

- 1. Acceptance of Orders.** All orders or other proposed agreements are subject to acceptance by TVM Building Products (the "Seller ") and are not binding on the Seller unless so accepted. These terms and conditions of sale are applicable to all quotations and purchase orders and are the only terms and conditions applying to the sale of Seller's goods or services except those which additionally relate to (i) price, (ii) quantity, (iii) delivery schedule, (iv) payment terms, and (v) the description and specifications of the goods or services provided. Seller hereby expressly objects to and rejects any terms and conditions proposed by Buyer which are different from or in addition to the terms contained herein, unless expressly assented to in writing by the Seller. Buyer's signing of this form, or acceptance of goods or services described in Buyer's order shall constitute its unqualified acceptance of the terms and conditions contained herein.
- 2. Delivery/Risk of Loss/Transportation/Insurance.** Seller shall use reasonable commercial efforts to make delivery or perform services within the time requested. All terms and conditions regarding transportation shall be set forth using INCOTERMS 1990 Revised Edition. Unless the parties specifically agree to other transportation terms, deliveries shall be ex works from the facility, which Seller, in its sole discretion, selects to service the Buyer. Unless otherwise agreed to by the parties, goods shall be deemed to be delivered and risk of loss shall pass to Buyer at such time as possession of such goods is given to a transportation carrier. Seller has the right to make partial deliveries when Seller reasonably deems appropriate. Unless otherwise agreed to by the parties, Seller has no obligation to obtain insurance for Buyer covering the goods while they are being transported.

Lead Times:

 - Regular Stock Orders placed before 2:00 pm for in-stock materials shipped from TVM warehouses will be shipped next day
 - Orders of non stock material require 3 weeks
 - Truckload or container orders will ship in ten (10) working days
- 3. Prices/Taxes.** Prices and charges for Seller's goods and/or services shall be invoiced at Seller's prices and charges in effect at time of shipment. In the case of a price decrease, adjustments will not be allowed on goods in transit or held in inventory of Buyer. In the case of a price increase, Buyer will be given notice thereof and, if the new price is unacceptable, Buyer may cancel any order or portion thereof with respect to goods not yet delivered to the carrier. Unless otherwise provided by law, Buyer shall pay to Seller any and all taxes, excises or other charges.
- 4. Freight.** F.O.B. our plant or nearest TVM warehouse. TVM will at their discretion, utilize the most direct regular freight service to any given area unless a specific truck line is requested by the customer in writing. Customer requests will be honored on the Prepaid freight carrier is to the discretion of TVM. Prepaid freight excludes all additional charges, including but not limited to Specific Dock Time Fees, condition that the requested freight line has regular pick-up available. Special Docking Fees, Hydraulic Tailgate fees, Residential Delivery fees, Detention fees, Appointment Charges, 2nd Delivery Charge and Handbomb fees.
- 5. Cancellation.** Buyer's wrongful non-acceptance of goods, or cancellation or repudiation of an agreement to purchase goods or services shall entitle Seller to recover, in addition to any incidental damages caused by Buyer's wrongful non-acceptance, cancellation or repudiation, the risk of loss of which has passed to Buyer at the time of non-acceptance, cancellation or repudiation, or goods which cannot reasonably be resold by Seller to a third party.
- 6. Quantity Variations.** On any individual order or release against an order for goods not stocked as a standard item, or not packed in standard cartons or packages, or on which special fabrications or constructions are involved, the Seller reserves the right to ship and invoice for a quantity of goods, which may vary up to 10 percent over or under the quantity specified on the individual order or release and the Buyer shall accept delivery and pay for such revised quantity.

Back orders: Orders for stock-items temporarily out of stock can either be held until items are produced or the order will be considered cancelled and the customer will be requested to re-order at a later date.

Short Shipments: If the order is incorrect or short shipped, contact the TVM Customer Service Department immediately at: 888-699-1645. Any claim for shortage or incorrect product must be signed as such on the Bill of Lading in the presence of the Driver.

Damaged Material: If there is damage as a result of shipping and handling, make a note on the Bill of Lading before signing. Please notify the TVM Customer Service Department that your order arrived with shipping damage immediately. If the damage is concealed and not discovered until product is opened, it is important the goods are kept in the same packaging in which they were delivered. A claim can only be made if the merchandise is in the original packaging material.

- 7. Force Majeure/ Allocation of Goods.** Seller will not be responsible for any failure or delay in the performance of all or any part of this agreement caused by acts of God and nature, intervention of government, war or threat of war, conditions similar to war, sanctions, blockades, embargoes, strikes, lockouts or other causes or circumstances beyond the reasonable control of Seller. However, Seller shall use commercially reasonable efforts to give written notice to the Buyer whenever such contingency or other act becomes reasonably foreseeable, and shall use commercially reasonable efforts to overcome the effects of the contingency, and shall give written notice to the other party of the cessation of such contingency. Seller shall not be required to resolve a strike, lockout or other labor problem in a manner which it does not, in Seller's sole discretion, deem advisable. Whenever the Seller determines its ability to supply the total demands for goods covered by an order or release against an order is insufficient to meet current shipping requirements or in the event of any contingency mentioned above, the Seller may allocate any goods affected first for its own use, for its subsidiaries and affiliates and the remainder among its customers on such basis as the Seller in the exercise of its discretion may determine, and in such event the Seller shall not be liable to Buyer for failure to deliver all or any part of the quantities sold hereunder. The provisions of this Section 7 shall be effective even though the circumstance or contingency invoked by the Seller shall have been in effect on the date a particular order was accepted.
- 8. Limited Warranty\Disclaimer of Warranties.** In the case of goods sold by Seller with a separate written warranty, that warranty shall apply. Otherwise, the Seller warrants only that (i) goods shall be manufactured in accordance with Seller's specifications and (ii) services shall be performed as specified. THE WARRANTY PROVIDED ABOVE IS THE ONLY WARRANTY PROVIDED BY SELLER AND IS IN PLACE OF AND TO THE EXCLUSION OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY EXCLUDED. In no event shall TVM Building Products be responsible for goods manufactured by other parties; such goods shall carry only the warranty of the manufacturer.
- 9. Buyer's Remedies\Limitation of Liability**

 - (a)** Buyer's sole and exclusive remedy and the limit of Seller's liability for goods or services proven to be other than warranted, whether based upon breach of warranty, negligence, strict liability, tort, breach of contract or any other legal theory, shall be, at Seller's option, (a) replacement of the goods or services, without charge, carriage paid to Buyer's facility; or, (b) refund of the purchase price paid in respect of such goods or services, plus commercially reasonable charges in connection with the return or disposition of goods. **To effect this sole and exclusive remedy, Buyer must make its claim for breach of warranty within 12 months of the date of shipment of the goods or performance of the services, and any such claim not made within such 12-month period shall be irrevocably waived.**
 - (b)** Seller's sole liability with respect to the goods and services, for any and all loss or damage to Buyer, or any other loss, damage, expense or claim, resulting from any cause whatsoever (whether based on damaged or defective goods, irrespective of whether such damages or defects are discoverable or latent, or Seller's limited warranty shall fail of its essential purpose, or any other reason), and whether based upon breach of warranty, negligence, strict liability, tort, breach of contract or any other theory, shall in no event exceed the aggregate purchase price of the particular goods or the price of the services with respect to which losses,

damages, expenses or costs are claimed. Seller shall have no liability to any person other than Buyer by virtue of the sale of the goods, provision of services, or any other matters contemplated by this Agreement and Buyer shall add Seller as a party protected by Buyer's warranty and limit of liability provisions in Buyer's terms of sale. The limitation of liability set forth in this paragraph shall survive termination or cancellation of this Agreement.

(c) The foregoing is the entire obligation of the Seller. In no event shall Seller be liable for any consequential, special, incidental, indirect or punitive damages to any person, whether based upon breach of warranty, negligence, strict liability, tort, breach of contract or any other theory, regardless of whether the replacement or refund remedy set forth above fails of its essential purpose or for any other reason whatsoever.

No statement or recommendation made or assistance given by Seller, or its representatives, either oral or in any literature or other documentation, to Buyer, its customers or any other persons in connection with the purchase, use or installation by Buyer, its customers or any other persons, of any Product sold hereunder, shall constitute a waiver by Seller of any provision hereof or affect Seller's liability as herein defined; and no such statement, recommendation or assistance that is not expressly required by the provisions of this Agreement shall subject Seller to any liability of any nature whatsoever.

10. Safety and Health Information. The Seller has supplied or made available to Buyer information (including but not limited to Material Safety Data Sheets) and warnings concerning the safety and health aspects of its goods. Buyer agrees to communicate such information and warnings to Buyer's employees, agents, contractors and customers, and to require such persons to further communicate such information and warnings to all persons that they may reasonably foresee will be exposed to or handle such goods.

11. Trademarks. The purchase of goods or services shall not entitle Buyer to use, or otherwise identify Buyer or its business with the name, trademark or other identity of the Seller. Should Buyer violate this provision, the Seller may avail itself of all remedies provided for by law or in equity, including, without limitation, injunctive relief.

12. Export Sales. Buyer represents and warrants that it has complied and/or will comply with all applicable laws, rules and regulations pertaining to the export, import and movement of the goods sold hereunder. All drawbacks of duties paid on items used in the manufacture of the goods delivered hereunder shall accrue to the Seller, and Buyer agrees to furnish the Seller with all documents and cooperation necessary to obtain payment of such drawbacks.

13. Terms of Payment. Terms of payment shall be as stated on individual price sheets, quotes, invoices, or other agreement. If at any time the Buyer's credit is unsatisfactory to the Seller or is in any way impaired, or is pending approval, the Seller reserves the right, among other remedies; to terminate this contract, suspend further deliveries; or, to require payment either by:

- (a) Cash with the order;
- (b) Credit Card with the order (Mastercard or Visa only);

Cash discounts are allowed only on the sales value of the goods. Transportation costs and other "add-on" charges are excluded. The Seller will compute and show on the invoice the exact amount of cash discount allowed. Buyer will not be allowed a cash discount on any invoice while any past due invoice remains unpaid. No future datings may be given on invoices. Except as otherwise agreed, Invoices are payable in U.S.A. funds only. If Buyer fails to pay the price for goods when due, the Seller shall be entitled to recover the purchase price, the lesser of 18% interest per annum or the maximum interest rate permitted by law, costs of collection, all damages resulting from the Buyer's breach and reasonable attorney fees incurred. A Buyer who makes payment by check that is returned due to non-sufficient funds will be assessed a fee of \$50.00 for each returned check.

14. Return of Goods. Goods sold by the Seller may not be returned for credit unless permission is granted by the Seller in writing within six (6) months from the date of delivery of the goods. Only standard goods regularly maintained in stock by the Seller and in resalable condition will be considered by it for return by the Buyer for

credit. If permission is granted, such goods must be returned to Seller in good resalable condition, freight prepaid and credit will be allowed depending on the condition upon receipt by Seller. Special packaging by Buyer may be necessary to protect goods returned in less than full truckload quantities. Credit shall not exceed 85% of the original or then current purchase price for the goods delivered to the Buyer, whichever is the lower, less freight paid by the Seller on the original shipment to the Buyer.

Defective Merchandise Policy: In the case of defective material, please contact the TVM Customer Service Department immediately to complete a Customer Complaint Form (CCF) and obtain a Return Authorization Number (RAN). The CCF must be followed and completed in order for the issue to be considered for product replacement or credit. For a copy of the CCF, please contact TVM Customer Service. Following the inspection of the merchandise, if the product is found to be defective a credit will be issued for the cost on the corresponding invoice or replacement product will be sent, at the Seller's sole discretion. All defective merchandise must be returned with the RAN clearly marked on the merchandise. If your request for credit is rejected for any reason, you will be notified in writing of the reason for rejection.

- 15. General.** Amendment or modification of these terms and conditions shall not be valid unless made in a writing signed by authorized representatives of both parties. If Buyer has ordered or acknowledges this sale transaction on its own terms, the Seller hereby expressly and specifically rejects all of Buyer's terms and conditions that are in addition to or different from the terms and conditions herein. No course of prior dealings and no usage of the trade shall be relevant to supplement or explain any terms used in this Agreement.