

ICI BUILDING SUPPLIES INC.

Terms and Conditions of Sale

1. Application of Terms and Conditions of Sale

These Terms and Conditions of Sale are made between ICI BUILDING SUPPLIES INC., any of its subsidiaries, affiliates, divisions, successors and assigns (collectively, "**ICI**") and Buyer and, unless otherwise agreed to in writing by ICI, these Terms and Conditions of Sale shall apply to all transactions between ICI and Buyer, including but not limited to, quotes, purchase orders, order acknowledgements, invoices or any other document used to place an order ("**Order**"), and shall exclude, and prevail over, any terms and conditions of purchase of Buyer regardless of the form of such terms and conditions or time at which such terms and conditions are presented to ICI. ICI and Buyer specifically agree that ICI's acceptance of any Order from Buyer is strictly conditioned upon Buyer's acceptance of these Terms and Conditions of Sale and that ICI shall not be deemed to accept any of Buyer's terms and conditions including if ICI should fail to object to them in any communication received from Buyer or should ICI subsequently execute any of Buyer's field tickets, forms, receipts, invoices, or terms of services. For greater certainty, any Order or other document sent by Buyer to ICI shall only be used to define the description, quantity, price and destination of goods to be sold, supplied or delivered by ICI to Buyer and shall not constitute part of the agreement between ICI and Buyer. Buyer shall be conclusively deemed to have accepted these Terms and Conditions of Sale upon any of the following by Buyer, its agents, or representatives: (i) written or electronic acknowledgement or acceptance hereof, (ii) transmission to ICI, its agents, or representatives of any Order for ICI's goods, or (iii) acceptance of or payment for any goods covered hereby.

2. Offers

All quotes, proposals, or offers to sell provided by ICI to Buyer ("**Offers**") are subject to modification or withdrawal without notice unless otherwise stated in writing by ICI. Any expiration date, time-framed validity, or similar statements included in any Offers are made in good faith for the convenience of Buyers and do not negate or mitigate ICI's right to modify or withdraw Offers without notice.

3. Acceptance, Cancellation, Changes

3.1 Acceptance: All Orders are subject to acceptance in writing by ICI, which acceptance is contingent on adequate supply and, if applicable, ICI's credit approval of Buyer and ICI may accept or reject any Order at ICI's sole discretion. ICI's interpretation of a verbal Order shall be final and binding in the absence of a written confirmation from Buyer.

3.2 Buyer may not cancel, change, or modify an Order without the written consent of ICI. ICI may cancel any unfilled Order immediately and without notice to Buyer if Buyer becomes insolvent, is adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statutes, fails to pay delinquent balances due to ICI, or, in the sole judgment of ICI, is unable to timely meet its financial obligations in the normal course of business.

3.3 Changes: Any changes to an Order requested by Buyer may affect or delay the delivery and the Price and must be agreed to by ICI and the Buyer and signed by ICI. Any modifications to an Order requested by Buyer are subject to ICI's written acceptance and, when applicable, Buyer's written acceptance of any additional costs required to affect the modification including, without limitation, labor and materials, tooling and fixtures, shipping, and/or administration and engineering costs. This provision applies to modifications including, without limitation, quantities, delivery schedules, specifications, documentation, tooling, packaging, labeling, shipping, and billing addresses, freight carriers, and any other element of Order requiring any sort of action on the part of ICI, its suppliers, or agents.

4. Price, Taxes and Payment

4.1 Price: The purchase price ("**Price**") is subject to change unless otherwise noted in writing by ICI and Buyer shall be invoiced at the Price in effect at the time of shipment. Unless otherwise specified by ICI in writing, the Price is to be paid in Canadian dollars. All taxes, transportation costs, duties and other charges are in addition to the Price. The Price is payable without offset, back charge, retention, holdback or withholding of any kind. All Offers are subject to change without notice and prior to shipment.

4.2 Taxes: The Price is subject to all applicable customs duties, import duties, excise taxes, value added taxes (including HST or GST, as applicable), sales taxes and any other taxes, charges or levies levied by any governmental authority ("**Taxes**"). Such Taxes shall be added

to the Price but shown separately on any invoice issued by ICI; however, Buyer is responsible for payment of all Taxes, and ICI's failure to charge or collect any Taxes shall not relieve Buyer of its obligation for payment of Taxes.

4.3 Payment: All invoices are due upon issuance of ICI's invoice unless alternative payment arrangements are agreed to in writing by ICI. An interest charge of 1.5% per month (18% per annum) applying on past due invoices, unless alternative payment arrangements are agreed to, in writing, by ICI. Buyer agrees to pay and shall indemnify and hold harmless ICI in respect of such interest together with all the costs, losses, charges, expenses and liabilities of ICI related or incidental to its collection efforts or the enforcement of any of its rights in connection with such default (including legal fees). If Buyer defaults on any payment when due or refuses to accept delivery or becomes insolvent, ICI may, at its option, without prejudice to other lawful remedies, defer deliveries or cancel the remainder of any Order. If Buyer's financial condition is or becomes unsatisfactory to ICI, ICI reserves the right to cancel or delay the Order or shipment at any time prior to delivery without further obligation or liability on ICI's part. Any goods held for Buyer shall be at the risk and expense of Buyer. Each shipment is a separate and independent transaction and payment must be made by Buyer accordingly. Payments are considered received on the day they are received by ICI. ICI may change payment terms upon reasonable notice to Buyer, including requiring payment prior to shipment.

4.4 Set-Off: ICI may withhold any sum due to Buyer as a set-off against Buyer's indebtedness to ICI either under the Agreement or under any other agreement between the parties. Buyer is not entitled to set-off any amounts due to ICI by any amount due by ICI to Buyer either under the Agreement or under any other agreement between the parties.

5. Title and Delivery

Title and Delivery: Unless otherwise agreed to by ICI in writing, all freight costs are to be paid by Buyer. Unless otherwise agreed to by ICI in writing, all sales to destinations within Canada ("**Domestic Sales**") are to be shipped F.O.B. ICI's facility in Dartmouth, Nova Scotia or other shipping point designated by ICI (each a "**Source**") regardless of how freight costs are apportioned. All sales to destinations outside Canada ("**International Sales**") are to be shipped Ex-Works per Incoterms 2010. Title, ownership, and risk of loss to any goods sold as either Domestic Sales or International Sales shall pass to Buyer, and ICI's liability shall cease, immediately when ICI places any goods covered hereby at the disposal of Buyer (or Buyer's

selected carrier as Buyer's agent) at the Source. Delivery to the job site or other location indicated by Buyer constitutes delivery to Buyer, regardless of whether Buyer or Buyer's agent is at such location at the time of delivery or signs a delivery receipt. ICI shall use commercially reasonable efforts to deliver the goods within the time agreed but assumes no responsibility for any losses or damage, consequential or otherwise, incurred by Buyer due to delays, late deliveries, loss, breakage, or damage after having placed any goods, in good condition, at the disposal of Buyer or its carrier at the Source. All claims for loss or damages must be filed with the carrier by Buyer. In the absence of timely and specific shipping instructions from Buyer, or the failure of Buyer's selected carrier to accept any goods on the acknowledged shipment date, ICI may select another carrier and service level like that of Buyer's selected carrier (if any), to complete the Order as originally acknowledged by ICI. In such cases, Buyer will promptly accept any goods as if placed at the disposal of Buyer or its selected carrier at the Source. Buyer will be responsible for all costs incurred by ICI because of Buyer's refusal of any shipment made by ICI according to the Terms and Conditions stated herein. Any non-standard or special packing or packaging requirements, requested by Buyer or required by carriers, are subject to ICI approval and provided at additional cost to Buyer.

6. Delay and Force Majeure

Delays in production or delivery of any one or more goods shall not relieve Buyer of its obligation to accept and pay for remaining deliveries, regardless of the cause of such delay. ICI shall not be liable for or responsible for any failure to perform or failure to give notice of a delay when such delay is due to acts of God, war, riot, acts of terrorism, pandemic, embargoes, acts of civil or military authorities, fire, flood, earthquake, accident, strike, severe inclement weather conditions, shortages of transportation facilities, shortages of utilities, delays in transportation, fuel, labor, or materials, a breakdown or accident or compliance with any other action taken to carry out the intent or purpose of any law or regulation, or for any other cause beyond ICI's reasonable control. In the event of any delay caused by any such contingency, the date of shipment shall, at the discretion of ICI, be deferred until such event has terminated. In the event ICI's production is curtailed for any of the foregoing reasons so that ICI cannot make available the full amount of the shipment, ICI may allocate production deliveries to the various customers then under contract for similar goods. The allocation will

be made in a commercially fair and reasonable manner at ICI's sole discretion. When allocation has been made, ICI will notify Buyer of the estimated quantity to be made available to Buyer and the approximate time when this quantity will be made available.

7. Inspection

Buyer is obligated to inspect any goods delivered as promptly as practicable upon receipt thereof. Buyer shall notify ICI of any visible defects, quantity shortages or incorrect product shipments within 5 days of receipt. Failure to notify ICI in writing of any visible defects in any goods or of quantity shortages or incorrect shipments within such period shall mean Buyer is deemed to have irrevocably accepted any goods contained in the shipment and waived any rights to return any goods or to not pay for any goods based on visible defects, shortages, or incorrect shipments. Without limiting the generality of the foregoing, unless Buyer notifies ICI, within five (5) days of delivery by ICI to Buyer of an invoice relating to any goods, that any goods have not been received or that the Price is incorrect, the invoice shall, as against Buyer, be deemed to be final as to any goods delivered and the Price. All claims of quantity shortages are subject to ICI's verification and approval, and ICI reserves the right to reject any such claims at its sole discretion based on inventory, production and freight records, photographs, and other evidence.

8. Quantity Variances

Notwithstanding section 5.1 and 5.2, unless otherwise agreed by ICI in writing, ICI may at its sole discretion satisfy its obligation regarding any Order upon shipping any total quantity within five percent (5%) of original Order quantities. Buyer is obligated to receive and pay the full amount for quantities shipped within these provisions at the Price.

9. Returns

Buyer may return any goods which ICI stocks and which are not special-order items if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all original parts; and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered, or damaged. All returns are subject to a twenty-five percent (25%) re-stocking fee, unless otherwise agreed to by ICI. Special orders or non-stock items may be returned only if the manufacturer is willing to accept the return. Items which are not shipped are

backordered for future shipment unless Buyer cancels its order in accordance with these Terms and Conditions of Sale.

10. Acknowledgment and Agreement, Limited Warranty, Exclusive Remedy 10.1

Acknowledgment and Agreement: Buyer expressly acknowledges and agrees that:

a) ICI neither makes nor manufactures any goods sold to Buyer in accordance with these Terms and Conditions of Sale and instead provides Buyer with processing services to such goods that are manufactured by third parties.

b) Subject to Section 10.1(a), ICI is solely a distributor of goods; and,

c) That ICI does not test the properties or the integrity of the goods it sells unless this is specifically requested, in writing, by Buyer. 10.2 Limited Warranty: ICI assigns to Buyer any warranty provided by ICI's suppliers and by the manufacturer of the goods and only to the extent that the supplier or manufacturer honours any applicable warranty. ICI makes no claims nor offers any warranty related to the merchantability, Buyer further acknowledges and agrees that, though Buyer may consult with ICI's employees for assistance, recommendations or instructions in selecting goods, Buyer is solely responsible and liable to determine the appropriate specifications, materials and goods for its particular purpose, fitness, or suitability of any goods for any particular purpose, use, or application, or for Buyer's satisfaction with goods for any reason not specified or referenced on an Order. No warranty is provided for goods supplied as or for the purpose of tooling or process evaluation, samples, or design prototypes unless otherwise agreed to in writing by ICI. ICI is not liable or responsible for, nor does the foregoing warranty apply to normal wear and tear, decay or damages caused by misuse, improper installation, maintenance, handling, transportation, storage, or operation or by overloading, accident, neglect or harmful alterations or repairs made by Buyer or any other person all of which are subject to the determination of ICI at its sole discretion. THE WARRANTIES CONTAINED IN THIS SECTION 10.2, CONSTITUTE THE SOLE AND EXCLUSIVE WARRANTIES IN RESPECT OF THE GOODS AND SERVICES AND THE PARTIES EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS, GUARANTEES AND/OR ASSURANCES, WHETHER BASED IN TORT, CONTRACT, LAW EQUITY OR OTHERWISE OR ARISING FROM A COURSE OF CONDUCT, DEALING OR TRADE INCLUDING WITHOUT LIMITATION, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS AND/OR GUARANTEES AS TO MERCHANABILITY, MERCHANTABLE QUALITY OR FITNESS

FOR PURPOSE. BUYER HEREBY ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS TRANSACTION IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION BY ANY PERSON OR ENTITY EXCEPT FOR THE WARRANTIES OR REPRESENTATIONS SPECIFICALLY SET FORTH HEREIN.

11. Limitation of Liability

UNDER NO CIRCUMSTANCE SHALL ICI BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES TO PERSON OR PROPERTY, REWORK, INVESTIGATION AND REPAIR OR REPLACEMENT COST, LOSS OF PROFITS, INCREASED COSTS OF OPERATIONS, DIMINUATION IN VALUE OR LOSS OF GOODWILL ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF THE GOODS OR THESE TERMS AND CONDITIONS OF SALE. IN THE EVENT ICI IS FOUND TO HAVE ANY LIABILITY FOR ANY REASON WHATSOEVER REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN TORT, CONTRACT, LAW, EQUITY OR OTHERWISE, THE MAXIMUM AGGREGATE LIABILITY OF ICI TO BUYER SHALL BE LIMITED IN ALL CIRCUMSTANCES TO THE PRICE PAID BY BUYER TO ICI FOR SUCH GOODS IN THE SPECIFIC TRANSACTION GIVING RISE TO THE DAMAGE OR LOSS. THE LIMITATION OF LIABILITY IS A CONDITION TO THE SALE OF THE GOODS BY ICI AT THE PRICE. THE PARTIES ACKNOWLEDGE THAT THE PRICE PAYABLE FOR THE GOODS WOULD HAVE BEEN SUBSTANTIALLY GREATER IN THE ABSENCE OF THIS LIMITATION OF LIABILITY WHICH SHALL APPLY IN ALL CIRCUMSTANCES.

12. Indemnity

Buyer shall be responsible for the installation, maintenance, operation, and use of the goods and for any injury, damage, destruction, loss, damages, or expenses, caused by the goods and ICI shall have no liability in relation thereto. Buyer shall indemnify, hold harmless and defend ICI and its employees, officers, directors and agents from and against any action, cause of action, judgment or claim for damages to property (including environmental damages) or bodily injury, loss of life, liability of any nature (including the violation of any applicable laws or regulations in connection with the sale, transportation, installation, use or repair by Buyer of the goods sold, supplied or delivered by ICI), costs, or expenses including reasonable legal fees to the extent caused by the negligent act or omission or willful misconduct of or breach of these Terms and Conditions of Sale by Buyer. Where Buyer has supplied the design for all or any part of the goods, Buyer also agrees to indemnify, hold

harmless and defend ICI and its employees, officers, directors and agents from and against any action, cause of action, judgment or claim for damages to property (including environmental damages) or bodily injury, loss of life, liability of any nature (including the violation of any applicable laws or regulations in connection with the sale, transportation, installation, use or repair by Buyer of the goods sold, supplied or delivered by ICI), costs, or expenses including reasonable legal fees arising from or in connection with any claim that the goods or any part thereof infringe any patent, industrial design or any other intellectual property right.

13. Security

ICI may require Buyer to provide satisfactory security prior to the purchase of any goods. ICI retains the right to register a lien or encumbrance against the goods or other property of the Buyer in which the goods are incorporated. In the event title to the goods vests in Buyer prior to payment of the Price, ICI shall retain a security interest in the goods to secure Buyer's obligation. Buyer hereby grants ICI a Purchase Money Security Interest (as defined in applicable statute) in the goods and all proceeds thereof. ICI shall have all remedies available under applicable personal property legislation to enforce as a secured party in the event of non-payment.

14. Tooling and Fixtures

Unless otherwise specified in writing, tooling charges quoted and/or invoiced by ICI represent only a part of the actual cost of same and therefore does not entitle the Buyer to ownership of the tooling or fixtures purchased or made by ICI for the sale of goods to Buyer belonging to ICI, even in cases where some or all the cost of such tooling or fixtures is paid by Buyer. ICI agrees to maintain, at its expenses, such tooling in good working condition.

15. Export

All licenses or other required governmental approvals shall be obtained by Buyer at its sole cost and expense. Buyer acknowledges and warrants that, as applicable, it shall comply with all Canadian export legislation including the Export and Import Act and its related regulations, Control of Dangerous Goods laws, United States legislation including Export Administration Regulations, International Traffic in Arms Regulations (ITAR), export laws and regulations of

the European Union (EU) and/or any of its member states. Buyer warrants that it shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any goods or technical data, or the direct product of any goods or technical data, to any proscribed person, entity, or country, or foreign national thereof, unless properly authorized by the applicable or relevant government or regulatory body. Buyer shall hold ICI harmless from any liability arising from Buyer's failure to comply with such laws, regulations and orders, or the provisions of this section and indemnify ICI for any damages resulting to ICI from a breach of this subparagraph by Buyer.

14. Default

In addition to any other rights or remedies available to ICI under these Terms and Conditions or under any applicable law, if Buyer is in default of these Terms and Conditions of Sale, ICI may, at its option, cancel any unexecuted portion of any Order to which these Terms and Conditions of Sale apply and/or exercise any right or remedy which may be available to it at law. Buyer will be in default under these Terms and Conditions of Sale if: (a) the Buyer fails to perform any covenant, term or condition contained herein or breaches any representation or warranty given by Buyer to ICI (b) Buyer fails to give a required notice to ICI.

15. Governing Law

These Terms and Conditions of Sale are governed by the laws of the province of Nova Scotia and the federal laws of Canada applicable therein without regard to conflict of law provisions and Buyer hereby irrevocably attorns to the jurisdiction of the courts of such province. All actions, regardless of form, arising out of or related to a transaction governed by these Terms and Conditions of Sale must be brought against ICI within the applicable statutory period, but in no event more than one (1) year after the date of the relevant invoice.

16. General Provisions 16.1 No Rule of Strict Construction: The language used herein shall be deemed to be the language chosen by the parties hereto to express their mutual intent and shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.

16.2 Non-Waiver: The failure of ICI to insist upon the strict performance of any of these Terms and Conditions of Sale will not be deemed to be a waiver of any of the rights or remedies of ICI, nor of its right to insist upon strict performance of such term or of any other term in the future. No waiver of any of these Terms and Conditions of Sale will be valid unless in writing signed by ICI.

16.3 Severability: If any of the provisions contained in these Terms and Conditions of Sale are held to be invalid, illegal or unenforceable by reason of any determination made by a court of competent jurisdiction or any governmental authority having jurisdiction in the circumstances, then such provision or part of such provision shall be severed from this contract to the extent of such invalidity or illegality and the validity, legality or enforceability of the remaining provisions of the Agreement shall not in way be affected or impaired thereby.

16.4 Assignment: Buyer may not assign or transfer or otherwise delegate any performance under, these Terms and Conditions of Sale or an Order in whole or in part without the prior written approval of ICI which may be withheld in ICI's sole discretion. No assignment nor the granting by ICI of any approval or consent to assign shall relieve the Buyer of any of its liabilities or obligations under these Terms and Conditions of Sale.

16.5 Successors and Assigns: These terms and Conditions of Sale shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

16.6 Independent Contractors: The relationship of the Buyer to ICI will be that of an independent contractor and not an employee, partner or agent, and nothing contained herein shall be regarded or construed as creating a partnership, joint venture, agency or employer/employee relationship.

16.7 Further Action: The Buyer shall, at the reasonable request of ICI, execute and deliver any further documents and do all acts and things as reasonably required to carry out the intent of these Terms and Conditions of Sale.

16.8 United Nations Convention on Contracts: The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods as well as any applicable sale of goods acts.

16.9 Subject to Section 1 of these Terms and Conditions of Sale, these Terms and Conditions of Sale constitute the final written expression of all the agreements between the parties with respect to the subject matter herein and supersedes all understandings and negotiations concerning the matters specified herein.

16.10 Language: The parties have requested and agreed that these Terms and Conditions of Sale be drafted in the English language. In the event any applicable contract or agreement is executed in more than one language version, the English language version shall control.