

## SUSTAINABLE MATERIALS, LLC TERMS & CONDITIONS OF SALE

All products and services offered by Sustainable Materials, LLC. ("Company") are sold and provided to you subject to the following terms and conditions. The terms and conditions set forth below are fundamental elements of the basis of the agreement between the Company and you (the "Buyer"). Buyer understands and agrees that Company fills Buyer's order(s) subject to the following terms and conditions and that Company would not provide any product(s) or services to Buyer without Buyer's agreement to these terms. By ordering and accepting product(s) and/or services from Company (the "Product" or "Products" and "Services"), Buyer irrevocably acknowledges its assent to the terms and conditions listed below.

**1. PAYMENT & PRICING.** ALL PAYMENTS ARE DUE UPON CONFIRMATION OF ORDER, unless otherwise agreed to by the Company, and all initial orders must be paid in advance. **MINIMUM ORDER:** Orders totaling less than \$100.00 will be assessed a \$10.00 service charge. All prices are subject to change without notice.

**2. CREDIT ACCOUNTS.** To apply for a new credit account: Buyer shall complete and submit a credit application to the Company. The Company shall review the application and determine, in its sole discretion, whether to grant or deny Buyer credit. If the application is approved, the following payment terms shall apply to the second order received by Buyer after credit has been approved (the first order must be paid in full on confirmation of order): 50% of the total payment is due upon the Company's confirmation of the order, 25% of the total payment is due on delivery of the Products to Buyer, and the remaining 25% of the total payment is due NET 15, i.e., payment in full shall be due 15 days after delivery of the Products. Subsequent orders to credit accounts approved by Company will be NET 15. The Company may require personal guarantees, collateral, and/or other security as a pre-requisite to providing or continuing to provide credit. All credit terms are subject to change without notice at the Company's sole discretion.

**3. OVER-DUE ACCOUNTS; TITLE.** A 1.5% finance charge will be assessed monthly on all past due accounts. A \$50.00 fee will be charged on all returned checks. Company, at its sole discretion, may refuse to ship any Products, on any basis, to past due accounts. **Legal title to all Products sold remains with the Company until such time as the Products are paid in full by Buyer. Company retains a security interest in all Products sold on credit until such Products are paid in full. In the event any payment is more than 15 days overdue, Buyer agrees that Company, at its sole discretion and without further notice, may physically reclaim all Company Products for which Buyer has not paid at all Buyer's retail, wholesale, job sites, and/or warehouse location(s). Company will credit Buyer's account for the value of such reclaimed inventory, less a fifty percent (50%) reclamation and restocking fee. Buyer hereby releases, indemnifies, and holds harmless Company from any and all claims, damages and/or loss suffered by Buyer arising out of or related to the Company's repossession of its Products.** In the event any action is necessary by Company to collect on any past due account, including but not limited to reclaiming Product(s), retaining an attorney, turning the account over to a collection agency, repossession, litigation, etc., Buyer shall be responsible for and shall pay Company all costs and fees incurred by Company or its assigns, including, without limitation, reasonable attorney fees and court costs. In the event of Buyer's bankruptcy or similar proceedings, costs of collection shall include all costs and attorneys' fees incurred in connection with such proceedings, including the fees of Buyer's counsel for attendance at meetings of creditors' or other committees.

#### **4. SHIPPING & DELIVERIES.**

4.1. All shipments are F.O.B. Boulder, Colorado unless otherwise noted by Company. All shipments will be made LTL, "common" carrier, UPS or FedEx ground unless otherwise specified. Any delivery date specified by the Company is approximate only and not guaranteed by the Company. Under no circumstance shall the Company be liable to Buyer for any loss or damage to Products occurring during possession and/or transport by any carrier.

4.2. When Buyer has declared or manifested an intention not to accept delivery of any Products, no tender will be necessary and Company may, at its option, give notice to Buyer that Company is ready and willing to deliver and such notice will constitute a valid tender of delivery. If Buyer refuses any delivery, Buyer shall pay Company fifty percent (50%) of the total price of the Products as invoiced as a restocking fee and title to the Products shall remain with the Company.

4.3. Company shall not be liable to Buyer for any failure to perform by reason of strikes, fires, floods, unavoidable accidents, wars, delays in transportation, acts of God, or other causes beyond its reasonable control. In connection with the foregoing, Buyer acknowledges that delivery of the Products is contingent upon Company's ability to obtain supplies, materials and services through its regular and usual sources and thus, if for any reason beyond Company's control, Company is not able to meet anticipated deliveries, Company will not be liable therefore and may postpone any affected delivery date(s) for a reasonable period of time.

## **5. INSPECTION; RETURNS; WARRANTY CLAIMS.**

5.1. Buyer agrees to promptly inspect each delivery of Products, and Buyer agrees to notify the Company in writing of any discrepancy between the Products ordered and the Products received, and/or any claimed damage or defects no later than five (5) days after Buyer's receipt of the Products. If Buyer fails to so inspect or notify Company, Buyer will be deemed to have accepted the Products as received and to have waived any claim for discrepancy, damage or defect. Any remedy of Buyer against Company shall be barred unless notice is given in accordance with this Section. All actions by Buyer against the Company arising out of or related to the sale of any Products, including but not limited to actions for breach of warranty, must be brought by Buyer within one (1) year after the cause of action thereon accrues or they shall be forever barred.

5.2. After inspection and notification, if Buyer desires to return Products that Buyer believes to be damaged or defective and covered by the Company's limited warranty, Buyer shall first call the Company and explain the issues. The Company may request photos and a written description of the issues from Buyer. Upon investigation, if the Company determines that there is a warranty issue, the Company may either repair or replace the Products and either refund or credit the Buyer's account for the Products at issue at the Company's sole discretion. The Company may require the return of the Products at issue at its discretion before issuing any credit or refund. The Company shall accept only returns preauthorized by the Company. Custom orders and discontinued Products are not returnable. The Company reserves the right to make all warranty determinations, which may include but are not limited to repair, replacement, refund, or credit for the Product at issue at the Company's sole discretion. If it is determined that there is no warranty issue with any returned Product, the Product may be returned to the Buyer (at Buyer's request and expense) and no credit or refund will be provided.

5.3. If Buyer desires to return undamaged Products, Buyer shall first call Company and request a Return Authorization Number. At the Company's discretion and upon payment of a thirty-five percent (35%) restocking fee, the Company may preauthorize the return by issuing Return Authorization Number. After payment of the restocking fee, the Company shall accept only returns preauthorized by the Company. Custom orders and discontinued Products are not returnable. Buyer shall be credited only for Products returned in accordance with this Return Policy and that are in undamaged and resalable condition in Company's discretion.

**6. LIMITED WARRANTY.** Unless otherwise stated in writing by the Product manufacturer, Company Products are covered by a one (1) year limited warranty from the original date of purchase. This limited warranty only covers defects in materials and workmanship in the Products.

**7. WARRANTY EXCLUSIONS and DISCLAIMERS.** DAMAGE TO THE Products THAT ARISES FROM OR IS RELATED TO: NORMAL USE AND WEAR, ABUSE, OR ACCIDENTS; IMPROPER PREPARATION; IMPROPER INSTALLATION, FABRICATION, AND/OR RECLAMATION; IMPROPER CLEANING; EXCESSIVE MOISTURE AND/OR OTHER ONSITE CONDITIONS; FAILURE TO TEST THE SITE OR THE IMPROPER OR INCOMPLETE TESTING OF THE SITE; FAILURE TO FOLLOW ANY RELEVANT INSTRUCTIONS (INCLUDING BUT NOT LIMITED TO THE COMPANY'S, THE Product MANUFACTURER'S, AND/OR ANY Product's OR MANUFACTURER'S INSTRUCTIONS collectively referred to herein as "Instructions"); IMPROPER INSTALLATION, MAINTENANCE, OR OPERATION OF HEATING SYSTEMS (INCLUDING IN FLOOR SYSTEMS); AND THE LIKE IS NOT COVERED BY THIS LIMITED WARRANTY AND COMPLETELY VOIDS THIS LIMITED WARRANTY.

Except as otherwise specified above, THE COMPANY MAKES NO WARRANTY OF ANY KIND, ORAL OR WRITTEN, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY AS TO THE DESIGN, CONDITION OR QUALITY OF MATERIALS AND/OR WORKMANSHIP OF COMPANY Products and/or Services

TO THE BUYER OR TO ANY OTHER PERSON WHATSOEVER. THE COMPANY PROVIDES NO WARRANTY FOR ANY PRODUCTS AND/OR SERVICES PROVIDED BY ANY THIRD PARTY. NO WARRANTY IS PROVIDED BY THE COMPANY FOR ANY UNAPPROVED, INADVISABLE, IMPROPER, NEGLIGENT PRODUCTS AND/OR SERVICES, AND/OR ANY SIMILAR PRODUCTS OR SERVICES RELATED TO INSTALLING, CLEANING, MAINTAINING, FABRICATING, AND/OR RECLAMATION, OF THE COMPANY'S Products AND ANY SUCH PRODUCTS OR SERVICES VOIDS THIS LIMITED WARRANTY. THE COMPANY EXPRESSLY DISCLAIMS ALL RESPONSIBILITY FOR ANY DAMAGE TO BUYER AND/OR BUYER'S PROPERTY ARISING OUT OF OR RELATED TO ITS Products and/or Services, INCLUDING BUT NOT LIMITED TO ANY INSTALLATION OR REMOVAL OF THE PRODUCTS, AND/OR ANY PRODUCTS OR SERVICES PROVIDED BY ANY THIRD PARTIES.

**8. LIMITATIONS OF LIABILITY.** UNDER NO CIRCUMSTANCES (INCLUDING OUR NEGLIGENCE) AND IN NO EVENT, SHALL THE COMPANY AND/OR ITS AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, DIRECT, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR OTHER SIMILAR DAMAGES OR ANY OTHER DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THE SALE OR PROVISION OF ANY Products AND/OR Services, INCLUDING BUT NOT LIMITED TO: (1) BUYER'S USE OF OR INABILITY TO USE THE COMPANY'S Products, (2) BUYER'S USE OF OR INABILITY TO USE ITS PROPERTY, (3) ANY LOST PROFITS, ERRORS, DEFECTS, OR DELAYS, (4) ANY COSTS OR EXPENSES ARISING OUT OF OR RELATED TO THE INSTALLATION OR REMOVAL OF ANY Products, AND/OR (5) ANY PRODUCTS OR SERVICES PROVIDED BY ANY THIRD PARTIES, EVEN IF THE POSSIBILITY OF SUCH DAMAGES COULD HAVE BEEN FORESEEN BY THE COMPANY.

TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT THE COMPANY'S TOTAL LIABILITY FOR ALL DAMAGES TO BUYER ARISING OUT OF OR RELATED TO THE COMPANY'S Products AND/OR Services IS LIMITED TO THE TOTAL AMOUNT THAT BUYER PAYS FOR THE Products AND/OR Services. THE COMPANY IS NOT LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO FORCE MAJEURE OR ACTS OF NATURE.

**9. BUYER REPRESENTATIONS.** Buyer represents and warrants that: (a) Buyer is solely responsible for determining whether the Products and/or Services are suitable for Buyer's use and site and for the conditions onsite where the Product will be used; (b) Buyer and/or Buyer's installer, contractor, representatives and/or agents are solely responsible for creating an installation plan, for knowing and performing the proper installation procedures for the Products, and for insuring that the installation of the Products is performed properly and in accordance with all relevant Instructions; and (c) the installer, contractor, representatives, and/or agents hired by Buyer to install the Products shall have final approval and assume all responsibility for all such installation, fabrication, and/or plans. The Company hereby explicitly disclaims all responsibility for any claims, damages, expenses, or loss related to or arising from Buyer's installation, fabrication, planning, removal, or use of the Products. BUYER HEREBY RELEASES AND HOLDS THE COMPANY HARMLESS FROM ANY INJURY THE COMPANY SUFFERS THAT ARISES FROM OR IS RELATED TO, OR WHICH OCCURS AS A RESULT OF, BUYER'S BREACH OF THESE REPRESENTATIONS AND WARRANTIES. BUYER HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE COMPANY, ITS SHAREHOLDERS, MEMBERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, CLAIMS AND EXPENSES, INCLUDING ATTORNEY FEES AND COURT COSTS, ARISING OUT OF ANY CLAIMS OR SUITS FOR DAMAGE OR INJURY TO ANY PERSON OR PROPERTY BASED IN WHOLE OR IN PART ON, ARISING OUT OF OR RELATED IN ANY WAY TO, THE BUYER'S BREACH OF THESE REPRESENTATIONS AND WARRANTIES.

THE PARTIES ACKNOWLEDGE THAT THE COMPANY HAS SET ITS FEES AND SOLD ITS Products and/or Services TO BUYER IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS AND CONDITIONS WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

**10. LAW, JURISDICTION & VENUE.** These Terms and Conditions of Sale shall be governed by and enforced in accordance with, the domestic laws of Colorado without giving effect to any choice of law provision that would cause the application of the laws of any jurisdiction other than Colorado, irrespective of the fact that any one of the parties now is or may become a resident of a different state or nation. All disputes arising out or in connection with the Products and/or Services rendered by the Company, if not settled amicably between the parties within thirty (30) days of written notification of such dispute shall be mediated within ninety (90) days of either party's written notice to the other to participate in mediation. The exclusive venue for the mediation shall be in Boulder, Colorado. If mediation is unsuccessful in resolving the dispute, the parties may begin litigation. Each of the parties submits to the exclusive jurisdiction of any appropriate state or federal court sitting in Boulder or Denver, Colorado, in any action or proceeding arising out of or relating to the Products and/or Services provided by the Company and agrees that all claims in respect of the action or proceeding shall be heard and determined in any such court. Each of the parties hereby waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto.

Company reserves the right to modify, without notice, these Terms and Conditions, as well as all prices, Products and Services. Possession of the price list does not automatically entitle the Buyer to the Products or prices set forth therein.

I have read, understand, and agree to the terms stated in Sustainable Materials' Terms and Conditions of Sale.

AGREED AND APPROVED:

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(Buyer's signature, name, title (if any), and date)

Print Name:

Business Name:

Sales Order #:

## Sustainable Materials' Payment Authorization

We accept payment via check. Promptly mail your check and your order will be ready to ship once your check is received. We also have an online electronic check payment service. This free, secure and easy service helps expedite your order further. A link will be provided with your Invoice. Please provide the information below and indicate which payment method you choose: Please email this sheet to your sales representative or [info@sustainablematerials.com](mailto:info@sustainablematerials.com) with your selection in addition to the signed Payment Terms and Conditions signature page. Once received, we will issue an invoice for payment processing.

Your Business Name: \_\_\_\_\_

Sales Order #: \_\_\_\_\_

I wish to:

Pay via check. I will mail the check to Sustainable Materials.

Release upon receipt of payment

Release for delivery on \_\_\_\_/\_\_\_\_/\_\_\_\_

Pay via electronic check (free electronic funds transfer). I will pay upon receipt of the invoice and payment link. \*

Release upon receipt of payment

Release for delivery on \_\_\_\_/\_\_\_\_/\_\_\_\_

\*Sustainable Materials will issue an invoice with a link to the secure online payment service.



# SUSTAINABLE MATERIALS

## Shipping Requirements For LTL shipments

Unless otherwise noted, shipping quotes are based on a Business/Commercial destination, no liftgate, and no notification.

### Information is correct on Sales Order / Order Acknowledgement

Yes       No (if selected, please respond with corrections on the SO / OA)

### Destination Type: (Please select one)

Business/Commercial       Construction Site       Limited Access Building  
 Residence       Shopping Mall       Other \_\_\_\_\_

### Liftgate: (Please select one)

Liftgate is needed       Destination has fork lift or loading dock

### Notification: (Please select one)

Notification prior to arrival is needed       Carrier can come M-F from \_\_\_\_\_ to \_\_\_\_\_  
with no notice. (at least 4 hour window)

### Destination Contact:

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

If shipping requirements change after the order ships, additional charges will apply. If carrier unsuccessfully attempts delivery, redelivery charges will apply.

Signature/Date: \_\_\_\_\_ Print Name: \_\_\_\_\_