

## STANDARD TERMS AND CONDITIONS

1. **PARTIES.** Buyer ("Buyer") acknowledges, understands and agrees that by executing this Credit Application and/or the Sales Order it shall be bound by the Standard Terms and Conditions set forth herein and that said Standard Terms and Conditions shall be enforceable against Buyer by Liberty Products, Inc. (a Texas Corporation) and all of its subsidiaries, affiliates, assigns, associated or affiliated companies, corporations, partnerships, successors, and insurers (collectively "Seller"). The Credit Application, the Sales Order, these Standard Terms and Conditions, each applicable Seller estimate, Seller order and or Seller invoice confirmation shall form the sole agreement ("Agreement") under which Buyer shall purchase goods and materials ("Materials") from Seller and the acceptance of any purchase order from Buyers hereby is made expressly conditional upon Buyer's acceptance of the terms and conditions contained herein. Any conflicting or additional terms or conditions contained in Buyer's acceptance of this offer, whether by purchase order, oral agreement or otherwise, are hereby objected to by Seller and shall have no effect on, and not become part of the terms and conditions of this Agreement. Additional terms, changes, and alleged subsequent agreements shall not be effective unless signed by Seller's authorized representative. No course of dealing or usage of trade is applicable unless expressly agreed to in writing. Any clerical error may be corrected by Seller. Buyer's written acknowledgment, issuance of a purchase order, acceptance of an offer of sale by Seller, delivery of Materials, whichever occurs first, is acceptance of these terms.
2. **APPLICABILITY.** This Agreement is made between Buyer and Seller. All the terms and conditions herein are intended to and shall apply to all purchases by Buyer from any entity included in the definition of "Seller" as set forth above.
3. **PRICES.** The purchase price for Materials will be the price for the Materials in effect at the time of shipment, unless otherwise agreed to in writing by the parties. Prices are subject to change without notice. Quotations automatically expire 30 days from date of quotation and are subject to change or termination by notice from Seller during this period. All delivered prices or process with freight allowed are based upon prevailing rates and transportation charges, and if these are increased or decreased, such prices on all unshipped tonnage shall be increased or decreased accordingly. Unless otherwise agreed to in writing by Seller, Buyer will pay all freight, storage, handling, packaging, insurance or similar charges. Seller may require Buyer to pay a deposit, or provide an irrevocable letter of credit in favor of Seller in an amount determined by Seller and from a bank approved by Seller payable on presentation of a commercial invoice.
4. **BUYER REPRESENTATIONS.** Buyer represents to Seller that, as of the date of this Agreement, it is solvent, and that any financial information provided or attached accurately reflects the present financial condition of Buyer. If at any time Seller deems the financial condition of Buyer as unsatisfactory, in Seller's sole discretion, Seller reserves the right to require payment in full in advance or other security satisfactory to Seller. Buyer further warrants and represents that it has authority to enter this Agreement and that any person signing this Agreement has been duly authorized to execute this Agreement to and on behalf of Buyer. Each representation and the information contained in the Credit Application is material and given to induce the Seller to provide Credit.
5. **TECHNICAL ASSISTANCE.** In no event shall Seller bear any responsibility for claims arising from technical advice or assistance or lack thereof provided to Buyer. Advice and assistance provided by Seller is for Buyer's guidance only and Buyer agrees to rely solely on its own architects, engineers or other technical experts. Any specifications, drawings, schematics, tests, designs, inventions, engineering notices, financial information, technical data, samples, prototypes, models and/or equipment ("Technical Information") supplied by Seller, directly or indirectly, will remain Seller's property and will be held in confidence by Buyer. Technical Information will not be reproduced, used or disclosed to others by Buyer without Seller's prior written consent, and will be returned to Seller upon demand or upon completion by Seller of its obligations under the Terms. Without obtaining the prior written consent of Seller, Buyer will not advertise or publish the fact that Buyer has purchased Products from Seller, or use any trademarks or trade names of Seller in Buyer's advertising or promotional materials. Buyer may not resell the Products under any brand name other than Seller's.
6. **LIMITED WARRANTY AND LIABILITY DISCLAIMER.** Seller warrants that the Materials sold under this Agreement meet solely the description and specifications for the same set forth in the applicable invoice, or Sales Order if any, and shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery thereof. No other express warranties are made with respect to said Materials. Acceptance by Buyer of the Materials shall constitute confirmation by Buyer that the Materials meet the description and specifications, if any, set forth in such applicable invoice or Sales Order. The foregoing warranty is subject to proper handling, proper and good warehousing, standard manufacturing and color variations, fluorescence, tolerances and classifications. Seller is not responsible for installation or defective conditions caused by installation nor for any financial cost or commission when making payments. Buyer's exclusive remedy for breach of this warranty shall be to require Seller, at Seller's option, to either (i) refund the purchase price for the Materials sold hereunder, or (2) to repair or to provide Buyer with conforming replacements for any nonconforming Materials. Seller shall not be responsible for any removal or installation costs. **THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WRITTEN OR ORAL WARRANTIES OR CONTRACTUAL AGREEMENTS, WHETHER EXPRESS OR IMPLIED BY LAW OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OF HABITABILITY.** Seller warrants that to the best of Seller's knowledge, the use of or sale of the Materials will not infringe on the claims of any United States patent covering the Materials, if any, but Seller does not warrant against infringement by reason of the use of the Materials in combination with other materials, goods, or manufacturing processes.
7. **CLAIMS.** Buyer's exclusive procedure for commencing claims under this Agreement against Seller shall be as follows: written Notice of Claims against Seller for breach of warranty or for alleged short delivery of Materials must be given to Seller promptly upon discovery, but in no event after more than ten (10) days from the date delivery, and must be supported in writing within seven (7) days thereafter to afford Seller an opportunity to investigate such claims promptly and mitigate any potential damages. Failure of Buyer to file such notice shall constitute a waiver by Buyer of its right to later make such a claim or to any recovery.
8. **LIMITATION OF LIABILITY. THE REMEDIES SET FORTH IN THESE TERMS WILL BE EXCLUSIVE.** Seller's liability on any claim or loss or damage arising out of the supplying of any Materials to Buyer, or their sale, operation or use, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price of the Materials paid for by Buyer, for which such claim for loss or damage is made. In no event shall Seller be liable, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds, for special, consequential, incidental, liquidated or penal damages including, but not limited to, loss of profits or revenue, loss of use of the Materials or any associated product, cost of capital, cost of substitute products, facilities, services, downtime costs, or claims of customers of the Buyer for such damages. Any proceeding by Buyer for breach of the Terms cannot be filed or maintained unless it is commenced within one year after the cause has accrued, Buyer has provided written notice to Seller as provided in these Terms and Buyer has paid in full all amounts owing to Seller under these Terms.
9. **INDEMNIFICATION BY BUYER.** To the fullest extent permitted by the law, Buyer further agrees that, in specific consideration for receiving the express warranty granted by Seller in paragraph 6 above, it will defend, indemnify and hold harmless Seller from and for any and all damages, including attorney's fees and costs, incurred by Seller in connection with any claim, demand, liability, or cause-of action asserted against Seller for personal injuries, loss of life, property damages, or economic losses of Buyer or its employees, agents, representatives or any other person or entity, provided, however, that Buyer's duty hereunder shall not arise if such claims, demands or liability are caused by the willful misconduct of Seller. Nothing herein shall be interpreted to require Buyer to indemnify Seller for Seller's own gross negligence.
10. **DELIVERY AND INDEMNIFICATION.** Seller's responsibility for delivery shall cease FOB Shipping Point or, if Seller agrees in writing to deliver FOB delivery site, at the curbside or street or frontage of the address of delivery. If Buyer requires Seller to cross a curb line or enter upon private property to make delivery on site, Buyer shall be responsible to provide safe and adequate access and such delivery shall be at the risk of the Buyer. Following delivery, Buyer shall be responsible for compliance with all governmental regulations and ordinances with regard to disposal, storage or placement of the same and shall indemnify and

hold Seller harmless against all claims for personal injuries, including death, and any damage to private or public property arising from the delivery, storage, use, disposal or handling of said Materials. Unless otherwise specifically agreed, shipments will be made only during normal business hours, but not on Saturdays, Sundays, or holidays recognized by Seller or labor unions under contract with Seller. All delivery dates are Seller's best estimate and are subject to delay. Seller shall not be responsible for spotting, switching, or drayage charges at destination.

If Buyer is In default under this Agreement or any of its contracts or obligations with Seller, Seller may, at its sole option and without prejudice to any of its other remedies: (i) postpone further deliveries or shipments until such default is remedied; or (ii) terminate any and all obligations under any contract or obligation and refuse further performance without any liability to Buyer.

11. **DELIVERY SITE CONDITIONS.** Seller reserves the right to determine whether the site for delivery requested by Buyer is suitable for such delivery and Seller may refuse to deliver to a site if Seller is of the opinion that delivery would be unsuitable or unsafe. Buyer shall be responsible for all costs and damages incurred where, in the sole opinion of Seller, adequate access for delivery cannot be obtained. Where delivery of products is to an unattended site, Seller will not be liable for any loss or damage to products, property or for unsigned delivery tickers.

12. **QUANTITIES.** The type and quantity of Materials delivered and detailed on the delivery ticket must be checked by Buyer at the time of delivery for compliance with Buyer's order. Variations between actual quantities of materials delivered and those shown on the delivery ticket must be noted on all copies of the delivery ticket signed by Buyer. Invoice charges will be based on the quantities shown on the delivery ticket. Any claim for alleged short delivery of Materials must be made in accordance with Section 7 above, otherwise it will be deemed accepted by Buyer. In the absence of any claim Buyer shall be liable to pay for the full quantity of the Materials listed on the delivery ticket. The Buyer agrees to accept the tolerances of the norm. **ALL DEFECTS AND NONCONFORMITIES WHICH ARE NOT SPECIFIED ARE WAIVED BY BUYER.**

13. **MEASUREMENT OF QUANTITIES.** Measurement of quantities of Materials shipped and delivered to Buyer or Buyer's delivery agent by Seller shall be made only by Seller's certified truck or rail scales at the respective Seller facility. In the event that shipment is made by rail, then such measurement shall be based on the average capacity of the rail cars as agreed in writing by the parties or the weight shown on the invoice by Seller.

14. **CREDIT, CONDITION PRECEDENT TO SELLER'S OBLIGATION TO PERFORM, PERSONAL GUARANTEE.** Any and all credit terms of payment must be set forth in this Agreement. In the absence of any such credit terms, and acceptance of said terms by Seller, all deliveries under this Agreement are Collect on Delivery ("COD") or "Cash in Advance" ("CIA"). Buyer agrees upon request to furnish Seller such additional information (including financial statements) as is deemed necessary in the opinion of Seller to determine Buyer's financial condition. Seller's obligation to perform under this Agreement is subject to the condition precedent that Seller does not notify Buyer that Seller's Credit Department has disapproved any credit terms of payment specified herein.

15. **CREDIT.** Should Buyer's account be opened and approved with a credit amount, this amount, as may be amended from time to time, or eliminated in its entirety, in Seller's discretion, applies to the total purchases and can be exceeded at any given time only if approved by Seller's Credit Manager. Buyer acknowledges that Seller is relying upon the credit worthiness and financial ability of the guarantors, owner, or owners of Buyer and Buyer, guarantors and such owner or owners shall be jointly and severally liable for all indebtedness of Buyer to Seller incurred under this Agreement.

16. **PAYMENT.** Buyer shall make all payments due hereunder in United States currency and in accordance with the terms of this Agreement, without any right of setoff or reduction and without regard to any agreement Buyer may have with other parties. Buyer has to pay for all transaction fees and costs. If delivery is to be delayed either at the request of Buyer or through no fault of Seller past the delivery date specified in this Agreement, Buyer shall pay promptly in full for all Materials sold hereunder. If any payments are not received when due, Seller may, at its option, assess an additional charge equal to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, for each thirty (30) day period of delay or part thereof to cover Seller's increased costs, or, in the alternative, upon notice to Buyer, cancel the portion of the Agreement which remains to be performed. If no due date is stated elsewhere in the Agreement, payment of all invoices are due by the 15<sup>th</sup> day of the month following invoicing. Until Seller has received full payment for the Materials sold under this Agreement, Buyer shall not remove nor allow the removal of said Materials from the jobsite to which they were delivered, nor shall Buyer use or allow the use of any such Materials for any project other than the one for which they were purchased for.

17. **SECURITY INTEREST.** In addition to any security interest granted by the UCC, Buyer grants Seller a security interest in the Products and documents related to Products and proceeds and goods from the Products to secure all obligations of Buyer to Seller, whether or not arising under the Terms. Seller may file a financing statement and at Seller's request, Buyer will sign financing statements if necessary, evidencing the security interest. Buyer will provide a landlord's waiver of any lien rights at the premises to which the Products will be installed. In case of a default by Buyer, Seller, as the appointed agent of Buyer, may peaceably enter the premises of the Buyer and others and take other actions to repossess or render inoperable all Products in which it has a security interest. Products are considered strictly personal property no matter whether affixed to a permanent foundation, building or structure. Buyer will maintain the Products in a segregated area and not comingle any Products which are not fully paid. Buyer will not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in unpaid Products and will advise Seller immediately in writing of any damage to, change in location of, or seizure of, any unpaid Products. Buyer will insure such Products for damage or loss (including theft) in an amount not less than replacement value.

18. **OFFSET AND/OR SETOFF.** Seller may exercise the right of set-off under this Agreement as to any sums owed by Seller and/or its affiliates under any other contract, order or agreement with Buyer and/or its affiliates.

19. **PAST DUE ACCOUNTS.** Should Buyer fail to pay when due any amount payable to Seller under the terms of this Agreement or should Buyer's financial condition become impaired or unsatisfactory to Seller, in the Seller's sole opinion, Seller may, at its option, make demand upon Buyer for (1) immediate payment of all amounts then due and owing to Seller under this Agreement; (2) payment in advance or at the time of delivery of all future amounts to become due under this Agreement, and or (3) such other assurances as Seller shall deem necessary to adequately assure Seller that Buyer will perform its obligations under this Agreement. Until Seller receives the same, Seller may suspend its performance of this Agreement, and if such assurances are not received from Buyer within a reasonable time not exceeding ten (10) days, Seller may, at its option, deem this Agreement to have been repudiated by Buyer. Buyer further agrees to pay Seller any and all collection fees, attorney's fees, and court costs incurred by Seller in collection of any amounts due under this Agreement. Buyer shall be liable for all costs incurred by Seller, including legal fees and costs, to collect payment from Buyer for Materials sold pursuant to this or any subsequent Agreement between the parties.

20. **TAXES.** In the absence of an exemption or resale certificate acceptable to Seller and to the respective taxing authority, all federal, state and local taxes, assessments, fees, duties and charges levied by reason of the Agreement are in addition to the prices quoted in each applicable estimate, sales order or purchase order, and shall be paid by Buyer.

21. **TITLE AND RISK OF LOSS.** Title and risk of loss to the Materials shall transfer to the Buyer FOB Shipping Point or upon payment, whichever occurs earlier, and Buyer hereby grants Seller a first priority security interest in all such Materials until such time as Seller is paid in full all amounts due under this Agreement. Buyer further agrees to execute any and all documents that may be required for Seller to perfect such security interest.

22. **INSURANCE.** To the extent required by law, Seller will procure insurance coverage for itself and its employees or, if no such requirement exists, in an amount Seller deems appropriate. Notwithstanding any requirement in any bid documents, purchase order or any contract documents to the contrary, Seller will

not provide a waiver of subrogation clause nor additional insured status for any party under any circumstances, nor shall Seller's insurance be primary and non-contributory.

23. **LIMITATION OF WARRANTY.** BUYER REPRESENTS AND WARRANTS TO SELLER THAT THE MATERIALS ARE BEING PURCHASED FOR RESALE OR FOR COMMERCIAL USE AND THAT ANY WARRANTIES GIVEN HEREUNDER ARE NOT SUBJECT TO THE REQUIREMENTS OF THE MAGNUSON-MOSS WARRANTY-FEDERAL TRADE COMMISSION IMPROVEMENT ACT, 15 U.S.C. SECTION 2301 et seq. ANY WARRANTIES HEREUNDER, WHETHER EXPRESS OF IMPLIED, ARE MADE TO BUYER ONLY, AND TERMINATE UPON TRANSFER OF THE MATERIAL TO ANY OTHER PERSON FOR ANY PURPOSE WHATSOEVER.

24. **MODIFICATION OF TERMS.** No employee or agent of Seller has the authority to make any statement, including restricting or modifying or otherwise concerning the existence or effect of any of these terms and conditions or of any warranty or guarantee and no such employee or agent making any such statements shall be acting on behalf of or with the consent or agreement of Seller. These conditions can only be altered or varied in writing signed by a Seller Credit Manager, General Manager or Regional Manager and no other employee nor shall any other person have the authority to alter or vary any or all of these terms and conditions

25. **TERMINATION.** These Terms are subject to Seller's revocation or cancellation at any time, without liability, provided that Seller completes all current orders in process at the time of cancellation. Buyer may cancel its order for Materials prior to its completion by immediate payment to Seller of Seller's cost of manufacture and liquidated damages (including labor, engineering, materials, Tooling, equipment time, overhead) computed using Seller's standard internal costing procedures, plus 15% of the sales price for the Products. Cost of manufacture includes all materials or services that Seller has ordered and that cannot be canceled, and all costs incurred in canceling such orders. Seller may retain without cost all materials and partially completed Products on cancelled orders.

26. **ASSIGNMENT.** Buyer shall not assign this Agreement or any interest herein without the prior written consent of Seller, and any attempted assignment, whether by operation of law or otherwise shall be void without such prior written consent.

27. **NOTICE.** Any notice required to be sent to Seller shall be in writing and sent by Certified Mail, postage prepaid, to the local Seller office, with a copy to Seller at Liberty Products, Inc., 1335 Boyle Street, Suite A, Houston, Texas 77020 and via email at [jghitman@libertyprods.com](mailto:jghitman@libertyprods.com).

28. **SEVERABILITY.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. The parties agree that each term and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against any Party.

29. **VENUE AND CHOICE OF LAW.** The parties hereto agree that venue for any action brought for the breach of or the enforcement of this Agreement will lie in Harris County, Texas, at Seller's sole option. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Texas, without regards to its conflicts of law provisions. Any and all actions brought by Buyer under this Agreement shall be brought within one (1) year of the date of delivery of the Materials with respect to which the action relates. AS A MATERIAL INDUCEMENT TO SELLER TO ENTER INTO THIS AGREEMENT, BUYER WAIVES THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

30. **ENTIRE AGREEMENT.** This Agreement sets forth the sole and entire agreement between the parties with regard to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements between the parties regarding the same. No delivery of any Materials shall be made until Buyer returns a signed copy of this Agreement. Facsimiles, copies or other reproductions of this Agreement shall have the same effect as an original thereof.

31. **WAIVER.** Seller may, in its sole discretion, permit Buyer to remedy any default under this Agreement without waiving the default of remedies of any other subsequent or prior default by Buyer. Buyer waves notice of default of this Agreement and waives presentment, demand, protest and notice of dishonor as to any instrument

32. **MISCELLANEOUS.** Buyer consents to Seller sending information to Buyer regarding Seller's products ad prices at any time by fax to any fax number provided by Buyer, other electronic means or otherwise.