

FIBERESIN NON-ARCHITECTURAL PRODUCTS

TERMS AND CONDITIONS OF SALE

20191201

THE FOLLOWING TERMS AND CONDITIONS GOVERN ALL SALES OF PRODUCTS AND MATERIALS, ALONG WITH RELATED DESIGN AND SERVICES, EXCEPT STONEWOOD ARCHITECTURAL PRODUCTS COVERED BY FIBERESIN STONEWOOD ARCHITECTURAL TERMS AND CONDITIONS OF SALE (“GOODS”) BY FIBERESIN INDUSTRIES, INC. OF OCONOMOWOC, WISCONSIN INCLUDING ITS FIBERESIN AND EDGEMOLD PRODUCTS DIVISION (INDIVIDUALLY OR COLLECTIVELY “SELLER”) TO THE CUSTOMER (“BUYER”). THESE TERMS AND CONDITIONS APPLY TO ALL ORDERS, WRITTEN OR ORAL, RECEIVED BY THE SELLER, ITS REPRESENTATIVES, SALESPEOPLE OR SUBSIDIARIES. THESE TERMS AND CONDITIONS SHALL SUPERSEDE ANY TERMS ON BUYER’S PURCHASE ORDERS, OTHER DOCUMENTS, AND ALL PRIOR COMMUNICATIONS BETWEEN SELLER AND BUYER, INCLUDING, BUT NOT LIMITED TO, ORDERS AND VERBAL QUOTATIONS, AND WILL CONSTITUTE A BINDING CONTRACT BETWEEN SELLER AND BUYER WHICH CAN ONLY BE MODIFIED BY MUTUAL WRITTEN CONSENT OF SELLER AND BUYER.

APPROVAL OF ORDERS

Orders are approved at the sole discretion of the Seller and may be rejected for any reason. Determination and verification of required quantities, colors, dimensions and shapes on a Quote is the sole responsibility of the Buyer.

COMMITMENT TO PURCHASE

Buyer’s signature on any Fiberesin quotation (hereinafter, “Quote” or “Quotes”) or Buyer’s purchase order is Buyer’s agreement to purchase the Goods in the quantities and for the prices shown according to the terms and conditions herein. Receipt of any Goods by Buyer from Seller or Seller’s fulfillment under any Quote or Order shall constitute Buyer’s agreement to the terms and conditions herein. Determination and verification of required quantities, colors, dimensions and shapes on a Quote is the sole responsibility of the Buyer.

TRANSPORTATION AND DELIVERY; TITLE

Unless otherwise stated by Seller on the Quote, Buyer agrees to arrange and pay for the transportation of the Goods. Buyer and Seller agree that the shipping terms are FCA Factory, Oconomowoc, WI. Title to Goods and risk of loss shall transfer to Buyer when Goods are loaded onto the carrier, unless otherwise stated by Seller on the Quote. Full panels are packaged on 50” x 98” heavy duty skids. Buyer is responsible for off-loading truck. **Prior to signing the carrier’s bill of lading or delivery receipt, Buyer agrees to inspect the Goods for visible damage, quality and quantity and clearly note any discrepancies or problems on the carrier’s delivery receipt / Bill of Lading.** Any claim by Buyer for visible shortage or damage must be made within one business day of receipt of the Goods and must be accompanied by the original bill of lading signed by carrier noting that Goods arrived in the condition claimed.

Buyer agrees to report any concealed damage discovered after carrier leaves to Seller within 15 days of delivery date. Pictures of the damage should be included with the claim. Buyer agrees to send claim documentation to Seller within the timeframes specified if the order shipped prepaid, and Seller will then file the claim with the carrier if damaged in transit. In all other cases, Buyer agrees to file the claim directly with the carrier within the timeframes specified above. Buyer shall keep damaged Goods along with their original packaging secure from further damage or theft until the claim is settled by the carrier.

PAYMENT TERMS

Discount payment terms, if specified herein, will apply only to the Goods and not to transportation charges or taxes. Discounts will be provided only when payment occurs within the time specified by such terms and only when Buyer has no outstanding, past due invoices from the Seller. Buyer agrees to make payments according to the terms set forth in the Quote. If the Buyer fails to pay by the required date, Seller shall be entitled to interest from the day on which payment was due at the lesser rate of 1.5% per month or the maximum allowable rate by law. Buyer agrees to pay Seller’s reasonable attorney fees and other collection expenses on any past due amounts. **Buyer shall have no right to offset, deduct or credit any amounts due to Seller, as all amounts invoiced are due in full without offset, deduction or credit, except as set forth specifically in these terms and conditions.**

PRICES

The pricing for Goods stated in any Quote is valid for 90 days and is only valid for a single purchase of the quantities specified in such Quote. Additional orders, even for the same Goods, may not receive the same pricing. The pricing includes only the Goods itemized in the Quote and excludes, without limitation, taxes, and freight. Fiberesin may, but shall not be obligated to, collect and remit sales, use, excise or any other taxes of any kind or nature. Buyer is obligated to remit all applicable taxes to the sale, and Buyer shall indemnify Fiberesin from all such applicable taxes due and owing on or arising out of the sale or use of Goods.

SALE IS FINAL, NO RETURN WITHOUT SELLER AUTHORIZATION

Unless otherwise stated, all sales are final, and Goods may not be returned for refund. Nevertheless, in the event Seller agrees to accept the return of Goods, the Seller will provide a Return Materials Authorization (RMA) number to the Buyer for inclusion with the returned Goods. Buyer agrees to return the Goods packaged in the original packaging or in an equivalent level of packaging and Buyer shall be responsible for damage to returned Goods resulting from inadequate return packaging.

WARRANTY FOR ALL FIBERESIN AND EDGEMOLD GOODS EXCLUDING ARCHITECTURAL WALL CLADDING PRODUCTS

All Goods sold by Seller, excluding architectural cladding products, are warranted to be free from defects in material and workmanship for one year from the date of purchase.

THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE.

Any claim by Buyer with reference to the Goods sold hereunder for any cause shall be deemed waived by the Buyer unless submitted to Seller in writing within thirty (30) days of the date on which the cause or defect is identified, whichever is earlier.

Buyer agrees to follow Seller's Installation Guidelines and Care and Handling Instructions. Improper fabrication, installation, care or handling may void product warranty. Seller shall not be liable for any loss or damage caused by improper application, storage or use of the Goods, or for the cost of any substituted Goods.

ALL WARRANTIES EXPRESSLY EXCLUDE GOODS NOT SOLELY DESIGNED, ENGINEERED AND MANUFACTURED BY SELLER. SELLER IS NOT RESPONSIBLE OR LIABLE IN ANY FORM FOR THE PERFORMANCE OF PARTS OR PRODUCTS MADE BY SELLER TO BUYER DRAWINGS OR SPECIFICATIONS. SELLER IS NOT RESPONSIBLE FOR ANY GOODS OR MATERIALS SUBSTITUTED FOR PARTS OR PRODUCTS MADE BY SELLER, OR INCOMPATIBILITY OF ANY SUBSTITUTED GOODS OR MATERIALS FOR PARTS OR PRODUCTS MADE BY SELLER.

Buyer is responsible for all testing related to the Goods as needed for the intended end use.

LIMITATION OF LIABILITY

Seller's liability for any claim of any type, including, without limitation, claims based upon the negligence of Seller, for any and all loss, damage, or personal injury arising out of or in any way connected with the Goods shall in no event exceed the original purchase price actually paid by the Buyer for the Goods. This limitation applies to claims that may result from the design, manufacture, sale, delivery, resale, installation, inspection, repair, test, modification, operation or use of any component, materials, service, or piece of equipment manufactured, furnished, sold, serviced or repaired in connection with Seller's performance, under these terms and conditions, along with any technical direction provided by Seller to the Buyer in connection with any of the foregoing, or any patent infringement claims. BUYER, SELLER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE.

INDEMNIFICATION FROM BUYER'S USE

Buyer agrees that the Goods purchased hereunder shall be installed and operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with any instructions provided by Seller and for the purposes for which the Goods are intended. Further, the Goods shall be operated in compliance with applicable government labor and safety standards, etc. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, demands, actions, causes of action, judgments, and costs, including, without limitation, reasonable attorneys' fees, arising out of or in connection with the installation of the Goods by Buyer, or Buyer's contractors, agents and installers, unless caused by Seller's gross negligence.

CANCELLATIONS; DELAYS

Orders submitted may not be cancelled by Buyer unless such cancellation is agreed to in writing by Seller. Buyer's failure to make payment in accordance with the agreed upon payment terms, or failure to comply with any provisions hereof, may result in the Seller's cancellation of the unshipped portion of an order, in addition to other remedies. Buyer will remain liable for all unpaid amounts.

Buyer's cancellation will be accepted only upon Buyer's acceptance of and payment in full for finished Goods, work in process and specially ordered materials, as a condition for Seller's acceptance of cancellation. Buyer agrees to pay Seller's cost for work in process and specially ordered materials plus 20%, whether or not Buyer chooses to take delivery of such specially ordered materials or work in process.

If Buyer shall, for any reason, request delay in delivery, the Goods may be placed in storage by Seller at the Buyer's sole risk and expense. Seller may, in addition to all other applicable charges, charge the Buyer for such storage together with all costs of handling, transportation and retransfer to Seller for delivery to Buyer at the then prevailing commercial rates. Seller shall have a Warehouseman's Lien on all Goods which are stored pursuant to this provision with all rights and remedies established by the laws of the State of Wisconsin relating to the foreclosure and sale of property subjected to such liens.

FAIR LABOR STANDARDS ACT

Seller gives the written assurance that it complies with the Fair Labor Standards Act 1938, as amended.

FORCE MAJEURE; DEFAULT

Seller shall not be liable for failure to ship or delays in shipment caused in whole or in part by any of the following: (a) fires, floods or other casualties; (b) wars, riots, civil commotion, embargoes, governmental regulations; (c) Seller's inability to obtain necessary materials (finished or otherwise) from its usual sources of supply; (d) shortage of cars or trucks or delays in transit; (e) existing or future strikes or other labor troubles affecting production or shipment, whether involving employees of Seller or employees of others, and regardless of responsibility or fault on the part of the employer; (f) other contingencies of manufacture or shipment, whether or not of a class or kind mentioned herein and not reasonably within the Seller's control. If Buyer is in default in performing any of its obligations, Seller may, at its option and without incurring any liability thereby, elect to cancel the unshipped portion of any open orders and refuse to accept future orders from Buyer. Seller shall also, in addition to any rights or remedies provided herein on Seller's election, have all of the rights and remedies with respect to defaults by Buyer as may be provided for under the laws of the particular state in which the sale occurred, or Goods are located or delivered.

TERMS AND CONDITIONS TO GOVERN; DEFAULT

Buyer agrees that the terms and conditions expressed herein shall apply to all Orders placed with Seller. By signing or stamping and returning a copy of a Quote; sending email or written acceptance of a Quote, or submitting a purchase order, Buyer agrees to be bound by these terms and conditions. These terms and conditions represent the complete agreement of the parties and shall be binding upon the Buyer and Seller, shall terminate and supersede all previous negotiations, commitments, representations, agreements, obligations, discussions and writings between the parties in connection with the subject matter. Terms on Buyer's purchase order, shipping request or any other document shall not modify the provisions stated herein unless such terms are in writing and signed by an officer of the Seller or another person authorized to bind the Seller. These terms and conditions constitute the complete and final agreement concerning the subject matter thereof. The parties' prior dealings, course of performance, and usage of trade shall not be relevant to determining the meaning of these terms and conditions. No waiver of any breach of any provision of these terms and conditions shall constitute a waiver of any other provision thereof. None of Buyer's rights or privileges under these terms and conditions, or any purchase order, shall be assignable without the prior written consent of Seller.

GOVERNING LAW; JURISDICTION; VENUE

This document shall be governed by and construed in accordance with the substantive laws of the State of Wisconsin. The parties hereto hereby (i) consent to the personal jurisdiction of the state and federal courts located in the State of Wisconsin in connection with any controversy related to this document, or any Quote, Order, invoice, the Goods, including without limitation sale of or payment for the Goods; (ii) waive any argument that venue in any such forum is not convenient; and (iii) agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The provisions of the United National Convention on the International Sale of Goods shall not apply to the sale and purchase of Goods by Seller.

TAXES & SALES TAX EXEMPTION CERTIFICATE

All prices for Goods are quoted exclusive of any applicable taxes. All taxes and excises of any nature whatsoever now or hereafter levied by governmental authority, whether federal, state or local, either directly or indirectly, upon the sale of any Goods covered hereby, or upon the subject matter hereof or upon transportation charges, shall be the responsibility of the Buyer, unless prohibited by law. (Please check only one box below.)

RELATIONSHIP OF SELLER AND BUYER

Buyer has no ability to bind Seller and shall not act or hold itself out as Seller’s agent, representative, joint venture or partner, as no such agency, representation, joint venture or partnership exists or is intended. The relationship between the parties is solely as Seller and Buyer under these terms and conditions.

- Buyer will provide a state sales tax exemption certificate for the state receiving the order or this state does not levy a sales tax. Orders will not be released until certificate is verified by Fiberesin. You may obtain a form that works for most states here: <http://goo.gl/2sZQQK>
- Sales to buyer are subject to sales tax. Fiberesin may calculate and add sales tax for the state specified in the shipping address.

The undersigned represents that they are authorized to bind Buyer to the Terms and Conditions herein and does hereby do so.



Signature _____ Date: _____

Printed Name: _____ Title: _____

Buyer (Company Name): _____