

Don Construction Products, Inc.

TERMS AND CONDITIONS OF SALE

ALL TRANSACTIONS BETWEEN DON CONSTRUCTION PRODUCTS, INC. ("SELLER") AND BUYER ("BUYER"), AND ALL DOCUMENTS PERTAINING TO SUCH TRANSACTIONS, ARE SUBJECT TO AND CONDITIONED UPON THESE TERMS AND CONDITIONS OF SALE ("TERMS") AND THESE TERMS ARE INCORPORATED BY REFERENCE INTO AND ARE A PART OF ALL TRANSACTIONS BETWEEN SELLER AND BUYER. NO TERM CONTAINED IN ANY BUYER CORRESPONDENCE OR ANY SALES DOCUMENTS ISSUED BY BUYER, OTHER THAN BUYER'S ACCEPTANCE OF THESE TERMS, SHALL BECOME A PART OF THE TRANSACTION BETWEEN THE PARTIES OR BIND SELLER.

1. Order Process; Acceptance; Additional or Conflicting Terms.

(a) "Sales Documents" include any quotation, proposal, statement of work, service request, order confirmation, order acceptance and invoice issued in writing (including via email or electronically) by an authorized representative of Seller. Buyer's purchase of Products (defined below) from Seller, and any Services (defined below) Seller provides, will be governed solely by these Terms and any applicable Sales Documents issued by Seller in connection with such Products and Services (collectively, the "Contract").

Buyer may not cancel or change a Contract except with the prior written consent of Seller. Seller shall have the right to make any changes to the Products or Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the nature or quality of the Services or the Products. Seller may change a Sales Document at any time to correct mathematical or clerical errors.

2. Price; Payment.

(a) All prices for Products and Services will be as stated in writing by Seller in its Sales Documents and, prior to Seller's written acceptance of an order, prices are subject to change by Seller at any time without notice. If no price has been stated in the Sales Documents, the price will be Seller's standard price in its catalogs or price lists in effect at the time of delivery or performance, as the case may be, and as increased to account for costs of changes or modifications to the Products or Services for the particular Contract. Unless expressly stated otherwise in the Sales Documents, all prices must be in writing and are in U.S. dollars. Unless expressly stated otherwise in the Sales Documents, Buyer will also reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of Services.

(b) Unless expressly stated otherwise in the Sales Documents, Buyer will pay all amounts due in full, and without deduction or setoff, to Seller's account within thirty (30) days of the date of the invoice.

(c) If Buyer fails to make any payments as and when due or otherwise defaults, then (i) interest will accrue from the date the payment was due until payment is received in full at the lower of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law; and (ii) Seller may take any or all of the following actions: (1) suspend performance under the applicable Contract or any other Contract with Buyer; (2) terminate the applicable Contract for default or any other Contract with Buyer; (3) require Buyer to pay the full Contract price and any interest, fees, taxes, or assessments and other charges immediately; and (4) take any other actions or pursue any other rights or remedies. To the extent allowed by applicable law, Buyer will further reimburse Seller for all costs incurred in collecting any late payments or overdue amounts, including attorneys' fees and expenses. Failure by Seller to charge interest on late payments or to exercise its other rights and remedies will not be construed as a waiver of any other legal or equitable remedies.

3. Delivery.

(a) Unless expressly stated otherwise in Seller's Sales Documents, all deliveries of Products are FOB at the facility stated by Seller on the Sales Documents], or such other location as designated by Seller ("Delivery Point"). All risk of loss of Products shall pass to Buyer when Seller delivers the Products FOB

(b) Seller shall not be liable for any delay in the delivery of Products or performance of Services caused in whole or part by a supplier, contractor or agent of Seller; by a Force Majeure event; or by Buyer or its affiliates, suppliers, contractors or agents, including requests for modifications to any Contract, or Buyer's failure to provide Seller with adequate delivery instructions, or any other instructions that are relevant to the design, production or delivery of Products or performance of Services. Seller will not be responsible for any damage to Products caused by a carrier and Buyer's sole recourse for such damage will be against the carrier. If Buyer does not take delivery of the Products within five business days after Seller notified Buyer that the Products are ready for pickup at the Delivery Point, then Buyer agrees that either: (i) by the end of the sixth business day, Buyer will instruct Seller to arrange for freight and have the freight charges added to the Buyer's order and invoice; (ii) if the Products are not made-to-order, the order will be cancelled and Buyer agrees to pay Seller a restocking fee of 25% of the value of such Products, which will be invoiced to the Buyer; or (iii) if the Products are made-to-order, the order will be cancelled, Buyer shall pay Seller the full price for the Products and Seller shall have no obligation to retain or store the Products]. All Product deliveries from Seller to Buyer are subject to and conditioned on Seller's receipt of Products or materials from its suppliers. Should the fulfillment of the Contract be delayed or become impossible due to the delay or failure of Seller's supplier(s), Buyer shall not be entitled to a claim against Seller for damages or for any other reasons.

4. Acceptance.

(a) Buyer shall inspect all Products and Services immediately upon their delivery or performance, and prior to use or resale. Immediately and no later than 72 hours after receipt of a Product or completion of a Service, Buyer must give written notice to Seller of any claim Buyer makes based upon any alleged shortage, defect or discrepancy of Products sold or Services provided, based upon the condition, grade, patent defects in or quantity of Products, and such notice must indicate the basis of the claim in detail, state the invoice number, invoice date, and information, such as a batch number, on the Product label or packaging. Buyer's failure to comply within the time specified in this Section 4 constitutes Buyer's irrevocable acceptance of Products delivered or Services provided and will bind Buyer to pay to Seller the full price of such Products or Services. [Products sold will not be returned without Seller's prior written consent and then only in the original, unopened packaging, within 45 days of the date of invoice and DDP Seller's facility located in Lancaster, South Carolina, plus a restocking fee equal to 25% of the Contract price of the Products returned and in accordance with Seller's then current return policies (for example, Buyer may be required to include the original packaging slip). Buyer shall pre-pay any other shipping charges for any authorized returns of Products.]

5. Limited Warranty.

(a) Subject to the provisions in these Terms and in the Sales Documents, Seller warrants that (i) when Products are delivered to Buyer, Products will materially comply with Seller's published specifications for such Products, if any, as of the date of the Sales Documents, and (ii) when Services are performed, Services will have been performed in a workmanlike manner in accordance with generally recognized industry standards in the United States for similar services. The warranties provided in this Section 5 are hereinafter referred to collectively as the "Limited Warranty." Unless expressly stated otherwise in the Sales Documents, the Limited Warranty shall expire on the expiry date listed on the Product's label or packaging or, in the case of Services, [six (6) months] after Seller has performed Services (each, a "Warranty Period"). The Limited Warranty is conditioned upon Buyer following the claims process outlined in Section 7 below, which Seller may change from time to time. [This Limited Warranty extends to Buyer only, and not to any resale customer of Buyer or end consumer, and is non-transferable. In the event of a Product resale by Buyer, Buyer is solely responsible for any and all warranties and other claims resulting from Products and for any representations or warranties made by Buyer to its customers and any end-customers. Buyer will not refer to Seller or the Limited Warranty in any manner in connection with its resale of Products.] Buyer is solely responsible for proper selection of Services and Products as well as for their intended use, application and processing, and Buyer has tested Products or otherwise determined their suitability for Buyer's intended use. As such, Buyer should not rely on Seller to ensure that the Services performed or Products purchased will meet any standards or specifications.

(b) Any depictions, statements, claims, advertising, technical advice, trials, projections, diagrams, samples, drawings, illustrations, and other descriptions or other information from Seller or its affiliates, applicable to Products, Services, or a Contract, whether included in catalogs, datasheets or otherwise, are descriptions or approximations only, and do not constitute any specifications, representations, warranties, or guarantees, implicitly or explicitly.

(c) No employee, dealer, distributor, sales representative, or any other person or entity is authorized to offer any different or additional warranties or remedies, or to change the Limited Warranty, without the signature of an authorized officer of Seller. No descriptions, representations and other information or claims made by an employee, dealer, distributor, sales representative, or any other person or entity affiliated with Seller are binding on Seller.

(d) EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY PROVIDED IN THIS SECTION 5, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, STATUTORY OR OTHERWISE, REGARDING OR RELATING TO PRODUCTS, SERVICES OR ANY CONTRACT, AND SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO PRODUCTS AND SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

6. Limited Warranty Exclusions. The Limited Warranty does not cover: (a) damage to Products during or after delivery; (b) damage caused by normal wear and tear; (c) user error, including unsuitable or improper use; (d) use under circumstances or resale for uses exceeding Seller's specifications or limitations or contrary to any instructions or information from Seller; (e) unauthorized use, or unauthorized or improper modification or alteration; (f) improper storage; (g) defects or failures of Products sold or Services performed arising from, in whole or part, Buyer's instructions, information, design, plans or other non-Seller specifications; (h) faulty or negligent treatment; (i) any warranties or representations given by Buyer on resale of Products or use of Services; (j) repackaging or rebranding; (k) modification or alteration of Products or Services; (l) abuse or accidents; (m) unsuitable operating equipment or media; (n) faulty construction work; (o) unsuitable foundations, chemical, electrochemical or electrical influences; (p) inappropriate or insufficient building or site preparation work; (q) use of unsuitable working material; or (r) damage caused by natural calamities. The Limited Warranty on the Products is subject to marginal, technically unavoidable discrepancies in quality, color, touch, size, weight or design, and do not confer any right of Buyer to make a Warranty Claim. Buyer will be solely responsible for the correct use, application, and circumstances in which Seller's Products are used, modified or applied, alone or in conjunction with other products.

7. Buyer's Limited Warranty Claims. Buyer must give Seller detailed written notice of any Products or Services which Buyer alleges do not conform to the Limited Warranty, stating the alleged non-conformities (each, a "Warranty Claim"). Any Warranty Claim must be made within [10 days] after Buyer is aware of the alleged non-conformity and, in any event, within the Warranty Period. The Limited Warranty expires when, and no claims may be made after, the Warranty Period ends. Buyer will follow Seller's then current Warranty Claims process. At Seller's request, Buyer will allow Seller access to the Products to inspect the Products and Services evaluate the alleged non-conformity and, upon request of Seller, will return, at Buyer's expense, any alleged non-conforming Product to a location designated by Seller for Seller to inspect the Products and evaluate the alleged non-conformity. For any Products that Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, will be, at Seller's choice, in its sole discretion and within a reasonable time, to replace such non-conforming Product, or to refund the purchase price for such non-conforming Product. For any Services that Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, will be, at Seller's choice, to correct or repeat such Services, or refund the amount charged by Seller for such Services. Unless otherwise agreed by Seller in writing, Buyer shall pay for any travel and related expenses by Seller's personnel to the installation site. This Limited Warranty does not cover any allegedly defective Products or Services if Seller is not permitted to inspect such Products or Services. In the event Seller determines that any Products or Services are not covered by this Limited Warranty, Buyer shall pay all of Seller's expenses for inspection, handling, repair and replacement.

8. Limitation of Liability.

(a) SELLER'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO A CONTRACT, OR PRODUCTS, OR SERVICES, OR THE USE (OR INABILITY TO USE) ANY PRODUCTS OR SERVICES, WHETHER IN WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT BUYER PAID TO SELLER FOR THE PARTICULAR PRODUCTS OR SERVICES AT ISSUE.

(b) IN NO EVENT WILL SELLER OR SELLER'S AFFILIATES BE RESPONSIBLE FOR ANY LOSS, LIABILITY, INJURY OR DAMAGE ARISING OUT OF OR RELATING TO (I) BUYER'S DETERMINATION AS TO THE SUITABILITY OR FITNESS OF THE PRODUCTS OR SERVICES FOR A PARTICULAR PURPOSE, (II) THE USE OR APPLICATION OF THE PRODUCTS OR SERVICES, ALONE OR IN CONJUNCTION WITH OTHER PRODUCTS, OR DEVICES, OR (III) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF BUYER OR (IV) FROM DEFECTS OR DEFICIENCIES IN BUYER'S OTHER EQUIPMENT.

(c) IN NO EVENT WILL SELLER OR SELLER'S AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, WHETHER ARISING FROM THE SALE OF THE PRODUCTS OR PROVIDING OF SERVICES, SETUP OF ANY PRODUCTS, ANY TRAINING, ANY SERVICES, ANY DEFECT IN THE PRODUCTS OR SERVICES, ANY NON-CONFORMITY WITH WARRANTIES, ANY USE OR INABILITY TO USE THE PRODUCTS, OR OTHERWISE, REGARDLESS OF THE THEORY OF RECOVERY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER OR SELLER'S AFFILIATES BE LIABLE FOR DAMAGES TO GOODS OR MATERIALS PROCESSED IN OR HANDLED WITH THE PRODUCTS. THESE TERMS CONTAIN BUYER'S SOLE AND EXCLUSIVE REMEDIES RELATING TO THESE TERMS, A BREACH OF THESE TERMS, THE SALES DOCUMENTS, THE PRODUCTS OR THE SERVICES, REGARDLESS OF THE THEORY OF RECOVERY.

9. Indemnity. Buyer agrees to indemnify and hold harmless Seller and its affiliates, and their respective officers, directors, employees and agents, from and against any and all claims, actions, suits, damages, liabilities, costs, obligations, and expenses (including attorneys' fees and expenses) arising out of or relating to: (i) Buyer, its employees, agents, or customers' selection, setup, use of, incorporation of, modification of, or application of the Products alone or in conjunction with other products, or Services; (ii) any processing or modification of Products in any manner by Buyer, its employees, agents, or customers; (iii) claims regarding warnings or failure to warn of dangers related to Products; (iv) any violation or failure to comply with applicable laws and regulations, including those pertaining to health and/or safety; (v) any intentional or negligent act, or misrepresentation by Buyer, its employees or agents; (vi) any breach of warranty or misrepresentation (express or implied) made by Buyer, its employees or agents; (vii) any violation, misappropriation, or infringement of any patent, trademark, copyright or other intellectual property rights of any person or entity arising out of or related to compliance with Buyer's design, specifications or instructions or Buyer's use of a Product with other goods; (viii) use of a Product or Services inconsistent with or exceeding Seller's specifications, limitations or recommendations; (ix) any breach by Buyer of any terms of a Contract; or (x) any personal injury or property damage arising out of Buyer's or its personnel's acts or omissions. At Seller's request, Buyer shall also defend Seller and its affiliates, at Buyer's expense, against any such claim made against Seller or its affiliates.

10. Force Majeure. Seller will not be liable or responsible, nor be deemed to have defaulted under or breached a Contract, and its performance (and delivery dates and delivery periods) will be deemed extended for any failure or delay in fulfilling or performing any provision of a Contract, when such failure or delay is caused by or results from acts beyond the reasonable control of Seller, its affiliates, or either Seller's or its affiliates' respective subcontractors or suppliers, including the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, explosion, epidemic, or pandemic; (c) war, invasion, hostilities (whether war is declared or not), terroristic threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect after the date of the Contract; (f) national or regional emergency; (g) strikes, labor stoppages or labor slowdowns or other industrial disturbances; (h) changes in the law; (i) delays in obtaining or the inability to obtain labor, materials, Products or Services through usual sources at normal prices; and (j) other similar events beyond the reasonable control of Seller or its affiliates, and their respective subcontractors or suppliers.

11. Limitation on Actions. Buyer must commence any action or proceeding that arises out of or relates to a Contract, Seller's breach of a Contract, or Products or Services within the earlier of: (a) one (1) year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. Any action or proceeding Buyer does not commence within such period will be forever barred and Buyer waives the right to file any action or proceeding arising directly or indirectly from a Contract under any longer statute of limitation. The Contract contains Buyer's sole and exclusive remedies relating to a Contract or Products or Services regardless of the theory of recovery.

12. Choice of Law; Venue; Jurisdiction. The transaction and Contract, and any matter, dispute or controversy arising out of or relating to the transaction, Contract or Products or Services will be governed by the laws of the State of South Carolina, excluding its conflicts of law principles, and the provisions of the 1980 United Nations Convention on the International Sale of Goods ("UNCISG") are expressly excluded. Buyer and Seller agree that the South Carolina State Courts and the United States District Court for the District of South Carolina, shall constitute the sole and exclusive judicial forum(s) and venue and, therefore, will have sole and exclusive jurisdiction over the adjudication and resolution of any and all matters, disputes and controversies arising out of or relating to a transaction, a Contract, or Products or Services; except with respect to Seller's claim or any action instituted by Seller (a) for equitable or comparable relief including an action for temporary or permanent injunctive relief; (b) for recovery of possession of Products, such as replevin, claim and delivery, attachment or the like; (c) to collect any amounts owed by Buyer; or (d) to join or implead an action in which Buyer is a party.

13. Relationship. Seller is an independent contractor. Nothing in a Contract will be construed as creating a partnership, association or joint venture between the parties. Buyer will have no power or authority to enter into any commitment on behalf of or otherwise bind Seller on any matter including making any representation or warranty on behalf of Seller. No employee of either party will be deemed to be an employee of the other party.

14. Notice. All Notices will be in writing, on original letterhead, signed by Buyer and sent via certified mail, return receipt requested, or by express mail or personal delivery to the address of [2826 Lineberger Industrial Dr., Lancaster, SC 29720]. Facsimile and emails will not be accepted as Notices, unless followed up by the original signed Notice. The effective date of such notice will be the date Seller receives it. A notice will be deemed effectively given and received (a) upon personal delivery, (b) if delivered by overnight courier, on the next business day after delivery to the overnight courier service, and (c) if sent by registered or certified mail, three business days after delivery to the U.S. postal service; provided, however, that any written communication containing such information actually received by a person will constitute notice for all purposes of these Terms.

15. Miscellaneous. A Contract contains the entire agreement and understanding of the parties relating to the subject matter and supersedes all previous and contemporaneous agreements, understandings, proposals, negotiations or discussions, usages of trade and courses of dealing, whether written or oral, between the parties. A Contract will be binding on, and will inure to the benefit of, the parties and their respective successors, heirs and permitted assigns. Buyer may not assign (including by operation of law) all or any portion of its rights or obligations under a Contract without Seller's prior written consent, and any purported assignment without that consent will be void and of no effect. No assignment will relieve Buyer of any obligations under a Contract. Any consent, approval or agreement required or allowed by Seller may be given or withheld by Seller in its sole discretion and must be in writing and signed by an authorized representative of Seller to be effective. No delay or failure by Seller to exercise or enforce any of its rights or remedies under a Contract will be construed as a waiver of such rights or remedies. The express waiver of any right or remedy in a particular instance will not constitute a waiver of that right or remedy in any other instance. If any provision of these Terms or any Sales Documents is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, then such provision(s) will be deemed to be severable and these Terms and any Sales Documents will then be construed and enforced in accordance with the remaining provisions. As used herein, the words "including", "include" and "includes" will not be deemed to be limiting. The Contract and these Terms may be amended or modified only by a written agreement, signed by both parties, expressly amending or modifying the Contract or these Terms.