

ISC BUILDING MATERIALS

TERMS AND CONDITIONS OF SALE

1. **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 to Buyer are rejected without further objection by Seller. Buyer agrees to these terms and conditions if Buyer fails to reject them immediately upon receipt hereof, takes possession of the goods to be sold under this order, or otherwise proceeds in any way with the transaction proposed.
2. **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.
3. **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 unless other payment terms are stated by Seller on the face hereof. If Buyer fails to pay in full, Buyer agrees to pay a default charge of 1.5% per month on the balance outstanding 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.
4. **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. Buyer acknowledges that all goods and related materials so repossessed will be Seller's property.
5. **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 hereof, all prices are F.O.B. Seller's place of business, as noted in the F.O.B. box on the face hereof. If goods are shipped or delivered directly 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 or 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 all such 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 of loss for all goods during shipment and all shipments will be insured, if at all, 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.
6. **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 costs, including 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.
7. **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 or consequential damages, irrespective of the cause or origin, results directly or indirectly to persons or property, 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 ANY WARRANTY OR STANDARD OF STRICT LIABILITY). Should Buyer wish to increase this limitation, it may negotiate with Seller to pay for such an increase.
8. **Acceptance of Goods.** Buyer will examine all goods immediately upon receipt and will be deemed to have accepted such goods as conforming unless written notice to the contrary is sent to Seller within 5 days of Buyer's receipt of goods.
9. **Limited Warranty; Limitation on Liability.** Seller warrants that the goods are as described on the face of this order and to be 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.

AS TO THE GOODS MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, whether used alone or in combination with other materials. Notwithstanding the foregoing, 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 as to manufacture, Seller may at its option and solely as an accommodation to Buyer, repair, replace or issue credit for such goods, provided, however, that nothing in this sentence is to be construed as a commitment or obligation of Seller to do any of the foregoing or as a warranty of Seller and IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF BUYER OR OF ANY THIRD PARTY.

10. **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 prepay 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 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 91st day of discovery of such a loss or such claim is waived.
11. **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 States 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 and hold the Seller harmless against any claim, loss or cost incurred by Seller in connection with any application or use of the goods by Buyer, 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 or hazard presented by products or processes into which the goods are incorporated. 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.
12. **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, 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 of foreign patent relating to the manufacture or sale of the goods covered by such a patent.
13. **Custom Orders.** If Buyer places an order with Seller or goods that are custom-made for buyer and subsequently cancels that order, Buyer agrees to pay Seller its published price for such goods as are completed and an equitable price based upon the completion of such goods as are in the process at the time of cancellation.
14. **Applicable Laws; Attorney's Fees & Interest.** This instrument and performance hereunder will be governed by the laws of the State of Texas applicable to contracts made and performed entirely in that state. Buyer agrees that it may bring suit against Seller only in Dallas 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 Dallas 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. Interest on any outstanding balance owed to Seller by Buyer hereunder shall bear interest at the rate of 1.5% per month (18% per annum) until paid.
15. **Entire Agreement.** These terms and conditions constitute the entire agreement between Buyer and Seller relating to the goods sold hereunder and supercede all prior 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.

Agreed, and made a part of our credit application:

Printed name _____ Company Name _____
 Signed Name _____ Title _____ Date _____