

## Terms and Conditions of Sale

ALL TRANSACTIONS ARE GOVERNED BY SELLER'S TERMS AND CONDITIONS OF SALE. ANY PROPOSAL THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT VARY FROM COLTON, INC.'S ("SELLER") TERMS AND CONDITIONS OF SALE ARE OBJECTED TO AND DISALLOWED. NOTWITHSTANDING THE FOREGOING, ANY SUCH COUNTERPROPOSALS BY BUYER SHALL NOT OPERATE AS A REJECTION OF THE CONTRACT OF SALE, BUT AS A REJECTION OF THE ADDITIONAL OR DIFFERENT TERM(S)

**1. FORMATION OF CONTRACT.** An order is deemed by Seller to be an offer to purchase, which Seller may accept or reject in its sole discretion. Seller's acceptance of an offer to purchase is binding on Seller only if made by written instrument or, if not by written instrument, by shipment or installation of the products ordered (and acceptance by shipment shall only be binding as to the portion of the order actually shipped by Seller). Any automatic or computer-generated response to an order by Seller shall not be deemed acceptance of an order. Seller's acceptance is subject to Seller's Terms and Conditions of Sale stated herein.

**2. CREDIT.** Seller may, but shall not be obligated to, grant credit terms to Buyer. Acceptance of any order is subject to final credit approval by Seller. Seller reserves the right to cancel any sale if Seller deems Buyer unable to pay for any products. Seller reserves the right, in its sole discretion and without prior notice, to deny, change or limit the amount or duration of credit to be allowed Buyer, either generally or with respect to a particular purchase order, and may require cash payments in advance or security satisfactory to Seller.

**3. COST OF DELIVERY, TAXES AND OTHER CHARGES.** Except as otherwise agreed in writing, Buyer shall pay the costs of delivery of the products. Buyer shall pay all sales, use, excise or similar taxes, or other charges, which Seller is required to pay, or to collect and remit, to any Government (national, state or local) and which are imposed on or measured by the sale.

**4. TRANSFER OF PROPERTY AND RISK OF LOSS.** Seller retains the right and title to the products sold to Buyer until Seller is paid in full for the products. Buyer shall obtain the right and title to the products upon payment to Seller of the purchase price and any taxes, excise or other charges. The risk of loss, including, but not limited to the risk of loss, theft, damage or destruction of the products, transfers to Buyer F.O.B. Seller's warehouse.

**5. CANCELLATIONS.** Orders are not subject to cancellation except upon such terms and conditions as may be approved by Seller in writing.

**6. PAYMENT.** Unless otherwise agreed in writing, payments shall be made at Seller's corporate office no later than thirty (30) days following the date of invoice. Any balance not paid within ten (10) days of the date when due shall accrue interest at the rate of two percent (2%) per month. A surcharge of up to three percent (3%) will be assessed on all credit card payments over the amount of \$5,000.00. Buyer shall have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Seller shall be made without Seller's prior, express written approval. BUYER'S PAYMENT OBLIGATION TO SELLER IS NOT CONDITIONED UPON RECEIPT BY BUYER OF ANY PAYMENT DUE TO BUYER FROM ANY PROPERTY OWNER, GENERAL CONTRACTOR OR OTHER PARTY.

**7. SECURITY.** Seller reserves the right to protect its interest in receipt of payment of all amounts due by Buyer to Seller by registering its products/services on any applicable State Construction Registry or otherwise take any other necessary steps (including without limitation filing preliminary notices) to ultimately record (to the extent necessary) a contractors/mechanics lien against the real property for which Seller is providing products and/or services. Moreover, Buyer hereby grants to Seller a continuing security interest in all of Buyer's accounts receivables, inventory, equipment, fixtures, deposit accounts, machinery, and other personal property assets as collateral security for the prompt payment and performance of Buyer's payment obligations to Seller. Buyer hereby authorizes Seller at any time and from time to time to file one or more financing or continuation statements to perfect this security interest.

**8. PAYMENT DEFAULT.** In the event of any payment default, Seller may exercise all or any of the following rights and privileges without notice or demand of any kind, and the same are cumulative and not in the alternative: (i) declare the entire amount due and payable and seek to recover the amount payable through collections or legal processes; (ii) take possession of the products provided by Seller to Buyer and all additions thereto and hold the products or sell the same at public or private sale, at which Seller may credit bid on the products without the products present; or (iii) exercise any and all other rights and remedies available to Seller under applicable law, including foreclosing on any property or assets pledged as collateral to secure payment hereunder and/or recording and pursuing a contractors/mechanics lien against the real property to which Seller provided products/services hereunder. If Seller elects to take possession of the products, all rights of Buyer shall terminate and all payments thereto made shall belong to Seller, and Seller may hold Buyer liable for all costs and expenses in connection with the taking, holding and selling of the products, and if the proceeds of such sale, together with the payments theretofore made, are not sufficient to equal to the total of all amounts payable to Seller, Seller may recover the balance from Buyer. Buyer shall pay Seller all costs of collection and reasonable attorneys' fees incurred in the enforcement of Buyer's payment obligations, or otherwise arising out of Buyer's default under any obligation contemplated hereunder.

**9. PATENTS.** Sellers reserves the right to discontinue deliveries of any products, the manufacture, sale or use of which would, in Seller's opinion, infringe upon any U.S. patent, trade mark or design now or hereinafter issued, registered, or existing and under which Seller is not licensed. Seller assumes no responsibility for, and Buyer shall defend and indemnify Seller against, patent infringement claims on any item built to Buyer's specifications, either verbal or written.

**10. DISCLAIMER OF WARRANTIES.** THE WARRANTIES SET FORTH HEREIN OR IN SELLER'S WARRANTY DOCUMENTS WITH RESPECT TO A PRODUCT ARE THE ONLY WARRANTIES MADE BY SELLER IN CONNECTION WITH THE PRODUCTS AND THE TRANSACTIONS CONTEMPLATED AS A RESULT OF THIS SALE. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS TO BUYER OR ANY OTHER PERSON OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PRODUCTS SOLD HEREUNDER ARE SOLD ONLY TO THE SPECIFICATIONS SPECIFICALLY SET FORTH BY THE SELLER IN WRITING. SELLER'S SOLE OBLIGATION FOR A REMEDY TO BUYER SHALL BE REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF PRODUCTS PURCHASED, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS OR SUBSTANCES.

**11. LIMITATION OF LIABILITY.** No claim by Buyer of any kind including, but not limited to, claims for indemnification, whether as to quality or amount of product delivered or non-delivery, shall be greater in amount than the purchase price for the products in respect of which damages are claimed. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF THE PRODUCTS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. SUCH EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF GOODWILL, LOSS OF REVENUE OR PROFITS, LOSS OF USE, LOSS OF TIME, INTERRUPTION OF BUSINESS, OR OTHER SIMILAR INDIRECT FINANCIAL LOSS. MOREOVER, SELLER'S TOTAL POTENTIAL LIABILITY TO BUYER FOR ANY CLAIMS RELATING TO OR ARISING OUT OF ANY PRODUCTS OR SERVICES PROVIDED BY SELLER TO BUYER SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED THE TOTAL AMOUNT OF MONEY ACTUALLY PAID BY BUYER TO SELLER FOR THE PRODUCTS AND/OR SERVICES PROVIDED.

**12. INSPECTION.** Buyer shall inspect the products promptly upon receipt for non-conformity (including but not limited to non-conformity for quantity, quality, and/or defects). Failure by Buyer to provide Seller with written notice of a claim within [30 days] from the date of delivery or, in the case of non-delivery, from the date fixed for delivery, shall constitute a waiver by Buyer of all claims with respect to such products.

**13. EXCUSES FOR NON-PERFORMANCE.** If the manufacture, transfer or receipt by either party of any products covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference, and neither party shall be liable to the other for default or delay in performing, except with respect to Buyer's payment obligations.

**14. SELLER'S RIGHTS.** If Buyer should fail in any manner to fulfill the terms and conditions hereof, Seller may defer further shipments until such default is cured. Remedies provided herein shall be in addition to, and not in lieu of, other remedies that may be available to Seller. If for any reason, the quantities of the products covered hereby or of any materials used in the production of the products reasonably available to Seller shall be less than Seller total needs for its own use and for sale, Seller may allocate its available supply of products among its existing or prospective purchasers and/or its own departments, divisions and affiliates in such manner Seller deems proper in Seller's sole discretion, without thereby incurring liability on account of the method of allocation determined or its implementation or for failure to perform this Agreement.

**15. GOVERNING LAW.** This Agreement shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of Utah, without giving effect to its principles of conflicts of laws.

**16. DISPUTE RESOLUTION.** Any dispute, controversy or claim arising out of or related in any way to these Terms and Conditions of Sale and/or any sale and purchase of products hereunder or any transaction contemplated hereby which cannot be amicably resolved by the parties shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in Salt Lake County, Utah. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of Utah. The decision of the arbitrator(s) shall be in writing with written findings of fact and shall be final and binding on the parties. The arbitrator shall be empowered to award money damages, but shall not be empowered to award incidental damages, consequential damages, indirect damages, statutory damages, special damages, exemplary damages, punitive damages or specific performance. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement.

**17. MISCELLANEOUS.** These Seller's Terms and Conditions of Sale are the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by this sale, notwithstanding any other terms that might be contained in any purchase order or other document received from Buyer or submitted to Seller. These Terms and Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and can only be modified or changed in writing and signed by authorized representatives of both parties. No waiver by Seller of any of Seller's Terms and Conditions of Sale or any breach hereof shall constitute or be deemed to be a waiver of any such term or any such breach in any other case. No waiver shall be deemed to occur as a result of the failure to enforce any term or condition of these Seller's Terms and Conditions of Sale.