

# ISC ACQUISITION CORP DBA ISC BUILDING MATERIALS TERMS AND CONDITIONS OF SALE

- Buyer's Acceptance of Terms and Conditions.** All sales are made only on these terms and conditions. Orders are subject to acceptance by Seller's office. Any additional or conflicting terms submitted by Buyer, whether included in a purchase order or otherwise, are rejected without further objection by Seller. Buyer agrees to these terms and conditions if Buyer fails to reject them in writing within 3 days of receipt hereof, takes possession of the goods to be sold under any order, or otherwise proceeds in any way with any sales transaction.
- Prices.** PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE. Prices will be those in effect on the date of shipment. Written or verbal quotations of price are subject to change unless otherwise agreed by Seller in writing.
- Payment; Default; Taxes.** Buyer agrees to pay the net price of goods and any shipping or other related charges in full within 30 days of the date such goods are invoiced promptly unless other payment terms are stated by Seller on the face of any quote, proposal or order. If Buyer fails to pay in full, Buyer agrees to pay interest of 1.5% per month on the balance outstanding, or at the maximum rate allowed by law, whichever is less, and to pay all costs of collection including without limitation attorney's fees. Buyer will pay all sales, use or similar taxes imposed upon the goods sold or upon their manufacture, sale or delivery.
- Advance Payment; Repossession.** Seller reserves the right to discontinue shipment and require payment in advance for the goods at any time if in Seller's opinion Buyer's actions or financial condition indicate that Buyer's payment for goods ordered may not be received. In such event, Seller may cancel the remainder of the order and Seller also reserves the right, among other remedies, to repossess at Buyer's expense all goods and related materials that may be stored with Seller for Buyer's account without undergoing any further legal proceedings or after undertaking such proceedings as may be required by law and Buyer hereby assigns to Seller a security interest in all such goods and materials. Buyer acknowledges that all goods and related materials so repossessed will be Seller's property.
- Shipment; Risk of Loss.** Seller will determine in its sole discretion the method and route of shipment of goods. Unless any different terms are stated by the Seller on the face of any quote, proposal or order, all prices are F.O.B. Seller's place of business. If goods are shipped or delivered by Seller, or by any other means other than common carrier, Buyer will pay Seller separately for the costs and charges related thereto. Title to the goods sold hereunder passes from Seller to Buyer upon delivery thereof curbside at Buyer's job site and before any spreading or stocking is performed at Buyer's warehouse. Such delivery shall constitute delivery to Buyer, and thereafter the goods, location of the placement of the goods, and the manner in which the goods are stored shall be at Buyer's risk. Seller reserves the right to make delivery of the goods in installments, and such all installments when separately invoiced will be paid for when due per invoice without regard to the dates of subsequent deliveries. All goods accepted will be paid for regardless of any claim relating to other delivered or undelivered goods. Buyer will at all times bear the risk loss of all goods during shipment and all shipments will be insured, solely at Buyer's expense. Seller will in its sole discretion, determine whether, under what terms, and for what amounts shipments will be insured (with input from Buyer if so requested in writing) and will make arrangements accordingly.
- No liability for Delays; Force Majeure.** Seller will attempt to meet any shipment or delivery dates specified herein, but Seller will in no event be responsible or liable to Buyer or any third party for any damages or other loss, liabilities or costs, including but not limited to incidental or consequential damages resulting from any delay in the shipment or delivery of goods regardless of the cause of such delays. Specifically, delay in delivery or non-delivery in whole or in part by Seller shall not be a breach of this order if performance is made impracticable by the occurrence of any one or more of the following contingencies, the non-occurrence of which is a basic assumption on which the agreement is made: (a) Fires, floods, or other casualties; (b) Wars, riots, civil commotion, embargoes, governmental regulations, or martial law; (c) Seller's inability to obtain necessary materials (finished or otherwise) from its usual sources of supply; (d) Shortage of cars or trucks or delays in transit; (e) Existing or future strikes or other labor troubles affecting production or shipment, whether involving employees of Seller or employees of others, and regardless of responsibility or fault on the part of the employer; and (f) Other contingencies of manufacture or shipment, whether or not of a class or kind mentioned herein and not reasonably within Seller's control.
- Limitation of Liability. IN NO EVENT SHALL THE LIABILITY OF SELLER UNDER THIS AGREEMENT EXCEED THE PRICE PAID HEREUNDER FOR THE GOODS.** Seller shall not be liable for incidental, indirect, special or consequential damages, irrespective of the cause or origin from performance or nonperformance of the obligations imposed herein or from negligence or gross negligence, active or otherwise, of Seller or its agents, servants, assigns, or employees. This limitation of liability applies to all liability arising from or related to Seller's activities and obligations hereunder, including, but not limited to, duties arising in contract, warranty, statute and tort (WHETHER SUCH OCCURRENCE ARISES OUT OF SELLER'S SOLE OR CONCURRENT NEGLIGENCE OR BREACH OF WARRANTY OR STANDARD OR STRICT LIABILITY).
- Acceptance of Goods.** Buyer will examine all goods immediately upon receipt and will be deemed to have accepted such goods as conforming and in good condition unless written notice to the contrary is delivered to Seller within 5 days of Buyer's receipt of goods.
- Limited Warranty; Limitation on Liability.** Seller warrants that the goods are as describes on the face of the order and are free from defects in materials and workmanship, and except as may otherwise be expressly provided in a separate written warranty, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY IMPLIED OR STATUTORY WARRANTY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO THE GOODS MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, whether used alone or in combination with other materials. Seller may at its sole option, examine goods that are returned in the manner provided in paragraph 10 hereof, and, if in its sole discretion, Seller determines such goods to be defective in material or workmanship, or non-conforming, Seller may at its option and as Buyer's sole and exclusive remedy, repair, replace or issue credit for the purchase price of such goods. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF BUYER OR OF ANY THIRD PARTY.
- Return of Goods.** Seller will have no responsibilities or obligation whatsoever regarding goods returned without Seller's prior written authorization. Goods returned without authorization will be refused. In requesting such authorization, Buyer must submit a detailed statement of the reason for return. Buyer must repay all costs of returning goods. Seller will refuse goods shipped collect and reserves the right to charge back and set off all transportation costs under these circumstances. Returned goods may be subject to reasonable handling, inspection and restocking charges by Seller. Upon receipt of goods for which Seller has properly authorized return, Seller's only obligation will be to inspect and repair or replace, if defective or non-conforming and return such goods to Buyer at Buyer's expense and risk. Buyer will be responsible for all transportation costs for Seller's reshipment of returned goods (whether or not repaired) to Buyer and for Seller's shipment of replacement goods, if any. Buyer will at all times bear the risk of loss for all goods returned to Seller and for any replacement goods shipped to Buyer. All shipments of repaired or replaced goods to Buyer will be insured, it at all, in accordance with the last sentence of paragraph 5 hereof. Notice of any claim related to the goods delivered hereunder or performance hereunder must be made by the 91<sup>st</sup> day after discovery of such claim or such a claim is waived.
- Buyer's Warranties.** Buyer represents and warrants that the sale and delivery of the goods to it will not violate any law, regulation, rule, order or restriction of the United State or any state or other government authority and Seller is furnishing goods to Buyer only in reliance upon this representation. **BUYER ASSUMES** the risk of all applications and uses of the goods and agrees to indemnify, defend, and hold the Seller harmless against any claim, liability, loss or cost or expense, including reasonable attorneys' fees, incurred by Seller in connection with any application or use of the goods, including without limitation claims of injuries to any persons or damage to any property (whether connected with Buyer or third parties) directly or indirectly arising, in whole or in part out of any defect in the goods, or any defect or hazard presented by products or processes into which the goods are incorporated. **EVEN IF SUCH INJURY OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF SELLER.** Buyer acknowledges that it has received and is familiar with Seller's safety and hazard labels and other information concerning the goods sold hereunder and Buyer represents and warrants that it will disseminate such information so as to warn persons Buyer can reasonable foresee may be exposed to such hazards, including its employees, agents, contractors and customers.
- Patents.** As to any goods manufactured or sold by Seller to meet Buyer's particular specifications or requirements, Buyer agrees to defend indemnify and hold Seller harmless against any suit or action from all damages, liabilities, attorneys' fees, claims and demands based upon, and to release and not bring any suit or action against Seller on account of actual or alleged infringement of any United States or foreign patent relating to the manufacture or sale of the goods covered by such a patent.
- Cancellation of Orders.** If Buyer places an order with Seller for goods and subsequently cancels that order, Buyer agrees to pay Seller its price for such goods as are completed and all of Seller's costs, plus reasonable overhead and profit thereon, and any damages or loss incurred by Seller in connection with such goods as are in process at the time of cancellation.
- Applicable Laws: Attorney's Fees & Interest.** This instrument and performance hereunder will be governed by the laws of the State of Texas notwithstanding any applicable conflict of laws principles. Buyer agrees that venue for any suit arising out of or related to these terms and conditions or any sale hereunder shall lie exclusively in Harris County, Texas, and Buyer submits itself to the Jurisdiction of that state for purposes of suit against it by Seller. Buyer and Seller agree that performance hereunder is in Harris County, Texas. Buyer agrees to pay Seller for any costs for expenses, including reasonable attorney's fees and court costs, incurred in connection with the enforcement of these terms and conditions.
- Entire Agreement.** These terms and conditions and any Seller quote, proposal or order issued constitute the entire agreement between Buyer and Seller relating to the goods sold hereunder and supersede all prior or contemporaneous verbal or written representations, agreements or understandings, including without limitation sales literature, sample, models or other sales information. No agent, employee or other representative of Seller has nay authority to bind Seller to any affirmation, representation or warranty concerning the goods sold hereunder and no modification of these terms and conditions will be effective unless made in writing on a date subsequent to the effective date hereof and executed by a duly authorized representative of Seller. These terms and conditions may not be waived except in writing signed by Seller.

Agreed, and made a part of our credit application:

Printed Name: \_\_\_\_\_ Company Name: \_\_\_\_\_

Signed Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_