

## TERMS AND CONDITIONS

The Terms and Conditions (collectively, "Terms") are an integral part of the Sales Contract, which is a legally-binding agreement between Millennium Forms, LLC, and the purchaser (and the purchaser's principal(s) and agent(s) if any) of the Materials identified on the Sales Contract.

**DEFINITIONS.** The purchaser and the purchaser's principal(s) and agent(s) are referred to herein collectively as "**You**" or "**Your**," Millennium Forms, LLC, is referred to herein as "**We**" or "**Us**" or "**Millennium Forms**." The materials purchased under this Sales Contract are referred to herein as the "**Materials**."

**SCOPE.** The Terms shall apply to all quotations and offers made by, and Sales Contracts accepted by Us. The Terms apply regardless of any course of dealing between You and Us, or usage of trade in the industry. If the Terms conflict with any of the terms and conditions affixed to any procurement document issued by You, the Terms shall govern, and acceptance of Your Sales Contract is conditioned upon Your acceptance of the Terms, irrespective of whether You accept the Terms by a written acknowledgement, by implication, or acceptance and payment of Materials ordered hereunder. Any failure by Us to object to provisions contained in any communication from You shall not be deemed a waiver of the Terms.

**YOUR ACCEPTANCE OF THE MATERIALS.** You acknowledge and agree to all of the following:

1. Before signing this Sales Contract, We provided You with samples of the Materials which You are purchasing from Us;
2. You understand that because of the method of manufacturing the Materials, there may be variances in color, appearance, finish, and sheen among the Materials, including the samples You review and the Materials You purchase; We have explained to You and You understand that because of the method of manufacturing the Materials, the color, appearance, finish, and sheen of the Materials likely will look different depending on the position and angle at which a person is looking at the Materials and the available ambient or focused light;
3. You understand that the Materials may be scratched during installation, which is not harmful to their corrosion resistance and that surface rust can occur from "free iron" and/or carbon steel. "Free Iron" and/or carbon steel are often found in tools used in installation and/or grinding dust. We recommend the use of non-ferrous tools to prevent "free iron" and carbon steel contamination;
4. You have directed Us, on Your behalf, to manufacture and/or procure raw material for your Sales Contract and to send the same to You and You have agreed to pay Us for the same;
5. **We strongly recommend that you engage a professional installer to fabricate and/or install the Materials;**
6. **YOUR SIGNATURE OR OTHER WRITTEN ACKNOWLEDGMENT ON THE REVERSE OF THIS SALES CONTRACT CONSTITUTES YOUR ACCEPTANCE OF THE MATERIALS, YOUR OBLIGATION TO PAY ALL FEES AND CHARGES FOR THE MATERIALS, AND YOUR ACCEPTANCE OF ALL OF THE AGREEMENTS, TERMS AND CONDITIONS CONTAINED IN THIS SALES CONTRACT UNDER THE UNIFORM COMMERCIAL CODE OR OTHERWISE;** and
7. **WE HAVE PROVIDED YOU WITH A COPY OF OUR LIMITED WARRANTY AND YOU UNDERSTAND THAT YOUR ONLY RECOURSE FOR REJECTION OF ALL OR ANY PART OF THE MATERIALS OR FOR ANY OTHER DAMAGES YOU MAY BELIEVE YOU HAVE INCURRED AS A RESULT OF YOUR PURCHASE OR USE OF THE MATERIALS SHALL BE YOUR RIGHTS UNDER THE LIMITED WARRANTY,** which is incorporated under the Terms.

**PAYMENT.** In addition to the purchase price for the Materials as stated on the associated Sales Contract, You are solely responsible for all applicable sales, value added, turnover, revenue and excise taxes, import duties (including brokerage fees), and other taxes applicable to the sale of the Materials, as well as all freight, packaging, insurance, handling, and all other charges. Unless otherwise expressly provided in the Sales Contract, payment terms are as follows: 50% deposit upon entry into the Sales Contract, with the remaining balance due upon completion of manufacturing and before shipment. We will not procure or produce Materials until we receive the initial 50% deposit. We procure and produce Materials on a first-come, first-served basis; good communication, a fully-signed Sales Contract, and receipt of deposit are the best way to ensure the completion of Your order in a timely manner.

**DELIVERY/TITLE.** Shipping dates are estimates only. We will make a good faith effort to complete delivery of the Materials as indicated by Us in writing, but We assume no responsibility or liability and will accept no charge for loss or damage due to delay or inability to deliver, regardless of whether such loss or damage was made known to Us, including, without limitation, Our delay or non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors, or suppliers, fires, explosions, floods, breakdown of or damage to plants, equipment or facilities, or any other causes of any kind whatsoever beyond Our reasonable control. Under no circumstances will We be liable for any special, consequential, incidental,

indirect, or liquidated damages, losses, or expenses (regardless of whether based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

Title and risk of loss to the Materials shall pass to You at our loading docks (F.O.B. factory). Loss or damage that occurs during shipment is Your responsibility, regardless of whether the carrier was selected by You or Us, and regardless of whether the cost of shipment is borne by You or Us.

You shall notify Us within ten (10) days of receipt of the Materials if You believe any of Your order is missing, incorrect or damaged. Failure to notify Us in writing of any such missing, incorrect or damaged Materials within such period shall be deemed an unqualified waiver of any right to return Materials on a basis that Your order has missing, incorrect, or damaged Materials.

**WARRANTIES.** You shall be entitled to the warranties contained in the **LIMITED WARRANTY** made a part of the Terms. WE MAKE NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, OTHER THAN THOSE CONTAINED IN THE **LIMITED WARRANTY**.

**DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES OR LOSSES ARISING OUT OF PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF PROFITS, FOR BUSINESS INTERRUPTION, FOR PROFESSIONAL NEGLIGENCE, OR LIABILITY, IMPROPER STORAGE, PROJECT DELAYS, BACK CHARGES AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER, OUT OF OR IN ANY WAY RELATED TO THE PURCHASE OF, INSTALLATION OF AND USE OF THE MATERIALS, EVEN IF SUCH LOSSES OR DAMAGES ARISE FROM OUR COMMISSION OF A TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**INDEMNITY.** EXCEPT TO THE EXTENT CAUSED BY OUR SOLE GROSS NEGLIGENCE, YOU SHALL DEFEND AT YOUR OWN COST AND EXPENSE, AND INDEMNIFY AND HOLD HARMLESS US, OUR OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES AND EXPENSES (INCLUDING ATTORNEYS' FEES) BROUGHT OR CHARGED BY ANY PERSON OR ENTITY (OTHER THAN CLAIMS MADE UNDER THE LIMITED WARRANTY IN ACCORDANCE WITH THE TERMS OF THE LIMITED WARRANTY) RELATED TO OR IN CONNECTION WITH YOUR PURCHASE OF, THE INSTALLATION OF, OR THE USE OF, ALL OR ANY PART OF THE MATERIALS PURCHASED UNDER THIS SALES CONTRACT. THIS INDEMNITY SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DAMAGE, LIABILITY OR EXPENSE IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHERWISE. WE MAY CHOOSE, BE REPRESENTED BY, AND ACTIVELY PARTICIPATE THROUGH, OUR OWN COUNSEL IN ANY SUIT OR PROCEEDING RELATED TO THIS INDEMNITY, AND THE COSTS OF SUCH REPRESENTATION SHALL BE PAID BY YOU.

**ARBITRATION.** Any dispute as to any claims under this Sales Contract will be settled by final, binding arbitration in the City of Elkhorn, Wisconsin, by three (3) arbitrators, one (1) of whom will be appointed by Us, one (1) of whom will be appointed by You, and the third (3rd) of whom will be appointed by the first two (2) arbitrators. If either party fails to appoint an arbitrator within twenty (20) days of a request in writing by the other party to do so, or if the first two (2) arbitrators cannot agree on the appointment of a third (3rd) arbitrator within twenty (20) days of their designation, then such arbitrator will be appointed by the American Arbitration Association ("AAA"). Except as to the selection of arbitrators, which will be as set forth above, the arbitration will be conducted promptly and expeditiously in accordance with the commercial arbitration rules of the AAA, so as to enable the arbitrators to render an award within ninety (90) days of the commencement of the arbitration proceedings. Judgment upon the award rendered by the arbitrators may be entered in any court having competent jurisdiction thereof. Each party will bear the expenses of the arbitrator it selects and will jointly share the expenses of the third (3rd) arbitrator and of the arbitration.

**LIMITATION OF LIABILITY AND REMEDIES.** Notwithstanding any other provision of this Sales Contract, (including, without limitation, all damages referenced above and all direct or general damages), to the extent that We are found to be liable for an award of monetary damages for any reason arising as a result of, in connection with, or as a consequence of this Sales Contract, our sole, entire aggregate liability under any provision of this Sales Contract and Your exclusive remedy for all of the foregoing shall be limited to the amount paid by You to Us for the Materials. The foregoing limitations, exclusions, and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

**GENERAL:** You acknowledge reading and understanding these Terms and agree to be bound by them. Any action against Us under this Sales Contract or related to the Materials must be brought within one (1) year after the cause of action accrues. Nothing in this Sales Contract shall create or be deemed to create any third party beneficiary rights in any person or entity (including any employees). No failure or delay on our part in exercising any right, power or remedy or recognizing any breach or default hereunder shall operate as a waiver thereof or as a waiver of a subsequent or different breach, default, right, power or remedy. We retain the intellectual property in all the Materials. The sale of any Materials does not convey to You any license by implication, estoppel, or otherwise. We retain the copyright in all documents, catalogs and plans supplied to You pursuant to or ancillary to any Sales Contract. Section headings are for convenience only and have no legal or interpretive effect. Any provision of this Sales Contract prohibited or unenforceable in any jurisdiction shall be ineffective only to the extent of such prohibition and shall not invalidate any of the remaining provisions of this Sales Contract. This Sales Contract constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and communications. No additional terms, conditions, waivers or alterations of this Sales Contract shall be binding unless in a writing signed by You and Us. This Sales Contract shall be governed by and construed under the laws of, and under the Uniform Commercial Code as adopted by, the State of Wisconsin, without regard to its choice of laws rules. All notices and other communications hereunder shall be in writing, and shall be addressed to You or Us, and shall be considered given (i) on the date of service if served personally, (ii) on the third day following mailing if sent by United States Certified Mail, postage prepaid, return receipt requested, (iii) on the first business day following delivery to an overnight courier, if served by overnight courier, and (iv) on the date of confirmed delivery if served by telephone facsimile service or by electronic email (with read receipt requested) before 5:00 p.m. central time (standard or daylight savings as applicable) on a business day. Any signed document transmitted by fax or e-mail shall be treated in all manner and respects as an original document, and the signature of either party upon a document transmitted by fax or e-mail shall be considered an original signature.