



Sustainable Materials LLC's
TERMS & CONDITIONS OF SALE
Last modified 1/23/19

All products and services offered by Sustainable Materials LLC (the "Company") are sold and provided to you (the "Buyer") subject to the following terms and conditions (the "Terms"). These Terms are fundamental elements of the basis of the agreement between the Company and the Buyer. Buyer understands and agrees that the Company fills Buyer's order(s) subject to these Terms and that the 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 the Company (the "Product", "Products" and/or "Services"), Buyer irrevocably acknowledges its assent to the terms and conditions listed below and agrees to be legally bound by these Terms. These Terms apply to any and all purchases of Products or Services regardless of whether or not the Terms are signed by Buyer. PLEASE READ THESE TERMS CAREFULLY BEFORE PURCHASING ANY PRODUCTS OR SERVICES OR USING OUR WEBSITE. PLEASE NOTE THAT SECTION 10 BELOW CONTAINS MANDATORY ARBITRATION AND CLASS ACTION WAIVER PROVISIONS, WHICH AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT. The Company may, in the future, modify or revise these Terms at its sole discretion, without any further notice.

1. PAYMENT & PRICING.

1.1 ALL PAYMENTS ARE DUE UPON RECEIPT OF AN INVOICE FROM THE COMPANY. Unless otherwise agreed to by the Company in writing, all initial orders from a new customer must be paid in advance.

1.2 *Minimum Order.* Orders totaling less than \$100.00 will be assessed a \$10.00 service charge. All prices are subject to change without notice.

1.3 *Custom Orders.* All custom orders must be paid in advance and in full for the entire custom order. Once a custom order is placed with the Company, it cannot be modified, cancelled, or returned.

1.4 *Non-Custom Orders.* All non-custom orders must also be paid in full in advance, unless credit is approved as described below in Section 2, or otherwise agreed to by the Company in writing. Non-custom orders may only be modified, cancelled, or returned at the Company's sole discretion.

2. CREDIT ACCOUNTS. To apply for a new credit account: Buyer shall complete and submit a credit application to the Company, and the Company shall determine, in its sole discretion, whether to grant or deny Buyer credit. If credit is approved by the Company, the following payment terms shall apply to all non-custom orders accepted after the initial order (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 fifteen (15) days after delivery of the Products. The Company may require personal guarantees, collateral, and/or other security as a pre-requisite to providing or continuing to provide credit. The Company may revoke or withdraw credit approval at any time at the Company's sole discretion. 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 that any payment is more than fifteen (15) days overdue, Buyer agrees that Company, at its sole discretion and without further notice, in addition to all other remedies available to Buyer, may physically repossess and reclaim all Company Products for which the Company has not received payment in full from Buyer at any location(s) where the Products are found, including retail, wholesale, job sites, warehouses. For non-custom orders that are repossessed, at the Company's sole discretion, Company may credit Buyer's account for the value of such undamaged and saleable reclaimed inventory, less a minimum fifty percent (50%) reclamation and restocking fee. Buyer hereby releases, indemnifies, and holds the Company harmless from all claims, damages, liability, 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 repossessing any Product(s), retaining an attorney, turning the account over to a collection agency, etc., Buyer agrees to be responsible for and shall pay to the Company upon demand all collection related costs and fees incurred by Company or its assigns, including, without limitation, all reasonable attorney fees and legal 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. with the shipping point or destination designated by the Company. All shipments will be made LTL, "common" carrier, UPS, or FedEx ground unless otherwise agreed to in writing by Company. Buyer understands and agrees that any delivery date specified by the Company is approximate only and not guaranteed by the Company. Under no circumstance shall Company be liable to Buyer for (a) any loss or damage to Products occurring during possession and/or transport by any carrier, and/or (b) any loss or damage to Buyer by any delay in the manufacture or delivery of any order.

4.2. If Buyer (a) refuses delivery, threatens to refuse delivery, or manifests any intention not to accept delivery of any Product order, or (b) if Buyer has not paid the Company pursuant to the Company's payment terms, all payments due the Company for that order shall become immediately due and owing, and Buyer releases the Company from any obligation to deliver the order to Buyer until Buyer has paid for the order in full. Buyer agrees that the Company may, at its sole discretion, re-route the order to a distribution center or other storage facility at a location of the Company's choosing, and all costs and expenses incurred by the Company to do so shall be paid by Buyer upon demand. Such order will only be released when Buyer has paid for the order in full, including all additional shipping, handling, storage, warehousing, and internal fees and expenses. If Buyer does not pay for the order in full within fifteen (15) days of the Company's written demand, the Company may sell or otherwise dispose of the order in any manner it deems fit in its sole discretion and begin collection proceedings against Buyer or pursue other remedies as described in Section 3 above. Buyer shall be responsible for and shall pay to the Company upon demand all costs and fees incurred by Company or its assigns, in doing so, including, without limitation, all reasonable attorney fees and legal costs.

4.3. Buyer understands and agrees that the Company is not liable to Buyer for any failure by the Company to perform any Company delivery or other obligation arising out of or related to manufacturing and/or shipping delays, strikes, fires, floods, unavoidable accidents, wars, delays in transportation, acts of God, or other causes beyond the Company's control. Buyer acknowledges that any delivery date provided by the Company for any Product order is the Company's best estimate at the time and is contingent upon the Company's ability to obtain supplies, materials,

products, and services through its regular and usual sources. If for any reason outside of the Company's control, Company is not able to meet an anticipated delivery date, Buyer releases the Company from any and all liability and/or damage suffered by Buyer as a result and agrees that the Company may postpone any affected delivery date(s) for a reasonable period of time and until the order is available.

5. INSPECTION; RETURNS; WARRANTY CLAIMS.

5.1 Buyer agrees to promptly inspect each delivery of Products and to notify the Company in writing of any discrepancy between the Products ordered and the Products received, and/or any claimed Product damage or defect no later than five (5) business days after Buyer's receipt of the Products. If Buyer fails to so inspect or notify the Company within that time period, Buyer will be deemed to have accepted the Products as received and to have waived any claim for discrepancy, damage or defect. Any recourse of Buyer against Company shall be barred unless notice is given in accordance with this Section 5.1. All claims 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 or refund or credit the Buyer's account for the Products 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 in writing by the Company and after a Return Authorization Number is issued. 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 and saleable Products, Buyer shall first call Company and request a Return Authorization Number. Custom orders and discontinued Products are not returnable. At the Company's discretion and upon payment of a thirty-five percent (35%) restocking fee, the Company may preauthorize the return by issuing a Return Authorization Number. After payment of the restocking fee, the Company shall accept only returns preauthorized in writing by the Company. 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 and except as otherwise excluded in Sections 7 and 8 below, Company Products are warranted to the original retail purchaser to be free from defects in materials and workmanship for one (1) year from the original date of purchase. This limited warranty only covers defects in materials and workmanship in the Products.

7. WARRANTY EXCLUSIONS and DISCLAIMERS.

7.1 DAMAGE TO THE Products THAT ARISES FROM OR IS RELATED TO ANY OF THE FOLLOWING CAUSES IS NOT COVERED BY THE LIMITED WARRANTY AND COMPLETELY VOIDS THE LIMITED WARRANTY: NORMAL USE AND WEAR, ABUSE, OR ACCIDENTS; IMPROPER PREPARATION; IMPROPER INSTALLATION, FABRICATION, AND/OR

RECLAMATION; PRODUCT MODIFICATION OR ALTERATION; 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, all collectively referred to herein as "Instructions"); IMPROPER INSTALLATION, MAINTENANCE, OR OPERATION OF HEATING SYSTEMS (INCLUDING IN FLOOR SYSTEMS); and/or SIMILAR CONDITIONS OUTSIDE OF THE COMPANY'S CONTROL.

7.2 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, PROVIDED BY ANY THIRD PARTY AND/OR ANY SIMILAR PRODUCTS OR SERVICES RELATED TO INSTALLING, CLEANING, MAINTAINING, FABRICATING, AND/OR RECLAMATION, OF THE COMPANY'S Products. 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, ANY DELAY IN DELIVERY, AND/OR ANY PRODUCTS OR SERVICES PROVIDED BY ANY THIRD PARTIES.

8. LIMITATIONS OF LIABILITY. (a) IN NO EVENT SHALL THE COMPANY OR ITS AFFILIATES BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, WHETHER IN 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 TO BUYER. (b) NOR SHALL THE COMPANY OR ITS AFFILIATES BE LIABLE TO BUYER FOR ANY INJURY, DAMAGE, LIABILITY, OR LOSS ARISING OUT OF OR RELATED TO BUYER'S BREACH OF ANY OF THESE TERMS, INCLUDING BUT NOT LIMITED TO BUYER'S REPRESENTATIONS AND WARRANTIES, AND 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. (c) TO THE EXTENT PERMITTED BY LAW, BUYER AGREES 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 SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO FORCE MAJEURE OR ACTS OF NATURE. NOTHING CONTAINED IN THE FOREGOING Section 8 IS INTENDED TO LIMIT THE COMPANY FROM LIABILITY FOR ORDINARY DAMAGES FOR PROVEN PRODUCT LIABILITY CLAIMS. Please note that certain state laws do not allow limitations on implied warranties or the exclusion or limitation of certain

damages. If you are a resident of such a state and these laws apply to you, some or all of the above disclaimers, exclusions, or limitations may not apply to you, and you may have additional rights.

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 Products 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, DAMAGE, LIABILITY, OR LOSS 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 PARTON, ARISING OUT OF OR RELATED IN ANY WAY TO, THE BUYER'S BREACH OF THESE REPRESENTATIONS AND WARRANTIES.

BUYER ACKNOWLEDGES 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 THOSE LIMITATIONS AND DISCLAIMERS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. BUYER AGREES THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS AND CONDITIONS WILL SURVIVE FOR SIX (6) YEARS AFTER THE CONCLUSION OF EACH ORDER. Buyer understands and agrees that these Terms are effective and enforceable against Buyer once Buyer places an order with the Company, that these Terms do not have to be signed by the Buyer to be effective, that the Company only provides Products and Services pursuant to these Terms, and that all orders are subject to these Terms.

10. LAW, JURISDICTION & VENUE.

10.1. All matters relating to these Terms and Conditions of Sale, including but not limited to all disputes, 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.

10.2 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 sixty (60) 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, or if ninety days (90) have passed from the written

notification to mediate the dispute, and the dispute remains unresolved, whichever occurs first, the parties may begin arbitration. Notwithstanding the foregoing, nothing in this Section 10.2 is intended to nor shall prevent or preclude the Company, at its sole discretion, from pursuing the collection of overdue invoices from Buyer by collection agencies or attorneys without the requirement of mediation.

10.3 BINDING ARBITRATION: In the event of any dispute arising under or relating to these Terms, such dispute will be finally and exclusively resolved by binding arbitration. Except as otherwise provided herein, NEITHER BUYER NOR THE COMPANY SHALL HAVE THE RIGHT TO LITIGATE ANY CLAIM IN COURT OR TO HAVE THE CLAIM DECIDED BY A JUDGE OR JURY. DISCOVERY RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the Federal Arbitration Act. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) and, where appropriate, the AAA's Consumer Arbitration Rules, both of which are available at the AAA website www.adr.org. The arbitration shall be conducted in person and shall take place in Boulder, Colorado. The parties may litigate in court to compel arbitration, to stay proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The Federal Arbitration Act and federal arbitration law apply to these Terms. Buyer hereby irrevocably waives, to the fullest extent permitted by law, (a) any objection that Buyer may now or hereafter have to such jurisdiction and venue and (b) any claim that any such arbitration proceeding has been brought in an inconvenient forum. Notwithstanding the foregoing, nothing in this Section 10.3 is intended to nor shall prevent or preclude the Company, at its sole discretion, from pursuing the collection of overdue invoices from Buyer by collection agencies or attorneys without the requirement of arbitration.

10.4 CLASS ACTION WAIVER: Any arbitration or proceeding shall be limited to the dispute between the Company and the Buyer. To the full extent permitted by law, (a) no arbitration or proceeding shall be joined with any other; (b) there shall be no right or authority for any dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (c) there shall be no right or authority for any dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. **BUYER AGREES THAT BUYER MAY BRING CLAIMS AGAINST THE COMPANY ONLY IN BUYER'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.**

10.5 Buyer agrees that any and all claims arising out of or related to these Terms must be brought by Buyer within one (1) year after the cause of action arises, or such claim or cause of action is forever and irrevocably barred.

10.6 A printed version of these Terms and of any notice given in electronic form shall be admissible in any mediation or arbitration proceeding based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. All headings in these Terms are for convenience or reference only and shall be ignored in construing these Terms.

10.7 The Company's failure to enforce all or any part of these Terms or respond to a breach thereof by Buyer or any other party shall not in any way be construed as a waiver or a relinquishment of any right granted the Company hereunder of the future performance of all or any part of these Terms, and Buyer's obligations set forth in these Terms shall continue in full force and effect.

10.8 If any provision in these Terms is held invalid or unenforceable under applicable law, the invalid or unenforceable provision shall be modified by the arbitrator to the minimum extent necessary to make the provision a valid and enforceable provision that most closely matches the intent of the original provision and the remaining provisions of these Terms will continue in full force



and effect.

10.9 Company reserves the right to modify, without notice, these Terms and Conditions, as well as all prices, Products and Services. Possession of a Company price list does not automatically entitle the Buyer to the Products or prices set forth therein. All orders are subject to these Terms as they exist now and as they may be amended in the future.

10.10 These Terms contain the entire and final agreement between the parties and supersede any prior or contemporaneous communications between the parties. Buyer understands and agrees that these Terms do not have to be signed by the Buyer to be effective, and that the Company only provides Products and Services pursuant to these Terms.

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

AGREED AND APPROVED:
BUYER:

(Buyer's signature, name, title (if signing on behalf of an LLC or corporation), and date)

Printed Name / Title:

Business Name:

Order/Invoice #: