

TERMS AND CONDITIONS

Customer confirms that by taking physical possession of goods provided by Builders FirstSource – Texas Installed Sales, 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. If Customer does not give written notice to Builders FirstSource within fifteen (15) days from the date of this invoice of any objection to the Goods listed, or the receipt thereof, 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 claims which it may assert against Builders FirstSource and/or to withhold payment to Builders FirstSource based on a claim that Builders FirstSource is indebted or has any obligation to Customer. No claim asserted by Customer against Builders FirstSource shall relieve Customer of its obligations to make timely payment to Builders 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 to pay to Builders FirstSource (i) a service charge of 1.5% per month on all past due amounts, (ii) interest at a rate of the lesser of (a) 1.5% per month or (b) the greatest amount permitted by law from the due date until paid, (iii) attorneys' fees of twenty-five percent (25%) of the amount due, including without limitation service charges, (iv) other collection costs and (v) attorneys' fees and costs incurred for post-judgment collection.
3. This purchase shall be deemed fully executed and performed in Dallas County, Texas and will be governed and construed in accordance with the laws of Texas. Builders 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 Dallas County, Texas and understands that such consent is a material inducement to Builders FirstSource to extend credit to Customer. If any subsidiary of or entity otherwise related to Customer seeks to purchase from Builders FirstSource on credit, such entity must become a party to a separate Credit Application/Agreement with Builders FirstSource. In the absence of such a Credit Application/Agreement and invoice issued to such entity, the terms of this Document shall apply and Customer shall be liable for payment for all Goods shipped by Builders FirstSource to every such entity. Acceptance by Builders FirstSource of payment for this Document from any party other than Customer shall not affect the liability of Customer hereunder.
4. Customer agrees that, on the basis of information provided by Customer, Builders FirstSource may, in its sole discretion, designate on the invoice for all Goods the lot, unit, or parcel into which the Goods were to be incorporated. Such designation shall be conclusive and binding as to the use of such Goods unless Customer provides to Builders FirstSource in writing a correction of such designation within fifteen (15) days from the date of such invoice. Customer further agrees that all sales designated as aforesaid to a particular lot, unit or parcel, 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 for purposes of determining any time requirements applicable to enforcement by Builders FirstSource of any lien or collection rights against such lot, unit or parcel or other rights of collection for such sales.
5. Any waiver or non-enforcement by Builders FirstSource of a breach, default or term hereunder shall not be deemed a waiver of any subsequent or other breach or default or enforcement of such term. Builders FirstSource shall only be deemed to have given such waiver if in a writing executed by Builders FirstSource explicitly providing for such waiver. If any provision hereunder is waived by Builders FirstSource or is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect as if such invalid, unenforceable or waived provision were not contained herein.
6. No modification, amendment of or addition to the terms hereof will be binding on Builders FirstSource unless such modification, amendment or addition is in a writing executed by Builders FirstSource. Without limitation 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 Builders FirstSource, and 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 Builders FirstSource and Customer or industry practice. The headings of sections hereof are for reference only and shall not alter or affect the terms hereof. Any action by Customer instituted against Builders FirstSource arising from Goods sold must be commenced within one (1) year from delivery of the subject Goods.

Nonconforming Goods, No Warranty and Indemnification of Builders 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 Builders FirstSource within such seven (7) days and specify the Goods rejected and the specific nonconformity asserted. The rejected Goods must be received by Builders FirstSource within ten (10) calendar days from the date of the initial Builders FirstSource delivery. All Goods not so rejected shall conclusively be deemed to have been accepted. 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 Builders FirstSource of Goods returned shall in no way be deemed agreement by Builders FirstSource of any claim by Customer of nonconformity.
2. Builders FirstSource shall have a reasonable time after receipt of proper notice of rejection of nonconforming Goods or of revocation of acceptance of nonconforming Goods 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. Customer is not relying on the skill or judgment of Builders FirstSource to select or furnish Goods suitable for any particular purpose, whether or not known by Builders FirstSource. BUILDERS FIRSTSOURCE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSES OR MERCHANTABILITY OF ANY GOODS, AND CUSTOMER HEREBY WAIVES ANY SUCH REPRESENTATIONS OR WARRANTIES. CUSTOMER AGREES THAT THE SOLE AND EXCLUSIVE REMEDY AGAINST BUILDERS 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 BUILDERS FIRSTSOURCE IN ITS SOLE DISCRETION. CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES. IN NO EVENT SHALL BUILDERS FIRSTSOURCE BE LIABLE FOR ANY NEGLIGENCE OR GENERAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES SUFFERED BY CUSTOMER OR ANY OTHER PARTY, INCLUDING WITHOUT LIMITATION THOSE FOR LOST PROFITS OR SALES, ADDITIONAL LABOR OR INJURY TO PERSON OR PROPERTY. BUILDERS FIRSTSOURCE MAY DELIVER CERTAIN THIRD-PARTY MANUFACTURER WARRANTIES TO CUSTOMER, BUT BUILDERS FIRSTSOURCE SHALL HAVE NO LIABILITY UNDER SUCH WARRANTIES.
4. CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BUILDERS FIRSTSOURCE, ITS EMPLOYEES, AGENTS, AFFILIATES AND PARENT CORPORATIONS FROM AND AGAINST ALL CLAIMS, COSTS (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS), LOSSES, LIABILITIES AND GENERAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL AND OTHER DAMAGES ASSERTED AGAINST OR INCURRED BY BUILDERS FIRSTSOURCE, ITS EMPLOYEES, AGENTS, AFFILIATES AND/OR PARENT CORPORATIONS WITH RESPECT TO OR ARISING OUT OF THE GOODS AND/OR ANY RELATED ACT, ERROR OR OMISSION (IN EACH CASE REGARDLESS OF WHETHER BASED ON NEGLIGENCE, BREACH OF CONTRACT OR WARRANTY, INJURY TO PERSON OR PROPERTY AND/OR OTHERWISE AND WHETHER ASSERTED BY ANY CUSTOMER, TRANSFEREE OR ASSIGNEE OF CUSTOMER OR BY ANY OTHER PARTY). IT IS THE INTENT OF THE CUSTOMER TO INDEMNIFY BUILDERS FIRSTSOURCE FOR BUILDERS FIRSTSOURCE'S NEGLIGENCE.