

TERMS AND CONDITIONS (for Framing Systems, Inc. Customers)

Framing Systems, Inc. ("Seller") hereby quotes to the party identified on the face hereof or the attached hereto ("Buyer") the opportunity to purchase the goods identified upon the terms and conditions set forth herein below.

- 1. ACCEPTANCE.** The acceptance of any order from Buyer pursuant to this quotation is conditioned upon the acceptance by Buyer of all terms and conditions contained in this quotation. Any inconsistent or additional terms contained in the Buyers purchase order or other form of contract are hereby rejected unless expressly accepted in writing by Seller within ten (10) days after the receipt of such purchase order or contract.
- 2. TITLE AND RISK OF LOSS.** Unless otherwise stated herein, title for all goods sold hereunder shall pass to Buyer upon payment to Seller in full. Risk or loss shall pass upon delivery to project site listed on this quotation. Signed Bill of Lading constitutes acceptance of listed goods complete and free of damage.
- 3. PRICES AND TAXES.** All Buyers with an approved credit account shall make payment within thirty (30) days from the date of invoice. Unless otherwise stated and agreed upon in writing all sales are subject to a payment schedule which shall be submitted by Framing Systems upon contract signing. A 10% deposit is required on all orders over \$100,000. Unless otherwise stated herein, the prices quoted are F.O.B. Project Site listed on this quotation. Payment for all special order inventory acquired by Seller to complete Buyer's current order or anticipated orders shall be due upon demand by Seller. Any portion of the price which is not paid within thirty (30) days shall bear interest from the date due at the rate of 1 ½% per month until paid. The price quoted herein is subject to applicable price adjustments in effect at the time of shipping. Any invoice not paid in full within seventy-two (72) days will be sent to collections, the cost of which, including court costs and reasonable attorneys' fees will be the Buyer's sole responsibility.
- 4. CANCELLATION OR CHANGE ORDERS.** No orders may be withdrawn or cancelled by Buyer, nor may they be deferred when ready, unless Seller shall have previously approved such withdrawal, cancellation, or deferral in writing and Seller shall have been paid a withdrawal, cancellation or deferral charge of a reasonable amount acceptable to the Seller. In the event Buyer shall request changes in its order after receipt thereof by Seller, it shall be responsible for all charges and expenses reasonably incurred by Seller with respect to such changes. Any dates or schedules which may be specified for the delivery of the goods purchased hereunder have been slated only approximately and are estimated from the date of the receipt of the signed order, with complete specifications, designs, approved submittals and other information reasonably requested by Seller to be provided in order to proceed with the manufacture and delivery of the goods. Seller shall not incur any liability, either direct or indirect, nor shall this quotation or any other purchase order be cancelled as a result of any delays in meeting such dates or schedules.
- 5. DELIVERY; STORAGE FEES.** All goods will be shipped per the mutually agreed upon project / payment schedule. Seller may agree at Seller's discretion to delay shipment and store completed goods for a period of time at the request of the Buyer. In such event, the Buyer agrees to pay storage fees at a rate of 1% of the invoiced amount per month until shipped. Storage of any goods shall not delay the Buyer's obligation to timely pay all invoices in accordance with Section 3 above. If payment is not made as agreed, the Buyer agrees to pay a late fee of 1 ½% per month until paid in full. The Buyer agrees to accept shipment of completed goods upon the expiration of the period of time during which the Seller has agreed to store the completed goods. The failure of the Buyer to accept such completed goods or to pay any invoices for stored goods in accordance with the provisions of Section 3 above shall be a breach of this agreement and Seller may stop production (at Seller's discretion) and shall not be liable for any penalties or liquidated damages for project delays. In the event of a Buyer "Stop Work Order" or payment delay causing the Seller to stop production, a re-mobilization fee will apply and penalty fee for each lost production day of \$50,000.
- 6. DELAY IN PERFORMANCE.** Seller shall not be responsible or liable for any delays or failures in the manufacture or delivery of the goods due to any cause or condition beyond the control of the Seller. Approved submittals must be received in accordance with dates outlined in the project /payment schedule. Delays in receiving approved submittals will result in delays of product production and delivery for which the Seller takes no responsibility or liability.
- 7. LIMITED WARRANTY.** Seller makes no warranty whatsoever, except as to title, with respect to goods manufactured and/or designed to Buyer's or any other party's specifications or with any material selected by any party other than Seller, and Buyer shall, at its own expense, defend and hold Seller harmless from and against any claim, suit, expense or otherwise which shall be asserted or brought against Seller by reason of Seller's manufacture or sale of such goods. All goods are sold and fabricated with the understanding that Buyer has provided critical dimensional information and has had opportunity to review and approve submittal information reflecting dimensions received. Buyer acknowledges an adequate opportunity to review this quote and subsequent submittals to determine the suitability and compatibility of such goods for Buyer's purposes. Any statements, technical information and recommendations concerning goods sold or samples provided by Seller are based on data provided to Seller by its suppliers and believed to be accurate, but do not constitute a guarantee or warranty. Seller makes no representation or warranty that the delivery or subsequent use of the goods ordered shall be free from the claim of any third party by way of infringement.

Seller at its sole option, will replace any of the goods which fail to meet the Buyer's specifications or are due to Seller's defective materials or workmanship; provided, however, if the Seller determines that replacement is not commercially practicable, Seller shall issue a credit in favor of Buyer in an amount not to exceed the purchase price of the goods. All claims for breach of this warranty must be made to Seller within ten (10) days after the date of shipment of the product to which the claim relates and must be returned at Buyers expense to the Seller's plant in accordance with Seller's written material return authorization and instructions. Seller's warranty shall extend only to the original Buyer. Seller's warranty does not cover the effects of normal wear, tear, deterioration or abuse of the goods or the effects of improper shipping, storage or handling of the product.

EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED ABOVE, THERE ARE NO OTHER WARRANTIES OF GUARANTEES, EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR ARISING UNDER CUSTOM OF TRADE INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF THE SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR ANY TERMS THEREOF.

- 8. LIMITATION OF LIABILITY.** In no event shall Seller be liable to Buyer or to any third party for consequential, incidental or special damages, or for lost profits, resulting from or in any manner related to the goods, their delivery, non-delivery, design, use, or any inability to use the same, whether such damages be claimed under contract, tort or any other legal theory. Buyer understands that the sole and exclusive remedy of the Buyer shall be the replacement of any defective product pursuant to the warranty provision hereinabove. This limitation of liability shall survive the termination, expiration or cancellation hereof. Any action by Buyer against Seller for breach of contract must be commenced within one (1) year after the cause of action accrued.
- 9. INDEMNIFICATION.** To the fullest extent permitted by law, Buyer shall defend and indemnify Seller against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorney fees) on account of any damaged property or injury or death of persons (including, without limitation, Buyer's employees) arising out of the Buyer's negligence or the negligence of its employees, subcontractors, agents or assigns. This indemnity obligation of Buyer will survive the expiration, termination or cancellation hereof.
- 10. INTEGRATION.** There are no understandings between the parties hereto other than those expressly stated in this quote, and, when accepted by Buyer's Order this constitutes the only agreement between the parties hereto with respect to the subject matter of the quote, and the entirety of the parties agreement with respect to the subject matter of the quote. Any terms and conditions of a purchase order or change order, to the extent they purport to modify or supplement the terms of this quote, shall be void and ineffective unless agreed to by the Seller in writing. Delivery of a purchase order by the Buyer pursuant to this quotation shall be deemed to be an acceptance by Buyer of the terms and conditions of this quotation and the terms and conditions included herein. Any different terms or conditions in any purchase order, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Seller and Seller specifically objects to the inclusion of any different or additional terms or conditions by Buyer in confirming or accepting this quotation. If Buyer does include different or additional terms and conditions in its purchase order, acceptance, confirmation or other written form sent in a response to this quotation, neither Seller's delivery of all or part of the goods, nor any other action except a written notice from Seller shall constitute acceptance of such additional or different terms, but instead the terms and conditions of this quotation shall govern.
- 11. MISCELLANEOUS.** The terms and conditions applicable to the transaction provided herein, and the rights and duties of the parties, shall be determined and construed in accordance with, and shall be governed by, the laws of the State of Ohio without giving effect to its principles of conflicts of law. Buyer hereby consents to the personal jurisdiction of the courts of the State of Ohio located within Cuyahoga County, Ohio for the purposes of resolving any dispute or claim arising in connection with said transaction. Buyer's rights and obligations may not be assigned or transferred without prior written consent of Seller. Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party. The failure of either party to insist or enforce in any instance strict performance of any of the terms of this contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.