

## CBC AMERICA LLC TERMS AND CONDITIONS OF SALE

### 1. GENERAL

The issuance by CBC AMERICA LLC. (hereinafter "CBCA"), of this invoice to BUYER operates as an acceptance of the BUYER's order to purchase products from CBCA; provided, however, that such acceptance is subject to the terms and conditions set forth herein, which shall override and supersede any prior agreements, understandings, representations and communications between the parties, including any terms and conditions stated by BUYER in its purchase order or otherwise. Unless BUYER notifies CBCA, in writing, within five (5) business days of the issuance of this invoice, of BUYER's unwillingness to accept the terms and conditions set forth herein, the parties shall be deemed to have entered into a binding contract for the purchase and sale of the products ordered by BUYER, and covered by this invoice, on the terms and conditions set forth herein.

### 2. DELIVERY

Shipments are scheduled by CBCA upon issuance of an invoice. Whenever possible, CBCA will schedule shipments in accordance with BUYER's requirements. In instances where existing priorities and schedules prevent strict compliance with requested delivery dates, CBCA shall schedule shipments as close as possible to the requested dates, and BUYER will be advised of the actual shipping schedule. Delivery shall be deemed to occur on transfer of possession of the products in question to the carrier or to BUYER's representative. Shipping dates scheduled by CBCA are conditional upon prompt receipt of all necessary documents from BUYER.

### 3. DELIVERY TERMS

In the absence of written agreement to the contrary, shipment shall be made freight collect, to any point within the continental United States by the carrier selected by CBCA in the absence of specific selection of a carrier by BUYER. In no event shall CBCA assume any responsibility or liability for any costs, expenses, damages or losses incurred by the BUYER in connection with shipment, and in no event shall the carrier be deemed an agent of CBCA. CBCA shall not be liable for damages or penalties arising out of any delay in delivery or out of any failure to give notice of such delay.

### 4. TITLE AND RISK OF LOSS

All deliveries shall be made F.O.B. Warehouse at the discretion of CBCA. Title and risk of loss and damage shall pass from CBCA to BUYER upon delivery at the F.O.B. point to the common carrier or, at BUYER's request, to BUYER's representative.

### 5. PAYMENT

Upon approval of credit by CBCA, payment terms must adhere to from the date of shipment. In case of partial shipment, prorata payments shall become due on account of each partial shipment on the terms stated above. On overdue accounts, BUYER shall pay a one and one-half percent (1.5%) per month finance charge (but not more than the maximum rate permitted by law) upon the unpaid balance, until the date of payment. Regardless of any prior approval of credit, CBCA may require full or partial payment in advance if, in its sole judgement, the financial condition of BUYER at any time prior to shipment so warrants. If at any time CBCA requests written assurances with respect to BUYER's financial condition, BUYER shall deliver the same to CBCA within seven (7)

business days after receipt of CBCA's request therefore; if BUYER shall not so deliver such assurances, or shall deliver assurances which are not satisfactory to CBCA, CBCA may suspend all deliveries until receipt of such assurances which are satisfactory in form and substance to CBCA. Note: Buyer must remit payment for the entire value of the invoice. No deduction from the stated invoice will be allowed without prior approval by CBCA. Any unauthorized deductions will be subject to late payment penalties.

### 6. SECURITY INTEREST

Where permitted by law, BUYER grants CBCA a purchase money security interest in the material delivered by CBCA TO BUYER and in any proceeds thereof (including accounts receivable arising from projects involving the installation of materials obtained from CBCA), as security for all its obligations hereunder. Upon request of CBCA, BUYER shall execute any financing statement or other document, in a form satisfactory to CBCA, which may be required to perfect such security interest, provided that if BUYER shall refuse or fail to comply with any such request by CBCA within five (5) days of such request, CBCA may execute such financing statements as BUYER's attorney-in-fact.

### 7. TAXES

The prices stated are exclusive of federal, state, municipal or other government taxes now or hereafter imposed upon the sale, production, storage, transportation or use of the products described herein. Such taxes applied directly to the sale covered by this invoice shall be paid by BUYER, unless BUYER shall provide a tax exemption certificate which is applicable to the taxes required to be paid and which is acceptable to the taxing authorities in lieu of payment. When such taxes are applicable, they shall be billed as a separate item on the invoice. On sales outside the United States, all required customs and import duties, licenses and fees shall be payable by BUYER in addition to the stated prices.

### 8. LIMITED EXPRESS WARRANTY

CBCA warrants all products sold pursuant to this invoice to be free from defects in workmanship and material under normal use and service for a period defined in each of the products' warranties from the date of Buyer's invoice to the original end user. CBCA's sole obligation under the foregoing warranty shall be to repair or replace, at CBCA's option, at the place of shipment, without charge, all defective products which are returned for inspection within the applicable warranty period, but only if such inspection confirms that the defects are as specified above, and that the products have not been: (1) installed incorrectly, or in non-compliance with the procedures prescribed and instructions issued by CBCA; (2) modified or altered, other than with authorization from CBCA and by its approved procedures; (3) subjected to forces in excess of the maximum forces for which CBCA has specified the product for use; (4) subjected to sharp objects or abrasive surfaces, substances or chemicals; (5) or subjected to abuse, misuse, improper maintenance, negligence or accident.

THIS WARRANTY IS IN LIEU OF, AND BUYER WAIVES, ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 9. LIMITATION OF LIABILITY

(a) In no event shall CBCA be liable for (i) special, indirect or consequential damages; or (ii) any damages whatsoever from loss of use, data or profits, arising out of or in connection with this contract or the use or performance of CBCA products, whether in an action for contract or tort (including negligence) or otherwise. CBCA's liability for damage to property shall be limited to repair or replacement of CBCA products, and liability for physical damage directly caused by the sole negligence of CBCA.

(b) No action, whether in contract or tort (including negligence), arising out of or in connection with this contract, may be brought by either party more than eighteen (18) months after the cause of action has accrued, except that an action for non-payment may be brought within eighteen (18) months of the date of the last payment made by the party against whom the action is brought.

(c) The maximum liability of CBCA to any person whatsoever arising out of or in connection with any sale, use or other employment of any CBCA products delivered to BUYER hereunder, whether such liability arises from any claim based upon contract, warranty, tort or otherwise, shall in no case exceed the actual amount paid to CBCA by BUYER for the particular product(s) delivered hereunder which gave rise to the claim.

### 10. CONTRACT CHANGES

By mutual agreement, changes may be made in quantity, model types, options, place of delivery, and methods of shipment. If any such change causes an increase or decrease in the price of the products, or in the time required for performance, CBCA shall promptly notify BUYER and equitable adjustment shall be made by mutual agreement. Except as otherwise provided in this paragraph, no changes to the contract between CBCA and BUYER shall be effective unless agreed to in writing by both parties.

### 11. PRODUCT CHANGES

CBCA reserves the right to make any changes which it deems appropriate to the design or manufacture of the products, so long as such changes do not materially change the form, fit or function of the products.

### 12. TERMINATION

The contract formed hereunder is not subject to cancellation or termination by BUYER. At any time, CBCA may terminate the contract formed hereunder, prospectively, by delivery of a written notice of termination to the BUYER at least thirty (30) days prior to the effective date of termination; provided, however, that CBCA may terminate this Agreement effective immediately, without prior written notice to the BUYER in the event that:

(a) BUYER shall become insolvent, or bankruptcy or insolvency proceedings shall be commenced with respect to BUYER; or  
(b) BUYER shall neglect or fail to perform or observe any of its existing or future obligations to CBCA, including but not limited to the obligation to make timely payment of any sums due CBCA on any purchase order or sale by CBCA to BUYER. No termination shall affect BUYER's obligation to make additional payments as a result of products purchased up to the effective date of termination.

### 13. EXCUSABLE DELAYS AND DEFAULT

Either party shall be excused from any delay or failure in performance hereunder caused

by reason of any occurrence of contingency beyond its reasonable control, including, but not limited to, an act of God, earthquake, labor disputes, riots, novelty of product manufacture of other unanticipated manufacturing problems, governmental requirements, inability to secure materials on a timely basis, and transportation difficulties. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable delay or failure.

### 14. PROPRIETARY INFORMATION

All proprietary information which is specifically designated as such, disclosed by either party to the other in connection with this contract shall be used solely for manufacture, installation, operation, maintenance, and support of products provided hereunder and shall be protected by the recipient from disclosure to others with the same degree of care as that which is accorded to its own proprietary information.

### 15. WAIVER

All rights and remedies of the parties hereto are separate and cumulative, and no one of them, whether exercised or not, shall be deemed to exclude or limit or prejudice any other rights or remedies which the parties hereto may have. The parties hereto shall not be deemed to waive any of their rights or remedies hereunder, unless such waiver is in writing and signed by the party making the waiver. Any waiver made shall be limited strictly by its express terms, and a waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

### 16. GOVERNING LAW

The contract formed hereunder, and the performance of the parties pursuant to the contract, shall be construed and interpreted in accordance with the laws of the State of New York.

### 17. ASSIGNMENT

Any assignment of this Agreement, or any of the rights hereunder, by BUYER shall be void without prior written consent of CBCA. A transfer of control, or sale of all or substantially all the assets, of BUYER shall be deemed to be an assignment hereunder.

### 18. ENTIRE AGREEMENT

This Agreement sets forth all the promises, agreements, conditions and understanding, written or oral, between the parties hereto with respect to the subject matter hereof and constitutes the entire agreement between the parties, superseding any prior or contemporaneous oral or written agreements. No subsequent alterations, amendments, changes or additions hereto shall be binding and valid unless reduced to writing and signed by each party.

### 19. CAPTIONS

Except for the caption preceding paragraph 8, LIMITED EXPRESS WARRANTY, all paragraph captions are for reference only and shall not be considered in construing the contract formed hereunder.

### 20. SEVERABILITY

If any provision or portion thereof of this contract is held to be unenforceable or invalid, the remaining provisions and portions thereof shall nevertheless be given full force and effect.