

TERMS AND CONDITIONS OF SALE

(United States of America)



Foundation Building Materials

THESE TERMS AND CONDITIONS OF SALE (these “Terms”) of Foundation Building Materials, LLC, a California limited liability company (including its affiliates and subsidiaries, “FBM”) shall govern the purchase and sale of all FBM products, goods, and materials (the “Products”) by and to any contractor, subcontractor, builder, or other customer purchasing said Products, whether an individual or business entity (the “Purchaser”). These Terms, and to the extent applicable, FBM’s Terms and Conditions of Commercial Credit (available at www.fbmsales.com/salesterms/ (the “Credit Terms”)), are hereby incorporated by reference into any and all purchase orders, pick tickets, quotations, invoices, or other form of acknowledgement between the parties concerning the purchase, sale, and/or supply of Products (each, an “Order”) as if fully set forth therein.

1. ACCEPTANCE OF TERMS. Any of the following shall constitute Purchaser’s unqualified acceptance of these Terms: (a) issuance of an Order for the Products; (b) accepting delivery of any Products ordered under an Order; (c) the alteration, modification, installation, assembly, disassembly, relocation, or other use of the Products after FBM’s delivery thereof; and (d) payment for any of the Products ordered under an Order. Additional or different terms or conditions proposed by Purchaser, including any additional or different terms provided by Purchaser in an Order, are hereby expressly rejected, null and void, and shall be of no force or effect unless otherwise explicitly acknowledged and agreed to in writing by FBM.

2. SIGNATURES. Signatures are not required on delivery documents in order for FBM to enforce these Terms. Any and all persons issuing and/or executing Orders on behalf of Purchaser hereby represent they are authorized to do so, and Purchaser hereby affirms and ratifies any person issuing and/or executing an Order on behalf of Purchaser is authorized to do so.

3. REJECTION OF OTHER 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 Order or other documents submitted by or on behalf of Purchaser at any time (including any “prime contract” or “master contract” with a builder, project owner, or general contractor), whether before or after the date hereof, shall be deemed a material alteration of these Terms, and is expressly rejected by FBM.

4. PAYMENT TERMS; PRICES. Purchaser agrees to pay for all Products in accordance with Purchaser’s credit account with FBM, or in the absence of such a credit account, per the terms of the invoice issued by FBM for such Products. All price quotes provided by FBM to Purchaser shall expire within thirty (30) days following issuance of the price quote, regardless if communicated to Purchaser in person, by telephone, or in any written form including email. Payments required to be made to FBM by Purchaser shall not be subject to any setoffs, deductions, retainage, withholdings, or claims, unless otherwise agreed to in writing by FBM. Prices do not include any 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 at the time of sale unless Purchaser supplies a valid sales tax exemption certificate to FBM. Regardless of any statement appearing on a check or otherwise, FBM shall have the right to set-off any amounts Purchaser owes 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. **UNDER NO CIRCUMSTANCES SHALL PAYMENT TO FBM BE CONDITIONED UPON PAYMENT TO PURCHASER BY THE END-USER OF THE PRODUCTS OR OWNER OF THE PROJECT FOR WHICH SUCH PRODUCTS ARE BEING SUPPLIED.**

5. DELIVERY. Subject to the occurrence of a Force Majeure Event (as defined in Section 16), FBM will use all commercially reasonable efforts to tender Products ordered by Purchaser to the destination designated in the applicable Order (each, a “Delivery Point”). All shipping dates are approximate and not guaranteed. FBM agrees to deliver the Products to each Delivery Point using industry standard methods for packaging and shipping of such Products. Unless otherwise indicated in the Order, Purchaser shall be responsible for all loading and/or unloading costs. Purchaser represents and warrants it has the ability, requisite authority, and/or permission to grant FBM access to the Delivery Point to complete the delivery of the Products per its Order (e.g., specifically for ingress, egress, unloading and deposit of Products, and all related and necessary activities thereto).

6. PARTIAL SHIPMENTS; DELIVERY ACCEPTANCE. FBM may, in its sole discretion, without liability or penalty, make partial shipments of Products to Purchaser. Each such shipment shall constitute a separate sale, and Purchaser shall pay for the Products shipped whether such shipment is in whole or in partial fulfillment of Purchaser’s Order. If, for any reason Purchaser (or a representative of Purchaser) is not available to execute or does not execute the delivery ticket at the time of delivery at the Delivery Point, the quantity of any installment of Products as set forth on such delivery ticket as recorded by FBM shall be conclusive evidence of the quantity received and delivered unless Purchaser can provide

conclusive evidence of the contrary. If FBM is unable to deliver the Products at the Delivery Point on such date because Purchaser did not provide appropriate instructions, documents, licenses, or authorizations, FBM, at its option, may store the Products until Purchaser picks them up, whereupon risk of loss of such Products shall transfer to Purchaser and Purchaser shall be liable for all related costs and expenses, including, without limitation, storage and insurance of such Products.

7. TITLE; RISK OF LOSS. For those Products to be tendered to Purchaser at FBM’s facility, both title and risk of loss shall transfer to Purchaser when Purchaser or its agents take possession of the Products at FBM’s facility. For Products to be delivered to a Delivery Point, title and risk of loss shall vest in Purchaser at the time the Products arrive curbside at such Delivery Point address. Any damages related to any handling of the Products by Purchaser or any third party after such transfer shall be at the sole and exclusive risk and cost of Purchaser. Subject to Section 8 (Inspection of Products) and Section 12 (Limited Warranty), FBM shall have no responsibility to repair or replace any Products that have been altered, installed, assembled, disassembled, modified, or otherwise relocated from the original Delivery Point by any party other than FBM. FBM shall have no responsibility for securing the Products from any risk once delivery is completed (including, without limitation, securing against damages due to weather, theft, or improper storage).

8. INSPECTION OF PRODUCTS; NOTICE OF DAMAGE. Purchaser shall promptly inspect any and all tendered Products for any reasonably discoverable damage or non-conformity within forty-eight (48) hours of tender and notify FBM in writing (email is sufficient) of any such damage or non-conformity. If Purchaser does not notify FBM of any purported damages or non-conformities which would have been reasonably discovered in the course of such an investigation, but which were in fact not made within said forty-eight (48) hour period, such failure 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 tendered to Purchaser, the sole remedy for Purchaser shall be, at FBM’s election: (a) repair or replacement of the damaged or non-conforming Products; or (b) refund of the price paid by Purchaser for such damaged or non-conforming Products (upon the return thereof to FBM).

9. SET-OFF RIGHTS. To the fullest extent permitted by law, FBM shall have set-off rights against all money, accounts, rebates, credits, and other property of Purchaser, now or hereafter in possession of or maintained by FBM, and such right of setoff may be exercised without demand upon or notice to Purchaser. No right of setoff shall be deemed to have been waived by any act or conduct on the part of FBM, or by any neglect or delay to exercise such right of setoff.

10. CANCELLATIONS; RETURNS. If Purchaser fails to make payment as required, or otherwise fails to comply with these Terms or act in accordance with any other written 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 liability, in which case Purchaser shall be responsible for all unpaid amounts for Products already delivered. Except as set forth in these Terms, Products cannot be returned, and orders, once accepted by FBM, cannot be cancelled without FBM’s prior written consent which may be 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 shipping costs. **NOTWITHSTANDING THE FOREGOING, ALL SALES OF SPECIALTY OR CUSTOM PRODUCTS ARE FINAL AND INELIGIBLE FOR RETURN OR REFUND.**

11. SECURITY INTEREST; LIENS. Purchaser hereby grants FBM a security interest in all Products purchased from FBM, as well as in all the proceeds thereof. Such a security interest is and shall continue as a first-priority security interest in the Products whether by virtue of the priority accorded to purchase-money security interests under applicable UCC provisions or otherwise. Purchaser shall take all actions FBM deems necessary or desirable to perfect its security interest and maintain its priority, and irrevocably authorizes FBM to file financing statements and amendments thereto in such places as FBM determines necessary or ideal (without the need for Purchaser’s signature where permitted by the UCC). Upon request of FBM, Purchaser shall execute and deliver to FBM a separate security agreement under which Purchaser grants FBM a security interest in the Products.

12. LIMITED WARRANTY. FBM DOES NOT DESIGN, MANUFACTURE, OR FABRICATE THE PRODUCTS IT DISTRIBUTES. EXCEPT AS OTHERWISE SET FORTH IN SECTION 13 AND ASIDE FROM FBM’S WARRANTY THAT THE PRODUCTS WILL CONFORM TO THE SPECIFICATIONS SET FORTH IN THE APPLICABLE ORDER, FBM DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES, OR GUARANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO SAID PRODUCTS. ANY AND ALL IMPLIED WARRANTIES OR REPRESENTATIONS SUCH AS FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, COURSE OF DEALING, USAGE OF TRADE, OR OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS (WITH ANY AND ALL INTELLECTUAL PROPERTY RIGHTS STRICTLY REMAINING WITH THE

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MANUFACTURER), ARE EXPRESSLY DISCLAIMED BY FBM. However, FBM agrees to provide and pass-through, to the extent permitted by the respective manufacturer and applicable law, any manufacturer warranty to Purchaser or the applicable end-user. FBM further agrees to act as a liaison on behalf of Purchaser with respect to the manufacturer regarding any manufacturer warranties or defects; *provided, however*, FBM makes no representations as to dispute outcome and retains the right to terminate such efforts in its sole 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 (b) 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.

13. DELIVERY RELEASE. In connection with FBM's delivery of the Products, FBM may require access to and use of a designated road, driveway, path, yard, entrance, route, zone, or area to reach each Delivery Point and/or complete its delivery under an Order. Except for FBM's gross negligence or willful misconduct, Purchaser releases FBM from and assumes full responsibility for any damage, loss, or liability sustained to the Delivery Point and surrounding areas in connection with FBM's delivery to or performance of an Order at the Delivery Point. Purchaser further agrees to indemnify and hold FBM harmless from all Claims (as defined in Section 17) concerning damage to property as a result of FBM's use of the Delivery Point and/or performance of the delivery at, on, in, to, or about the Delivery Point, except to the extent such Claims are directly attributable to FBM's gross negligence or willful misconduct.

14. INSTALLATION DISCLAIMER. In the event FBM is responsible for performing or causing the completion of any assembly, installation, hanging, stocking, scattering, or spreading of any of the Products (the "Services") per the Order, FBM represents and warrants to Purchaser such Services shall be performed in a good and workmanlike manner with personnel of required skill and in accordance with generally recognized industry practices. Except as set forth in this Section 13, FBM disclaims any warranty with respect to such Services as set forth in Section 12.

15. LIMITED DAMAGES. Purchaser's sole and exclusive remedy (and FBM's total liability for breach of the limited warranty in Section 12 above, if any, shall be, at FBM's option: (a) repair of damaged or nonconforming Products; (b) replacement of such Products with a like quantity of conforming products; or (c) the refund of the purchase price of such damaged or non-conforming Products, plus reasonable handling and transportation costs incurred for approved returns pursuant to Section 8 herein. **TO THE FULLEST EXTENT PERMITTED BY LAW, FBM'S TOTAL LIABILITY FOR ANY CLAIMS, LOSSES, DAMAGES, OR COSTS WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO ITS PERFORMANCE UNDER THIS AGREEMENT, IRRESPECTIVE OF CAUSE AND HOWEVER ALLEGED, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, BREACH OF CONTRACT, STRICT LIABILITY, OR ANY OTHER CLAIM IN TORT, CONTRACT, OR EQUITY, SHALL NOT EXCEED THE TOTAL VALUE RECEIVED OR TO BE RECEIVED UNDER THE APPLICABLE PURCHASE ORDER.** 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.

16. FORCE MAJEURE. FBM shall not be liable or responsible to Purchaser, nor be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing under the Order, when and to the extent such failure or delay is caused by or results from acts beyond FBM's reasonable control, including without limitation, the following events (each, "Force Majeure Event"): (a) acts of God; (b) flood, fire, earthquake, explosion, other disasters or catastrophes; (c) war, invasion, hostilities, terrorist threats or acts, riot or civil unrest; (d) government order, law, directive, mandate, or actions; (e) embargoes or blockades, tariffs, or trade restrictions; (f) national or regional emergencies, pandemics, or epidemics; (g) strikes, labor stoppages, slowdowns or industrial disturbances; and (h) shortage of adequate power or transportation facilities. FBM shall use diligent efforts to ensure the effects of such Force Majeure Event are minimized and resume performance of its obligations as soon as reasonably practicable after removal or ending of such cause.

17. INDEMNIFICATION. Purchaser agrees to defend, indemnify, and hold harmless FBM and its present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, successors, and permitted assigns (the "FBM Parties"), from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind and whatever nature (the "Claims") which Purchaser ever had, now has, or hereafter can, shall, or may have against any FBM Parties for, upon, or by reason of (collectively, the "Indemnity Claims"): (a) any resale of the Products by Purchaser to a third-party; (b) FBM accessing or using the Delivery Point to perform or attempt to perform delivery pursuant to an Order; (c) the assembly, installation, modification, possession, or use of the Products; or (d) the transportation, unloading, spreading, stocking, scattering, or storage of said

Products except where FBM is providing such services under the Order and is negligent in providing such services. Without limiting the foregoing terms of this Section 17, any obligation of FBM to indemnify, release, defend, and hold harmless Purchaser shall apply to and be binding upon FBM only to the extent of FBM's negligence or willful misconduct. Under no circumstances does FBM waive the contributory negligence, comparative fault, or conduct of others nor does FBM agree to waive any rights and protections afforded to FBM by statutory law or regulations. Any obligation for FBM to defend or indemnify Purchaser shall be limited to the extent such claim for damages is reasonably attributable to FBM's acts or omissions.

18. U.S. FOREIGN CORRUPT PRACTICES ACT. FBM and Purchaser each represent and warrant it understands and shall comply with the U.S. Foreign Corrupt Practices Act and all other applicable anti-bribery and anti-corruption laws of the jurisdictions under which each party is or may be acting hereunder.

19. EXPORT CONTROL REGULATIONS. All Products sold by FBM are subject to the export control laws of the United States 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 Products by Purchaser, Purchaser shall obtain the same at its expense and provide evidence of the same to FBM upon 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.

20. 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 State of California, without giving effect to any choice of law or conflict of law provision or rule causing the application of the laws of any jurisdiction other than the State of California. 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. **THE PARTIES WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM, OR PROCEEDING RELATING TO THESE TERMS.**

21. MISCELLANEOUS PROVISIONS. 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. 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 Orders. If it becomes necessary for FBM to undertake collections of delinquent balances owed to FBM by Purchaser, Purchaser agrees to pay any cost of collection, regardless of whether suit is instituted, including reasonable attorneys' fees in the event of a lawsuit or appeal, along with any post-judgment collection actions necessary to enforce any judgement rendered. Purchaser acknowledges and agrees in the event FBM files a lawsuit to collect any sums due, such action may be initiated in the state in which the FBM branch supplying the Products is located, and in the county or parish of FBM's choosing. The unenforceability 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 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 is 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, termination, or cancellation of any purchase and sale of Products. Which party prepared these Terms shall have no bearing on their construction in favor in any party.