

## TERMS AND CONDITIONS

These Sales Terms and Conditions ("Terms") govern all sales of products ("the Products") by Englert, Inc. ("Seller") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders, telephonic orders, or electronic orders (collectively, "Purchase Orders"). Upon receipt by Seller of an express acceptance by Buyer or upon commencement of performance by Seller, these Terms and the face of the Purchase Order, as modified by Seller's acceptance or order acknowledgment, become a binding contract between Buyer and Seller on the terms reflected in those documents. In the event of a conflict between these Terms and the face of the Purchase Order, these Terms prevail except where Seller has expressly agreed to the conflicting term(s) in the Purchase Order in Seller's written acceptance or order acknowledgment. In all cases, any and all terms and conditions as may be contained in any request for quotations, request for bids, purchase orders and similar documents issued by Buyer are hereby expressly rejected in their entirety and shall have no force or effect. Seller is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction.

**1. Acceptance:** ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON BUYER'S ASSENT THERETO. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER.

**2. Changes:** Orders arising hereunder may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery. Buyer may not cancel the Purchase Order unless such cancellation is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of the Purchase Order by Buyer which is permitted by Seller. Certification of such costs by Seller's independent public accountants shall be conclusive on the parties hereto.

**3. Shipment:** The method of packing and shipment of the Products sold hereunder shall be at the discretion of the Seller, unless otherwise agreed to by the parties.

**4. Delivery:** Seller reserves the right to make delivery in installments. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries. If a delivery is delayed as a result of any action or inaction of Buyer, Seller may invoice Buyer for the Products as of the scheduled delivery date and may charge Buyer for warehousing and other expenses incurred because of the delay. Seller's obligation with respect to delivery ceases upon its tendering possession of the Products to the first common carrier at Seller's facility. Thereafter, all risk of damage, loss or delay in transportation shall be borne of the Buyer.

**5. Inspection:** Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages, defects or damages and shall hold the goods for Seller's written instructions concerning disposition. If Buyer shall fail to so notify Seller within five (5) calendar days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by the Buyer.

**6. Excusable Delay:** Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including, without limitation, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riots, insurrection or sabotage, floods, labor difficulties, lightning, windstorm, or other catastrophes or acts of God, unusually severe weather, accidents, epidemics or quarantine restrictions, acts of local, state or national governments, or public agencies, labor disputes or shortages, energy or material shortages, utility or communication failures or delays, threats or acts of terrorism, delays of a supplier of Seller, or causes beyond the reasonable control and without the fault or negligence of Seller. In the event of any such delay, the date of delivery shall be deferred for a period equal to the time lost by reason of the delay.

**7. Payment:** Payment will be due from Buyer as deliveries are made by Seller, unless a deposit is required in the case of a special order and specified on the face of the Purchase Order. Payment of all sums invoiced to Buyer shall be in U.S. currency. In the event delivery is made in installments, all such installments will be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries.

**8. Prices – Adjustments:** The prices stated on the face of Seller's quotation apply only to Products scheduled for shipment as detailed on Buyer's purchase order and acknowledged by Seller. Notwithstanding the foregoing, however, Seller reserves the right to increase its prices upon notice to Buyer for those shipments scheduled for delivery greater than ninety (90) days from the date of Buyer's purchase order. Buyer shall have thirty (30) days from the date of such notice to cancel its order, without charge, with respect to any Products not scheduled for shipment prior to the effective date of the price increase.

**9. Taxes:** In addition to the stated prices, Buyer shall pay Seller the amount of any excise, sales, use or other taxes incident to the sale of Products hereunder for which Seller may be liable or which Seller is required by law to collect unless Buyer timely provides Seller with a proper tax exemption certificate.

**10. Warranty:** Seller only warrants the Products sold to Buyer hereunder to the extent specifically set forth in Seller's Limited Exterior Building Product Finish/Base Metal Warranty. THE LIMITED EXTERIOR BUILDING PRODUCT FINISH/BASE METAL WARRANTY IS BUYER'S SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY, OR PRODUCTIVENESS.

**11. Returns and Claims:** Written authorization must be obtained from Seller prior to the return of any Products. Upon Seller's verification of defect, Seller retains the option to repair, replace or issue credit, at Seller's option, for the defective product. Seller shall have the right, prior to return, to inspect at Buyer's warehouse, any Products claimed to be defective or nonconforming. Risk of loss or damage to any Products returned to Seller for adjustment shall remain with Buyer until they are received by Seller. Shipping charges for returned Products will be paid by Seller only for Products repaired or replaced pursuant to warranty. Otherwise, such charge will be Buyer's responsibility. Claims for shortages, incorrect materials or invoicing errors must be made by Buyer in writing within five (5) days after receipt of shipment. Claims for non-receipt of shipment must be made in writing within five (5) days after receipt of invoice.

**12. Financial Responsibility:** In the event that Buyer fails to fulfill the terms of payment for any shipment of Products or if Seller shall have a reasonable doubt at any time as to Buyer's ability to pay for Products ordered Seller may, at its option and without liability, (i) change the terms of payment or (ii) defer further production and shipments until satisfactory performance has been made by Buyer and Seller is satisfied as to Buyer's financial ability, and such change or deferment shall not prejudice any claim for damages Seller may otherwise have against Buyer.

**13. Product Installation:** Buyers shall indemnify and hold harmless Seller, its directors, officers, agents and employees against all expense, loss, attorneys fees, costs, damage or liability arising from any claim or action relating to or arising from any claim of defective installation of the Product by Buyer. At the request of Seller, Buyer shall defend at its own expense all such claims or actions, provided that Seller shall be entitled at its election, to participate in such defense.

**14. Limitation of Liability:** Seller's liability for defective or nonconforming Products, whether based on breach of warranty, negligent manufacture or product liability, is exclusively limited to repair or replacement, at Seller's election, of such Products. Seller assumes no risk and shall NOT be subject to ANY liability for any damages or loss resulting from the specific use or application made of the Products. Seller's liability for any other claim, whether based on breach of contract, negligence or product liability, relating to the Products shall not exceed the price paid by Buyer for such Products. In no event shall Seller be liable for any special, incidental, consequential or other damages, including, but not limited to, loss of profits, delay claims, and claims of third parties, howsoever caused, whether by the negligence of Seller or otherwise.

**15. Compliance With Laws:** Seller warrants and certifies that it complies with all applicable statutes, rules, regulations and orders of the United States, including those pertaining to labor, wages, hours and other conditions of hiring and employment.

**16. Government Contracts:** If the Products are to be used in fulfilling a contract with the United States Government, Seller will comply with all mandatory requirements of such contract which are applicable to Seller provided that Seller has received written notice of such requirements from Buyer in sufficient time to incorporate their impact into the price and delivery schedule for such Products. In addition, Seller may at its option adopt any provisions of the FAR, DFAR, DAR or other federal statutes or regulations which are applicable to Seller.

**17. Waiver:** The rights and remedies of Seller as set forth in this Agreement shall be in addition to any other rights and remedies provided in law or equity and the failure or delay by Buyer to exercise any rights or remedies hereunder shall not operate as a general waiver thereof.

**18. Assignment:** Buyer shall not assign any of its rights or obligations hereunder without the prior written consent of Seller.

**19. Notices:** Any notices and other communications required or permitted to be given hereunder shall be in writing and shall be effective when delivered personally, electronically transmitted (later confirmed in writing) or air mailed, postage prepaid.

**20. Severability:** In the event that one or more provisions hereof should be held to be unenforceable in any respect, this document shall be construed as if such unenforceable provision(s) had not been contained herein.

**21. Entire Agreement:** These terms and conditions supersede all other agreements, representations, warranties and undertakings of the parties with respect to the subject hereof and may not be modified except by a writing signed by an authorized employee of Seller. If Buyer and Seller have executed an overriding agreement covering the sale of Products to which this document relates, the terms of said overriding agreement shall prevail over the terms stated herein only to the extent of any conflict.

**22. Governing Law:** Buyer's purchase of Products hereunder shall in all respects be governed by the laws of the State of New Jersey without regard to its conflicts of laws provisions. Should it be necessary for any party to commence any legal action to enforce these Terms, the prevailing party in such action shall be entitled to recover from the unsuccessful party all reasonable attorneys' fees, costs and expenses incurred by it in the prosecution or defense of such action, and any appeal.