

Terms and Conditions

Customer confirms that by taking physical possession of goods provided by Builders FirstSource - Texas Group, L.P. ("Builders FirstSource") to Customer, the following Terms and Conditions Shall apply to all goods (the "Goods") described on the reverse side hereof.

Sales, Payment and Effect of Invoice:

1. Except as may be expressly provided otherwise hereinbelow, if Customer does not give written notice to Builder FirstSource 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 rights to set off which it may assert against Builders FirstSource and/or to withhold payment to Builder FirstSource based on a claim that Builder FirstSource is indebted to Customer. No claim asserted by Customer against Builder FirstSource shall relieve Customer of its obligations to make timely payment of this or any other invoice to Builder FirstSource.
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 Builder FirstSource 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 Builder FirstSource in connection with post-judgment collection effort and actions.
3. The purchase shall be deemed fully executed and performed in Tarrant County, Texas, and will be governed and construed in accordance with the laws of Texas. Builder FirstSource 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 Tarrant County, Texas and understands that such consent is a material inducement to Builder FirstSource to extend credit to Customer.
4. If any subsidiary of or entity otherwise related to Customer seeks to purchase from Builder FirstSource on credit, such entity must become a party to a separate Credit Application/ Agreement with Builder FirstSource, and in the absence 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 Builder FirstSource to every such entity. Acceptance by Builder FirstSource 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, Builder FirstSource 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 Builder FirstSource sole discretion, shall be conclusive and binding as to the location or site for the use of such Goods unless Customer provides to Builder FirstSource in writing a correction of 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 Builder FirstSource 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 Builder FirstSource or a breach, default or term under the Invoice shall not be deemed a waiver of any subsequent breach or default or enforcement of such term unless Builder FirstSource has made or given such waiver in a writing executed by Builder FirstSource. 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 Builder FirstSource unless such modification, amendment or addition is in writing executed by Builder FirstSource. Without limitations of the foregoing, the terms hereof shall not be modified, amended or added to by the terms of any purchase order or similar document submitted by Customer to Builder FirstSource and unless otherwise agreed by the parties the terms hereof shall control notwithstanding the terms of any such documents. The terms hereof shall not be altered or interpreted by reference to any course of dealing between Builder FirstSource and Customer of industry practice. The headings of sections hereof are for reference only and shall not alter the terms hereof. Any action by Customer instituted against Builder FirstSource arising from Goods sold must be commenced within one year from delivery of the subject Goods.

Nonconforming Good, No Warranty and Indemnification of Builder FirstSource:

1. Customer shall have seven (7) calendar days from the date of delivery to reject Goods as nonconforming. Such rejection must be in writing received by Builder FirstSource and must specify the Goods rejected and the specific nonconformity asserted and the subject Goods must be returned to Builder FirstSource within (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 Builder FirstSource of Goods returned shall in no way be deemed an agreement by Builder FirstSource of any claim of nonconformity by Customer.
2. Builder FirstSource 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 Builders FirstSource in its sole discretion. If Customer otherwise has an outstanding balance, the refund shall be in the form of a credit to Customer's account.
3. CUSTOMER IS RESPONSIBLE FOR DETERMINING THE GOODS IT CHOOSES TO PURCHASE AND FOR WHAT PURPOSES THOSE GOODS WILL BE USED AND CUSTOMER WILL NOT BE RELYING ON THE SKILL OR JUDGEMENT OF BUILDER FIRSTSOURCE TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE. BUILDER FIRSTSOURCE 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 BUILDER FIRSTSOURCE 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 BUILDER FIRSTSOURCE IN ITS SOLE DISCRETION. CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES, AND IN NO EVENT SHALL BUILDER FIRSTSOURCE BE LIABLE FOR ANY NEGLIGENCE OR GENERAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY CUSTOMER OR ANY OTHER PARTY FOR LOST PROFIT, SALES, LABOR, INJURY TO PERSON OR PROPERTY OR ANY OTHER LOSS. BUILDERS FIRSTSOURCE MAY DELIVER CERTAIN THIRD PARTY MANUFACTURER WARRANTIES TO CUSTOMER, BUT BUILDER FIRSTSOURCE SHALL HAVE NO LIABILITY UNDER SUCH WARRANTIES.
4. CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS (INCLUDING BUT NOT LIMITED TO PAYMENT OF ATTORNEY'S FEES AND COST) BUILDER FIRSTSOURCE, ITS EMPLOYEES, AGENTS, AFFILIATES AND PARENT CORPORATIONS 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, LIABILITY, GENERAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES ASSERTED AGAINST OR INCURRED BY BUILDER FIRSTSOURCE, ITS EMPLOYEES, AGENTS, AFFILIATES AND/OR PARTENT CORPORATIONS WITH RESPECT TO THE GOODS AND/OR ANY RELATED ACT, ERROR OR OMISSION.