

NEW CASTLE

BUILDING PRODUCTS

PURCHASE AGREEMENT TERMS AND CONDITIONS OF SALE

1. Any purchase made on credit requires that Buyer have on file with S&K Distribution LLC, DBA New Castle Building Products ("Seller") an approved Credit Application. Buyer further confirms Buyer's consent to Seller's Credit Agreement, the terms and conditions of which have been read by Buyer and are incorporated by reference herein.
2. Seller acknowledges and accepts Buyer's order. Seller's acknowledgement and acceptance is expressly conditioned upon Buyer's acceptance of the terms and conditions herein. No terms or conditions other than those stated herein, whether contained in Buyer's purchase order, shipping release, or elsewhere, and no written or oral agreement that purports to vary these terms and conditions shall be binding upon Seller unless hereafter set forth in a writing signed by Seller's authorized representative. All negotiations, proposals and representations are merged herein, and this writing constitutes the complete and exclusive statement of the terms and conditions of this Purchase Agreement between Buyer and Seller. In the event Buyer fails to accept this Purchase Agreement in writing, Buyer's consent to the terms and conditions herein shall be conclusively presumed, either from Buyer's failure to object in ten days in writing or from Buyer's acceptance or use of the material delivered hereunder. Unless Buyer notifies Seller in writing to the contrary prior to making a purchase, Buyer hereby represents and warrants that any employee or agent action on Buyer's behalf shall be deemed to be authorized by Buyer and Seller may rely upon such representation.
3. In any case, in which Seller makes delivery, Buyer hereby agrees to pay Seller's customary shipping charges. Delivery shall be made at the project site or other place of delivery adjacent to the closest public right of way. The risk of loss shall pass to Buyer upon delivery of the goods should Buyer not be present to accept delivery. Buyer hereby authorizes Seller to unload the goods and leave them at the delivery destination. Buyer shall release Seller and shall indemnify and hold harmless Seller from and against any and all claims demands, actions, causes of action, cost, expenses, and attorney's fees arising out of or in connection with any and all injury including death, to any person or persons (whether third parties or agents, servants, or employees of Buyer), any and all damages to or loss of any property (whether belonging to Buyer or a third party), and any and all other damages recognized at law or in equity caused in whole or in part by or in any way related to the delivery of goods onto the project site, whenever such delivery is made in accordance with or pursuant to Buyer's instructions.
4. Buyer shall have the right to inspect the goods upon arrival. Buyer's inspection rights shall expire 24 hours after the arrival of the goods at the delivery destination. A failure to make inspection within that time shall waive notice of any defect which reasonable inspection would have revealed. A rejection of the goods by Buyer shall not be effective unless it is made and written notice thereof is given to Seller within 5 calendar days of delivery.
5. Seller shall have the right, without prejudice to any other rights, to suspend further deliveries of any items purchased if Buyer defaults in payment of any amounts due, or whenever Seller may deem itself insecure as to Buyer's performance, until Buyer remedies such default or provides adequate assurance to Seller of Buyer's ability to perform.
6. Unless otherwise provided by law, Seller may require Buyer to pay or to reimburse Seller for any tax (except income tax) which now or hereafter may be imposed by any taxing authority with respect to the items purchased or the sale, purchase, manufacture, delivery or use thereof.
7. Seller reserves the right to discontinue, without liability hereunder, deliveries of any merchandise, the manufacture, use and/or sale of which in the opinion of Seller would infringe any patent now or hereafter issued and under which Seller is not licensed.
8. Where Buyer requires tests or inspection not regularly provided by Seller, Seller may charge Buyer for the actual cost of such test or inspections.
9. An order may be terminated by Buyer before completion only with Seller's written consent, in which event Buyer shall pay to Seller:
 - (a.) The contract price for all products, which shall have been delivered or completed prior to receipt of notice of termination.
 - (b.) All actual costs incurred by Seller in connection with the uncompleted portion of the order.
 - (c.) Cancellation charges, if any, of Seller.
10. Buyer shall not hold Seller responsible for any delay caused in whole or in part by circumstances beyond Seller's reasonable control, including but not limited to, force majeure, fires, or accidents; strikes or other differences with workmen; war (whether declared or undeclared), riots, or embargoes; delays by carriers; delays in shipment or receipt of materials from suppliers; or any legislative, administrative or executive law, order, or requisition of the federal or any state or local government or any subdivision, department, agency, officer or official thereof. Seller shall not be liable in any event for any special, incidental, or consequential damages caused by Seller's failure or delay in performance or delivery due to any cause whatsoever, if Seller is unable, due to any cause beyond Seller's control, to supply Buyer's total demand for products. Seller may allocate its available supply among Seller's customers, including Seller's branches and affiliates, in any manner Seller deems reasonable.
11. **SELLER SHALL ASSIGN OR TRANSFER TO BUYER ANY ASSIGNABLE OR TRANSFERABLE MANUFACTURER'S WARRANTIES, IF ANY, APPLICABLE TO THIS PURCHASE, IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SELLER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT EXTENDS BEYOND THE DESCRIPTION ON THE FACE OF THIS PURCHASE AGREEMENT. BUYER ACKNOWLEDGES THAT BUYER IS MAKING THIS PURCHASE BASED UPON BUYER'S SPECIFICATIONS TO SELLER OF THE GOODS REQUIRED BY BUYER AND NOT BY REASON OF ANY STATEMENT MADE BY OR ON BEHALF OF SELLER AS TO THE MERCHANTABILITY, SPECIFIC ATTRIBUTE OR OTHERWISE OF THE GOODS.**
12. Seller shall not be liable under any circumstances for consequential or Incidental damages arising out of, or in connection with, this Purchase Agreement. The liability of Seller under this Purchase Agreement is limited to repayment of the purchase price of items not conforming to the description on the face hereof upon return of the items. This remedy is the exclusive remedy of Buyer under this Purchase Agreement. Seller shall not be liable for any damages attributable to product abuse, misuse, neglect or any other cause, which is not the fault of Seller.
13. Buyer agrees to indemnify and hold harmless Seller from and against any and all claims, demands, actions, causes of action, costs, expenses, and attorney's fees arising out of or in connection with any and all injury, including death, to any person or persons (whether third parties or agents, servants or employees of Buyer), any and all damages to or loss of any property (whether belonging to Buyer or to a third party), and any and all other damages recognized at law or in equity, caused by or resulting from in whole or in part, any act(s) or omission(s), negligent or otherwise, of Buyer, or any of Buyer's agents, servants, employees, subcontractors or customers. In the event that the applicable law prohibits enforcement of this clause as written, then and only then, this clause shall be modified to provide the maximum indemnification to Seller, as indemnitee, allowable under that applicable law.
14. This Purchase Agreement shall be governed by and construed according to the laws of the state wherein the Seller branch supplying the goods hereunder is situated. Any action brought, upon or by reason of, this Purchase Agreement shall be brought, in Seller's sole discretion, either in a court with jurisdiction over the county in which the Seller branch is located, in a court within the county where Seller's principle credit department within the state where the Seller branch is located, in a court with jurisdiction over the county in which the project for which the goods are to be used is located, or in a Court where an action between Seller and a third party is pending which concerns the subject matter of this Purchase Agreement. Buyer agrees that, in the event, any action is brought upon, or due to, this Purchase Agreement by either Buyer or Seller, and Seller prevails, Buyer shall pay Seller's reasonable attorney's fees and other costs incurred because of or in connection with such action, in the maximum amount permitted by law.
15. Waiver by Seller of any terms or conditions of this contract or waiver of any breach hereof shall not be construed as a waiver of any other term, condition, or breach. Determination that any provision of this Agreement is illegal or invalid shall not affect the validity or enforceability of the remaining provisions of this Agreement.
16. Buyer consents to Seller's execution and recording of a UCC1 security interest in the good purchased, any replacement goods and any proceeds from the sale of the goods.