

Terms of Sale

1. Applicable Terms. The "Terms of Sale" listed below are the exclusive terms and conditions governing any Agreement, whether oral or written, between Buyer and City Lumber Company, Inc. ("Seller") for the sale and purchase of materials and supplies ("Materials"). The term "Agreement" as used herein means any quotation, purchase order, acknowledgement, invoice and/or statement together with any attachment thereto, any document expressly incorporated by reference, this credit application and these Terms of Sale.

2. Delivery. Seller shall not be liable for any delays in delivery or non-delivery, in whole or in part, by Seller caused by one or more of the following: acts of governmental authority, laws or regulations; strikes; fires, floods, earthquakes, severe weather, epidemics, quarantine restrictions, or other casualties; wars or riots; shortage of cars or trucks, wrecks, or other delays in transportation; inability to obtain Materials from usual sources; and/or any other causes beyond the reasonable control of Seller. In the event of any delays in performance due to such causes, the date of delivery or performance shall be deferred for a period equal to the time lost by the reason of delay. Upon and after delivery, risk of loss or damage to the Materials shall be Buyer's risk. If delivery is by common carrier, delivery by Seller to the carrier at the point of origin shall constitute delivery to Buyer and thereafter the shipment of the Materials shall be at Buyer's risk and any claim for loss or damage must be filed by Buyer against the carrier. If upon delivery to a job site, there is not present at the job site an agent of Buyer authorized to accept delivery, then Seller reserves the right to deposit the Materials at the delivery area previously designated by Buyer and the Buyer waives signature requirement.

3. Payment. Statements shall run from the 26th of each month through the 25th of the following month. Payment is due and payable on the 10th of each month following receipt of such statement (the "Due Date") and shall be considered past due on the 20th of each month. Seller may apply any payment from Buyer against any obligation of Buyer to Seller, without discharging the remainder of any obligation, regardless of any condition, provision, or statement appearing on or relating to Buyer's payment. On any statement not paid in full by the Due Date, Buyer shall incur a service charge of one and one-half percent (1½%) each month of the outstanding obligation. A \$25.00 handling charge will be assessed to all checks returned and marked NSF. Buyer agrees to pay all costs associated with collection of Buyer's account, including, but not limited to, attorney's fees of 30% and legal costs.

4. Credit. Buyer's acceptance of Materials indicates Buyer's agreement to pay the finance charge specified on each invoice and/or statement. Delivery of Materials, on an open basis, may not be made to Buyer if such delivery would cause Buyer's account to exceed the established line of credit. Seller may at any time, and in its sole discretion, limit, alter or cancel the credit of Buyer, and as a consequence may declare payment due immediately in cash before delivery of any unfilled portion of an invoice. Buyer represents and warrants to Seller that it is solvent at the time of this credit application and Buyer hereby makes a continuing representation and warranty of its solvency at the time of each tender or delivery. Buyer hereby agrees to give Seller advance notice by certified mail or reputable overnight carrier of any change in the business structure of Buyer (i.e., incorporation, changed ownership, etc.). Without such notice, the original principals to whom credit was extended shall remain liable to Seller.

5. Default. Upon any default or breach by Buyer of this Agreement, or if Buyer shall become insolvent or if a bankruptcy is filed by or on behalf of Buyer, Seller may cancel this Agreement, but Buyer shall remain liable for damages; defer any deliveries hereunder; declare all outstanding invoices and/or statements immediately due and payable; sell all or any part of the Materials covered by this Agreement at a public or private sale (Buyer shall be responsible for the costs and expenses of such sale and any deficiency and Seller shall have the right to become the purchaser of such Materials at such sale); obtain damages from Buyer equal to ten percent (10%) of the obligation of Buyer to Seller to cover Seller's costs of reselling and additional overhead. All rights and remedies of Seller under this Agreement shall be nonexclusive, cumulative, and in addition to all other rights and remedies of Seller under any other Agreement or applicable law.

6. Security Interest. Buyer hereby grants Seller a continuing security interest in all Materials to secure Seller for all existing and future obligations of Buyer, however arising; Buyer also hereby authorizes Seller to file financing statements and/or any other documents necessary to perfect said security interest. Seller's rights as a secured party shall be all those available pursuant to applicable law.

7. Warranty. ALL MATERIALS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED ARE MADE WITH RESPECT TO THE MATERIALS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

8. Limitation of Liability. Buyer's remedies under this Agreement shall be limited to the sums paid by Buyer to Seller for the Materials. In no event shall Seller be liable for consequential, special, punitive, indirect or incidental damages or loss of profits arising out of a delay or failure of delivery, defects in the Materials, a breach by Seller of this Agreement, or under any other theory of recovery in law, equity or otherwise. Seller shall not be liable to indemnify or defend any other person or entity against any loss, damage or injury regardless of any language purported to be expressed or implied.

9. Indemnity. Buyer assumes all liability and agrees to indemnify Seller against any claims of third persons for injuries or damages resulting in the manufacture or sale of the finished product made, in whole or in part, from the Materials.

10. Returns. All Materials delivered hereunder shall be deemed accepted by Buyer unless Buyer notifies Seller in writing of any alleged nonconformity of the Materials within five (5) days of delivery; provided that Buyer may only reject Materials for failure to meet the Materials specification. Any claim not made within five (5) days of delivery is deemed waived by Buyer. Within ten (10) days of receipt of the notation of said defects in Materials, Buyer shall make the Materials available for inspection by Seller at a place designated by Seller and without cost to Seller. Failure to do so shall constitute acceptance by Buyer and waiver of all claims for defects. Seller may examine and at its discretion accept such Materials for return or make allowances agreeable to both parties. If the Materials are accepted for return, Seller shall replace the Materials within a reasonable time in full satisfaction of all claims of Buyer. When approved in writing by Seller, Buyer may return nonconforming Materials within thirty (30) days of approval of the return. Buyer shall pay a fifteen percent (15%) restocking charge on any returned Materials. However, where custom goods are involved, Buyer shall be responsible for all related work in progress. Special order items are not subject to return except when specifically approved by the seller and/or manufacturer and may be subject to a different restocking fee.

11. Miscellaneous. This Agreement shall be governed according to the laws of the State of Tennessee and Buyer consents to personal jurisdiction in the State of Tennessee. This Agreement shall inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns. Buyer may not assign this Agreement without the express written consent of Seller. This Agreement contains the entire agreement between Seller and Buyer and supersedes all prior oral and written understandings between Buyer and Seller concerning the Materials, and any prior course of dealings or usage of the trade not expressly incorporated herein. No change, modification, or waiver of this Agreement shall be binding upon Seller unless signed in writing by Seller. No waiver by either party of any default shall be deemed a waiver of any subsequent default. Any facsimile or electronic communication of any Agreement between Buyer and Seller shall be binding upon the parties as if it was an original copy thereof.

Date: _____

Signature (Acceptance of above terms)