

PORTA-FAB CORPORATION

TERMS AND CONDITIONS

1. AMENDMENTS

All quotations, order confirmations and shipments are subject to the following Terms and Conditions. Any modification of this document by the Buyer, and all additional or different terms included in Buyer's purchase order or any other document responding to this document, are hereby rejected and shall not become part of the contract between Buyer and Porta-Fab Corporation ("Seller"). These Terms and Conditions supersede all prior understandings, drafts, discussions, or statements, whether oral or in writing, express or implied, dealing with the subject matter hereof. They constitute the final written expression of all the terms of this Purchase Order, and are the complete and exclusive statement of these terms. All sales are made conditioned on Buyer's assent to these Terms and Conditions. No purported modification or waiver of the provisions hereof shall be binding upon Seller for any purpose unless it is contained in a writing signed by an authorized representative of Seller.

BY ORDERING THE GOODS HEREIN, BUYER AGREES TO AND ACCEPTS THESE TERMS AND CONDITIONS.

2. UNIFORM COMMERCIAL CODE

This contract shall be governed by and construed in accordance with the Uniform Commercial Code in effect in Missouri, except to the extent such code is modified by these Terms and Conditions.

3. ACCEPTANCE

This contract shall not be binding on Seller until accepted by Seller in Chesterfield, Missouri.

4. PRICES

All prices are FOB, Porta-Fab Corporation, Chesterfield, Missouri. Goods are shipped freight collect.

5. TERMS

Payment terms shall be net 30 days. Buyer shall pay interest at the rate of one and one-half percent per month, or at the highest rate allowed by law, whichever is less, for all outstanding balances 30 days or more past due. Should Seller file suit to collect any past due balances, Buyer agrees to pay Seller's costs of collection, including its reasonable attorney's fees and court costs, in addition to the outstanding balance, plus interest thereon. All invoice amounts are payable without any set-off.

Buyer shall use parts pricing for orders under \$1,000. All prices are subject to change without notice. All prices are subject to acceptance by Seller with shipment to be made as soon as possible after Seller's receipt of order; Buyer acknowledges that all delivery times are estimates, and Seller shall not be liable for any delays in shipment or delivery. Buyer's order shall be a minimum of \$200 net.

No material will be accepted for return without Seller's written authorization, and all products and material will be subject to a 25% restocking charge. Special order items are not subject to return or cancellation. Inspection of material prior to use is Buyer's responsibility. If damage is found, Buyer shall promptly file a claim with the carrier.

Stairways, landings and mezzanines will ship direct from the manufacturer on a separate truck. Structural steel beams and columns may ship direct from the steel vendor. Buyer must contact the factory for information concerning the limitations of Seller's structural steel handling capabilities. Seller will process an order and assign a ship date once Seller receives all the required information from Buyer. Buyer shall provide: (A) the Purchase Order, including: (i) ship-to address, (ii) freight charges: collect or freight billed to Buyer, (iii) price breakdown, and (iv) referenced quote number, if applicable; (B) model number of office (if applicable); (C) layout, including the following: (i) location of windows, (ii) location of doors, noting with or without glass and door swing, (iii) location of air conditioner, exhaust fan, etc.; and (D) interior and exterior color.

Buyer should return copies of all documents Buyer sends to Seller. Seller will acknowledge Buyer's order. Buyer shall review Seller's acknowledgement to ensure the parties agree what is to be shipped, and the shipping date.

6. ADJUSTMENTS TO TERMS OF PERFORMANCE

Seller may modify the transportation terms, terms of payment or minimum requirement per shipment at any time prior to Seller's shipment of goods, provided Seller gives Buyer 15 days' prior written notice of such proposed changes. Buyer's failure to make written objection to the proposed change within such 15-day period shall constitute Buyer's acceptance of such change. Within 10 days of receiving Buyer's written objection to such proposed change, Seller will advise Buyer whether Seller will (a) continue to supply pursuant to the terms and conditions in effect prior to the announced change, or (b) cancel the contract without any further obligation to Buyer.

Buyer and Seller acknowledge that this purchase order is placed during a period of material and equipment price volatility. To provide the lowest feasible Contract Sum to Buyer, Seller has included materials and equipment in the Contract Price at prices available as of the date of this purchase order, with little or no allowance for price escalation. Buyer and Seller agree that, if commercially-available prices for any type of material or equipment necessary for the Goods increase by more than 3% from prices effective on the date of this purchase order until procurement by Seller, based upon demonstrable industry price metrics, the Contract Price shall be increased by the amount such documented price increase exceeds 3% for the affected materials and/or equipment that will be incorporated into the Goods.

7. FORCE MAJEURE

Either party's obligations may be suspended by Acts of God, pandemic, war, riot, fire, explosion, accident, flood, or sabotage; inability to obtain fuel, power, raw materials, labor, containers or transportation facilities; inability to obtain raw materials at rates similar to those in effect as of the date of the purchase order; labor disputes; governmental laws, regulations, orders or action; breakage or failure of machinery or apparatus; Buyer's failure to release an order for production or shipment on a timely basis; national defense requirements, or any other event beyond the reasonable control of such party, which event prevents the manufacture, shipment, or acceptance of a shipment of the goods or of a material upon which the manufacture of the goods is dependent.

If, because of any such event, Seller is unable to supply all goods ordered, Seller may allocate its available supply of goods, among itself and all of its customers, on an equitable basis without obligation to purchase similar goods from other sources. Any deliveries suspended under this section may be canceled without liability, but this contract shall otherwise remain in effect.

8. LIMITED WARRANTY

Seller warrants to Buyer that the products and equipment delivered to Buyer hereunder will be free from defects in material and workmanship for a period of one year from the date of original shipment by Seller, when stored, installed, operated and maintained in accordance with recommendations of the Seller and standard industry practice, and when used under proper and normal use. Seller shall in no event be liable for modifications, alterations, misapplication or repairs made to its products or equipment by Buyer or others, or for damage caused thereto by negligence, accident or improper use by Buyer or others, or for normal wear and tear. No warranty is made for products or equipment not manufactured by Seller, such being subject only to warranties made by their respective manufacturers. Seller does not warrant, and Buyer assumes all responsibility for, compliance by the products and equipment delivered hereunder, with federal, state and local laws, building codes, regulations, and ordinances, including applicable occupational safety and health standards promulgated pursuant to the Federal Occupational Safety and Health Act. Except as provided in this paragraph, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS AND EQUIPMENT SOLD HEREUNDER, AND SUCH IMPLIED WARRANTIES ARE DISCLAIMED.

9. **REMEDIES**

SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ARISING OUT OF THIS CONTRACT OR THE TRANSACTION BETWEEN BUYER AND SELLER, INCLUDING FOR NEGLIGENCE, IS EXPRESSLY LIMITED TO REPLACEMENT OR REPAIR OF THE DEFECTIVE PRODUCTS; PROVIDED, HOWEVER, THAT SELLER SHALL NOT BE RESPONSIBLE FOR ANY COSTS RELATING TO THE REMOVAL OF THE DEFECTIVE PRODUCT OR REINSTALLATION OF THE REPLACEMENT PRODUCT. BEFORE SELLER IS OBLIGATED TO REPLACE OR REPAIR ANY ALLEGEDLY DEFECTIVE PRODUCT, SELLER IS ENTITLED TO DETERMINE WHETHER THE PRODUCT HAS A DEFECT. SELLER MAY EXERCISE THIS RIGHT BY ELECTING EITHER TO INSPECT THE PRODUCT AT THE PLACE THE PRODUCT IS LOCATED, OR BY REQUIRING BUYER TO SHIP THE PRODUCT TO SELLER F.O.B. CHESTERFIELD, FREIGHT PREPAID. BUYER SHALL NOT BE ENTITLED TO THIS REMEDY UNLESS THE SELLER IS PROVIDED WRITTEN NOTICE OF SUCH CLAIM WITHIN 30 DAYS FOLLOWING BUYER'S DISCOVERY OF THE DEFECT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DEFECT NOT DISCOVERED DURING THE WARRANTY PERIOD DEFINED IN PARAGRAPH 8.

10. **LIMITATION OF LIABILITY**

BUYER AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, UNDER NO CIRCUMSTANCES SHALL SELLER'S TOTAL AGGREGATE LIABILITY, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER CAUSE OF ACTION, EXCEED THE PRICE PAID BY BUYER FOR THE PRODUCT. BUYER AGREES THAT, IN NO EVENT WILL SELLER BE LIABLE FOR ANY PENALTY OR FOR ANY INDIRECT, SPECIAL, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, THE LOSS OF USE, INCOME, PROFITS OR PRODUCTION, OR INCREASED COST OF OPERATION, OR DAMAGES TO MATERIAL, OR DOWN-TIME COSTS, OR COSTS ASSOCIATED WITH THE REMOVAL OF EQUIPMENT OR PRODUCTS FROM SERVICE, OR REINSTALLATION, DISASSEMBLY OR REASSEMBLY, OR CLAIMS OF THIRD PARTIES AGAINST BUYER ARISING IN CONNECTION WITH THE SALE, INSTALLATION, USE OF, INABILITY TO USE, OR THE REPAIR OR REPLACEMENT OF SELLER'S PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL SURVIVE COMPLETION OR TERMINATION OF THE CONTRACT.

11. **BUYER'S CREDIT**

Seller reserves the right, among other remedies, either to terminate this contract or to suspend further deliveries under the contract if Buyer fails to pay for any shipment when payment becomes due, or fails to make any other payment under this contract or any other arrangement between Buyer and Seller. Should Buyer's financial condition become unsatisfactory to Seller, Seller may require cash payments or security satisfactory to Seller for future deliveries and for goods delivered.

12. **TITLE AND RISK OF LOSS**

Title to and risk of loss of all goods sold hereunder shall pass to Buyer upon Seller's delivery of such goods to the carrier at the shipping point.

13. **TAXES**

Taxes or governmental charges, or increases in such taxes or charges hereafter becoming effective, increasing the cost to Seller of producing, selling, or delivering the goods herein specified or procured materials used therein, and any tax now in effect or any increase in same payable by the Seller because of the sale of the goods, such as sales tax or use tax, may, at Seller's option, be added to the price herein specified.

14. **CANCELLATION AND BREACH**

This agreement cannot be canceled or terminated by Buyer. If Buyer cancels or terminates or breaches this contract in any manner, Buyer shall pay all damages and costs, direct and indirect, including attorney's fees, suffered by Seller, and shall pay to Seller a one-time charge of 10% of the contract price as damages for Seller's lost opportunities.

15. **CHANGES TO ORDER AND SPECIFICATIONS**

Buyer may not make any changes to its order after Seller releases the order from its Customer Service department for fulfillment, without Seller's prior written approval. Buyer shall pay all costs, direct and indirect, incurred by Seller due to the change in Buyer's order, and in addition, shall pay to Seller a one-time charge of 5% of the contract price. Seller will notify Buyer of the new shipping date due to the change. If Seller does not approve a change, Seller will notify Buyer of the disapproval, and will continue to supply pursuant to the terms and conditions in effect prior to Buyer's proposed change. If Buyer directs changes in the shipment date of the goods and Seller approves such change, Buyer shall be liable for all costs Seller incurs as a result of such change, including any storage costs, material costs, and lost profits resulting from Seller's loss of production time.

Seller reserves the right to change the specifications, drawings, samples or other descriptions or instructions of its goods at any time without notice.

16. **NON-ASSIGNABILITY**

Buyer shall not assign its rights or delegate its performance hereunder, in whole or in part, without the prior written consent of Seller, and any attempt at assignment or delegation without such consent shall be void.

17. **WAIVER**

No waiver by Seller of any breach of this contract shall be deemed to be a waiver of any other or subsequent breach. All rights and remedies available to Seller shall be cumulative and in addition to any other rights and remedies provided herein or by law.

18. **BANKRUPTCY**

In the event any bankruptcy, arrangement or insolvency proceedings are commenced by or against Buyer or, if an assignee for the benefit of creditors or of a receiver for Buyer or its properties is appointed, Seller, at its option, shall be entitled to cancel any unfilled portion of this contract without any liability whatsoever.

19. **LAW**

The parties hereby consent and agree that any legal proceeding arising out of or in connection with this Agreement shall be conducted exclusively in the Circuit Court of St. Louis County, Missouri, which shall have exclusive jurisdiction and venue to adjudicate any dispute between the parties. The laws of the State of Missouri (without regard to its choice of law principles) shall govern the contract and its performance, including the construction of these terms.

Buyer is solely responsible for ensuring that all products Buyer is purchasing from Seller comply with all federal, state, and local building codes, regulations, laws and ordinances. If Buyer purchases, installs and/or uses, in violation of any code, regulation, law, or ordinance, any product that Seller provides, Buyer shall defend and indemnify Seller against all claims, actions, expenses, and sanctions resulting from such installation and use.

20. **SEVERABILITY**

Should any provision of these terms be determined by a court or other competent authority to be unenforceable or prohibited in any state or other jurisdiction, then such provision shall, as to such provision in such jurisdiction only, be deemed severed to the extent of such unenforceability or prohibition. Subject to such severance, all remaining provisions of these terms and the contract shall continue in full force and effect.