

## Terms of Sale

**Terms of Sale** All quotations and sales by MORSCO, Inc. and/or any present or future parent, subsidiary, affiliate or business unit of MORSCO, Inc. (collectively, "Seller") to the Applicant, Guarantor(s) and/or any parent, subsidiary, affiliate or business unit of the Applicant (collectively, "Buyer") are expressly conditioned upon Buyer's acceptance of these Terms and Conditions of Sale (the "Terms"). These Terms, along with any terms and conditions identified in Seller's quotation, invoice or delivery ticket for specific goods, which are incorporated by reference herein, reflect the complete agreement of Buyer and Seller with regard to the sale of goods by Seller to Buyer, and all prior proposals, agreements and understandings, oral or written, are superseded by these Terms. Modification or alteration of these Terms must be in writing and signed by an authorized representative of Buyer and Seller. Buyer's acceptance or receipt of the goods shall be deemed acceptance by Buyer of these Terms. Seller objects to additional or different terms and conditions in any Buyer purchase order, documentation or correspondence and those additional or different terms are of no force or effect.

**Delivery of Goods** The goods shall be delivered to Buyer in the manner specified in the purchase order. Seller shall use reasonable efforts to deliver the goods to Buyer at the location date and time specified mutually agreed upon by Buyer and Seller and specified in writing. Partial deliveries of goods are permitted at Seller's discretion. Seller does not guarantee planned delivery dates, but will use reasonable efforts to meet them. Delivery of materials to the construction site constitutes delivery to Buyer regardless of whether Buyer or its agent is on site at the time of delivery. Seller will not be liable for failure or delay in delivery for any reason, and Buyer hereby waives any claims for damages arising therefrom.

**Title and Risk of Loss** Seller's responsibility for the goods sold under these Terms ceases upon its issuance of Bill of Lading or upon delivery of goods to Buyer or a common carrier or upon installation, whichever occurs first. Seller shall not be liable to Buyer for goods that are damaged or lost while in the possession of a common carrier, and Buyer is solely responsible for recovering any and all damage directly from the common carrier. Title to the goods passes to Buyer upon Seller's receipt of full payment from Buyer for all amounts owed for the goods. Buyer hereby grants Seller a security interest in the goods sold by Seller to Buyer under these Terms and any proceeds thereof as security for Buyer's obligation to Seller to pay the purchase price. This security interest shall commence upon the first delivery of goods to Buyer or upon installation, whichever occurs first, and shall terminate upon Buyer's full payment of all amounts due Seller. Buyer authorizes Seller to file financing statements or other documents in Seller's sole discretion to perfect this security interest along with other notices, and will assist Seller in taking any other action that Seller deems necessary in its sole discretion to perfect and protect Seller's security interest.

**Prices** Quoted prices are subject to change without notice, and all quotations expire and become invalid if Buyer does not accept them within 30 days from the date of issue. Price extensions when granted by Seller are for Buyer's convenience only, and they, as well as any mathematical, stenographic or clerical errors, are not binding on Seller. Any claims by Buyer related to billing errors or adjustments shall be made in writing to Seller within ten (10) days from the invoice date or they are waived by Buyer. Any changes by Buyer in quantities, destination, schedule or installation may result in a price adjustment by Seller. Prices shown do not include any sales, excise, or other governmental tax or charge payable by Seller to Federal, State, or local authority. Any taxes now or later imposed upon sales will be added to the purchase price. Buyer will reimburse Seller for any such tax or provide Seller with an acceptable tax exemption certificate. Prices quoted with respect to a particular purchase of goods or installation of the goods, and any applicable transportation charges, shall apply only to that particular order of goods and/or installation and not subsequent orders and purchases.

**Payment** Buyer shall pay Seller in full for all goods within thirty (30) days of the date Buyer takes receipt of the goods unless stated otherwise on the invoice. Payment shall be in the form of cash, check or wire transfer. Retainage shall not apply, and Buyer shall not hold back any retainage from Seller, even if retainage is part of any contract between Buyer and any other party. Payment is not contingent on Buyer's ability to collect or obtain funds from any other party. Buyer consents to Seller's presentment of and request for payment of any check or other payment order issued to Seller by Buyer by any commercially reasonable electronic means in accordance with applicable provision of the Uniform Commercial Code, and Buyer further authorizes any bank or other financial institution on which any such order is drawn or through which such order is payable to make payment pursuant to such order directly to Seller or for credit to Seller's account by electronic funds transfer. If Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable and Seller may suspend further performance under any order with Buyer. Seller may repossess and remove any materials sold to Buyer where payment is outstanding, without notice or demand. Notwithstanding anything stated therein to the contrary, any lien waiver or release executed by Seller related to the goods sold under these Terms shall only be effective to the extent payment is received, paid by the drawee bank, and not avoidable as a bankruptcy preference. Seller may apply Buyer's payment against any open charges within Seller's sole discretion. Seller may exercise setoff or recoupment to apply to or satisfy Buyer's outstanding debt. Buyer shall have no right of setoff hereunder, the same being expressly waived hereby. Buyer agrees to pay Seller on past due accounts a monthly interest charge equal to the maximum interest charge permitted to be charged by the law governing the account between Buyer and Seller. Buyer and Seller further agree that, where required by law to specify such rate, a rate of one and one-half percent (1.5%) per month shall apply. The interest shall continue to accrue after Seller receives a judgment against Buyer at the highest rate allowable by law then in effect. At no time will interest be charged at a rate higher than the maximum rate allowable by law in the State where suit is brought. Buyer agrees to pay Seller all costs and expenses of collection, suit, arbitration or other legal action, including all actual attorneys and paralegal fees, incurred pre-suit, through trial, on appeal, or in any administrative proceedings, mediations or arbitrations brought as a result of the commercial relationship between them. In any jurisdiction where a stated rate is required, reasonable attorney's fees shall be 15% of the outstanding balance.

**Trust** Buyer agrees that all funds owed to or received by Buyer from any source, resulting from the labor or material supplied by Seller shall be held in trust for the benefit of Seller. Buyer agrees to promptly pay to Seller all such funds. Upon request, Buyer shall irrevocably assign to Seller its account receivable from anyone to the extent that such is resulting from the labor or materials supplied by Seller.

**Credit Terms** Issuance of any credit by Seller to Buyer shall be subject to the approval of Seller's credit department in its sole discretion. If Seller determines in its sole discretion that Buyer's financial responsibility is unsatisfactory, or becomes impaired, or if Buyer fails to make any payment for any goods purchased from seller when due, then Seller may postpone or decline to make any shipments except upon receipt of satisfactory security or payment of cash in advance of shipment, or Seller may cancel any or all contracts with Buyer or any portion thereof. If Buyer fails to comply with these Terms, or Buyer's credit becomes unsatisfactory in Seller's sole discretion, Seller reserves the right to terminate or restrict Seller's credit on any order upon notice to Buyer. Buyer certifies that it is solvent and that it will immediately advise Seller if it becomes insolvent. Buyer agrees to send Seller written notice of any changes in the form of ownership of Buyer's business within five days of such changes.

**Unavoidable Forces** Seller shall not be liable for delay, damage or default in delivery resulting from any cause beyond Seller's reasonable control ("Unavoidable Forces"), including but not limited to, governmental action, terrorism, strikes, or other labor troubles, fire, damage of destruction of goods, manufacturer's shortages, damage of goods by shipping agents or carriers, inability to

obtain materials, fuels, or supplies, weather events, floods or other so-called acts of God, or any other event interfering with the production, supply, transportation, or consumption of the goods being sold, or with the supply or consumption of any raw materials or labor used in connection with the goods. Upon occurrence of an Unavoidable Force, the time for Seller's performance shall be extended reasonably, the purchase price shall be adjusted for any increased costs to Seller resulting therefrom, and Buyer shall not be entitled to any other remedy.

**Seller's Interpretation of Buyer's Plans** Seller assumes no responsibility whatsoever for Seller's interpretation of plans or specifications provided by Buyer. Any interpretation of plans or specifications provided by Buyer to Seller for the purpose of purchases or bids are for the Buyer's convenience only, and Seller shall have no liability for quantities or materials arising from those interpretations. Buyer shall rely solely on final approval of the plans or specifications by architects, engineers, or other third parties, and not on Seller's interpretation.

**Disclaimer of Warranties** For any goods that are not manufactured by Seller, Buyer shall be entitled to any manufacturer's warranty that the manufacturer provides to Seller for said goods, but only to the extent and in the same manner as the manufacturer's warranty extends to Seller. **SELLER DISCLAIMS ANY AND ALL OTHER WARRANTIES WITH REGARD TO THE GOODS OR WORKMANSHIP, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, WORKMANSHIP, DESIGN, HABITABILITY OR NON-INFRINGEMENT OF ANY THIRD PARTY'S PROPRIETARY RIGHTS OR ANY WARRANTIES ARISING BY OPERATION OF LAW, STATUTE OR OTHERWISE, OR IMPLIED BY INDUSTRY OR TRADE CUSTOM, COURSE OF DEALINGS BETWEEN THE PARTIES OR OTHERWISE. BUYER'S SOLE AND EXCLUSIVE WARRANTY FOR ANY GOODS OR WORKMANSHIP SOLD UNDER THESE TERMS IS ANY WARRANTY PROVIDED BY THE MANUFACTURER OF THE GOODS. SELLER'S LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION, INCLUDING, WITHOUT LIMITATION, CLAIMS IN WARRANTY, CONTRACT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR CONNECTED WITH THESE TERMS IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT OF NON-CONFORMING MATERIALS OR, AT SELLER'S SOLE OPTION, PAYMENT NOT TO EXCEED THE PURCHASE PRICE OF THE MATERIALS OR WORKMANSHIP FOR WHICH DAMAGES ARE CLAIMED. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, LIQUIDATED, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE. SELLER'S LIABILITY, IF ANY, SHALL BE LIMITED TO THE NET SALES PRICE ACTUALLY RECEIVED BY SELLER FOR THE GOODS OF WORKMANSHIP. ALL CLAIMS BY BUYER AGAINST SELLER MUST BE BROUGHT WITHIN ONE YEAR OF DELIVERY OF THE GOODS TO BUYER OR INSTALLATION OF THE GOODS, WHICHEVER OCCURS FIRST, OR THEY SHALL BE DEEMED WAIVED.**

**Orders** Buyer specifically authorizes any of its employees and agents to purchase materials under these Terms, pick up materials, and sign for, deliver and receive ordered materials and invoices and delivery tickets for said materials and agrees to be bound by these Terms.

**Returns** Seller shall give no credit for goods returned by Buyer without Seller's prior written authorization. All returns are subject to a restocking charge. Any returns for credit must be clean, unused and undamaged with original packaging and all original parts. No claims for shortage of goods or damage to goods shall be allowed unless Buyer, within five (5) days after receipt of shipment, gives Seller written notice of the claim for shortage or damage with a full description of the alleged shortage or damage.

**Concealed Damage** Builder or Homeowner has five (5) business days to notify Seller of the damage. Photos from customer are required for sales team members to compare with photos taken at delivery or installation. Determination of whether service or replacement is required will be dependent on the location of the damage. If replacement is deemed necessary, RGA from the vendor must have prior approval before approving the return with the customer.

**Casing or structural damage will have to be replaced.** This should be caught immediately during installation or five (5) days after product has been delivered. Product to be returned to Seller and vendor RGA is required to send item(s) back to the manufacturer for credit. Customer has five (5) days to notify of structural damage.

**Tract Builders** Builders have ten (10) business days to notify of cosmetic damage, non-functioning (DOA) goods or structural damage after installation. Scheduling service must be done first. Sales team members will review installation or delivery pictures as well as the pictures provided from the builder to assess proper action. If damage was done after installation (trade damage), a PO is required for replacement from builder.

**Indemnification** Buyer agrees to indemnify, defend and hold harmless Seller and its officers, directors, employees and agents from any claim, demand, loss, costs (including attorneys' fees) or damage incurred or sustained by Seller arising from or related to Buyer's use or resale of the goods sold by Seller to Buyer, any negligent, intentional or tortious act or omission of Buyer or Buyer's failure to comply with these Terms. This indemnification shall not apply to losses, damages or liabilities expressly assumed by Seller under these Terms or to those damages for property damage or personal injury arising from the Seller's sole negligence.

**Governing Law and Venue** These Terms shall be construed and governed by the laws of the State in which the principal place of business of the MORSCO subsidiary that sold the goods in dispute is located, except that the law applicable to any mechanic's or materialman's lien asserted by Seller shall be construed and governed by the law of the State where the goods or services were delivered, consumed, or used. Any action or claim arising out of or relating to the manufacture, purchase or sale of the goods shall be brought only in a state court located in the State in which the principal place of business of the MORSCO subsidiary that sold the goods in dispute is located, or at Seller's election, in the State to which the goods were delivered, consumed, or used, and Buyer hereby waives any right to object to such venue or to assert the inconvenience of such venue. Buyer consents to jurisdiction in the state courts sitting in the State in which the principal place of business of the MORSCO subsidiary that sold the goods in dispute is located, or at Seller's election, the State to which the goods were delivered, consumed, or used.

**Miscellaneous** Buyer agrees that Seller retains all rights to claim a mechanic's and/or materialman's lien as allowed by the law of the State where the goods were delivered, consumed, or used. Buyer may not assign or transfer or delegate its rights or obligation (by law or otherwise) without Seller's prior written consent. A party's waiver of right under one provision of these Terms shall not constitute a waiver of any other provision or a subsequent waiver of the same provision.

#### **ABOVE PAYMENT TERMS DO NOT APPLY TO CASH SALES**

Last updated September 24, 2021.