



Foundation Building Materials
Founded on Principle · Built with Purpose

STANDARD TERMS AND CONDITIONS OF SALE (CANADA)

These are the Standard Terms and Conditions (these “Terms”) of sale for FBM Canada GSD, Inc., FBM Whitby, Inc., and each of its subsidiaries, affiliates, and divisions (hereinafter “FBM”). These Terms shall bind FBM and its Purchaser (the “Purchaser”) regarding the purchase and sale of FBM’s products and materials (the “Products”). Terms, as used herein, shall include the terms and conditions of any Credit Agreement, and shall govern the sale of Products identified on a delivery, pick ticket, quotation, order acknowledgment, or invoice (collectively, the “Ticket”) issued by FBM to Purchaser, and includes any related services such as delivery.

1. Acceptance of Orders. FBM’s offer to sell Products to Purchaser or acceptance of Purchaser’s order is expressly conditioned upon Purchaser’s acceptance of these Terms. By accepting delivery of Products from FBM, Purchaser agrees to be bound by these Terms unless otherwise set forth in a separate written agreement signed by both Parties. Purchaser’s use or holding of FBM’s Products for ten (10) days after delivery also constitutes Purchaser’s acceptance of these Terms.

2. Signatures; Authority. Signatures are not required on delivery documents in order for FBM to enforce the Terms. Any and all individuals signing Tickets on behalf of Purchaser represent and warrant to FBM they are authorized to do so, and acknowledge these Terms shall be binding upon Purchaser. Purchaser affirms and ratifies any individual signing a Ticket on behalf of Purchaser is authorized to place such orders.

3. Rejection of Terms; Inconsistent Terms. These Terms supersede and replace all prior oral or written agreements, proposals, memoranda, correspondence, or other communications between the Parties, excepting a written agreement to the contrary signed by both Parties. Any additional, inconsistent, or different terms or conditions contained in Purchaser’s purchase order or other documents submitted by or on behalf of Purchaser at any time, whether before or after the date hereof, shall be deemed a material alteration and not a rejection of these Terms, and are hereby expressly rejected by FBM.

4. Payment Terms; Prices. Purchaser shall pay in full for all Products on the due date specified in each purchase order and corresponding FBM invoice issued to Purchaser. All price quotes provided by FBM to Purchaser shall expire within thirty (30) days following issuance of the quote, defined as any form of communication of the quote, whether in person, by telephone, or in any written form including email. No payments shall be subject to any setoffs, deductions, or claims, unless agreed to in writing by FBM. Regardless of any statement appearing on a check or otherwise, FBM shall have the right to set-off any amounts owing from Purchaser against any amounts payable to Purchaser, and FBM’s acceptance of a payment in an amount less than due shall in no way constitute an accord and satisfaction, nor prejudice FBM’s rights and remedies to collect the full amount due. Prices do not include any provincial sales taxes or other charges levied by any governmental authority upon the sale, use, or transportation of the Products, all of which shall be paid by Purchaser to FBM at the time of sale unless Purchaser supplies a sales tax exemption certificate to FBM. Time is of the essence with regards to these Terms.

5. Shipping; Title; Risk of Loss. FBM shall tender all Products either to (a) Purchaser, or (b) Purchaser’s carrier at FBM’s or manufacturer’s warehouse designated on the Ticket, or by delivery to the “Ship To” address specified on the Ticket. All shipping dates are approximate and not guaranteed. For Products tendered at FBM’s or manufacturer’s warehouse, both title and risk shall transfer from FBM to Purchaser when the Products are loaded onto Purchaser’s vehicle(s) or Purchaser’s carrier vehicle(s). For Products delivered to the “Ship To” location specified on the Ticket, title and risk of loss shall vest in Purchaser, regardless of shipping or insurance arrangements, either (a) at the time the Products arrive curbside at the “Ship To” address and even before

unloading, spreading, or stocking, or (b) if the Ticket specifies FBM shall supply the unloaded, spreading, and/or stocking services, then at the time the Products are so unloaded, spread, and/or stocked. Any damages related to any handling of the Products occurring after such transfer of title and risk of loss shall be at Purchaser’s sole and exclusive risk. In the event of delivery to a “Ship To” address, Purchaser represents and warrants to FBM that Purchaser has the ability and right to permit the access necessary for FBM to make complete delivery of the Products, specifically for ingress, egress, unloading and deposit of Products, and all related and necessary activities. FBM is expressly granted by these Terms a purchase money security interest in all present or after acquired building materials and supplies purchased by Purchaser on Credit from FBM until final payment is received and Purchaser waives its right to receive a printed copy of the financing statement or a copy of the statement used by any Registry to confirm the registration of FBM’s security interest under any applicable personal property security legislation. Purchaser grants FBM a right of repossession of all materials for which credit terms are in default, or in FBM sole discretion, until full payment is received. For delivery and repossession purposes, Purchaser hereby grants FBM and its respective carriers a license to enter the construction property.

6. Inspection of Products; Notice of Damage. Purchaser shall promptly inspect any and all purchased Products for any reasonably discoverable damage or non-conformity within forty-eight (48) hours of delivery, with delivery defined as FBM’s tender of Products per Section 5 above, and notify FBM in writing (email is sufficient) of any such damage or non-conformity. All claims for damages or non-conformance which could reasonably be discoverable in the course of such investigation, but which were not made within said forty-eight (48) hour period, shall constitute irrevocable acceptance of the delivered Products and act as a waiver of any damage or non-conformity. Following timely notice of damaged, or non-conforming Products which FBM delivered to Purchaser, the sole remedy for any damaged or non-conforming Products shall be, at FBM’s election, (a) replacement of the damaged or non-conforming Products, or (b) refund of the price paid by Purchaser to FBM for such damaged or non-conforming Products.

7. Cancellations; Returns. If Purchaser fails to make payment as required by the Terms, or otherwise fails to comply with these Terms or act in accordance with any other agreement between Purchaser and FBM, then FBM may, at its option and in addition to other remedies, cancel any unshipped portion of Purchaser’s order without any liability to FBM, in which case Purchaser remains liable for all unpaid amounts for Products already delivered. Subject only to Section 6 above, Products cannot be returned, and orders, once accepted by FBM, cannot be cancelled without FBM’s prior written consent, which may be granted or withheld in FBM’s sole discretion. All Products accepted by FBM for return and refund are subject to a restocking fee of twenty percent (20%) of the price of cancelled or returned Products, plus all shipping costs, to be paid by Purchaser.

8. Limited Warranty. Except for those instances where FBM fabricates mechanical insulation Products, FBM is not and shall not be considered a manufacturer of Products. In those limited circumstances where FBM is acting as a manufacturer, FBM will honour any warranties expressly provided in writing on the Product label or separate FBM warranty. In the event some or all of the Products are warranted by the manufacturer, FBM agrees to provide and pass-through, to the extent reasonably possible and permitted by applicable law, any such warranty to Purchaser; however, FBM is not responsible for manufacturer’s warranties whatsoever. UNLESS THE PRODUCTS ARE SUBJECT TO AN EXPRESS WRITTEN WARRANTY PROVIDED BY FBM PER THIS SECTION, PRODUCTS ARE SOLD “AS-IS.” FBM DOES NOT MAKE, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, AND GUARANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF



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FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, COURSE OF DEALING, USAGE OF TRADE, OR OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS (WITH ANY AND ALL INTELLECTUAL PROPERTY RIGHTS REMAINING WITH THE MANUFACTURER). In accordance with FBM's commitment to provide quality service to its Purchasers, FBM agrees to act as a liaison for Purchaser with respect to the manufacturer regarding any manufacturer warranties; provided, however, FBM makes no representations as to dispute outcome and retains the right to terminate such efforts in its sole and exclusive discretion. Purchaser represents and warrants (a) it will use all Products for business and commercial purposes and not for personal, household, or family uses, and (ii) Purchaser is not a "consumer" or similar designation as defined by any applicable consumer protection, fair trading or fair business practice laws or other similar legislation, including without limitation, the Alberta Fair Trading Act, RSA 2000, c F-2, the British Columbia Business Practices and Consumer Protection Act, SBC 2004, c 2, the Saskatchewan Consumer Protection and Business Practices Act, SS 2014, c C-30.2, the Ontario Consumer Protection Act, SO 2002, c 30, Sched. A and the Manitoba Consumer Protection Act, CCSM c C200 and Business Practices Act, CCSM, c B120, all as amended. FBM is only obligated to distribute the Products ordered by Purchaser (if FBM accepts such order) without regard to the Product's appropriateness to Purchaser's intended application, whether express, implied by circumstances, or otherwise.

9. Limited Damages. Purchaser's sole and exclusive remedy and the limit of FBM's liability for breach of a limited warranty, if any, whether based in tort, contract, strict liability theory, or otherwise, shall be, at FBM's option, (a) repair; (b) replacement with a like quantity of non-defective product; or (c) refund of the purchase price, plus reasonable handling and transportation costs incurred for approved returns pursuant to Section 7 herein. UNDER NO CIRCUMSTANCES SHALL FBM BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY AT LAW OR IN EQUITY, FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. Consequential and special damages shall not be recoverable even if the repair, replacement, or refund remedy for FBM's breach of its limited warranty fails of its essential purpose or for any other reason.

10. Force Majeure. FBM shall not be in breach or default of these Terms if performance is delayed or made impracticable by the occurrence of any one or more of the following: (a) fires, floods, or other casualties; (b) wars, riots, embargoes, governmental regulations or martial law; (c) inability to obtain necessary materials from usual sources of supply; (d) shortage of transportation or delays in transit; (e) strikes or other labor troubles; and (f) other conditions not reasonably within FBM's control, whether or not of a kind mentioned herein.

11. Indemnification; Release. Purchaser, on behalf of itself and its insurers, respective successors, and assigns, as against FBM and its directors, officers, employees, agents, representatives, contractors, and all of their respective successors and assigns (the "FBM Parties"), Purchaser hereby waives all rights, liabilities, losses, claims, damages, penalties, actions, lawsuits, judgments, costs, and expenses of any kind (including legal fees and disbursements) arising out of or related to (a) the transport, unloading, spreading, stocking, or storage of the Products, except where FBM is providing such services; (b) the possession, use, or installation of any Products, or (c) any re-sales of Products by Purchaser to a third party (collectively referred to hereinafter as "Section 11 Claims"). Purchaser shall indemnify, defend, and hold FBM Parties harmless from and against all Section 11 claims and all third party claims against FBM for any mechanic, builders' or construction liens or payment bond claims filed by FBM to recover for delinquent amounts owed to FBM by Purchaser.

12. Anti-Bribery and Anti-Corruption Laws. FBM and Purchaser each represent and warrant it understands and shall comply with the requirements of the U.S. Foreign Corrupt Practices Act, the Corruption of Foreign Public Officials Act, and all other applicable anti-bribery and anti-corruption laws of the jurisdictions under which each party is or may be acting hereunder.

13. Export Control Regulations. All Products sold by FBM are subject to the export control laws of Canada, and Purchaser agrees not to divert or resell the Products contrary to such laws. If any license or consent of any government or other authority is required for the acquisition, carriage, or use of product by Purchaser, Purchaser shall obtain the same at its expense and provide evidence of the same to FBM on request. Failure to do so shall entitle FBM to withhold or delay shipment, but failure to do so shall not entitle Purchaser to withhold or delay payment of the price therefor. Any expenses or charges incurred by FBM resulting from such failure shall be paid for by Purchaser within ten (10) calendar days of receipt of FBM's written request.

14. No Personal Liability. Any obligation of FBM, which may arise under these Terms or any obligation or liability which may be incurred by or pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement against the property of, its directors, shareholders, officers, employees, or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

15. Governing Law; Venue. The validity, performance, construction, effect, and all claims and controversies which may arise under these Terms shall be governed by and construed in accordance with the laws of the province or territory where the FBM office is located which supplied the Products. The United Nations Convention on Contracts for the International Sale of Goods or any subsequently enacted treaty or convention shall not apply or govern these Terms or the performance thereof or any aspect of any dispute arising therefrom. Any action or proceeding between FBM and Purchaser relating to these Terms shall be commenced and maintained exclusively within the jurisdiction of the province or territory where the FBM office is located which supplied the Products. Notwithstanding the foregoing, if a controversy or claim relates to or is the subject of a mechanic's lien, also known as a guilders' lien, construction lien or equivalent, FBM may proceed in accordance with applicable law in a court of competent jurisdiction to preserve and enforce its lien rights. PURCHASER AND FBM EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM, OR PROCEEDING RELATING TO THESE TERMS.

16. Successors; Assigns. Purchaser may not assign any interest in, nor delegate any obligation under these Terms, by operation of law or otherwise, without FBM's prior written consent. Any assignment or attempted assignment in contravention of the foregoing shall be null and void, and shall permit FBM, in addition to any other rights it may have, to terminate all Purchase Orders.

17. Miscellaneous Provisions. If it becomes necessary for FBM to undertake collections of delinquent balances owed to FBM by Purchaser, Purchaser agrees to pay FBM the costs and expenses incurred by FBM to recover any overdue amounts, including any legal fees and disbursements incurred by FBM on a full indemnity basis, whether described as solicitor and their own client costs, special costs, or otherwise. Purchaser also agrees to pay interest to FBM at the agreed rate as set out in the Agreement on any overdue accounts. The enforceability or invalidity of any one or more portions of these Terms shall not render any other otherwise enforceable provisions unenforceable or invalid, which remaining portions shall continue in full force



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and effect. The failure of FBM to enforce any condition of these Terms is not a waiver of the right to enforce each and every condition contained herein. No provision of these Terms are waived unless such waiver is in writing and signed by the Parties. All of Purchaser's representations, warranties, and indemnities under the Terms shall survive the consummation of or termination or cancellation of any purchase and sale of Products by FBM to Purchaser. Which party prepared these Terms shall have no bearing on their contractual construction in favour in any party.