

Additional Terms and Conditions of Sale Incorporated in Each Southern Materials Company Quotation

1. **SALE AGREEMENT.** The goods or products shall be sold in accordance with the terms and conditions in Southern Materials Company's Quotation ("Seller") and these additional terms and conditions ("Terms"), and such other terms as Seller agrees to in writing, all of which shall be the Agreement of the parties with respect to the sale of goods. In the event of any conflict in the terms stated in the Quotation, and these Terms the Quotation shall control.

2. **ACCEPTANCE.** This sale is conditioned upon Purchaser's written acceptance of all terms and conditions of this Quotation. Seller rejects any and all terms in any purchase order or other document of Purchaser which are in addition to, different from, or inconsistent with this Quotation. This Quotation is an offer to sell, subject to final approval by Seller. The offer may be withdrawn at any time prior to Seller's final approval, and shall expire automatically if not accepted within 30 days from the date hereof, unless otherwise agreed to by Seller.

3. **PAYMENT.** Payment is due at the time of the order unless credit terms are provided on the face hereof, or otherwise provided by Seller. Any balance not paid when due shall draw interest at the rate of 1.5% per month (18% A.P.R.) on the average daily balance until paid or the highest rate allowed by applicable law, whichever is less. Notwithstanding paragraph 14 hereof, the parties agree that Seller may bring suit to collect any unpaid balance due from Purchaser (or arbitrate at Seller's option), and Purchaser shall pay all attorney fees and court costs incurred by Seller in connection with the suit to collect such unpaid balance, and all of Purchaser's defenses, avoidances and counterclaims (other than the defense of payment) shall be submitted to arbitration as provided in paragraph 14. All payments shall be made in U.S. currency.

4. **CREDIT APPROVAL.** If Seller allows credit terms to Purchaser, the obligations of Seller hereunder, shall be subject to the condition precedent that Seller's credit department approves the credit of Purchaser.

5. **DRAWINGS.** Any Seller drawings approved by Purchaser and its agents and representatives, shall be deemed to be in conformance with all project drawings and specifications provided by the Purchaser.

6. **SHIPMENT.** Any shipment date designated on the face hereof is estimated and not guaranteed. Seller may ship the goods by any mode, and in full or partial shipments. Seller shall not be liable for any delay in shipment of the goods due to delays caused by its suppliers, and causes beyond its control, including without limitation, acts of God, wars, terrorism, sabotage, casualties, accidents, labor disputes or shortages, governmental laws, ordinances, rules or regulations (such as priorities, requisitions, allocations and price adjustment restrictions), or an inability to obtain material, equipment or transportation.

7. **TITLE, RISK OF LOSS.** The goods shall be shipped FOB Seller's plant, and title to the goods and all risks of loss with respect to the goods shall transfer to the Purchaser after they have been placed in the possession of a carrier.

8. **INSPECTION.** Purchaser shall inspect the goods at the time and place of delivery and Purchaser agrees that such occasion shall constitute a reasonable opportunity for its full inspection. The parties agree that Purchaser's failure to reject the goods within three (3) business days shall constitute acceptance of the goods.

9. **TAXES AND DUTIES.** Purchaser shall pay, in addition to the purchase price, all sales, use and excise taxes, tariffs, duties and other charges imposed by any country, state, locality or other political subdivision in connection with the sale of the goods. For tax purposes, title to the goods shall pass from Seller to Purchaser upon being loaded for shipment

10. **WARRANTIES.** Seller makes no representation and disclaims all warranties, express or implied, for any product manufactured by a third party which may be sold by Seller, such products are sold by Seller, AS IS, for such products the warranty, if any, shall be the warranty provided by the original manufacturer, and Purchaser shall look solely to the original manufacturer for any warranty claim. For goods manufactured by Seller, Seller warrants that such goods shall be free of defects in workmanship for a period of one year from the date of shipment, or such other period as provided on the face hereof, and if goods do not conform to this warranty, Seller at its election shall repair or replace the goods, or refund the purchase price for the portion of the goods giving rise to the warranty claim, and in all cases the cost to repair or replace other property, the cost of removing and installing the goods, and freight are not included in this warranty; and provided that this warranty does not extend to products not of Seller's manufacture, and as to such products Seller conveys to Purchaser the warranty, if any, provided by Seller's vendor. **THIS WARRANTY IS EXCLUSIVE, AND SELLER DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED.**

Oral statements by seller's employees or representatives do not constitute warranties, shall not be relied upon by Purchaser, and are not part of this Agreement. If Seller provides a warranty, it is conditioned upon Purchaser's payment in full. Any warranty offered by Purchaser to its customers, in excess of that offered by Seller, shall be the responsibility of Purchaser.

11. **LIMITATION OF LIABILITY.** The parties' exclusive remedy for claims arising hereunder shall be for damages. Neither party, under any circumstances, shall be liable to the other for special or consequential damages. The remedies of the Purchaser, and any other party, arising out of or related to the goods set forth herein are exclusive, and the liability of the Seller with respect to the goods, or anything done in connection therewith, or from the manufacture, sale, delivery, resale, installation or use of any of the goods sold by Seller, whether arising out of contract, negligence, strict liability, tort, or under any warranty, or otherwise, shall not, exceed the price charged by Seller for the portion of the goods giving rise to such liability.

12. **CANCELLATION AND RETURNS.** Purchaser may not cancel this agreement, or return goods without the prior consent of Seller. For special order goods the cancellation charge shall equal the total selling price less the estimated direct labor and materials not expended less the salvage value of materials already purchased, and for returns, the re-stocking fee may equal the price of the goods. For stock items, the cancellation and return charge shall equal a re-stocking fee of 25% of the total selling price, provided that in the case of a return the goods are returned, unused, undamaged, in the original unopened, unmarked and undamaged packaging, of current design and series, and such return is received by Seller, freight prepaid, not later than 30 days after Seller's consent to the return. Goods cut to length or modified to Purchaser's specifications, obsolete, discontinued or close-out items, broken or fragile items, custom goods or goods not returnable to Seller's vendor, or goods without Seller's invoice number, are not returnable for credit.

13. **REMEDIES.** Except as to warranty matters, the remedies provided herein are cumulative and in addition to any other remedies allowed by law or in equity. The failure of a party to exercise any right or remedy shall not constitute a waiver of the right to exercise that, or any other remedy; and no waiver of any breach or non-compliance of any provision herein shall operate as a waiver of any other breach or non-compliance of the same or any other provision.

14. **APPLICABLE LAW, ARBITRATION.** This Agreement is governed by the internal laws of the State of Missouri. The parties agree that any proceedings in court or in arbitration shall be brought exclusively in Springfield, Missouri. **THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY.** Except as provided in paragraph 3 hereof, any dispute, controversy or claim arising out of or relating to this Agreement or any purchase order issued by Purchaser and accepted by Seller hereunder (including, but not limited to, any dispute relating to the existence, interpretation, breach or termination hereof or thereof) that cannot be resolved by the parties shall be resolved by binding arbitration administered by, and in accordance with the Construction Industry Rules of the American Arbitration Association. The arbitration award may be reduced to judgment by any court having jurisdiction thereof. The cost of the arbitration shall be shared equally between the parties, and each party shall bear its own attorney fees and expenses.

15. **MISCELLANEOUS.** This Agreement is a complete and exclusive statement of the terms of the Parties' agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein, and no modification shall be binding unless made in writing and signed by the party to be charged. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by separate consideration and is in a writing signed by the party to be charged. Neither party shall assign its rights or delegate its duties under this Agreement. Facsimile and E-mail signatures of the parties shall constitute original signatures for all purposes. The invalidity of any portion of this Agreement shall not affect the validity of any remaining portions thereof. Certain goods may be accompanied by OSHA required MSDS prepared by the Seller's vendor, and Seller makes no warranty or recommendation with respect to the information contained in any MSDS, and the Purchaser is responsible for any reliance on such information and the use or application of such goods

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.

CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF HE IS NOT PAID.

§ 429.013. Definitions -- subcontractor to have lien, when -- consent of owner, form -- requirements -- penalties for violation

1. The provisions of this section shall apply only to the repair or remodeling of or addition to owner-occupied residential property of four units or less. The term "owner" means the owner of record at the time any contractor, laborer or material man agrees or is requested to furnish any work, labor, material, fixture, engine, boiler or machinery. The term "owner-occupied" means that property which the owner currently occupies, or intends to occupy and does occupy as a residence within a reasonable time after the completion of the repair, remodeling or addition which is the basis for the lien sought, pursuant to this section. The term "residential property" means property consisting of four or less existing units to which repairs, remodeling or additions are undertaken. This section shall not apply to the building, construction or erection of any improvements constituting the initial or original residential unit or units or other improvements or appurtenances forming a part of the original development of the property. The provisions added to this subsection in 1990 are intended to clarify the scope and meaning of this section as originally enacted.

2. No person, other than an original contractor, who performs any work or labor or furnishes any material, fixtures, engine, boiler or machinery for any building or structure shall have a lien under this section on such building or structure for any work or labor performed or for any material, fixtures, engine, boiler, or machinery furnished unless an owner of the building or structure pursuant to a written contract has agreed to be liable for such costs in the event that the costs are not paid. Such consent shall be printed in ten point bold type and signed separately from the notice required by [section 429.012](#) and shall contain the following words:

CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF HE IS NOT PAID.

3. In addition to complying with the provisions of [section 429.012](#), every original contractor shall retain a copy of the notice required by that section and any consent signed by an owner and shall furnish a copy to any person performing work or labor or furnishing material, fixtures, engines, boilers or machinery upon his request for such copy of the notice or consent. It shall be a condition precedent to the creation, existence or validity of any lien by anyone other than an original contractor that a copy of a consent in the form prescribed in subsection 2 of this section, signed by an owner, be attached to the recording of a claim of lien. The signature of one or more of the owners shall be binding upon all owners. Nothing in this section shall relieve the requirements of any original contractor under [sections 429.010](#) and [429.012](#).

4. In the absence of a consent described in subsection 2 of this section, full payment of the amount due under a contract to the contractor shall be a complete defense to all liens filed by any person performing work or labor or furnishing material, fixtures, engines, boilers or machinery. Partial payment to the contractor shall only act as an offset to the extent of such payment.

5. Any person falsifying the signature of an owner, with intent to defraud, in the consent of owner provided in subsection 2 of this section shall be guilty of a class C felony. Any original contractor who knowingly issues a fraudulent consent of owner shall be guilty of a class C felony.

§ 429.012. Original contractor to have lien, when--requirements, failure to provide notice, penalty, exception--agents, insurance companies or escrow, accepting fraudulent lien waiver or false affidavit for gain, penalty

1. Every original contractor, who shall do or perform any work or labor upon, or furnish any material, fixtures, engine, boiler or machinery for any building, erection or improvements upon land, or for repairing the same, under or by virtue of any contract, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to [section 67.410, RSMo](#), shall provide to the person with whom the contract is made or to the owner if there is no contract, prior to receiving payment in any form of any kind from such person, (a) either at the time of the execution of the contract, (b) when the materials are delivered, (c) when the work is commenced, or (d) delivered with first invoice, a written notice which shall include the following disclosure language in ten-point bold type:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

2. Compliance with subsection 1 of this section shall be a condition precedent to the creation, existence or validity of any mechanic's lien in favor of such original contractor.

3. Any original contractor who fails to provide the written notice set out in subsection 1 of this section, with intent to defraud, shall be guilty of a class B misdemeanor and any contractor who knowingly issues a fraudulent lien waiver or a false affidavit shall be guilty of a class C felony.

4. The provisions of subsections 1 and 2 of this section shall not apply to new residences for which the buyer has been furnished mechanics' and suppliers' lien protection through a title insurance company registered in the state of Missouri.

5. Any settlement agent, including but not limited to any title insurance company, title insurance agency, title insurance agent or escrow agent who knowingly accepts, with intent to defraud, a fraudulent lien waiver or a false affidavit shall be guilty of a class C felony if the acceptance of the fraudulent lien waiver or false affidavit results in a matter of financial gain to:

- (1) The settlement agent or to its officer, director or employee other than a financial gain from the charges regularly made in the course of its business;
- (2) A person related as closely as the fourth degree of consanguinity to the settlement agent or to an officer, director or employee of the settlement agent;
- (3) A spouse of the settlement agent, officer, director or employee of the settlement agent; or
- (4) A person related as closely as the fourth degree of consanguinity to the spouse of the settlement agent, officer, director or employee of the settlement agent.