

 **STANDARD TERMS AND CONDITIONS** 
(revised and effective November 1st 2014)

1. **AGREEMENT:** These terms and conditions and any schedules attached hereto shall constitute the entire agreement (hereinafter the "Agreement") between MASTER BUILDING MATERIALS (hereinafter referred as the "Seller") and the purchaser and its agents, employees, assigns, invitees, successors or officers (collectively the "Buyer") of the Products and services referred to on the reverse side of this Agreement. This agreement supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. **THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN THE BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN THE BUYER'S ORDER.** There are no conditions, exceptions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided in this agreement.
2. **DELIVERY:** Delivery dates are estimates and not guarantees and are based on conditions at the time of this Agreement. The Buyer shall be responsible for providing free and unrestricted access at its site for delivery of the Product by the Seller as directed by the Seller. Seller shall be entitled to deliver and deposit any and all Product ordered under this Agreement, at such place and location at the Buyer's job site as the Seller and its delivery agents and/or employees shall, in its and their sole and absolute discretion, designate and select for the safe, timely and efficient delivery and deposit of ordered Product. Seller shall have no obligation to deliver the Product to any specific area designated by the Buyer at its job site unless identified on the reverse hereof. The Buyer shall be responsible for and shall pay to the Seller any and all additional costs, fees and expenses and a \$ 25.00 delivery charge, for any and all specific location requests made at site, in addition to the purchase price. The Seller will use its best effort in the ordinary course of its business to affect deliveries as specified, but in no event shall the Seller be liable for any damages of any nature or kind, consequential or otherwise, arising from any failure of the Seller to meet any delivery date. Buyer shall not be entitled to terminate this agreement in the event of a late delivery of the Product. Charges, if any, for transportation and handling provided or arranged for by the Seller, shall be handled as separate items and quoted separately. Seller reserves the right to assess fuel and other surcharges on shipments without notice. The duration and amount of any surcharge will be determined at Seller's sole discretion. By confirming and placing the order for the Products from Seller, the Buyer agrees to pay the surcharges, as determined by the Seller. The fuel surcharge rate, if applicable, is available on written request from the Seller at time of placement of the Buyer's order. The fuel surcharge is subject to change without notice. These additional charges and any adjustments to these charges shall be effective 15 days after written notice from the Seller, unless rejected within that time by the Buyer, in which case the Seller shall have the right to terminate this Agreement.
3. **RISK OF LOSS:** Risk of loss with respect to the Product furnished under this Agreement shall pass to the Buyer at the time of delivery of the Product to the carrier for shipment. F.O.B. points shall be the Seller's place of business otherwise specified.
4. **PAYMENT:** The Seller shall submit a final invoice to the Buyer for the purchased Product (the purchase price for which can and may be adjusted as applicable hereunder) ordered pursuant to this Agreement (which invoice may also reflect charges for freight, handling, taxes and other amounts payable to the Seller hereunder) within 30 days from the date of delivery of the Product. All amounts specified in any such invoice shall be paid by Buyer to the Seller the later of 30 days from the date or invoice or at the time provided on the reverse hereof and otherwise in accordance with this Agreement. Products are and will be priced and invoiced at the price in effect on the date of shipment, as determined by the Seller's price pages in effect at the date of delivery. Buyer shall provide any deposit(s) noted on the reverse, on the dates noted therein. All deposits are non-refundable. Any amount(s) due under the final invoice submitted to the Buyer and not paid by the due date hereon shall bear interest at the rate of two percent (2%) per month (24% per annum). Such interest shall be in addition to and without limitation of any other right or remedies which the Seller may have under this Agreement or at law or in equity. Buyer agrees to pay any legal fees and costs incurred by the Seller in the collection of any delinquent amounts due to Seller under this Agreement. Buyer hereby irrevocably assigns to the Seller any and all rights and the right to payment of any manufacturer rebates amounts, or similar volume discount entitlements, that Buyer is entitled to receive from any manufacturer of the Product delivered by Seller, for payment of any delinquent accounts owing to Seller hereunder. Buyer shall be responsible for all taxes arising out of or related to the provision of Products and services provided under this Agreement, including but not limited to any sales or excise taxes. Such taxes shall be in addition to the purchase price unless otherwise specified. Should any government or governmental body, board or agency impose or increase any applicable sales, excise or other taxes beyond those in effect at the date of this contract, the Seller reserves the right to increase prices to the Buyer by an amount sufficient to cover such additional taxes. The sale of any Product to Seller is conditional on Seller's review of the Buyer's credit worthiness prior to the Seller's acceptance of this agreement.
5. **PRODUCT SPECIFICATIONS:** Product is provided solely in accordance with and in sole reliance on the specifications supplied by Buyer. Supply of Product hereunder by the Seller shall not be interpreted as Seller's approval or warranty of the fitness, appropriateness, specifications or function of the Product for the Buyer's purposes and uses. The Seller assumes no liability whatsoever with regard to the Buyer's compliance or fulfillment of its obligations with respect to any statute, regulation or by-law prevailing or any contract to which the Buyer is a party, or the Buyer's failure to so comply with or fulfill its obligations thereunder through the supply or use of the Product. No agreement or other understanding in any way changing or adding to any matters specified in the Product order as described on the reverse herein shall be binding on the Seller or confer any rights on the Buyer unless attached hereto and by reference herein made a part of this agreement or made in writing signed by an authorized representative of the Seller. Any cost incurred by the Seller in making alterations necessitated by the furnishing by the Buyer of incorrect data and specifications will be charged to the Buyer. Buyer shall be responsible for all costs and expenses incurred from any changes to the specifications in the Product from those note on the reverse. The Seller makes no representations regarding validity, soundness, strength, accuracy or adequacy of the specifications of the Product ordered by Buyer and does not assume any liability or responsibility for the validity, soundness, strength, accuracy or adequacy of Product or the specifications provided by the Buyer for the Product. The Seller will not be responsible for the performance of the Product. Products will and may be furnished subject to commercial variations in material and production operations incident to the processes employed in manufacturing of the Product by the Product manufacturers.
6. **ACCEPTANCE BY BUYER:** The Product shall be deemed accepted by Buyer of the date of receipt of the Product by Buyer. The Buyer shall have 24 hours after such date to give the Seller written notice that the Product does not conform to the specifications for the Product expressed on the reverse here of and specify in detail the reasons therefore. The Seller may then, at its sole election, proceed to make any necessary corrections. Under no circumstances shall Buyer be entitled to revoke acceptance of the Product subsequent to acceptance thereof.
7. **TITLE TO THE PRODUCT:** Title to, property in and ownership of the Product shall pass to the Buyer upon acceptance as noted in section 6 hereof and the Seller shall have no obligation to move or retrieve Product that has been delivered in accordance with section 2 hereof.
8. **SECURITY:** The Buyer by accepting the Product grants to the Seller a purchase money security interest in the Product, and all proceeds therefrom including insurance proceeds and any other payment representing indemnity or compensation to the Buyer for the Product, or for loss of the Product, until payment in full of the purchase price to the Seller has been made, and agrees to do all things and to execute all documents necessary to protect such security interest. The Buyer appoints the Seller as its attorney to execute any documents or other instruments necessary to perfect and enforce the Seller's security interest.
9. **WARRANTY: THE SELLER GRANTS NO WARRANTIES FOR THE PRODUCT, AND THERE ARE NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, UNDER THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** The Seller assumes no liability for damages arising from the use of the Product by the Buyer or any third party. By purchasing the Seller Product, the Buyer assumes all liability for any damages of any kind which may result from its use or misuse by the Buyer, Buyer's employees, agents, contractors or any other third party unknown to the Seller or the Buyer, including damages due to failure of the Product. The sole warranty which the Buyer may be entitled to with respect to the Product(s) being purchased is the warranty, if any, provided by the manufacturer (identified on the Bill of Sale) of the Product supplied, the terms and conditions of which are set out in the manufacturer's website. Any and all warranty claims of the Buyer with respect to the Product shall be directed and made exclusively to the manufacturer of the Product, in accordance with the manufacturer's warranty terms and condition. The Seller, its officers, directors, agents and servants and its affiliates and their respective officers, directors, agents and servants shall not be liable to the Buyer, for any reason, for any failure of the manufacturer to honour, comply with or fulfil its warranty obligations for the Product and the Buyer shall have no right to deduct, credit or back charge the Seller for any warranty claims, issues or disputes.
10. **DEFAULT:** If the Buyer is in default under this agreement and this default continues for five days after notice of the default by the Seller, the Seller may terminate this Agreement, any unfulfilled deliveries of ordered Product and reject any future orders or deliveries for further Product or services. Upon a default in payment, the Seller has the right to declare the entire amount of the unpaid cumulative balance of monies owing to the Seller by the Buyer and any and all other charges provided herein to be immediately due and payable, and to exercise any other remedy existing at law or in equity. The Buyer shall pay the Seller all costs and expenses including legal fees (on a substantial indemnity basis) incurred in exercising its rights or remedies hereunder. In the event of default by the Buyer, the Seller may require the Buyer to release Product provided under this Agreement and make it available at the place of delivery, at a time and place reasonably convenient to the Seller. No delay or failure of the Seller to exercise any rights or remedy operates as a waiver of such rights or remedy. Buyer default includes (a) non-payment of any account when due (b) Buyer's non-performance of any obligation under this Agreement; (c) Buyer's breach of any warranty or representation contained in this agreement (d) Buyer's dissolution, insolvency, receivership, or any assignment for the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Customer or any guarantor or surety of the Customer; and (e) any seizure or attachment of any unit of the Product delivered to the Buyer prior to the Seller's receipt of payment therefore, even where such event occurs prior to the payment date required hereunder;
11. **DAMAGES:** The Seller, its officers, directors, agents and employees and its affiliates and their respective officers, directors, agents and employees shall not be liable to the Buyer nor to any other party for any liability, including without limitation, strict liability, for loss or damages due, directly or indirectly, from the Products ordered or supplied by the Seller or the supply of the Products to the Buyer under the terms hereof, including without limitation, economic and consequential losses, or direct or indirect, incidental, exemplary and punitive damages, whether in contract, tort or otherwise, or any other claims, losses or damages or expenses in any manner resulting, from, or connected with, the Product or the supply of the Product by the Seller whether or not supplied pursuant to this agreement, or claims, losses or damages or expenses incurred by the Buyer by reason of any action, omission, active negligence, passive negligence, gross negligence or any error or omission, misstatement, imprudence, lack of skill or error of judgment of or by the Seller or its officers, directors, agents and employees. Notwithstanding anything in this Agreement to the contrary, the Seller shall have no liability whatsoever whether arising in contract, tort, or otherwise, for loss of capital, loss of Product, loss of profit, loss of use, or any other indirect, special, incidental or consequential damages, under any circumstances.
12. **GOVERNING LAW & COMPLIANCE:** This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.
13. **SEVERABILITY OF PROVISIONS:** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.
14. **FORCE MAJEURE.** The Seller's obligations under this Agreement are and shall be subject to acts of God, war, invasion, insurrection, riot, the order of any civil authority, breakdowns, strikes, lockouts, labour disputes, accidents, fire, inclement weather, delays in transportation or delivery of Product or any other cause or causes, whether or not similar to any of the foregoing, beyond the Seller's reasonable control, and the Seller shall not be liable for any loss or damages of any kind or nature whatsoever, whether direct, indirect or consequential, suffered by any person as a result of any such causes or any delay resulting therefrom. The Seller reserves the right to terminate this Agreement should fulfillment hereof in whole or in part be delayed or rendered impossible by any of the foregoing causes. In the event of such termination, the Seller's liability and obligations under or arising out of this Agreement shall cease except with respect to any Product shipped hereunder prior to such termination and the Buyer shall remain liable to accept and pay for Product so shipped.
15. **BANKRUPTCY.** If Buyer is declared or adjudicated bankrupt or makes a general assignment for the benefit of creditors or a proposal or arrangement under the *Bankruptcy and Insolvency Act* or any successor legislation thereto, commits an act of bankruptcy or proposes a compromise or arrangement or institutes proceedings or admits in writing an inability to pay debts generally as they become due, or a petition is filed against a party under the *Bankruptcy Act*, or a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager or any other officer with similar powers is appointed for the party, the Seller may elect to terminate this agreement and discontinue all further supply or delivery of Product to the Buyer.
16. **UNSHIPPED ORDERS/RETURNS.** Any unshipped balance of Products, resulting from the Buyer's refusal or inability to take delivery, remaining in the Seller's possession 30 days after the expiry date stated herein will be invoiced to the Buyer on the usual terms, as though the Products had been shipped. If any Products remain unshipped 15 days after the expiry date stated herein, the Buyer shall pay the Seller storage charges of [1%] of the invoice value per month, to be billed and paid monthly. If delivery of any Products has not been completed within 2 months from such expiry date, the Buyer authorizes the Seller to dispose of such Products for the Buyer's account. In the event that the Buyer refuses to take delivery of ordered Product, or returns Product, that shows evidence of being used or installed contrary to manufacturer's instructions and/or subjected to improper handling, packaging, or shipping by the Buyer or its agents, or otherwise requests that the Seller retrieve any Products (the Seller having the option in its sole discretion to accept such returns), shall be subject to a restocking fee of 15% of the original purchase price for such Product.
17. **TAXES.** Should any government or governmental body, board or agency impose or increase any applicable sales, excise or other taxes beyond those in effect at the date of this Agreement, the Seller reserves the right to increase prices to the Buyer by an amount sufficient to cover such additional taxes, and the provisions of clause 4 shall apply with respect to any such increase.
18. **PRICE CHANGES.** The Seller reserves the right to alter the prices applicable to any Products unshipped hereunder in the event of an increase in the manufacturer price of Product charged to the Seller between date of order and date of delivery. The Buyer shall, within 10 days after the announcement of any price increase affecting Products on order hereunder, accept the Products and delivery at the prices in effect at the date of such announcement. The Company reserves the right to adjust its current prices to meet competition, but all price exception requests must be approved prior to the shipment of the Product. Seller reserves the right to cancel or remove price adjustments or exceptions previously made to meet a competitive offer. **All pricing is subject to change without notice.** Seller will use reasonable commercial efforts to provide lead-time notice Buyer before a price is changed. Shipments made on or after the date of a price change will be invoiced at the new price.