. The amount of any present or future applicable taxes imposed by any authority shall be paid by Buyer at the time of delivery, or in lieu thereof Buyer shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities. Buyer shall furnish California pre-lien information prior to Seller acceptance of order for all commercial projects over \$2,000.00 or at Seller's request.

**APPROVED SUBMITTALS.** In the event that any Purchase Order ("PO") and/or release is issued by Buyer but not also accompanied by an approved submittal executed by Buyer, Buyer shall have full responsibility and retain all liability for any issue concerning the PO and/or release, as well as for any material supplied, and accepts any terms of the Manufacturer, including but not limited to quotations, accuracy of materials, and ability to use in their specific project.

**LEAD TIME.** Lead time is quoted based on specific requirements identified at the time of quotation and is predicated on standard Manufacturer availability and lead times. Seller does not guarantee material availability or shipment dates. Pricing and lead time is quoted for the project to be released in one single order. If the order shall require more than one release or shipment, additional processing fees and freight costs may apply, and shall be the sole responsibility of Buyer.

Prior to any order release and commencement of quoted lead times, it is Buyer's responsibility to confirm accuracy of the bill of material, accept the Terms & Conditions herein, and provide a returned copy of applicable approved submittals.

Production or shipment expedites are available for an additional charge, via written request to Seller, and subject to Manufacturer approval. Expedited ship dates are estimates only and Seller makes no guarantees.

**PAYMENT.** Standard payment terms for all orders are Cash In Advance (CIA) or Approved Net 30. Buyers on CIA terms must deposit 100% of the invoice amount with Seller before the order will be released. Buyers on Approved Net 30 terms shall pay all invoices within 30 days of invoice date. Buyer's payments via ACH or check are accepted. Credit card payments, if accepted, are subject to a 3.5% fee.

**INTEREST, COLLECTIONS.** Payment shall be made within 30 days of invoice date. Past due accounts will be subject to a monthly service charge of 2.5%.

**CREDIT.** All Buyers seeking Approved Net 30 terms must submit a credit application, subject to review and sole approval by Seller. Buyer authorizes Seller to contact the Trade and Bank References provided by Buyer for the purpose of extending credit and thereafter renewing, maintaining and enforcing the terms of such extension of credit. Buyer warrants that it is not a "consumer" under State and Federal Law and Buyer certifies that all requests for the extension of credit are for business purposes only and are not intended for the extension of credit for personal, family or household

purposes. Buyer represents to Seller that it is solvent as of the date of this Agreement and continues to warrant and represent each time it places a future order. A Buyer on Approved Net 30 terms with no purchase activity for a 24-month period shall automatically be reverted to CIA terms.

**DEFAULT.** A Buyer who fails to make timely payment of any invoice or whose credit, in Seller's sole opinion, becomes impaired, shall cause the Buyer's account to be deemed in default, which may result in the account being placed on CIA terms, suspended, or cancelled, and Seller, at its sole discretion, may immediately cease extending further credit to Buyer. If Buyer fails or refuses to make such payment, or give such security, then the full amount due under the Purchase Order at such time, for material furnished shall immediately become due and payable and Seller shall have the right and the option to terminate this agreement. In the event of default, Seller shall have no obligation to deliver or order materials subject to an outstanding purchase order unless and until Seller receives payment in full for those materials and all outstanding balances. If legal action is filed to effect collection of any sums due hereunder, Seller shall be entitled to reasonable fees, including attorney's, collections, etc., in addition to all other damages found to be due hereunder. If more than one person or entity signs this application, it is understood and agreed that all entities and persons are jointly and severally liable for payment.

**LIENS.** Regardless of account credit or payment terms, if pre-lien information is not made available by Buyer upon request from Seller within five (5) business days, Seller has sole discretion to place any order on CIA terms. Additionally, Seller waives no rights of lien.

Buyer's delivery of notice or revocation of these terms and conditions shall in no way relieve Buyer from any liability or for any indebtedness incurred prior to Seller's actual receipt of such notice. To the extent that materials or products furnished by Seller are intended by Buyer to be incorporated into any construction work or improvement, Buyer shall fully and promptly furnish to Seller any and all project information necessary for Seller to perfect any actual or potential mechanic's liens, stop notice or bond rights.

Buyer shall assign to Seller any and all mechanic's lien, stop notice, bond claims or rights that Buyer has or may have with respect to the project under the Mechanic's Lien, Stop Notice and/or Bond Laws pertaining to public or private construction, or against contract proceeds or retainages payable to Buyer with respect to such project. In no event shall the assignment release Buyer of the underlying obligation to pay Seller the entire debt owed to Seller.

**SHIPPING & FREIGHT, DELIVERY, RISK OF LOSS.** Orders are shipped FOB Factory Prepaid & Add, unless otherwise stated in writing by Seller or Manufacturer, via common carrier to Buyer's specified location. Actual freight costs are subject to incoming freight charges. Risk of loss, delay, shortage or damage in shipment will pass to Buyer upon acceptance of the product by the carrier, forwarder, or other persons or companies designated for shipment to Buyer. All costs of insurance and other fees related to the shipment are the responsibility of Buyer. All claims must be made by Buyer against the carrier. Receipt of goods by Buyer shall constitute a waiver of any and all special or consequential damages arising out of or any way related to all purchases by Buyer from Seller.

All shipping dates are estimated based on prompt receipt of all necessary information by the Manufacturer and are not guaranteed. Seller will ship according to the schedule agreed upon but will not be responsible for delays due to failure of the Buyer to provide necessary information in a timely fashion. Delay in furnishing complete information may extend production lead time and shipment dates.

All shipped products shall be of the latest available design. Manufacturer product improvement is in the customer's best interest and no liability of any kind will be incurred on the part of the Seller due to a product change.

**HOLDS.** Once an order is released, a Buyer's request to place all or a portion of an order on hold must be submitted to Seller in writing, subject to Manufacturer's express written consent, which is not guaranteed. Buyer is subject to any applicable charges incurred by this hold request.

**CANCELLATIONS, RETURNS** Buyer may not cancel or return any order of goods without both Seller's and Manufacturer's express written consent. Buyer agrees and acknowledges that any and all cancellation or return of goods obligates Buyer to timely pay a minimum 35% restocking charge (subject to Manufacturer's restocking charge and Seller's right to provide express written consent to the cancellation or return) plus all applicable taxes and shipping costs. All returned goods must be in new and unused condition, subject to Manufacturer inspection and sole approval. If any returned material is deemed damaged or unacceptable, Buyer forfeits any credit for those goods. In the event that Buyer has ordered any custom, engineered, non-standard or in any way unique goods, Buyer may not cancel or return the goods, and acknowledges final purchase.

**WARRANTY.** The Seller makes no implied or express warranties, other than those of the Manufacturer. In no case will the amount of the warranty or liability exceed the invoice amount. In the scenario where any good is provided without a Manufacturer's warranty, Seller's liability shall be capped and not exceed the product purchase price. The Seller shall not be responsible for any contingent or consequential damages of any nature. In no case will the Seller be liable for damages beyond the product purchase price.

**FORCE MAJEURE.** Seller shall not be liable for any loss, damage, or other claim, including but not limited to delay in delivery (or inability to deliver) due to causes beyond Seller's reasonable control due to acts of God, acts of the Buyer, or of any civil, government or military authority, war, revolution, insurrection or riot, embargoes, sabotage, terrorism, boycotts, labor disputes or stoppages, civil disturbances, epidemics, pandemics, quarantine restrictions, act of public enemy or other criminal conduct, explosions, disturbances of production/supply with Seller's manufacturer/supplier (including but not limited to business closure of any manufacturer/supplier), trucking/transit shortages, unavailability of or delays in utilities, wrecks/delays in transportation, fires, floods, unusually severe weather, or inability to obtain necessary labor, materials or manufacturing facilities due to such causes (each a "Force Majeure Event"). Deliveries or other performance may be suspended or canceled by Seller upon notice to Buyer of a Force Majeure event. Lack of finances shall in no event be deemed to be a cause beyond Buyer's control.

**INDEMNIFICATION.** Buyer shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Seller from and against any and all claims and liability for injuries or loss to persons or property, or fines, or other damages, including all costs, expenses (including attorneys' fees), legal and otherwise ("Claims"), arising from or relating to in whole or in part to this Agreement or any use or possession of Goods sold hereunder, or any fraud, misrepresentation, negligent act, negligent failure to act (including the failure to properly store or handle goods, sole negligence, or violation of statute or government regulation) by Buyer. However, Buyer shall not be obligated to indemnify Seller for claims arising out of Seller's sole negligence, active negligence, or willful misconduct.

**ARBITRATION.** In the event of any dispute that may arise out of or in connection with the sale of any goods or services between Buyer and Seller, including but not limited to any Purchase Order or these Terms and Conditions, the parties agree that they will participate in good faith in a mediation conducted by a neutral third-party mediator appointed by a local bar association or Judicial Arbitration and Mediation Services ("JAMS") within 60 days of one party delivering written notice of a dispute to the other party. If the parties do not conduct a mediation within 60 days of one party delivering written notice of a dispute to the other party, or if the mediation fails to resolve the dispute, the parties hereby agree that the parties' sole and exclusive remedy shall be binding arbitration in Los Angeles County, California. Such arbitration shall be commenced within 180 days following the conclusion of the mediation (or expiration of the 60-day mediation time period) before a single arbitrator agreed upon by the parties, or, if they are unable to agree, a single arbitrator appointed by Judicial Arbitration and Mediation Services ("JAMS"). Such arbitration shall be governed by the commercial rules of the JAMS then in effect. The arbitrator's decision will be final and can be entered into any court of competent jurisdiction.

**GOVERNING LAW & VENUE** Buyer agrees that all issues/disputes relating to this Agreement shall be construed under the laws of the State of California. Buyer further agrees that the exclusive jurisdiction and venue for any legal action brought to enforce any and all disputes relating to this Agreement shall be Los Angeles County, California, unless Seller initiates said legal action to enforce statutory remedies (i.e., claims on mechanics lien, stop payment notices, payment bonds, etc.) in connection with a debt incurred by Buyer; in such case, the jurisdiction and legal venue will be determined by the law of the state where such statutory remedies are to be enforced.

**SEVERABILITY** If any term, condition or provision of this Agreement is found by a court or arbitrator of competent jurisdiction to be invalid or unenforceable as written, such term, condition, or provisions shall be severed out and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**ELECTRONIC COPIES** Buyer agrees that Seller may, at Seller's sole discretion, accept, utilize and rely upon an electronic copy or photocopy of this Agreement, in lieu of an original document. Buyer acknowledges that, by transmitting an electronic copy or photocopy of this document to Seller, Buyer agrees to be bound by the Terms and Conditions contained in this Agreement to the same extent as if an original were transmitted to Seller. Buyer waives any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original.

**COMPLETE AGREEMENT** It is mutually agreed that the terms and conditions herein constitute the entire complete and exclusive agreement and understanding between the Seller and Buyer relating to the subject matter contained herein and supersede and revokes any previous agreement, written or oral, and may not be amended or modified except in writing executed by the parties hereto. No understanding, promise or representation, and no waiver alteration, addition to, or modification of any provision hereof, shall be binding upon Seller unless agreed to in writing by Seller's duly authorized representative. No person has authority to make or claim any representation, warranty, term, promise, or condition, express or implied, statutory or otherwise, which is not expressed herein.

**ASSIGNMENT** Assignment of any interest therein without the prior written consent of an authorized representative of Seller is void.

**WAIVER** No waiver by Seller of any breach of the terms and conditions shall constitute a waiver of any subsequent breach.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER OR ANY THIRD PARTY HAVE THE RIGHT TO RECOVER FROM SELLER FOR ANY LOSS, DAMAGE, COST OF REPAIR, OR INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR LIQUIDATED DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR DAMAGES FOR LOSS OF EFFICIENCY OR DELAY TO ANY PROJECT ON WHICH THE GOODS ARE USED OR ORDERED OR INTENDED FOR USE), WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSES OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE, OR REPAIR OF THE GOODS OR SERVICES SOLD BY SELLER.

NOTWITHSTANDING THE FOREGOING, BUYER AGREES THAT SELLER'S LIABILITY, IF ANY, SHALL BE EXCLUSIVELY LIMITED TO REPLACEMENT OF ANY NON-CONFORMING GOODS, OR AT SELLER'S OPTION, REFUND OF THE PURCHASE PRICE PAID FOR SUCH NON-CONFORMING GOODS.

**ACKNOWLEDGMENT OF TERMS AND CONDITIONS.** Buyer hereby represents and warrants to Seller that: (i) it is voluntarily submitting to these Terms & Conditions on its free will, (ii) it is not entering under economic duress, (iii) the terms of these Terms & Conditions are reasonable and fair, and (iv) Buyer has had the opportunity to have independent legal counsel of its own choosing review these Terms & Conditions and advise the party with respect to them and represent the party in connection with them.