

# BESSERN Building Products, LLC TERMS AND CONDITIONS

## TERMS AND CONDITIONS OF QUOTATION AND SALES

### 1. CONFIRMATION

Any order, written or verbal emanating from a quotation, will only be accepted under the terms and conditions set out below, unless otherwise agreed in writing. This Agreement between BESSERN Building Products, LLC (the "Seller") and the buyer ("Buyer") of products ("Products") shall consist of and be contingent upon the Seller's acceptance of the Purchase Order submitted by Buyer.

### 2. QUOTATIONS & PRICES

Written quotations automatically expire thirty (30) calendar days from the date issued unless sooner terminated by notice. Seller's publications are maintained as sources of general information and are not quotations or offers to sell. Prices are subject to change from time to time. All clerical errors are subject to correction.

### 3. LIMITED WARRANTY

Seller warrants the goods sold hereunder to be free from defects in material and workmanship under normal use and service not arising from misuse, negligence or accident, in connection with the use, of the goods by Buyer, its agents, servants, employees. Seller's obligations under this warranty are limited to remedying any deficiencies in the goods at such place or places in the United States of America as may be designated by Seller. This warranty shall pertain to any Products to which Buyer has, within 1 year following delivery of such goods to Buyer or its nominees or the carrier, as the case may be, given written notice of claimed defects to Seller. Buyer shall be required to furnish Seller with details of such defects and this warranty shall be effective as to such goods which Seller's examination shall disclose to its satisfaction to have been defective and which at Seller's option shall promptly thereafter be returned to Seller or its nominees. This warranty is expressly in lieu of all other warranties expressed or implied. IN NO EVENT SHALL THE SELLER BE LIABLE TO THE BUYER OR TO ANY OTHER PERSON FOR ANY LOSS OR DAMAGE, DIRECT OR INDIRECT, ARISING OUT OF OR CAUSED BY THE USE OR OPERATION OF THE GOODS, OR FOR THE LOSS OF PROFITS, BUSINESS, OR GOOD WILL. SELLER SHALL IN NO EVENT BE LIABLE TO ANY PERSON OR FIRM (INCLUDING ANY ASSIGNEE OF BUYER) EXCEPT BUYER AND ITS SUCCESSORS. Seller's liability is limited to furnishing or repairing at Seller's option products determined by Seller to be defective.

### 4. SHORTAGE AND NON-CONFORMITY

Any claim of shortage or that the goods do not conform with the specifications of the order or model must be made in writing within ten (10) days after delivery of the goods (as to which such claim is made) to Seller or its nominees, but in no event shall the claim be later than within the time limit provided by the carrier or insurance company, otherwise such claim shall be deemed waived. The samples, measurements, dimensions and weights contained in the Seller's catalogues, sales manuals, photographs, and drawings constitute only an approximate guide. The Seller reserves the right to make any changes that which the Seller, in its absolute discretion, considers necessary.

In the event that Buyer has a verified claim of shortage or of nonconformity of the goods to the specifications of the order or the model, and if such claim has been submitted within the required time limits as set forth above, Seller shall, at its own expense, make up for the shortage of the goods, or replace or repair the goods, as the case may be, but in no event shall Seller be or become liable to Buyer or to any other person or persons for any loss or damage, direct or indirect, arising out of or cause by such incidents, or for the loss of profits, business or good will.

### 5. FORCE MAJEURE

The obligation of Seller hereunder shall be modified or excused as the case may be, for reasons of Act of God, war, governmental law or regulations, strikes or lockouts, fire, breakdown of machinery, whether in its own business enterprise, or if for any other cause beyond Seller's control, the goods cannot be delivered or their delivery becomes delayed in whole or in part. In the above instances, time for delivery shall be extended for the period of the delay caused, with the proviso, however, that either party may cancel in writing the undelivered portion of the order or contract if the delay exceeds six (6) months from the delivery date originally confirmed by Seller. In no event shall Seller become liable in the aforesaid instances to Buyer or any third party for consequential damages or business loss.

### 6. SHIPMENT AS UNITY

Each shipment by Seller shall be treated as a separate and distinct unit with respect, but only with respect to forwarding, terms of payment, and the making of claims by Buyer; however, Buyer defaults in the payment of any obligation to Seller or any installments thereof, under any agreement between Buyer and Seller, or if Buyer refuses to accept any goods when tendered for delivery hereunder or under any other contract between buyer and Seller, the Seller may, on fifteen (15) days written notice to buyer without prejudice to Seller's other lawful remedies, either defer further performance until the defaulted payments are made in full, or make future deliveries for cash in advance only, or treat the entire contract or contracts with Buyer as breached by Buyer and pursue its remedies for breach.

### 7. REFUSAL OF DELIVERY OR ORDER CANCELLATION

(a) If Buyer refuses to accept delivery of any goods tendered for delivery hereunder, then Seller, without prejudice to Seller's other lawful remedies, may either store or cause such goods to be stored in a warehouse, for Buyer's account and at buyer's cost, risk and expense, or sell such goods (without notice) to any purchaser at public or private sale, and hold Buyer liable for any difference between (a) the contract price for such goods stipulated herein and (b) the price at which such goods are resold less the costs and expense of such resale including brokerage commission.

(b) In the event of cancellation of an order, once entered, Seller will be entitled to a cancellation charge not to exceed its cost plus anticipated profit. If the goods ordered can be restocked or reasonably used for other customers a restocking charge will apply.

### 8. GOODS IN TRANSIT

If prior to delivery or while the merchandise is in transit, Buyer becomes bankrupt or insolvent, or any petition in bankruptcy or for reorganization, or for a state court receivership is filed against Buyer then Seller may forthwith terminate this contract by giving written notice of such termination. Such termination shall not prejudice Seller's rights to any amounts then due under the contract. If Buyer becomes bankrupt or insolvent or any petition in bankruptcy or for reorganization or for a state court receivership is filed against Buyer, then, at its option, Seller may take possession of any goods theretofore sold to Buyer, in connection with which the full purchase price has not been paid, analogous to the terms and provisions set forth in Paragraphs 9 and 10 hereinafter.

### 9. DELIVERY

Unless otherwise agreed, delivery of the goods to any carrier shall constitute delivery to Buyer, and thereafter the risk of loss or damage to the goods shall be upon Buyer.

### 10. PAYMENT OF PURCHASE PRICE

Time of payment is of the essence under this contract. Upon default in any of the terms of this contract, or failure to comply with any of the conditions hereof, or upon seizure of the property under execution or other legal process, or if Buyer becomes bankrupt or insolvent, or any petition for reorganization or for a state court receivership is filed against Buyer, or if the Buyer make any assignment for the benefit of his creditors or otherwise sells, encumbers or disposes of the merchandise, or if for any other reason the Seller should deem itself insecure, the full amount of the purchase price then remaining unpaid shall at once become due and payable at the option of the Seller. Seller reserves the right to charge interest of two (2%) percent over prime rate, as shown in the Wall Street Journal at the end of the days trading on the appropriate customer's statement date.

### 11. BUYER'S DEFAULT

Upon Buyer's default, the Seller may make any disposition of the goods that it deems fit and, if it desires to resell the same, may do so at private or public sale, with or without notice, and with or without the property being at the sale, subject, however, to applicable Federal and State Laws. The Seller or its assigns shall have the right to bid at such sale and may become the purchaser of the property. The proceeds of the sale shall first be applied to the expenses incurred in retaking, repairing, storing and selling the merchandise, reasonable attorney's fees included, and then shall be applied to the payment of the balance due under the contract. Any surplus remaining shall be paid to Buyer. If a deficiency results after resale, the Buyer agrees to pay same forthwith. In the event of default by Buyer or failure of Buyer to pay any sums due, Seller shall be entitled to all costs and expenses incurred in enforcing its rights, including without limitation, reasonable attorney fees.

### 12. SECURITY INTEREST & TITLE

In states and localities, which are governed by the Uniform Commercial Code, this contract shall serve as the security agreement, reserving in Seller a security interest until full payment of purchase price. The provisions of the uniform Commercial Code regarding security interest shall have preference and apply if inconsistent with other terms of the conditions of sale herein. In states and localities where the Uniform Commercial Code does not apply, title to the merchandise shall remain in the Seller or its assigns until full payment of the purchase price. Buyer agrees to execute forthwith any and all documents in such as Seller may require for filing or recording the security interest under the Uniform Commercial Code with the proper registers or offices, or for filing or recording the conditional sales contract.

### 13. VARIATIONS IN DUTIES AND TAXES

Buyer shall bear any increases, after the date of this contract, in or any new imposition of duties, levies or taxes relating to the product sold hereunder. Buyer shall further bear any additional cost and expense to Seller due to increases, subsequent to the date of this contract, in freight or insurance rates pertaining to the product sold. The same shall apply to currency exchange fluctuations.

### 14. SALES, USE, AND SIMILAR TAXES

Unless otherwise specifically agreed, the amount of any sales, use, excise taxes, or any similar taxes for which Seller is legally liable, either initially or through failure of payment by Buyer, shall be added to the price quoted or to the purchase price and Buyer agrees to pay the same to Seller and/or to hold Seller harmless therefrom.

### 15. MODIFICATIONS BY SELLER

Any contract and notice given hereunder may be assigned, transferred or negotiated by Seller, or the time for the making of any payment due hereunder by Buyer may be extended by Seller without derogation of any of the rights of the Seller or its assigns. Waiver by any party of any default shall not be deemed a waiver of any subsequent default.

### 16. LAW AND JURISDICTION

Any contracts herein are governed by the applicable laws of the Commonwealth of Pennsylvania. Any dispute arising under the contract herein shall be brought in the court of Common Pleas of Delaware County or the Federal District Court for the Eastern District of Pennsylvania. Buyer and Seller agree to waive trial by jury in any action or other such proceedings arising out of or relating to the goods or this contract.

### 17. NON-ASSIGNMENT BY BUYER

Contract or contracts may not be assigned by Buyer without prior written consent of Seller.

### 18. MISCELLANEOUS PROVISIONS

(a) If for any reason a provision of the contract is legally invalid, then in such event the rest of the contract shall remain in full force and effect.

(b) Any amendment to any contract or contracts shall require the consent in writing of both parties.

(c) The terms and conditions contained herein shall govern in any instance where they conflict with the provisions of any forms used by Buyer.

## DISCLAIMER

The Purchaser is responsible for determining the suitability of products for their different applications. The Purchaser must insure that Seller's products are installed and utilized in accordance with all local, state, federal and private governing bodies and meet all applicable health and safety standards.

Seller has made all reasonable efforts to accurately present the information in our catalog and shall not be responsible for any incorrect information which may result from unintentional oversights. Due to continuous product improvements, the product specifications as stated in the catalog are subject to change at any time and without notice. The Buyer is responsible for consulting a sales representative of Seller for detailed information and to determine any changes of information in the catalog.

Should our products be used in an application that is safety critical, the purchaser must provide appropriate safety testing of the products along with providing adequate safety devices, guarding, warning notices and provide machine specific training to protect the operator from injury.

## RETURN FOR CREDIT POLICY

Your product has been made specifically to your design and application. Therefore, Seller must bill a restocking fee and can only issue company credit. Credit requests must be made within 30-days from date of delivery. Seller company credit is good for 1-year from issue date. Seller will not be able to credit non-stock or special order items.

A restocking charge of 20% minimum will apply. The actual restocking figure will be determined at time of request.

Seller will not pay or refund freight charges for the original shipment or when the goods are returned. Return freight must be pre-paid. No COD returns will be accepted.

In order to receive full credit goods must have an accompanying order number, must be returned in new condition and never used. The customer is responsible for any damage due to improper packing. All returns are subject to receipt and inspection by Seller before credit can be given.

Seller reserves the right to exchange or replace any defective material/product as per our standard Terms and Conditions of Sale.

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