

TERMS AND CONDITIONS

1. THIS INVOICE CAN BE ACCEPTED ONLY IN ACCORDANCE WITH THE TERMS HEREOF. AND ADDITIONAL OR DIFFERENT TERM OR CONDITION ON PURCHASER'S ORDER FORM OR OTHERWISE COMMUNICATED BY PURCHASER, SHALL BE DEEMED TO BE A MATERIAL ALTERATION OF THIS INVOICE AND IS HERBY OBJECTED TO BY SELLER. UNLESS SUCH TERM OR CONDITION IS EXPRESSLY AGREED TO IN A WRITING SIGNED BY SELLER. SELLER'S FAILURE TO OBJECT TO ANY CONFLICT OR ADDITIONAL TERM OR CONDITION SHALL NOT BE CONSTRUED AS A WAIVER.
2. ALL GOODS ARE SOLD "AS IS". HOWEVER, GOODS WILL BE ACCEPTED FOR RETURN IF THEY ARE UNUSED, IN RESALABLE CONDITION, AND CURRENT PRODUCTION ITEMS. BUT IN NO EVENT WILL GOODS BE ACCEPTED FOR RETURN ON SPECIAL ORDERS, OR ON RETURNS AFTER TEN (10) DAYS FROM THE DATE OF DELIVERY. A 20% HANDLING AND BOOKKEEPING CHARGE, OR A MINIMUM OF \$50 WHICHEVER IS GREATER, WILL BE MADE ON ALL ACCEPTED RETURNS.
3. ALL PRICES, TERMS AND CONDITIONS OF SALE ARE SUBJECT TO CHANGE WITHOUT NOTICE.
4. THE BUYER ACKNOWLEDGES THAT THE SELLER RETAINS THE ABSOLUTE RIGHT TO LIMIT THE AMOUNT OF CREDIT OR REFUSE FURTHER CREDIT TO THE BUYER AT ANY TIME OR TO REQUIRE PAYMENT IN FULL AS A CONDITION OF SHIPMENT. SELLER SHALL NOT BE REQUIRED TO PROCEED WITH PERFORMANCE OF THIS CONTRACT WHILE BUYER IS IN DEFAULT UNDER THIS OR ANY OTHER CONTRACT WITH SELLER OR UPON THE SUSPENSION OF BUSINESS OR INSOLVENCY OR LIQUIDATION OF BUYER. EACH DELIVERY HEREUNDER SHALL CONSTITUTE A SEPARATE CONTRACT AND PLACEMENT OF THIS ORDER SHALL BE DEEMED BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS REGARDLESS OF WHETHER BUYER HAS RECEIVED AN ACKNOWLEDGMENT OF THIS ORDER FROM SELLER AT THE TIME OF THE ORDER. ANY ADDITIONAL ORDERS OF THE GOODS SOLD HEREUNDER WHETHER SUCH ORDER RESULTS FROM SHORTAGES DUE TO BUYER'S ERROR OR FAULT, OR REPLACEMENTS OR ADDITIONS REQUIRED BY BUYER SHALL CONSTITUTE SEPARATE CONTRACTS FOR WHICH BUYER SHALL BE OBLIGATED AND SELLER MAY RECOVER FOR EACH SUCH SHIPMENT AS A SEPARATE TRANSACTION WITHOUT REFERENCE TO OTHER SHIPMENTS. THESE TERMS ARE THE SOLE CONTRACT BETWEEN SELLER AND BUYER AND NO CHANGE OF THE TERMS HEREOF SHALL BE EFFECTED BY THE ACKNOWLEDGMENT OR ACCEPTANCE BY SELLER OF ANY TRADE OR ORDER OR OTHER FORM SUBMITTED BY BUYER CONTAINING ADDITIONAL OR DIFFERENT TERMS. COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE SHALL NOT SUPPLEMENT, VARY OR EXPLAIN THESE TERMS. THE FOREGOING SHALL NOT AFFECT ANY OTHER CREDIT OR PAYMENT CONDITIONS OR AGREEMENTS SELLER MAY REQUIRE BUYER TO SIGN IN ORDER TO CONSIDER OR PERMIT THE SALE OF MATERIALS TO BUYER AND THESE TERMS WILL SUPPLEMENT SUCH OTHER CONDITIONS OR AGREEMENTS.
5. IN THE EVENT OF PURCHASER'S FAILURE TO MAKE ANY PAYMENT TO SELLER BY THE DATE SPECIFIED HEREIN OR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER PROMPTLY AND FULLY WHEN DUE ("EVENTS OF DEFAULT"), OR IF SELLER DEEMS ITSELF INSECURE AND REASONABLY ANTICIPATES AN EVENT OF DEFAULT SELLER MAY AT ANY TIME THEREAFTER AT IT'S OPTION AND WITHOUT NOTICE OR DEMAND TO PURCHASER, DECLARE IMMEDIATELY DUE AND PAYABLE THE FULL AMOUNT THAT PURCHASER OWES TO SELLER UNDER THIS INVOICE. UPON AN EVENT OF DEFAULT, SELLER SHALL BE ENTITLED TO COLLECT FROM PURCHASER ALL REASONABLE COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEYS FEES INCURRED IN ENFORCING THE TERMS OF THIS INVOICE. PURCHASER ALSO AGREES TO PAY SELLER SIMPLE INTEREST ON UNPAID AMOUNT FROM THE DUE DATE AT THE LESSER OF ONE AND ONE-HALF PERCENT (1.5%) PER MONTH OR THE HIGHEST LAWFUL RATE.
6. AS TO ANY GOODS SOLD HEREUNDER, THE SELLER MAKES NO WARRANTY, GUARANTEE OR PROMISE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE BUYER BY BUYER AND NOT BY REASON OF ANY STATEMENT MADE BY OR ON BEHALF OF SELLER AS TO THE MERCHANTABILITY SPECIFIC ATTRIBUTES OR OTHERWISE OF SAID GOODS.
7. AS TO ANY GOODS SOLD HEREUNDER, THE BUYER RELEASES THE SELLER FROM ANY LIABILITY HEREUNDER FOR PERSONAL INJURIES, KNOWN OR UNKNOWN, AND DAMAGE TO PROPERTY, REAL OR PERSONAL, CAUSED BY OR ARISING FROM THE GOODS SOLD HEREUNDER AND AGREES NOT TO SUE SELLER UNDER ANY THEORY OR STRICT LIABILITY IN TORTE, NEGLIGENCE, CONTRACT OR OTHERWISE FOR ANY CLAIM OR DEMAND FOR PERSONAL INJURIES AND PROPERTY DAMAGE WHICH IN A MANNER ARISES OUT OF THE SALE, USE, APPLICATION, TRANSPORTATION OR OTHERWISE OF THE GOODS SOLD HEREUNDER. THE FOREGOING DISCLAIMER OF WARRANTY AND DISCLAIMER OF LIABILITY SHALL BE BINDING UPON THE BUYER AND ANY SUCCESSORS IN TITLE, ASSIGNS, TRANSFEREES AND ULTIMATE USERS.
8. THE BUYER HERBY INDEMNIFIES AND HOLDS THE SELLER HARMLESS FROM ANY AND ALL PROPERTY DAMAGES OR PERSONAL INJURY CLAIMS, AWARDS OR JUDGMENTS, INCLUDING ALL FINES, PENALTIES AND ATTORNEY'S FEES OF ANY KIND ARISING FROM SELLER'S SALE AND/OR DELIVERY OR THE GOODS UNDER THIS CONTRACT.
9. TITLE TO AND RISK OF LOSS OR DAMAGE TO ALL GOODS SOLD SHALL PASS TO BUYER UPON DELIVERY TO CARRIER AT POINT OF SHIPMENT WHETHER OR NOT SELLER PAYS ANY PART OF THE FREIGHT UNLESS SUCH MATERIALS ARE DELIVERED BY SELLER'S TRUCKS. IN WHICH CASE RISK OR LOSS IN SUCH MATERIAL SHALL REMAIN AND BE IN SELLER AND SHALL PASS TO BUYER UPON DELIVERY TO BUYER AT BUYER'S DESTINATION POINT. IF BUYER REQUIRES A MEANS OF TRANSPORTATION OTHER THAN THAT SELECTED BY SELLER THEN, ANY EXTRA COST INCURRED BY REASON OF USING THE OTHER MEANS SHALL BE PAID BY BUYER. SELLER SHALL RETAIN A PURCHASE MONEY SECURITY INTEREST IN ALL GOOD UNTIL SAME ARE FULLY PAID BY BUYER ON SELLER'S REQUEST. BUYER SHALL EXECUTE ANY DOCUMENTS REQUIRED BY SELLER TO PERFECT SUCH SECURITY INTEREST IN THE GOODS AND WHERE PERMITTED. BUYER HEREBY AUTHORIZES SELLER TO SIGN AND FILE, WITHOUT BUYER SIGNING, FINANCING STATEMENTS TO PERFECT SELLER'S PURCHASE MONEY SECURITY INTEREST. ON DEMAND, BUYER SHALL PAY TO SELLER ANY EXPENSES OF PREPARING AND FILING SUCH STATEMENTS.
10. ALL SPECIAL ORDERS ARE NOT CANCELABLE UPON ACCEPTANCE BY SELLER. SELLER, PRIOR TO ACCEPTANCE TO ANY SPECIAL ORDER, MAY REQUIRE A DEPOSIT FROM BUYER IN SUCH AMOUNTS AS SELLER DEEMS APPROPRIATE DUE TO THE NATURE OF SPECIAL ORDERS AND DIFFICULTY IN FIXING ACTUAL DAMAGES TO SELLER IF BUYER SHOULD ATTEMPT TO CANCEL A SPECIAL ORDER. THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES IF BUYER ATTEMPTS TO CANCEL SUCH SPECIAL ORDER AFTER ACCEPTANCE BY SELLER.
11. THE SELLER SHALL NOT BE RESPONSIBLE FOR ANY DELAY IN DELIVERING THE GOODS OR FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES. IN ADDITION TO THE FORGOING, SELLER SHALL NOT BE LIABLE FOR WITHOUT LIMITATION, DAMAGE TO DRIVEWAYS, SIDEWALKS, WALKWAYS, LAWNS, SPRINKLER SYSTEMS, GARDENS, SEPTIC SYSTEMS, DRAIN FIELDS, SHRUBBERY, FLOWER BEDS, AND ANY OTHER STRUCTURES, BUILDING OR PORTIONS THEREOF, AS A RESULT OF ROOFTOP OR ON THE JOB DELIVERY.
12. THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE SELLER'S LOCATION HAS RECEIVED THE ORDER FOR PURCHASE OF THE GOODS.
13. IF ANY OF THESE PROVISIONS IS DETERMINED TO BE INVALID, ILLEGAL OR UNENFORCEABLE, THE VALIDITY, LEGALITY AND ENFORCEABILITY OF THE REMAINING PROVISIONS OF THIS INVOICE SHALL BE UNAFFECTED AND SUCH PROVISION SHALL BE REFORMED TO THE EXTENT NECESSARY TO BE LEGAL, VALID AND ENFORCEABLE.
14. THIS INVOICE CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER AND IS A FINAL EXPRESSION OF THE TERMS AND CONDITIONS OF THEIR AGREEMENT.
15. BUYER, BY PLACING ITS ORDER WITH LIBERTY ROOFING CENTER, LLC. REPRESENTS AND WARRANTS THAT CUSTOMER IS FAMILIAR WITH AND INCOMPLIANCE WITH ALL LAWS AND REGULATIONS APPLICABLE TO IT'S JOB SITE AND IT'S WORK THERE, INCLUDING ALL OSHA RULES AND REGULATIONS WITH SPECIFIC REFERENCE TO THE SAFETY STANDARDS FOR FALL PROTECTION IN THE CONSTRUCTION INDUSTRY (29CFR PARTS 1910 AND 1926) APPLICABLE TO IT'S EMPLOYEES AND ALL RELATED ACTIVITIES AT THE SITE. BUYER FURTHER REPRESENTS THAT ALL OF IT'S EMPLOYEES HAVE RECEIVED TRAINING AND UNDERSTAND THE REQUIREMENTS OF THE OSHA FALL PROTECTION REGULATIONS.