



## Boyd's Additional Terms and Conditions of Sale

- 1. SALE AGREEMENT.** The goods or products shall be sold by Boyd ("Seller") in accordance with Boyd's Order Release Form as applicable, and including Boyd's Quote(s) and Production Order(s), Shop Drawings and Change Orders approved by Purchaser and Seller, if any, and these additional terms and conditions of sale ("Terms of Sale"), and such other terms as Seller agrees to in writing, all of which shall be the Agreement of the parties with respect to the sale of goods. In the event of any conflict in the terms stated in the Agreement of the parties and these Terms of Sale, the terms in the Agreement shall control. Any items not specifically referenced in the Agreement are excluded, including, but not limited to, installation services or field work, fasteners, caulking, caulking stops, blocking, or shims. Additional goods or products, such as parts, additional or replacement goods, and attic stock acquired by Purchaser or Purchaser's customers or others from Seller related to the goods sold hereunder, shall be acquired subject to the provision of this Agreement.
- 2. ACCEPTANCE.** This sale is subject to all terms and conditions of this Agreement. Seller rejects any and all terms in any purchase order or other document of Purchaser which are in addition to, different from, or inconsistent with this Agreement. Seller's Quote is an offer to sell, subject to final approval by Seller. The offer may be withdrawn at any time prior to Purchaser's and Seller's final acceptance and execution of a final agreement, and shall expire automatically if not accepted within thirty (30) days from the date hereof, unless otherwise agreed to by Seller.
- 3. PAYMENT.** Payment for the goods is due at the time of the order, unless Seller has allowed credit terms, in which case Purchaser shall, within thirty (30) days after Seller ships the goods, pay the full purchase price for the goods shipped (or the final installment of the purchase price if Purchaser has made progress payments prior to the shipment date); except that if an officer of Seller agrees to delay shipment as requested by Purchaser in writing under paragraph 6 hereof, Purchaser shall pay the full purchase price (or the final installment) within thirty (30) days after the goods have been completed, and, in addition, shall pay a reasonable storage charge as determined by the Seller. Any balance not paid when due shall draw interest at the rate of 1.5% per month (18% A.P.R.) on the average daily balance until paid or the highest rate allowed by applicable law, whichever is less. Notwithstanding paragraph 14 hereof, the parties agree that either party may bring a suit against the other when the amount in controversy in the initial claim or in any counterclaim in the suit is \$75,000.00 or less, exclusive of interests and costs, and the prevailing party in such suit shall be entitled to recover from the other party damages not exceeding \$75,000.00, plus interest and costs, and each party shall bear its own attorney's fees and litigation expenses. All payments shall be made in U.S. currency.
- 4. CREDIT APPROVAL.** If Seller allows credit terms to Purchaser, the obligations of Seller hereunder, shall be subject to the condition precedent that Seller's credit department approves the credit of Purchaser, and Purchaser's signing and delivering to Seller the Seller's credit application and agreement.
- 5. DRAWINGS.** Seller's drawings are its interpretation of drawings and specifications provided by the Purchaser. If Seller submits any drawings or other specifications to Purchaser for approval, and Purchaser does not approve or disapprove the same within the time specified by Seller, or within ten (10) days if no time is specified by Seller, Seller may revise the estimated shipping date to a later date and may increase the purchase price, as reasonably necessitated by Purchaser's delay. Drawings approved by Purchaser and its agents and representatives, shall be deemed to be in conformance with all project drawings and specifications provided by the Purchaser.
- 6. SHIPMENT.** If Purchaser delays in releasing the goods for manufacture after Boyd's acceptance of the Order, for a period of 30 days or more, then the agreed price is subject to price escalations by Boyd, including, but not limited to consideration of the following factors: current market conditions, vendor pricing, availability or unavailability of quantity discounts, internal labor increases and overtime costs, and costs of rescheduling other projects, and the estimated shipping date may be revised by Boyd. If Purchaser is not in default, Seller shall ship the goods upon completion, except that, subject to paragraph 3 hereof, shipment may be delayed if requested by Purchaser in writing and agreed to by an officer of Seller, provided in such case the warranty period for Seller's warranty, if any, shall commence on the date the goods are completed. Upon Boyd's acceptance of the Order, Boyd will schedule the Order for manufacturing and estimated shipping dates will be assigned. Purchaser agrees that the estimated shipping dates (and any other subsequent estimated shipping dates by Boyd, whether communicated in writing or orally), are estimates only. Boyd will endeavor to meet the estimated shipping dates and any revisions to such dates, subject to available manufacturing capacity, labor and materials, and subject to Boyd's fulfillment of prior orders; however, Boyd will not be subject to any delay damages, charges, back charges, penalties, liquidated damages, or other liability whatsoever, or any damages incurred by Purchaser to its customer, for failure to comply with the estimated shipping dates. Seller may ship the goods by any mode, and in full or partial shipments. Seller shall not be

liable for any failure or delay to manufacture or ship the goods due to causes beyond its control, including without limitation, any delay caused by Purchaser, acts of God, wars, terrorism, sabotage, casualties, accidents, pandemics, labor disputes or shortages, transportation shortages, governmental laws, ordinances, rules or regulations (such as priorities, requisitions, allocations and price adjustment restrictions), or any delay caused by, or inability to obtain materials from Seller's vendors and suppliers under normal commercial terms. Any special packaging, loading, unloading, or shipping instructions are not included in the price of the goods, and must be specified by Purchaser, agreed to by Seller, and specifically referenced in the Agreement.

**7. TITLE, RISK OF LOSS.** The goods shall be shipped FOB Seller's plant, and title to the goods and all risks of loss with respect to the goods shall transfer to the Purchaser after they have been placed in the possession of a carrier, subject to reversion to the Seller, at Seller's option, for Purchaser's default in payment.

**8. INSPECTION.** Purchaser shall inspect the goods at the time and place of delivery and Purchaser agrees that such occasion shall constitute a reasonable opportunity for its full inspection. Seller shall not be responsible for the costs of any inspecting or testing of the goods, except as may be conducted by Seller prior to shipment. All inspections and testing conducted by Purchaser, Purchaser's customers, or others before or after delivery of the goods, at Seller's plant, or at any other place or time, shall be at the sole expense of the person or entity conducting the inspection or testing, including any inspection or testing after the goods have been repaired or replaced by Seller or others. Purchaser and Purchaser's customer, if any, are responsible for any and all costs and expenses of inspection, testing, and re-testing the goods and products sold to Purchaser in this order and any repaired or substituted goods and products, including but not limited to: travel expenses; inspection, testing and re-testing fees and expenses; laboratory and other analytical fees and expenses; and any other similar expenses; in each case above, whether such costs, expenses or fees are incurred by Purchaser, its customer or others. Purchaser agrees to protect, defend, indemnify and hold Boyd harmless from any claims or demands for inspection, testing and re-testing as described in the forgoing sentence, that are brought against Boyd by Purchaser, its customer or others. Boyd's obligation with respect to non-conforming goods is only as provided in these Terms of Sale. The parties agree that Purchaser's failure to reject the goods or report shortages or discrepancies, in writing, within ten (10) business days of delivery, together with detailed supporting documentation, shall constitute acceptance of the goods, which Purchaser agrees is a reasonable opportunity for inspection, and failure to reject the goods or report shortages or discrepancies, in writing, and provide supporting documentation within this period, shall, except as provided in paragraph 10 hereof, be deemed as Purchaser's acknowledgement that the goods comply with the order and with all specifications, representations and warranties of Seller, and waiver of any claim or cause of action against Seller with respect to the goods. Purchaser at Purchaser's expense is encouraged to visit Seller's plant prior to shipment to inspect and, when possible, to witness any testing of the goods conducted by Seller. If return of the goods is impractical Purchaser may be required to inspect the goods at Seller's plant prior to shipment, at Purchaser's expense, which shall be deemed to be a reasonable opportunity to inspect and, upon satisfactory completion, shall constitute Purchaser's acceptance of the goods. Purchaser shall not return any goods that are timely rejected until Seller has had a reasonable opportunity to inspect the rejected goods. If Seller determines that the goods were rightfully rejected, Seller at its option, shall repair, provide substitute goods, or refund the price paid for the defective portion of the goods, as Purchaser's sole remedy.

**9. TAXES AND DUTIES.** The price of the goods does not include any sales, use and excise taxes, tariffs, duties and other charges imposed by any country, state, locality or other political subdivision in connection with the sale of the goods, all of which shall be responsibility of Purchaser. If the transaction is exempt, Purchaser shall provide tax exemption certificates from the state in which the project is located.

**10. WARRANTIES.** Unless Seller provides a written warranty on Purchaser's request, as provided herein, the goods are sold AS IS without any warranty express or implied. If applicable Seller's specific standard limited warranty applicable to the goods ordered is only effective, at Seller's option, when signed by the Purchaser and returned to Boyd for signature by its authorized representative, after which, if applicable, a fully executed copy will be provided to Purchaser.

**SELLER DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED.**

Oral statements by seller's employees or representatives do not constitute warranties, shall not be relied upon by Purchaser, and are not part of this Agreement. If Seller provides a written warranty, it is conditioned upon Purchaser's payment in full. Any warranty offered by Purchaser to its customers, in excess of that offered by Seller, shall be the responsibility of Purchaser.

**11. LIMITATION OF LIABILITY.** Purchaser's exclusive remedy for claims arising hereunder shall be for damages. Seller shall not under any circumstances be liable for special, indirect, incidental, punitive, exemplary, or consequential damages, such as, but not limited to: loss of use; loss of profits; loss of rents or revenue;

inconvenience or loss of time; costs of capital; facility shutdowns or slowdown; claims by Purchaser's customers; loss or damage to other property or equipment, loss or damage to other products or materials; the cost and labor to repair or replace loss or damage to other property, equipment, products or materials; the cost and labor to repair or replace the goods; the cost of freight to ship replacement goods; loss or damage caused by leakage, mold, fungi, or bacteria; or loss or damage occurring during the repair or replacement of goods; all of which are expressly excluded unless covered by policies of insurance issued to Seller, from time to time, and in such cases damages are limited to Purchaser's direct cost, fair market value, or the limits of any insurance coverage in effect for Seller, and providing coverage to Seller, whichever is less. The remedies of the Purchaser, and any other party, arising out of or related to the goods set forth herein are exclusive, and the liability of the Seller with respect to the goods, or anything done in connection therewith, or from the manufacture, sale, delivery, resale, installation, use, or the repair or replacement of any of the goods sold by Seller, whether arising out of contract, negligence, strict liability, tort, or under any warranty, or otherwise, shall not, exceed the price charged by Seller for the portion of the goods upon which such liability is based. Seller is not responsible for pitting, corrosion or suitability of use for any products, materials, or finishes in any particular application. The corrosion resistance and suitability for use of any product, material, or finish is dependent on environmental conditions, cleaning practices and many other factors beyond the control of Seller. Seller is not responsible for loss of functionality of moving portions of goods, and pitting and corrosion caused by environmental conditions and the performance of, or absence of cleaning/maintenance practices. Purchaser and its customers assume all responsibility and risk for pitting, corrosion, or suitability for use of all products, materials, or finishes in their particular application.

**12. CANCELLATION, CHANGES.** Purchaser may not cancel this Agreement without the prior consent of Seller, and without paying Seller a cancellation charge equal to total selling price less the estimated direct labor and materials not expended less the salvage value of materials already purchased. Purchaser may not change this agreement without the prior consent of Seller and without payment of a charge equal to the cost of the change to Seller, including overhead and profit. Seller's approval in each case must be in writing signed by an officer of Seller.

**13. REMEDIES.** If Purchaser fails to make timely payment, or breaches any of the other terms or conditions hereof or any other agreement with Seller, Seller, at its sole option, shall have the right to withhold further shipments on this or any other order until payments are brought current, require payment in advance, require payment COD, or the right to exercise any one or more of the foregoing remedies, and/or the right to terminate this Agreement and pursue collection of its damages from Purchaser. The Seller's remedies provided herein are in addition to other remedies allowed by law or in equity. The failure of Seller to exercise any right or remedy shall not constitute a waiver of the right to exercise that, or any other remedy; and no waiver of any breach or non-compliance of any provision herein shall operate as a waiver of any other breach or non-compliance of the same or any other provision.

**14. APPLICABLE LAW, ARBITRATION.** Except as otherwise provided in these Terms of Sale, this Agreement is governed by the internal laws of the State of Missouri. The parties agree that any proceedings in court or in arbitration, whether arising in contract, warranty, tort, statute, or otherwise shall be brought exclusively in the state or federal courts located in Springfield, Missouri in regard to suits, and in Springfield, Missouri for any arbitration hearing. THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY. Any dispute, controversy or claim arising out of or relating to this Agreement or any purchase order issued by Purchaser and accepted by Seller hereunder, whether based on theories of contract, negligence, strict liability, tort, laws or regulations, warranty, or otherwise, (including, but not limited to, any dispute relating to the existence, interpretation, breach or termination hereof or thereof, or the agreement of the parties to arbitrate disputes), where the amount in controversy in the initial claim or in any counterclaim equals or exceeds \$75,000.00, exclusive of interest and costs, that cannot be resolved by the parties within thirty (30) days of notification by either party of the dispute, shall be resolved by binding arbitration administered by, and in accordance with the Construction Industry Rules of the American Arbitration Association. The arbitration award may be reduced to judgment by any court having jurisdiction thereof. The cost of the arbitration shall be shared equally between the parties, and each party shall bear its own attorney fees and expenses, provided that where a party asserting a claim in excess of \$75,000.00 is awarded less than the sum or value of \$75,000.00 computed without regard to any setoff, claim, or counterclaim of the other party, the party so failing to recover, shall bear all the fees of the arbitrator(s) and the arbitration service conducting the arbitration. Purchaser and Seller agree that the agreement to arbitrate disputes shall not preclude Seller from exercising lien rights available under the laws of any state where the goods are located or services performed, including filing any suit to enforce its lien rights, provided that when the amount in controversy in the initial claim or in any counterclaim exceeds \$75,000.00, exclusive of interest and costs, the suit shall be stayed, and the Seller's claims for payment and the Purchaser's defenses to payment and counterclaims shall be determined by arbitration, as provided herein. The applicability of this agreement to arbitrate claims shall be determined by the arbitrator(s).

**15. MISCELLANEOUS.** This Agreement is a complete and exclusive statement of the terms of the Parties' agreement. These Terms of Sale shall survive the termination of this Agreement for any reason. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein, and no

modification shall be binding on Seller unless made in a writing signed by Seller. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by separate consideration and is in a writing signed by Seller. Purchaser shall not assign its rights or delegate its duties under this Agreement. Facsimile and E-mail signatures of the parties shall constitute original signatures for all purposes. The invalidity of any portion of this Agreement shall not affect the validity of any remaining portions thereof. Nothing contained herein shall be construed as creating any relationship between the parties other than as independent contractors.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.**