

AMERICAN LUMBER CO. INC.  
TERMS AND CONDITIONS

Complete Agreement. These Terms and Conditions (“Terms”) are incorporated by reference and made an integral part of any and all Quotes, Orders, Confirmations, or similar arrangements pursuant to which American Lumber Co. Inc. (“Seller”) provides goods or services to a buyer (“Buyer”). These Terms, together with the specific prices, quantities and delivery terms set forth on the face of an Order issued by Seller, represent the final and complete agreement of the parties, and these Terms apply to all sales of goods and services by Seller, except only if and then to the extent expressly modified or excluded by the express written agreement of Seller as evidenced by the signature to such amendment or exclusion by an officer of Seller. Buyer is deemed to have accepted the Terms at each time it places an order with Seller or executes or accepts a Quote, Order, Confirmation, or similar arrangement with Seller. Buyer’s only opportunity to reject the Terms is to not place an order with Seller. Any terms and conditions contained in Buyer’s documentation, including, but not limited to, its quote, order, or similar documentation, shall not be binding on and is expressly rejected by Seller. The foregoing provision applies despite Seller’s actual or constructive knowledge of existing contradictory terms and conditions.

Quotes. Quotes may be provided from time to time. Quotes are not binding on Seller, and are subject, among other things, to prior sale, pricing changes, changes in materials and unavailability.

Orders. Orders that are accepted by Seller shall be reflected in a Confirmation emailed to the address provided by Buyer. Buyer shall be responsible to Seller for ensuring receipt of the Confirmation and ensuring the accuracy of the terms required by Buyer on any Confirmation, including any applicable specifications.

Cancellation of Order. NO ORDER MAY BE CANCELLED OR CHANGED BY BUYER EXCEPT WITH SELLER’S EXPRESS WRITTEN ACKNOWLEDGMENT OR CONSENT. Accepted cancellations may be subject to a cancellation charge. If the Order provides for Goods which are subject of a special order, then Seller may cancel the Order without any liability to Buyer if the Seller is unable to procure the requested special order Goods in accordance with Buyer’s provided specifications on terms which Seller deems reasonable.

Delivery. Buyer may indicate on the Order whether the Goods are to be picked up at Seller’s place of business or delivered to Buyer. Buyer acknowledges that Seller’s products (and/or the materials used in the production of the products) are purchased on the market, and can therefore be subject to delays in deliveries or supply shortages, and Seller shall not be liable to Buyer in any way for any delays in Goods availability or delivery. Seller shall have the right, in its sole discretion, to schedule and reschedule all delivery and pick-up dates. Seller shall not be liable to buyer for delays in expected delivery dates, pick-up dates, shipping dates, lead times, or the like.

Buyer shall have an agent at the location for delivery of the Goods during normal receiving hours on the delivery date. In the event Buyer fails to have an agent at the location for delivery of the Goods on the delivery

date, Seller may, in its sole option, assess a freight and handling fee for the missed delivery. Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract, and the Seller may invoice separately for each installment.

Pickups are available only by prior arrangement and must be scheduled in advance. Buyer must abide by all Seller policies as in effect from time to time pertaining to pickups. Seller can refuse a pickup for any reason, including lack of driver identification, unsuitability of vehicle, inadequate Buyer personnel present to load vehicle and any other reason at Seller’s discretion. Seller’s failure to refuse a pickup does not constitute certification by Seller of suitability or safety of driver or vehicle. Buyer is specifically advised of the following in the case of pickups: Seller’s sole role will be to bring the order to the vehicle via forklift and place it on the available trailer deck or beside the vehicle if it lacks side forklift access; Goods must be inspected upon pick up; damage or short-shipping which could have been identified at pickup will be deemed to have occurred after departure and any associated claims will be denied; driver requests to alter tallies, pick through pieces, add or remove items etc. will be denied; Buyer acknowledges that Seller premises are an active lumberyard, and assumes all risk of damage to property and injury or death to persons.

Risk of Loss and Title to Goods. Risk of loss or damage to the Goods shall pass to Buyer at: (i) in the case of delivery of the Goods, when Seller tenders delivery of the Goods to Buyer, Buyer’s agent, or a carrier, as applicable; or (ii) in the case Buyer, Buyer’s agent, or a carrier, is designated to pick-up the Goods from Seller, at the commencement of pick-up.

Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, title to the Goods shall not pass to Buyer until Seller has received in readily available, cleared funds or cash, payment in full of all amounts owed from Buyer to Seller for the Goods (including, but not limited to, the Purchase Price, freight, delivery and transportation charges). Until such time as title for the Goods passes to Buyer pursuant to these Terms, Buyer shall hold the Goods as Seller’s fiduciary agent and bailee, and shall keep the Goods separate from the goods of Buyer and third parties, properly stored, protected, insured, and identified. Seller shall have the right, but not the obligation, to repossess Goods that have not been paid for, and Buyer will be responsible for the costs thereof.

Shortage and Non-Conforming Goods Claims. Any claim for a shortage of Goods or that such delivered Goods are non-conforming must be made to Seller in accordance with the following procedures: Visible damage/defect must be noted on shipping documents at the time of receipt; hidden damage/defect must be identified and claimed in writing within one (1) week of receipt. Claims related to mold/mildew will be denied if not claimed within 24 hours of delivery. In particular, products susceptible to mold or moisture damage must have bags or wrapping (applied to protect material in transit) removed promptly on delivery, as protective wrappings can trap moisture which can lead to mold if not removed promptly as intended. Failure to provide notice as aforesaid shall constitute Buyer’s complete acceptance of the Goods in the manner, amount, and conformity delivered. If Buyer timely submits a claim to Seller, Seller will pick up the rejected Goods on the next delivery to Buyer’s yard, and a credit issued upon confirmation of the validity of the claim. Buyer acknowledges that lumber quantities and tallies are approximate; under/overship and length substitutions are expressly permitted consistent with industry standard, unless otherwise expressly noted on Seller’s Confirmation.

Return of Goods. Goods may not be returned. Notwithstanding the foregoing, Seller may, in its sole discretion, accept the return of certain Goods on a case-by-case basis, but in such case of Seller's acceptance of the return of certain Goods, Seller shall be entitled to assess a Return and Restocking Fee, the amount of which is to be determined in Seller's sole discretion. Returns are not permitted on special order or custom-modified material.

Purchase Price and Payment. The Purchase Price shall be the price for the Goods listed on the Confirmation. In the event no price for the Goods is listed on the Confirmation, the Purchase Price shall be the price listed on Seller's standard price list current as of the date of the Confirmation. The Purchase Price shall not include taxes, levies, or charges against the Goods and/or related services, nor shall it include freight, delivery, or transportation charges or taxes, and Buyer shall be responsible for the payment of all taxes, levies, or charges against the Goods and/or related services, and freight, delivery, and transportation charges and taxes.

Seller shall provide Buyer an invoice, detailing all charges and amounts then due from Buyer to Seller, including, but not limited to, the Purchase Price, any applicable storage fees, interest, transportation charges, delivery charges, late fees, taxes which Seller must collect, etc. All invoices are due and payable as provided in the Confirmation.

If Buyer fails to make any invoice payment when due hereunder, Seller shall be entitled, cumulatively, to all rights and remedies available to it, and, without limitation, the following rights and remedies: all amounts due under the invoice shall be charged a late fee equal to one and one half percent (1.5%) of the total amount due under the invoice; all amounts due under the invoice shall bear interest at a rate equal to eighteen percent (18%) per year of the total amount due under the invoice, or the maximum rate of interest allowed under applicable law, whichever is greater, until payment in full of the invoice is received by Seller; Seller shall be entitled to apply any payments from Buyer to such invoices in such priority as Seller shall determine appropriate; Seller may decline to accept other Orders, or stop delivery or pick-up on pending Orders.

Indemnification. Buyer shall defend, indemnify and hold harmless Seller from all loss or damage sustained by Seller, and from and against all claims asserted against Seller with respect to the Goods or services and/or these Terms arising in whole or in part out of Buyer's, its agents', employees', and/or customers' (a) failing to follow specifications, instructions, warnings, or recommendations furnished by Seller or a manufacturer; (b) failing to comply with all applicable legal requirements including without limitation the Occupational Safety and Health Act of 1970, as amended; (c) misusing or making misrepresentations as to the goods; (d) being negligent; (e) providing designs, plans, specifications or other instructions which infringe or are alleged to infringe any patent, trademark, copyright, or other intellectual property right; and/or (f) any damage to property or injury to death to persons occurring during any pick-up at Seller's premises. Buyer hereby waives and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled. The term "Seller" shall include Sellers, its officer, directors, agents, employees, subcontractors, parents, subsidiaries, divisions and affiliates.

DISCLAIMER OF WARRANTIES. SELLER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND SUITABILITY. AS TO ANY GOODS SUBJECT TO A MANUFACTURER'S WARRANTY, SUCH MANUFACTURER'S WRITTEN WARRANTY SHALL BE THE ONLY WARRANTY APPLICABLE TO SUCH GOODS, AND BUYER SHALL BE ENTITLED TO LOOK ONLY TO MANUFACTURER IN THE EVENT OF ANY DEFECT IN, PROBLEMS WITH, OR FAILURE OF THE GOODS.

Seller's employees or agents are not authorized to make any representations or warranties concerning the Goods or related services sold by Seller, and any such representations and warranties are disclaimed. In entering into these Terms, Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations or warranties. Any advice or recommendation given by Seller, its employees or agents to Buyer, is followed or acted upon entirely at Buyer's own risk, and, accordingly, Seller shall not be liable for any such advice or recommendation.

LIMITATION ON LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER DISCLAIMS ANY LIABILITY TO BUYER FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, PUNITIVE DAMAGES, PROPERTY DAMAGE, ALL DAMAGES FOR LOSS OF USE, LOSS OF PROFITS OR INCOME, LOSS OF TIME OR INCONVENIENCE, AND ANY AND ALL OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, FORESEEN OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE SALE AND USE OF THE GOODS DESCRIBED HEREIN. SELLER'S TOTAL LIABILITY TO BUYER SHALL BE LIMITED TO THE PURCHASE PRICE PAID BY SELLER FOR THE GOODS IN THE CONFIRMATION WHICH IS THE SUBJECT OF THE CLAIM.

General. These Terms as they apply to current Orders may not be modified, except in writing and executed by the party against whom such modification is being charged. Seller may modify these Terms, for future Orders, by updating these Terms as they appear on Seller's website.

These Terms, and the transactions contemplated or covered hereby, shall be governed by and construed in accordance with the laws of the State of New York.

Any typographical, clerical, or other error or omission, determined in Seller's sole judgment in any sales literature, Quote, price list, Order, invoice, or other document or information issued by Seller shall be subject to correction without any liability on the party of Seller.

Seller's failure to insist upon strict performance of these Terms shall not constitute of waiver of that or any other provision of these Terms or any of Seller's rights under these Terms, nor shall it constitute a waiver by Seller of any subsequent default by Buyer in the performance of the these Terms. No actual waiver by Seller of any default by Buyer in the performance of these Terms shall be considered a waiver of any subsequent default of the same or any other provision.

If any provision of these Terms is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other terms, clauses, or provisions of these Terms shall not be affected thereby.

Any dispute arising out of, under, or in connection with these Terms, or the transactions contemplated or covered hereby, shall be referred to, adjudicated, and settled exclusively in the State and Federal courts in and for Orange County, New York, and all parties hereto consent to jurisdiction and venue in such court; provided nothing herein shall preclude Seller from bringing an action and/or enforcing a judgment in any other jurisdiction. The United Nations Convention on the International Sale of Goods shall not apply to these Terms, or the transactions contemplated or covered hereby.

Buyer may not assign or transfer these Terms or the transactions contemplated or covered hereby, unless agreed to in writing by Seller. Seller may assign or transfer these Terms and the transactions contemplated or covered hereby. These Terms and the transactions contemplated or covered hereby shall inure to the benefit of each party's permitted assigns, permitted transferees, legal representatives, and heirs.

Except for payment obligations, neither party shall be liable or be deemed to have defaulted under these Terms by reason of any delay in performing, or any failure to perform, any of the obligations under these Terms by reason of force majeure, including, but not limited to, an act of God, fire, act of terrorism, war, civil commotion, insurrection, international sanctions or boycotts, material shortages, import or export regulations or embargoes, power failure or breakdown in machinery, labor disputes of whatever nature, or public health emergencies.

ATTORNEYS' FEES; WAIVER OF JURY TRIAL. BUYER WILL REIMBURSE SELLER FOR ITS REASONABLE ATTORNEY FEES AND COURT COSTS AND EXPENSES INCURRED IN ENFORCING THESE TERMS FOLLOWING BUYER'S DEFAULT.

BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THESE TERMS, AND/OR THE TRANSACTIONS CONTEMPLATED OR COVERED HEREBY. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BUYER, NEITHER SELLER NOR ANY PERSON ACTING ON BEHALF OF SELLER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BUYER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR SELLER TO ENTER INTO THESE TERMS AND THE TRANSACTIONS CONTEMPLATED OR COVERED HEREBY, AND THAT SELLER HAS RELIED ON THIS WAIVER.