

Terms and Conditions of Purchase

ACCEPTANCE-ENTIRE AGREEMENT

(a) These terms and conditions of purchase apply to Rupert Construction Supply, including its affiliates and subsidiaries (collectively "Buyer"). Seller agrees to be bound by and to comply with all the terms and conditions of this order, including any supplements thereto, and all specifications and other documents referred to in this order. Performance of the services called for by this order shall be deemed acceptance of this order. THIS ORDER DOES NOT CONSTITUTE AN ACCEPTANCE BY BUYER OF ANY OFFER TO SELL, ANY QUOTATION, OR ANY, PROPOSAL. REFERENCE IN THIS ORDER TO ANY SUCH OFFER TO SELL, QUOTATION, OR ANY PROPOSAL SHALL IN NO WAY CONSTITUTE A MODIFICATION OF ANY OF THE TERMS AND CONDITIONS OF THIS ORDER. BUYER OBJECTS IN ADVANCE TO THE INCLUSION OF ANY ADDITIONAL, INCONSISTENT OR DIFFERENT TERMS PROPOSED BY SELLER IN THE ACCEPTANCE OR ACKNOWLEDGMENT OF THIS ORDER. THE INCLUSION OF SUCH TERMS BY SELLER WILL BE OF NO SIGNIFICANCE, AND SUCH PROPOSED TERMS WILL NOT BE CONDITIONS OR ADDITIONAL TERMS TO THIS ORDER, AND BUYER'S ACCEPTANCE OF SELLER'S GOODS OR SERVICES SHALL NOT BE DEEMED AN ACCEPTANCE OF SUCH TERMS. Unless otherwise stated on the face of this order, the following terms and conditions shall apply.

(b) This order, with such documents as are expressly incorporated herein by reference, is intended by the parties as a final expression of their agreement with respect to such terms as are included herein and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of this agreement.

PRICE

The prices for the goods or services purchased by Buyer pursuant to this order will be Seller's prices specified on the face of this order. Seller warrants that the prices for the goods or services sold to Buyer under this order are not less favorable than those currently extended to any other customer for the same or like goods or services in equal or less quantities. In the event Seller reduces its price for such goods or services during the term of this order, Seller agrees to reduce the prices hereof correspondingly. No extra charges of any kind including interest charges, service charges or carrying charges will be allowed unless specifically agreed to in writing by Buyer.

TAXES AND OTHER CHARGES

The price for the goods or services include, unless otherwise agreed and specifically listed on the face hereof, all packing, inspection, insurance and shipping costs and all federal, state and local excise, sales, use, value added, transfer or other taxes assessable against the production, sale, shipment or use of any goods or services covered by this order.

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DELIVERY AND DEFAULT

Time is of the essence in the performance of this order. All goods must be shipped at the most advantageous rates unless otherwise authorized in writing by Buyer; any extra expense in effecting delivery of goods not so shipped will be charged to Seller. Delivery shall not be deemed to be complete until goods or services have actually been accepted by Buyer. Delivery of goods or services must be made within the time specified in this order or applicable order. In the event Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule, Buyer may require delivery by fastest way and charges resulting from the premium transportation must be fully prepaid and absorbed by Seller. Buyer may by written notice of default to Seller terminate the whole or any part of this order (i) if Seller fails to perform within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the provisions of this order. In the event of termination pursuant to this section, Buyer shall have the right, in addition to any other rights and remedies conferred by law or under this order, to procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those terminated, and Seller shall be liable to Buyer for any excess costs for such similar goods or services. Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the agreed upon delivery schedule. It is Seller's responsibility to comply with this schedule, but not to anticipate Buyer's requirements.

QUANTITY

Goods may not be shipped to Buyer in advance of Buyer's delivery schedule without Buyer's prior written approval. Any unapproved shipments may be returned to Seller at Seller's expense, shipping charges collect.

IDENTIFICATION

Each shipment under this order must be positively identified by suitable marking on the outside of each package. An itemized list of contents must be contained in each shipment bearing the order number and on the outside of each shipment in format approved by Buyer. No charge will be allowed by Buyer for cartage or packing unless agreed upon beforehand in writing. All expenses incurred by Seller's failure to furnish necessary shipping documents shall be charged to Seller and may delay payment of invoices.

QUALITY AND INSPECTION

Notwithstanding (i) payment, (ii) passage of title, or (iii) prior inspection or test, all goods or services delivered shall at all times be subject to Buyer's final inspection and testing but neither Buyer's inspection or testing nor failure to inspect or test shall relieve Seller from full responsibility for furnishing goods and services conforming to the requirements of the order, nor prejudice any claim, right or privilege Buyer may have because of defective or unsatisfactory goods or

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services. Buyer reserves the right to reject and return at the risk and expense of Seller such portion of any shipment which may be defective or fails to comply with specifications without invalidating the remainder of the order. Any goods or services rejected or otherwise not meeting the standards set forth above may be held for disposition at the expense and risk of Seller or, at Buyer's sole discretion, be returned for credit or promptly replaced or reperformed by Seller at Seller's sole expense. At all reasonable times during the period of Seller's performance hereunder, including the period of manufacture, Buyer and its customers may inspect and/or test the items to be furnished hereunder at the plants where the work is being performed, including those of Seller's suppliers, and Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and test. Seller shall provide and maintain an inspection and process control system acceptable to Buyer covering the goods and services hereunder. Records of all inspection services by Seller shall be kept complete and available to Buyer during the performance of this order and for such longer periods as may be specified in this order or as otherwise required by Buyer.

SUSPENSION OF WORK / CANCELLATION

Buyer shall have the right to direct Seller by written or telegraphic notice, or verbal notice confirmed in writing, to suspend all or any part of the work being done pursuant to this order for a period of time not to exceed ninety (90) days. If the work is suspended pursuant to this paragraph, an equitable adjustment shall be made for any increase in the time and the cost (exclusive of profit) or performing this order necessarily caused by such suspension, and the order will be modified in writing accordingly by change order. No claim will be allowed under this paragraph unless the claim in an amount stated is asserted in writing within ten (10) days after the termination of the suspension. When the suspension has been terminated, Seller shall immediately commence performance, notwithstanding the fact that the amount of the adjustment in price, if any of the order has not been agreed to. Buyer may cancel this order at any time for its convenience, in whole or in part, by giving written notice to Seller. Upon receipt of such cancellation notice, Seller shall immediately act so that no further costs are incurred, and shall thereafter do only such work as may be necessary to preserve and protect work already in progress and to protect material and equipment at the work site or in transit thereto. All cancellation claims must be submitted by Seller in writing to Buyer's purchasing department within 15 days of the order cancellation date. Buyer's sole obligation for cancellation under this section shall be to reimburse Seller for (a) those goods actually shipped and accepted by Buyer up to the date of cancellation, and (b) costs incurred by Seller for unfinished goods, which are specifically manufactured for Buyer and which are not standard goods of Seller, as of the date of cancellation. In no event shall Buyer be responsible for loss of anticipated profit nor shall reimbursement exceed the order value. In no case shall Buyer's responsibility be greater than liability equal to thirty (30) days of finished goods and/or services in process (WIP) and thirty (30) days of raw material unless

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specifically agreed to in writing by Buyer.

CHANGES

Buyer shall have the right to make changes to this order, including, without limitation, quantities, specifications and/or delivery schedules, but no additional charges will be allowed unless authorized in writing by Buyer. If such changes affect delivery or the amount to be paid by Buyer, Seller shall notify Buyer within ten (10) days following a change requested by Buyer with Seller's proposal for adjustments to price or schedule along with sufficient supporting data to justify such adjustments for Buyer's consideration and discussion with Seller. Any claim by Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by Seller of the notification of change. Any price increase or extension of time for delivery shall not be binding on Buyer unless evidenced by a purchase order change notice issued and signed by Buyer and Seller.

CONFIDENTIAL INFORMATION

Seller agrees not to make use of nor disclose to third parties any data, designs, drawings, specifications and other information furnished to it by Buyer, except for the performance of this order. Upon completion, cancellation or termination of this order, Seller shall return to Buyer, all such data, designs, drawings, specifications and other information, including copies made by Seller. This order is confidential between Buyer and Seller, and it is agreed by Seller that none of the details connected herewith shall be published or disclosed to any third party without Buyer's written permission. Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer and which in any way relates to the goods or services covered by this order shall not unless otherwise specifically agreed to in writing by Buyer be deemed to be confidential or proprietary information and shall be acquired by Buyer free from any restrictions (other than a claim for patent infringement), as part of the consideration for this order.

PAYMENT

Payment terms shall be net thirty (30) days from the date of Buyer's receipt of complete and accurate documentation as set forth herein. All payments are contingent upon receipt of fully acceptable goods and receipt of complete and accurate documentation including invoices with bills of lading, express receipts and bills for prepaid transportation charges attached.

ASSIGNMENT

Neither this order, nor any portion thereof, may be assigned, subcontracted or transferred by Seller without prior written consent of Buyer.

INTELLECTUAL PROPERTY

Seller warrants that goods sold and services performed under this order do not, and will not, infringe any valid patent, copyright, trademark, trade secret or any

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other intellectual property interest owned or controlled by any other person, and Seller agrees to indemnify, defend and hold harmless Buyer, its officers, employees, agents, representatives, successors, assigns and any of Buyer's customers buying or using the goods or services specified herein, from any all losses, liabilities, damages, penalties, injuries, claims, demands, actions, suits, costs and expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising out of a claim or suit at law or equity for actual or alleged infringement of such intellectual property interests, by reason of the buying, selling or using the goods or services supplied under this order, and will assume the defense of any and all suits and will pay all costs and expenses incidental thereto. In the event that the buying, selling or use of said goods or services is enjoined, Seller shall at its own expense and at its option either procure for Buyer the right to continue buying, selling and using said goods or services or replace same with a non-infringing equivalent; or remove said goods or services from commerce and refund to Buyer the purchase price and the related transportation and handling costs thereof.

INDEMNITY

Seller shall indemnify and hold harmless Buyer, its officers, employees, agents, representatives, successors, assigns and any of Buyer's customers buying or using the goods or services specified herein, from and against any and all losses, liabilities, damages, penalties, injuries, claims, demands, actions, suits, costs and expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) of whatsoever kind and nature, in contract or tort, (i) arising out of any misrepresentation by Seller or relating to any breach or default in the performance of Seller's obligations under this order with respect to ownership, possession, use, operation, condition, sale, purchase, lease, maintenance, selection, manufacture, or delivery of any item or items of goods or services (including, without limitation, latent and other defects, whether or not discoverable by Buyer); (ii) arising out of any claims for injury to or death of persons or damage to property in any manner due to, in whole or in part, any act or omission on the part of Seller; (iii) and any defects in goods sold or services provided to Buyer pursuant to this order. This indemnity shall survive termination, cancellation or expiration of this order.

COMPLIANCE WITH LAW

Seller warrants that, in the performance of this order, Seller and all goods and services provided hereunder will comply with all applicable federal, foreign, state and local laws, ordinances, codes, regulations, and orders now in effect or which may become effective and which may apply to the goods or services provided hereunder, including, but not limited to, the Occupational Safety and Health Act of 1970 as amended ("OSHA"); Toxic Substance Control Act as amended ("TOSCA"); the Equal Employment Opportunity Act and the Regulations and Standards issued pursuant thereto ("EEOC"); and the Fair Labor Standards Act of 1938 as amended ("FLSA"). Additionally, Seller represents and warrants that is shall supply Buyer with such information as may be necessary to permit Buyer

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to comply with the Federal Hazard Communication Standard as set forth in 29 CFR 1920.1200. Seller shall supply such data (MSDS) to Buyer and receiving facility at the time of making its first delivery pursuant to this order, and shall revise or amend such data as necessary during the course of fulfilling this offer. Failure of Seller to supply such data shall be conclusively presumed to mean that such data is not required for the product supplied. Further, Seller warrants that the goods furnished by it will be in compliance with the Consumer Product Safety Act ("CPSA"), National Highway Safety Act ("NHSA"); and regulations issued pursuant thereto.

CONTINGENCIES

In the event of war, declared or undeclared, acts of terrorism, fire, flood, strike, labor trouble, riot, act of governmental authority, acts of God or other similar contingencies beyond the reasonable control of Seller, or in the event of plant shutdown or closing or sale by Seller, Seller shall notify Buyer of such delaying event or occurrence and take all steps necessary to end such delay, including procurement of materials from alternate sources and acceleration of activities to meet Buyer's schedule. If in Buyer's discretion the delay is not capable of prompt remedy, Buyer may terminate this order for its own convenience pursuant to the terms of this order. Buyer shall not be liable for damages resulting from delays arising out of causes beyond its control, including but not limited to, acts of God, acts of any government, fires, floods, epidemics, quarantine restrictions, strikes, labor shortages, material shortages or significant price increases, freight embargoes, and severe weather, nor shall such delay affect the remainder of this order.

WARRANTIES

Seller warrants that all goods and services delivered under or pursuant to this order shall be free of any claim of any nature by any third person and that Seller will convey clear unencumbered title thereto to Buyer as provided hereunder. Seller also warrants that all goods and services sold hereunder or pursuant hereto will be of the best quality of their respective kinds and free from all defects in design, material and workmanship, and shall conform strictly to the specifications, drawings, samples or other requirements including performance specifications, specified or furnished and shall be merchantable and fit for Buyer's intended purposes. This warranty shall run to Buyer, its successors, assigns, customers, and other users of the goods or services. For any breach of this warranty, Seller shall take all necessary action, at Seller's full cost and expense, to correct such breach in the most expeditious manner possible. All costs incurred in the expedient correction of breach, (including premium time, de-installation, installation, re-commissioning and freight if required by Buyer's operating needs) shall be borne by Seller. In the event of failure by Seller to correct defects in or replace nonconforming goods or services expeditiously, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the full cost incurred by Buyer thereby.

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GOVERNMENT CONTRACTS

If this order involves, or if Seller is otherwise informed, that it is placed, directly or indirectly, under or in connection with, a contract of the United States

Government or any State or other governmental authority, or involves an RCS product for which approval or authorization is required, then certain flow-down requirements will be applicable to Seller as instructed by RCS. Seller agrees to comply with all such flow down provisions. Seller also agrees, upon request, to furnish Buyer with a certificate or certificates in such form as Buyer may require certifying that Seller is in compliance with all such terms and conditions as well as any applicable law or regulation. Upon request, Buyer will make available to Seller copies of all pertinent terms and conditions required by any such government contract or product approvals or authorizations.

BUYER'S PROPERTY

Unless otherwise agreed in a writing signed by an authorized representative of Buyer, all drawings, sketches, blueprints, specifications, designs, models, tools, molds, jigs, dies, patterns and other material and information furnished or paid for by Buyer pursuant to this order or any applicable order and any replacement thereof or any materials affixed or attached thereto shall be and remain the property of Buyer and shall be delivered to Buyer or otherwise disposed of in accordance with Buyer's instructions. Such property, and whenever practical each individual item thereof shall be plainly marked or otherwise adequately identified by Seller as Property of Buyer and shall be safely stored separate from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Seller assumes all risk and liability for loss of or damage to Buyer's property in its custody or control, except for normal wear and tear, and shall insure such property at its own expense for an amount at least equal to the replacement cost thereof, with loss payable to Buyer and such property shall be subject to removal at Buyer's written request in which event Seller shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Seller reasonable wear and tear expected, all at Seller's expense. Unless previously known to Seller free of any obligation to keep it confidential, all information of Buyer shall be kept confidential by Seller and such information and other property of Buyer shall be used only in performing under this order and may not be used for other purposes. Such property while in Seller's custody or control shall be held free of any liens at Seller's risk.

TITLE AND RISK OF LOSS

Seller assumes the following risks; (a) all risks of loss or damage to all goods, work in process, materials and other things until the delivery thereof as herein provided; (b) all risks of loss or damage to third persons and their property until the delivery of all goods as herein provided; (c) all risks of loss or damage to any property received by Seller from or held by Seller or its suppliers for the account of Buyer, until such property has been delivered to Buyer or its customers as the case may be, and (d) all risk of loss or damage to any of the goods or part

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thereof rejected by Buyer, from the time of shipment thereof to Seller until redelivery thereof to Buyer. Title to goods and services purchased by Buyer hereunder shall pass to Buyer simultaneously when risk of loss to such goods and services passes to Buyer in accordance with the terms herein.

GOVERNING LAW

This order and all questions and disputes concerning such arising hereunder shall be governed by, and construed in accordance with, the laws of the State of California (without regard to the laws that might be applicable under principles of conflicts of law, and without regard to the jurisdiction in which any action or special proceedings may be instituted) as to all matters, including but not limited to matters of jurisdiction, validity, construction, effect and performance. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall specifically not apply to this order.

WAIVER

A holding that any term or condition hereof is void or unenforceable shall not render void or unenforceable any other terms or conditions of this order. No claim or right arising out of a breach of this order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The failure of Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor the right of Buyer thereafter to enforce each and every such provision. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

SETOFF

Buyer shall have the right at any time to set-off any amount owed by Seller, or its parent or affiliated companies, to Buyer or to Buyer's parent or affiliated companies against any amount due and owed to Seller on this order.

SERVICES ON BUYER'S PREMISES

If Seller's performance under this Order involves operations by Seller on the premises of Buyer or Buyer's customer, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such services. Seller shall maintain such public liability, property damage and employees' liability and compensation insurance as will protect Buyer from said risk and from any claims under applicable worker's compensation and occupational disease acts. Seller hereby agrees on behalf of its employees, agents and representatives, to submit to any security requirements of Buyer, or Buyer's customer, and to comply with all rules and regulations established by Buyer. Seller shall have sole responsibility for all governmental taxes and contributions imposed with respect to all persons compensated by Seller while such persons are on the premises of Buyer or Buyer's customer.

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LIMITATION ON BUYER'S LIABILITY

In no event will Buyer be liable to Seller for any indirect, incidental, consequential, or punitive damages, or for loss of profits, revenue, or data, whether in an action in contract, tort, strict liability, or otherwise, even if advised of the possibility of those damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any kind. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued and all rights of Seller to commence any court action or proceeding with respect to this order shall terminate one (1) year after the cause of action has accrued.

DISPUTE RESOLUTION

The parties agree that before, and as a condition precedent to, the initiation of any legal action or proceeding, all claims, controversies, and disputes (Disputes) arising out of or in relation to the performance, interpretation, application, or enforcement of this order, including without limitation any breach hereof, the following process must be completed. In the event of a Dispute, the parties agree that their respective project representatives familiar with the issue will schedule a meeting (by telephone or in person) to discuss the Dispute and to attempt in good faith to resolve it. If after ten (10) days, the matter is not resolved, then as promptly as practicable an executive officer of Buyer and an executive officer of Seller shall meet (by telephone or in person) to discuss and attempt in good faith to resolve the Dispute. If after such discussions, either of the parties conclude that no resolution of the Dispute is possible, then the parties can pursue any available legal remedy, action, or proceeding. Buyer shall be entitled to recover from Seller and Seller agrees to pay all costs related to such litigation as well as all attorneys' fees incurred by Buyer in connection therewith in addition to all other rights and remedies it might have.

JURISDICTION

Each of the parties agrees that all actions, suits or proceedings arising out of or based upon this order or the subject matter hereof shall be brought and maintained exclusively in the state or federal courts located in the State of California and each of the parties by execution hereof hereby irrevocably submits to the jurisdiction of the state and federal courts located in the State of Connecticut for the purpose of any action, suit or proceeding arising out of or based upon this order or the subject matter hereof. The provisions of this section shall not restrict the ability of any party to enforce in any court any judgment obtained in the state or federal courts located in the State of Connecticut.

PRODUCT SUPPORT

Seller warrants that items of the type purchased under this order, including the

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sub-assemblies and spare parts, shall be made available by Seller to Buyer and its customers during the operational life of the items purchased or for ten (10) years after the date of final shipment under this order, whichever is later. Further, during said period, Seller shall continue to provide technical support and service at the same level as presently provided. In the event Seller discontinues manufacture of the aforementioned items, sub-assemblies or spare parts thereof does not provide any of them in a timely manner for Buyer's requirements, Seller shall make available to Buyer all drawings, specifications, data and know-how which will enable and facilitate Buyer, its suppliers or its customers to manufacture or procure and use and sell said items, sub-assemblies and spare parts under a royalty-free license which is hereby granted.

CERTIFICATION OF ORIGIN

For all goods covered by this order, Seller shall provide to Buyer an up-to-date certificate of origin, including, without limitation, such pursuant to the provisions of the North American Free Trade Agreement or as otherwise required by Buyer.