

## TERMS AND CONDITIONS OF SALE

1. Application of Terms. These Terms and Conditions of Sale (the "Terms") constitute terms and conditions upon which R & B Company (R & B) agrees to sell goods or accepts an order to purchase goods, as applicable. THESE TERMS ARE THE ONLY ON THESE TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN THE PARTIES. ANY AND ALL ADDITIONAL OR DIFFERENT TERMS, WHETHER IN A PURCHASE ORDER OR OTHER DOCUMENT GIVEN BEFORE OR AFTER THIS ACKNOWLEDGEMENT, QUOTATION OR SHIP TICKET, ARE SPECIFICALLY REJECTED AND SHALL NOT BECOME PART OF THE AGREEMENT UNLESS AGREED TO IN WRITING BY R & B.
2. Delivery\Shipping\Risk of loss . Unless otherwise expressly agreed, all goods are shipped F.O.B. R & B's warehouse within ten (10) days of the date set forth on the front side of the applicable Acknowledgment, Quotation or Ship Ticket. All goods will be shipped according to shipping instructions provided by the buyer (ABuyer@) or, if none, by the best route and mode of transportation as determined by R & B in its discretion. Notwithstanding any other provision of these Terms, risk of loss shall transfer to Buyer at the time the goods are delivered at R & B's warehouse.
3. Goods Damage. Upon receipt of goods, Buyer shall count and inspect the same for damage and shortages before execution of the shipping receipt accompanying such goods. If there is any damage to any goods, Buyer must file a claim immediately with the carrier or R & B, as applicable. Any and all claims for damage or discrepancy between a shipping invoice and goods delivered, shortages or others errors must be delivered to R & B within ten (10) days following delivery of the goods. Failure to so make a claim shall be deemed full acceptance of the goods delivered and a waiver of any and all such claims. Any returns without authorization may be rejected and/or subject to a 20% restocking charge.
4. Payment. Payment terms are set forth on the front page of the applicable Acknowledgment, Quotation or Ship Ticket. If any sums due to R & B are not paid when due, interest shall accrue thereon at the rate of 2% per month until paid in full. Payment is to be made in Santa Clara County, California, and any action to collect any sums due under this Agreement may be brought in Santa Clara County, California, and the parties consent to jurisdiction and venue in such County. In any action or proceeding to enforce or construe this Agreement, the prevailing party shall be entitled to recover their actual attorney's fees and costs.
5. Expenses. If so requested by R & B, Buyer shall prepay the transportation, insurance charges and other expenses connected with the delivery of goods hereunder and add a separate charge, which represents such prepaid charges, to the shipping invoice accompanying the goods shipped.
6. Taxes and Duties. Buyer shall pay all excise, privilege, sales and value-added taxes and all custom duties, levies and other governmental charges, however designated, imposed by any governmental authority arising from the sale or the exportation or importation of the goods, and Buyer shall indemnify and hold R & B harmless from and against any and all expenses, costs, liabilities and claims arising out of or relating to Buyer's failure to fulfill such obligation.
7. Termination. R & B reserves the right to terminate this Acknowledgment by written notice to Buyer if Buyer fails to make payment within the time specified or fails to accept delivery within the time specified.
8. Limited Warranty. R & B is a distributor, not a manufacturer. R & B does not separately warranty any goods. Rather, R & B assigns to Buyer the warranties of the applicable manufacturer for the goods purchased. If Buyer believes any goods do not comply with such warranty, Buyer shall, within the warranty period, report the purported defect to R & B and the manufacturer cooperate fully with R & B and the manufacturer in determining the conditions and cause of any purported defect and, thereby, obtain a returned goods authorization from R & B. If R & B determines the alleged defect occurred as a result of misuse, neglect, improper installation, repair, alteration, application or accident, unusual physical or electrical stress or improper handling procedure, any warranty shall be void and ineffective.
9. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY R & B OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE OVERRIDDEN, EXCLUDED AND DISCLAIMED.
10. Exclusive Remedy and Damage Limitation. In the event Buyer establishes a breach of the above warranty, Buyer's exclusive remedy against R & B, and R & B's sole liability, is, at its option, the replacement of the defective goods or the refund of the purchase price therefor. In no event shall R & B be liable for damages in excess of the purchase price of the goods or \$50,000.00, whichever is greater.
11. No Consequential Damages. R & B SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF GOODWILL, PROFITS, USE OF MONEY OR USE OF GOODS, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY.
12. Force Majeure. Except for payment obligations, neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, transportation stoppages or slowdowns or the inability to procure parts or materials. If any of these causes continues to prevent or delay performance for more than ninety (90) days, the affected party may terminate the agreement between the parties, in whole or in part, effective immediately upon notice to the other party.
13. Waiver. Failure by R & B to strictly enforce any provision of this Acknowledgment shall not be deemed a waiver of such provision or create a course of dealing between the parties pursuant to which performance is not required.
14. Dispute resolution. Any action arising out of the agreement between the parties, except as otherwise provided herein, shall be resolved by binding arbitration in Santa Clara County, California in accordance with the rules of the American Arbitration Association.
15. Governing law. This Acknowledgment is entered into and shall be governed by, construed and enforced in accordance with the laws of the State of California, excluding its conflict of law rules.
16. Security Interest. Buyer grant to R & B a security interest in the goods purchased and all other assets of Buyer in R & B's possession, including without limitation, plans and drawings, for the performance of all of Buyer's obligations to R & B.
17. Construction Materials Provisions. Buyer shall immediately inform Seller in writing of any changes of information contained herein. To the extent that materials or products furnished by Seller are intended by Buyer to be incorporated into a construction work of improvement, Buyer shall fully and promptly furnish to Seller any and all information requested for the proper filling out and service of a preliminary twenty day notice under the Mechanic's Lien Laws. Buyer shall assign to Seller any and all mechanic's lien, stop notice, bond claims or rights that Buyer has or may have with respect to the project under the Mechanic's Lien and Stop Notice Laws pertaining to public or private construction, or against contract proceeds or retainages payable to Buyer with respect to such project. In no event shall the assignment release Buyer of the underlying obligation to pay Seller the entire debt owed to Seller. Further, Buyer's assignment to Seller of the claims or security given to Seller or that Seller may have received from Buyer. To the extent there are monies due for materials furnished by Seller to Buyer on a particular construction project, Seller agrees upon Buyer's request, to execute documents and perform any acts necessary or appropriate to perfect or pursue such claims or rights, or to permit Buyer to perfect or pursue such claims or rights whether in Seller's name or otherwise. Buyer shall reimburse Seller all legal expenses and costs, including attorneys' fees, incurred by Seller in pursuit of such claims or rights. Buyer agrees to indemnify, defend, and hold Seller harmless from any claims, liabilities, causes of action, expenses, including attorneys' fees arising out of or in connection with any services, materials, supplies, or equipment provided by Buyer.
18. Entire Agreement. This Acknowledgment, together with any applicable goods specifications, constitutes the entire agreement of the parties and may not be amended except in writing signed by both parties.