

Terms and Conditions

Customer confirms that by taking physical possession of goods provided by Builders FirstSource South Texas, L.P. ("BFS") to Customer, the following terms and conditions shall apply to all goods and serves (the "Goods") described on the reverse side hereof.

Sales; Payment; and Effect of Invoices:

1. Except as expressly provided otherwise hereinbelow (including Section 9), if Customer does not give written notice to BFS within fifteen (15) days from the date of this invoice of any objection to the Goods listed, including but not limited to an objection that such purchase was unauthorized, or of any other objection, all such objections shall be deemed waived. Customer waives any and all right to set off or backcharge which it may assert against BFS and/or to withhold payment to BFS based on a claim that BFS is indebted to Customer. No claim asserted by Customer against BFS shall relieve Customer of its obligations to make timely payment of this or any other invoice or obligation to BFS.
2. Payment of this invoice is due within ten (10) days from the last day of the month in which the invoice is rendered. If timely payment is not made, the account is past due. Customer agrees that all amounts more than 30 days past due shall bear interest at the maximum rate of interest permitted by applicable law, and Customer agrees to pay BFS reasonable attorneys' fees, and costs, in the event the account is given to an attorney for collection. Customer also agrees to pay any and all attorneys' fees and costs incurred by BFS in connection with post-judgment collection effort and actions.
3. The purchase shall be deemed fully executed and performed in Bexar County, Texas and will be governed and construed in accordance with the laws of Texas, other than the conflicts of law provisions thereof. BFS may institute legal proceedings against Customer in any court having jurisdiction of the parties, but Customer hereby consents to personal jurisdiction in Texas and to venue in any state or county court in Bexar County, Texas and understands that such consent is a material inducement to BFS to extend credit to Customer.
4. If any subsidiary or of entity otherwise related to Customer seeks to purchase from BFS on credit, such entity must become a party to a separate Credit Application/Agreement with BFS, and in the absence of such a Credit Application/Agreement and invoice issued to such entity, the terms of this invoice shall apply and Customer shall be liable for payment for all Goods shipped by BFS to every such entity. Acceptance by BFS of payment of this invoice from any party other than Customer shall not affect the liability of Customer hereunder.
5. Customer agrees that, on the basis of information provided by Customer, BFS may designate on this invoice the lot, unit or parcel of real property into which the listed Goods are to be incorporated and that such designation, in BFS's sole discretion, shall be conclusive and binding as to the location or site for the use of such Goods unless Customer provides to BFS in writing a correction such designation within fifteen (15) days from the date of the invoice. Customer further agrees that all sales designated as aforesaid to a particular lot, unit or parcel of real property, from the first sale to the last sale, shall be deemed to be a part of one supply contract applicable to such lot, unit or parcel of real property for purposes of determining any time requirements applicable to enforcement by BFS of any lien or collection rights against such lot, unit or parcel of real property or other rights of collection for such sales.
6. Any waiver or non-enforcement by BFS of a breach, default or term under this invoice shall not be deemed a waiver of any subsequent breach or default or enforcement of such term unless BFS has made or given such waiver in writing executed by BFS. If any provision of this invoice is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect as if such provision were not contained herein.
7. No modification, amendment of or addition to this invoice will be binding on BFS unless such modification, amendment or addition is in writing executed by BFS. Without limitation of the foregoing, the terms hereof shall not be modified, amended or added to by the terms of any purchase order, contract or other document submitted by Customer to BFS and, unless otherwise agreed by the parties, the terms hereof shall control notwithstanding the terms of any such documents. Typographical, stenographic, arithmetical and clerical errors are subject to correct by BFS. The terms hereof shall not be altered or interpreted by referenced to any course of dealing between BFS and Customer or industry practice. This invoice is subject to the terms and conditions of any BFS credit agreement or credit application signed by Customer. The headings of sections hereof are for reference only and shall not alter the terms hereof. BFS shall not be responsible or liable for any delay if occasioned any cause or circumstance beyond its reasonable control. Any action by Customer instituted against BFS arising from Goods sold must be commenced within one year from delivery of the subject Goods.
8. All sales hereunder are F.O.B BFS's locations unless otherwise noted. Federal, state and local taxes are not part of the quoted price (unless specifically set forth on the reverse) and will be added to the prices set forth on the reverse. No non-defective Goods may be returned without the prior written approval of BFS.

Nonconforming Goods; No Warranty; and Indemnification of BFS:

9. Customer shall have five (5) calendar days (twenty-four (24) hours in the case of a claim for mold contamination) from the date of delivery to reject Goods as nonconforming. Such rejection must be in writing received by BFS within such five (5) day period and must specify the Goods rejected and the specific nonconformity asserted. The rejected Goods must be returned to BFS within ten (10) calendar days from the date of delivery of those Goods to Customer. All Goods not so rejected shall conclusively be deemed to have been accepted by Customer. In order to effect such rejection, the Goods returned must be accompanied by the original invoice or other proof of purchase by Customer. Physical acceptance by BFS of Goods returned shall in no way be deemed an agreement by BFS of any claim of nonconformity by Customer.
10. BFS shall have a reasonable time after receipt of the allegedly nonconforming Goods to inspect and test those Goods and, to the extent those Goods are determined to be nonconforming, to repair or replace the Goods or refund the purchase price, with the remedy to be selected by BFS in its sole discretion. If Customer otherwise has no outstanding balance, the refund shall be in the form of a credit to Customer's account.
11. CUSTOMER IS RESPONSIBLE FOR DETERMINING THE GOODS ITS CHOOSES TO PURCHASE, FOR WHAT PURPOSES THOSE GOODS WILL BE USED AND WHETHER THOSE PRODUCTS CAN BE USED IN COMBINATION WITH OTHER MATERIALS. CUSTOMER AGREES THAT IT IS NOT RELYING ON THE SKILL OR JUDGMENT OF BFS OR ANY OF ITS EMPLOYEES OR AGENTS TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE OR IN COMPLIANCE WITH ANY PLANS OR SPECIFICATIONS. BFS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSES AND/OR THE MERCHANTABILITY OF ANY GOODS. CUSTOMER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY AGAINST BFS FOR DEFECTIVE OR NONCONFORMING GOODS SHALL BE REPAIR OR REPLACEMENT OF SUCH GOODS, OR REFUND OF PURCHASE PRICE, WITH THE REMEDY TO BE SELECTED BY BFS IN ITS SOLE DISCRETION. CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES, AND IN NO EVENT SHALL BFS BE LIABLE FOR ANY NEGLIGENCE OR GENERAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY CUSTOMER OR ANY OTHER PARTY FOR LOSS OF PROFIT OR SALES, LABOR, DEATH OF OR INJURY TO PERSON, DAMAGE TO PROPERTY OR ANY OTHER LOSS) EVEN IF BFS HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM OR THE POSSIBILITY OF SUCH DAMAGES. BFS MAY DELIVER CERTAIN THIRD-PARTY MANUFACTURER WARRANTIES TO CUSTOMER, BUT BFS SHALL HAVE NO LIABILITY UNDER SUCH WARRANTIES.
12. CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS (INCLUDING BUT NOT LIMITED TO PAYMENT OF ATTORNEYS' FEES AND COSTS) BFS AND ITS AFFILIATES AND OTHER OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FROM AND AGAINST ALL CLAIMS (WHETHER BASED ON NEGLIGENCE, BREACH OF CONTRACT OR WARRANTY, INJURY TO PERSON OR PROPERTY AND/OR OTHERWISE AND WHETHER ASSERTED BY CUSTOMER OR BY ANY OTHER PARTY), LOSSES, LIABILITIES AND GENERAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL AND OTHER DAMAGES ASSERTED AGAINST OR INCURRED BY BFS OR ITS AFFILIATES OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS WITH RESPECT TO THE GOODS OR THE DELIVERY THEREOF OR ANY RELATED ACT, ERROR OR OMISSION. IT IS THE INTENT OF CUSTOMER TO INDEMNIFY BFS FOR ITS OWN NEGLIGENCE.
13. This purchase order incorporates by reference the requirements of 41 C.F.R. 60-1.4, 60-250 and 60-741, to the extent applicable.