

BUILDERS CHOICE LUMBER, LLC TERMS AND CONDITIONS

1. **Applicability.** (a) These terms and conditions of purchase (these “Terms”) are the only terms which govern the purchase of materials (“Materials”) by Purchaser from the Seller (these “Terms” together with the “Order”, this “Agreement”); and (b) this Agreement comprises the entire agreement between the parties and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

2. **Changes to Quantities and Pricing.** We are constantly updating and revising our offerings of Materials, and we may discontinue Materials at any time without notice. To the extent that we provide preliminary information on the availability of Materials, you should not rely on such information, and we will not be liable for any lack of availability of Materials that may be ordered or prepaid, as Orders are only finalized at the time of actual pickup. All pricing for available Materials is subject to change, regardless of prepayment. For all of our prices and Materials, we reserve the right to make adjustments due to changing market conditions, discontinuation of Materials, manufacturer price changes, errors in advertisements, and other extenuating circumstances.

3. **Changes/Cancellation.** Purchaser may not cancel or modify an Order without the written consent of Seller and payment by Purchaser of all applicable cancellation or re-stocking fees. If an approved change affects the amount due or the time of delivery, an equitable adjustment shall be made. No such cancellation shall relieve Purchaser of any of its obligations as to any delivered Materials. Any claim for adjustment must be asserted within ten (10) days from the date when the change or cancellation is made.

4. **Delivery.** Title and risk of loss shall transfer to Purchaser at the time of delivery. Seller assumes no responsibility or liability for Seller’s non-performance caused by a force majeure event including, but not limited to an act of God, war, labor disputes, civil unrest, accidents, pandemics, the inability to obtain Materials, delays of carriers, contractors or suppliers, or any other causes beyond Seller’s control.

5. **Inspection and Acceptance.** Purchaser shall examine all Materials upon receipt and prior to installation. In accordance with paragraph 4 of this Agreement, Purchaser assumes responsibility for handling and storing Materials upon delivery. Purchaser waives the right to make claims for damage if not present at the time of delivery and/or fails to properly store delivered Materials. All claims for damage, shortage, and errors in shipment or improper delivery must be made to Seller promptly at the time of delivery, after which date Purchaser will be deemed to have accepted the Materials and will have no right to reject the Materials or to revoke acceptance.

6. **Payment.** Seller shall issue an invoice to Purchaser on or at any time after the completion of delivery. Purchaser shall pay all properly invoiced amounts due to Seller within thirty (30) days after Purchaser’s receipt of such invoice. In the event of late payment, Seller is entitled to treat Purchaser’s entire account(s) as immediately due and payable without notice or demand. All past due amounts are subject to a service charge accruing at a rate of 1.5% per month, plus costs of collection, including attorney fees, if incurred. Purchaser shall not be allowed to retain or holdback payment, and Purchaser’s payment obligations are not contingent on any event. Purchaser’s receipt of payment or funds from a third party shall in no way relieve Purchaser’s obligations to pay Seller. Purchaser is not entitled to set-off amounts due to Seller by Purchaser in connection with any transaction governed by these Terms. In the event of a payment dispute, Purchaser shall deliver a written statement to Seller no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this paragraph. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

7. **Returns.** Within thirty (30) days of purchase, and at the sole discretion of Seller, Purchaser may return any Materials which Seller stocks and which are not special order items if: (a) the Materials are in new and working condition, suitable for resale in undamaged original packaging and with all original parts; and (b) the Materials have not been used, installed, modified, rebuilt, reconditioned, repaired, altered, or damaged. No returns are allowed for special order items.

8. **Warranty & Warranty Exclusions.** Seller only warranties those extended by the Product(s) manufacturer(s). These warranties shall be void if defects or damages are caused by normal wear and tear during normal usage, in the event of an accident, usage for a purpose for which the Materials were not intended, modifications, unsuitable physical or operating of equipment, abuse, improper or insufficient maintenance, and improper storage or installation of the Materials. SELLER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR USE OR A PARTICULAR PURPOSE EVEN IF KNOWN BY SELLER. SELLER MAKES NO REPRESENTATION, WARRANTY, OR PROMISE THAT MATERIALS WILL CONFORM TO ANY APPLICABLE LAWS, ORDINANCES, REGULATIONS, CODES OR STANDARDS, EXCEPT AS SPECIFIED AND AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

9. **General Indemnification.** Purchaser shall defend, indemnify and hold harmless Seller and all of its respective members, shareholders, officers, directors, employees, agents, licensees, representatives, volunteers, and assigns (collectively, “**Indemnified Parties**”) against any suit, cause of action, arbitration/mediation proceeding, judgment, demands, losses and liabilities, or claim (“claim”) for damages (including but not limited to, property damage, bodily injury, death, infringement, the liability of any nature, costs, fines, penalties, and expenses, including reasonable attorneys fees and any other cost of litigation) to or by any and all persons or entities (including without limitation, the Indemnified Parties) arising out of, resulting from, or connected with Purchaser’s use of Materials, including but not limited to: (i) any breach by Purchaser of this Agreement; (ii) Purchaser’s negligence or misconduct; or (iii) Purchaser’s handling, storage, sales, transportation, use, misuse, or disposal of Materials purchased pursuant to this Agreement.

10. **Dispute Resolution.** If a dispute is unresolved after non-binding dispute resolution efforts, the Parties agree the venue for any binding dispute resolution proceeding shall be in a state or federal court having jurisdiction of the matter located in Anchorage, Alaska. The costs of any binding dispute resolution procedure and reasonable attorneys’ fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute. All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. To the extent disputes between the Purchaser and Seller involve, in whole or in part, disputes between the Purchaser and the Owner, disputes between the Seller and the Purchaser shall be decided by the same tribunal and in the same forum as disputes between the Purchaser and the Owner. Nothing in this paragraph shall limit any rights or remedies Seller may have under lien laws or payment bonds.

11. **No Waiver of Performance.** The failure of Seller to insist, in any one or more instances, upon the performance of any of the Terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of term, covenant, condition, or the rights and remedies of Seller, nor its right to insist upon strict performance of such term or of any other term in the future. No waiver of any of these Terms will be valid unless agreed to in writing by an authorized representative of Seller.

12. **Governing Law/Venue.** This Agreement shall be governed and construed by the laws of the State of Alaska without regard to conflicts of law principles. Purchaser and Seller hereby consent and agree to personal jurisdiction in Anchorage, Alaska, and all actions arising out of or relating to this Agreement shall be heard and determined exclusively by federal and state courts sitting in Anchorage, Alaska.