

TERMS AND CONDITIONS OF SALE

1. **General Conditions:** These terms and conditions of sale apply to all materials, fixtures, equipment, parts and accessories (collectively, "Materials") sold by Little Falls Lumber Company, Inc. and/ or Little Falls Concrete Forming Company, Inc. (the "Seller") and any other services performed by Seller, unless otherwise expressly agreed in writing by Seller. These terms and conditions, together with any quotation submitted by Seller, constitute the entire agreement between Seller and its customer (hereafter referred to as the "Customer"). These terms and conditions supersede all prior and/or contemporaneous negotiations, agreements or understandings, whether oral or in writing, between Seller and Customer with respect to the subject matter hereof. Any terms, conditions, specifications or warranties contained in any purchase order or other instrument submitted by Customer will not be binding upon Seller unless agreed to by Seller in writing.
2. **Acceptance of Order:** All purchase orders are subject to acceptance by Seller. Acceptance shall be indicated either in writing from Seller. Purchase orders shall be deemed to be executed in the State of New York and shall be construed and performed in accordance with the laws of that state.
3. **Price:** The price for all Materials will be set forth in Seller's quotation, if any, or on the invoice. All quotations are based upon specifications submitted by Customer. In the event Customer changes the specifications, the price shall be subject to equitable adjustment.
4. **Terms of Payment:** Payment terms shall be as set forth in Seller's quotation. Any delay in delivery requested by Customer, if accepted by Seller, shall not extend the time of payment. If Customer fails to comply with any terms of payment, Seller may withhold any further deliveries and may declare any unpaid amount to be due and owing immediately.
5. **Taxes and Other Charges:** All occupation, sales, use and other taxes imposed by any governmental authority on the sale between the Seller and the Customer shall be paid by the Customer in addition to the prices quoted or invoiced. In the event the Seller shall be required to pay any such tax, the Customer shall reimburse the Seller therefore unless the Customer has provided the Seller at the time of the order with an exemption certificate or other document acceptable to the authority imposing the same evidencing an exemption from any such tax.
6. **Time of Delivery:** Seller will use all reasonable diligence to meet the scheduled dates for delivery of Materials. Seller shall not be liable for any loss, damage, expense or charge of any kind resulting from delay in delivery that is outside the reasonable control of Seller. Seller will use its reasonable judgment as to the best means of shipment and routing consistent with the nature of the Materials shipped and the shipment schedule, unless special shipping instructions are received from the Customer at least two weeks before the scheduled delivery date.
7. **Force Majeure:** Delays occasioned by embargoes or other governmental action, strikes or labor disputes, shortage or non-delivery of materials, parts or components by suppliers, fire, flood, earthquake or other acts of God, or other causes over which the Seller has no reasonable control shall, upon written notice by the Seller, extend the time of performance under the contract for a period of time equal to the period of delay caused by the force majeure condition plus the delay reasonably incident to the resumption of normal production. In the event of inability for any reason to supply the total demands for the goods specified in the order, Seller may allocate its available supply among any and all purchases on such basis as it may deem fair and practical without liability for failure of performance which may result therefrom.
8. **Manufacturers Warranties Disclaimer:** All Materials supplied hereunder are manufactured by persons other than the Seller and are sold exclusively under such warranty as the manufacturer may give to the Seller. Such Warranties will be assigned by Seller to Customer if permitted thereunder or Seller, on Customer's behalf, shall use its best efforts to exercise the rights under the warranty in order to obtain the benefits thereof for Customer. Customer shall promptly notify Seller in writing of any defect discovered within the applicable warranty period and, if the defect is covered by the foregoing warranty, the Seller will, at its option, replace or repair such defective Material. THE FOREGOING SHALL CONSTITUTE CUSTOMER'S EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES (INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE), RIGHTS, CONDITIONS AND

REPRESENTATIONS WHETHER WRITTEN, ORAL, IMPLIED, STATUTORY OR OTHER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO DELIVERY OR USE OF THE MATERIALS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY OR OTHERWISE.

9. **Safety:** Customer agrees to employ proper safety rules and procedures, ensure that the Materials are being used safely, and that all instructions and warnings will be communicated to the users of the Materials. Customer agrees to indemnify and hold Seller harmless from and against all claims, causes of action, liabilities, losses, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or relating to (a) use of Materials in a manner or for a purpose other than contemplated by the specifications; (b) any modification of the Materials; (c) failure to properly instruct users on the use of the Materials or to follow applicable safety rules and regulations relating to the use of the Materials; or (d) the gross negligence or willful misconduct of Customer, its agents, servants or employees, except to the extent that such claims, causes of action, liabilities, losses, costs and expenses result from the gross negligence or willful misconduct of Seller.

10. **Applicable Law:** These terms and conditions shall be construed and enforced in accordance with the laws of the State of New York without giving effect to principles of conflict of laws. The federal and state courts in New York shall have exclusive jurisdiction over all controversies arising out of or in connection with these terms and conditions, and the parties consent to the personal jurisdiction of said courts.

11. **Cancellation:** Customer's order may not be cancelled unless requested by the Customer and accepted in writing by the Seller.

12. **Notice:** Any notice required or permitted hereunder will be deemed to have been effectively delivered if in writing and served by personal delivery to the other party or sent by registered or certified mail with return receipt requested, postage prepaid, or by facsimile or electronic mail transmission, to the other party at such party's address set forth on Seller's quotation or on the invoice or such other address as may be designated by either party hereto in writing to the other party.

13. **Miscellaneous:** There are no rights, warranties or conditions, expressed or implied, statutory or otherwise, other than those herein contained. These terms and conditions can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of these terms and conditions shall be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted and, unless expressly made generally applicable, shall only apply to the specific case for which the waiver is given. Failure of either party to insist upon strict performance shall not be construed as a waiver of any terms or conditions hereof. Each provision hereof shall be severable, and in the event any provision hereof is held to be contrary to law, invalid or unenforceable, the remaining provisions shall not be affected thereby, but shall remain in full force and effect. The paragraph headings herein are solely for the convenience of and reference by the parties and do not constitute any part of these terms and conditions.

14. **Purchase Orders:** IN THE EVENT CUSTOMER HAS PREVIOUSLY PROVIDED A PURCHASE ORDER OR OTHER TERMS AND CONDITIONS OF SALE TO SELLER, SUCH TERMS AND CONDITIONS ARE EXPRESSLY REJECTED IN FULL, AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE A COUNTEROFFER TO CUSTOMER.

ACCEPTANCE: The undersigned have read and hereby agree to all of the foregoing Terms and Conditions of Sale and acknowledge that such Terms and Conditions shall apply to any sale of Materials by Seller to Customer or any services performed by Seller for Customer, and shall be incorporated by reference in, any invoice or other document issued by Seller with respect to the purchase of any of Seller's goods or services by Customer.

[SIGNATURE PAGE FOLLOWS]

AGREED AND ACCEPTED

this ___ day of _____, 20__:

Customer

Little Falls Lumber Company, Inc./
Little Falls Concrete Forming Company, Inc.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____