

SALES AGREEMENT AND LIMITED WARRANTY (OCTOBER 2018)

1. **SALES AGREEMENT.** The terms of this Agreement govern all past, present and future sales by American Building Supply, Inc. (ABS), to you, the Buyer. All sales are final. **This document constitutes Buyer's agreement that any additional or different terms contained in Buyer's oral or written offer or acceptance shall not apply to any sales or other transactions between ABS and Buyer. In other words, this document contains the sole and exclusive terms for this and all future sales.** No agreement between ABS and Buyer shall create a third-party beneficiary agreement. No general contractor or other third party may rely upon performance of this agreement by ABS.

2. **QUOTATIONS.** Quotations from ABS shall be considered an offer to sell. Purchase orders from Buyer shall be considered acceptance of ABS offer to sell as stated in an ABS quote, confirmation, or invoice. However, quoted prices are good for thirty days only. No verbal statements, promises, or understandings shall be binding on ABS or Buyer, until or unless confirmed in an ABS written quotation, confirmation, or invoice.

3. **PAYMENT.** Payment is requested within 30 days of the date of the invoice. ABS shall be entitled to service charges (a time-price differential) on any invoice not paid within thirty days. Service charges shall be charged at the rate of 1.5% per month. Payments on any invoice that is 60 days or older shall be made to ABS at 16027 Ventura Blvd., Suite 503 Encino, California 91436. Invoices shall not be considered past due until the 90th day after the date of the invoice. However, failure to pay invoices within the requested 30 days may result in the cessation of credit sales or in the reduction of the amount of credit allowed. In the event Buyer fails to make payment on any invoice within 90 days of invoice date, Buyer shall be in breach of this Agreement and ABS may elect to declare Buyer's entire account immediately due and payable.

4. **PRICE.** An invoice will be sent to Buyer by email, fax, and/or by U.S. Mail after the goods are delivered. If Buyer believes that any price is incorrect, Buyer must notify ABS, in writing, within ten days of the date Buyer receives the invoice, or the invoice price shall conclusively be presumed to be the agreed upon price. The notice must be sent to ABS by certified return receipt requested mail.

5. **DELAYS.** Any and all delivery dates given by ABS are estimates only. Buyer is cautioned to make allowance for delays and Buyer is warned that ABS shall not be liable to Buyer, nor to anyone else, for delays.

6. **CLAIMS PROCEDURE.** Buyer must make any claim for shortage, patent defect, nonconformity, damage, non-delivery or for anything else, to ABS, within ten days of the date Buyer discovered, or could have reasonably discovered, the claim, but in no event later than 30 days after such goods are delivered. A claim for a latent defect must be made within 10 days of the date Buyer discovered, or could have reasonably discovered, the latent defect. A claim for non-delivery must be made within 10 days of Buyer's receipt of a priced invoice for the goods. All claims must be made in writing, by certified return receipt requested mail, and shall be deemed made on date of the Post Office post mark. Buyer's failure to strictly comply with the above exclusive claims procedure set forth in this section shall be a complete bar to any claim or to any setoff. Any suit against ABS must be filed within one year after the invoice date. Failure to file suit within one year shall be a complete bar to any setoff or to any recovery against ABS. ABS may respond to one or more verbal claims without waiving the requirement of a written claim, by certified return receipt requested mail, for that claim or any other past, present or future claim.

7. **RETURNS.** Goods may not be returned to ABS for credit without ABS prior written consent. Buyer must examine the goods prior to installing, altering or otherwise using the goods. If the claimed defect, non-conformity, or damage could have been discovered through the exercise of reasonable investigation and care before they were used or installed, used goods will not be accepted for return or credit.

8. **REPRESENTATIONS AND WARRANTIES.** There have been no representations or warranties made by ABS with respect to the goods listed on the front hereof, except for the written limited warranty statements published and distributed in ABS catalogs. **All implied warranties of merchantability and fitness for a particular purpose and all other implied warranties are excluded. Failure to properly seal all six sides of any door sold by ABS voids all warranties.** Buyer agrees to advise his customers, the general contractor, and the owner that all six sides of each wood door must be properly sealed or the warranty with respect to the door is voided. Priming is not a proper seal. Buyer also agrees to comply with, and notify his customers of, all use, maintenance and care requirements published and distributed in ABS catalogs.

9. **CONFIDENTIALITY.** Any information, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" that Seller conveys to Buyer, including but not limited to, product designs, customer information, business processes, trade secrets, business plans, forecasts, and financial information, considered non-public, confidential or proprietary by Seller is confidential information. Buyer shall use the confidential information solely for internally business purposes and may not disclose or copy confidential information unless authorized by Seller in writing. Buyer may disclose confidential information to its employees who (1) have a

bona-fide need to know the information to perform Buyer's duties under this agreement, and (2) are bound by a duty of confidentiality to Buyer greater than or equal to Buyer's duty of confidentiality under this agreement. Seller shall be responsible for any breach of these obligations by any party to whom it discloses Seller's confidential information. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party.

10. **LIMITATIONS OF LIABILITY.** Any liability of ABS which relates to the sale, manufacture, delivery, resale, installation, or use of any goods sold by or furnished by ABS, whether arising out of or related in any way to any contract, negligence, strict tort, under any warranty or otherwise, shall be limited to ABS choice of any one of the following: (a) the repair of goods by ABS; (b) the replacement of the goods; or, (c) the cancellation of the contract, Buyer's return of the goods in question to ABS, and ABS refund of the purchase price to Buyer. These remedies are exclusive; Buyer waives all other remedies. **In addition, ABS shall not, under any circumstances, be responsible for special, economic, consequential or incidental damages such as, but not limited to: loss of or damage to other property; loss of profits, revenue or reputation; loss of purchased or replaced goods; or damages caused by delays, back-charges, or loss of use. The goods are sold as is.**

11. **INDEMNIFICATION.** Buyer shall defend, indemnify, and hold ABS harmless from and against any and all: (i) claims by third parties for delays or other damages that are excluded by Sections 4,5,6,8, and 10 of this Agreement or excluded as a result of failing to give timely notice required by any of those Sections; and, (ii) construction defect claims asserted by anyone, except that, if there is a final judgment that unequivocally holds that there was a manufacturing defect (as opposed to improper installation) in any ABS product, ABS shall reimburse Buyer for the lesser of the cost of repairing the product or the cost of buying replacement product (but ABS shall not reimburse Buyer for any consequential damages including, but not limited to labor, removal, or installation costs).

12. **ATTORNEYS FEES AND SUIT.** In the event of a lawsuit brought by either Buyer or ABS related to the sale of the goods, the successful party shall be entitled to: attorney's fees in the amount of 40% (but not less than \$1,500.00) of the claim, if the claim is \$5,000.00 or less; or, attorneys' fees in the amount of 33.3% of the claim, if the claim is over \$5,000.00. However, if the defendant files an Answer (even if the Answer is allowed to be filed by the Court after a default has been entered and/or even if the Answer is ultimately stricken), the successful party shall be entitled to reasonable attorneys' fees. In addition, the successful party shall be entitled to request and receive post judgment collection costs and attorney's fees, whether the judgment awarding attorney's fees was based on the percentage formula or on the reasonable attorney's fee provision. Any suit, by Buyer or by ABS, must be brought in the Los Angeles Superior Court (Northwest District, Van Nuys). However, if ABS elects to require payment of \$5,000.00 or less, in Sacramento, suit must be filed in the Sacramento Small Claims Court. If ABS assigns Buyer's past due account to a collection agency for collection, Buyer agrees to pay the agency's collection fee. Buyer shall pay \$50.00 to ABS for each and every check issued by Buyer and returned unpaid to ABS. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California.

13. **SEVERABILITY.** If any part of this Agreement is held invalid or unconscionable, that part shall be fully severable, and the remaining provisions shall remain in full force and effect.

14. **WAIVERS.** ABS may delay exercising or may omit to exercise any right, remedy or requirement, without waiving that or any other past, present or future right, requirement, or remedy, except in writing by ABS. ABS consistent waiver of any right, requirement, or remedy shall not modify the terms of this agreement, nor establish a course of dealing which could be construed as a waiver of any of the provisions of this agreement.

15. **COLLATERAL RECOVERY.** If ABS recovers payment from a collateral source (on a mechanic's lien claim, stop notice, or similar statutory claim), ABS shall credit Buyer's account only with the net amount recovered by ABS after deduction of all costs and actual attorney's fees (whether or not some or all of those fees are included in a Court award or in a settlement agreement). Furthermore, in the event that ABS is unsuccessful in its attempt to recover from a collateral source, ABS reasonable costs and attorney's fees may be added to Buyer's account. ABS may proceed against a collateral source at any time regardless of the aging of Buyer's invoices.

16. **ENTIRE AGREEMENT.** This document, any written agreement signed by Buyer and ABS, and any credit application signed by Buyer, constitute the entire understanding between Buyer and ABS, and supersede all prior oral representations, warranties, statements, promises and understandings with respect to the subject matter hereof, and may not be modified or terminated, except by a document, in writing, signed by Buyer and ABS. ABS has not made any promises or representations to induce Buyer to enter into this Agreement and Buyer is not relying upon any promise or representation not contained in this Agreement, in a signed credit application, or in any other document referred to herein.