

GENERAL SALE TERMS AND CONDITIONS

1. **JOIST PRIMER.** SELLER PROVIDES A STANDARD GRAY TEMPORARY PROTECTIVE PRIMER VIA DIP METHOD IN ACCORDANCE WITH SJI STANDARDS AND SUBJECT TO THE SJI PAINT DISCLAIMER. THIS PRIMER MAY OR MAY NOT HAVE TO BE REMOVED PRIOR TO FINISHING PAINT DEPENDING UPON BUYER'S PAINT SYSTEM. NMBS MAKES NO REPRESENTATIONS WITH RESPECT TO THE COMPATIBILITY OR SUITABILITY OF THIS TEMPORARY PROTECTIVE PRIMER WITH BUYER'S PAINT SYSTEM. SELLER IS NOT RESPONSIBLE FOR ANY TOUCH-UP APPLICATION OF THE TEMPORARY PROTECTIVE PRIMER AFTER SHIPMENT. NMBS DOES NOT GUARANTEE THE COMPATIBILITY BETWEEN JOIST PRIMER AND FINISH COATS AND/OR FIREPROOFING.

2. **DECK PRIMER.** WHITE PRIMED DECK IS INTENDED TO PROTECT THE STEEL FOR ONLY A SHORT PERIOD OF EXPOSURE IN ORDINARY ATMOSPHERIC CONDITIONS AND SHALL BE CONSIDERED AN IMPERMANENT AND PROVISIONAL COATING. SCRATCHES AND ABRASIONS DUE TO DUNNAGE AND MATERIAL HANDLING ARE UNAVOIDABLE. THEREFORE, EXTENSIVE TOUCH UP MAY BE REQUIRED. SELLER ASSUMES NO RESPONSIBILITY FOR FIELD PAINTING OF DECK DUE TO SHIPMENT, HANDLING OR SITE STORAGE TO MEET APPEARANCE STANDARDS SET BY THE OWNER, ARCHITECT, ENGINEER OR ANY OTHER PARTY. WHITE PRIMED DECK IS DRAMATICALLY AFFECTED BY RUST STAINING. EXTRAORDINARY CARE MUST BE TAKEN IN HANDLING AND STORAGE AT THE SITE. STEEL DECK SHOULD BE STORED OFF THE GROUND WITH ONE END ELEVATED TO ALLOW FOR PROPER DRAINAGE. THE DECK SHALL ALSO BE PROTECTED BY A WATERPROOF COVERING THAT IS VENTILATED TO AVOID CONDENSATION. SELLER SHALL ASSUME NO RESPONSIBILITY FOR PROPER SITE STORAGE. SELLER DOES NOT GUARANTEE THE COMPATIBILITY BETWEEN THE DECK PRIMER AND FINISH COATS AND/OR FIREPROOFING. SELLER IS NOT RESPONSIBLE FOR ANY TOUCH-UP APPLICATION OF THE TEMPORARY PROTECTIVE PRIMER AFTER SHIPMENT.

3. **CONTROLLING TERMS.** These General Sale Terms and Conditions ("General Terms") are incorporated in, and a part of, each quote, purchase order, release, work order, sale, invoice, and other agreement, whether expressed in written form, by electronic data exchange or other format, relating to goods and / or services to be provided by New Millennium Building Systems ("Seller") (collectively referred to as the "Contract"). Seller agrees to sell to Buyer only on the condition that Buyer assents to all of the terms and conditions set forth herein. Shipments by Seller shall not be deemed acceptance of any provision of Buyer's purchase order, confirmation, or any other Buyer communication, which is different from, inconsistent with, a modification of or in addition to the terms in this Contract and these General Terms. All prior proposals, negotiations, course of dealings, representations, and agreements, if any, are superseded and merged herein, unless subject to or supplemented by other terms and conditions set forth in a separate written agreement which is actually signed by both an authorized representative of Seller and Buyer and specifically states that it is intended to govern the relationship between the parties (in which case the terms and conditions herein will apply except

to the extent inconsistent with the terms thereof). If Buyer accepts Seller's quote and/or Buyer issues a purchase order to Seller, Buyer will be deemed to have agreed that these General Terms are incorporated into the contract of sale and any additions to, changes in, modifications of, or revisions of these General Terms which Buyer proposes or includes in any purchase order or other document or procedure in use by Buyer will be deemed to have been rejected by Seller.

4. **PRICES.** All prices shall be good for thirty (30) days from date of quote. The purchase price of the goods shall be as stated on page 1 of the quote. If Buyer requests that Seller place an order on hold or delays order processing beyond the agreed delivery time frame, then the price may be adjusted by Seller to account for an increase in material costs resulting from the hold or delay.

5. **TERMS OF PAYMENT.** Subject to Seller's credit approval, and unless Buyer is notified to the contrary by Seller's Credit Department, Buyer shall be allowed a discount of ½% if payment in full is received by NMBS within ten (10) days of invoice date. The net invoice amount shall be paid in full without setoff or defense within thirty (30) days from date of invoice. Buyer shall not be allowed retainage. Buyer is responsible for payment for any sales, use, value added or other tax applicable on purchases that are not exempt under proper exemption certificates delivered by Buyer. Seller shall retain (and Buyer grants to Seller) a purchase money security interest and lien in the goods sold and any improvements to which they become affixed until Seller is paid in full. Buyer hereby authorizes any employee, agent or attorney of Seller to sign and file UCC forms and other lien filings to perfect and/or record the security interest and lien.

6. **CREDIT APPROVAL.** Performance of work and shipment of the goods is subject to approval by Seller's Credit Department. Seller may at any time condition its performance upon receipt of advanced payment, acceptable security, or Buyer's agreement to other reasonable credit-related terms and conditions and Buyer shall be responsible for payment to Seller of damages (including, without limitation, amounts that relate to Seller's performances to date) if failure to provide acceptable assurance of payment results in termination of contract. Buyer represents that by placing its order it is not insolvent as that term is defined in the Uniform Commercial Code, and, should it become insolvent before delivery of the goods, it will notify Seller. Failure to notify Seller shall be deemed to constitute a written representation of Buyer's solvency as of the date of shipment.

7. **ORDER MODIFICATION.** In the event NMBS receives requests for changes to the goods ordered, the delivery date, or other order changes which, in NMBS' judgment, impacts its costs, risks or other matters, NMBS reserves the right to accept or decline the same. Failure of Buyer to confirm agreement to adjustment of price or other terms as required by Seller on account of Buyer's requested changes within three (3) business days of request for such confirmation shall be deemed, at Seller's option, a cancellation by Buyer of the order. Such a cancellation shall be handled in accordance with Section 8 hereof.

8. **ORDER CANCELLATION.** In the event of order cancellation (which shall include a cancellation on account of Buyer failing to confirm agreement to a price adjustment as contemplated under Sections 4 or 7 of these General Terms), whether in whole or in part, NMBS shall be paid for the work performed to date as well as recover damages under applicable law, including, without limitation, lost profit.

9. **SHIPMENT/RISK OF LOSS.** Buyer shall pay the cost of shipping the goods to the destination (location) set forth on the face of Seller's quote, but Seller's quote includes an allowance for the regular cost of normal shipping to such location. Title and risk of loss passes to Buyer as Seller completes manufacture of the goods, subject to Buyer paying for such goods and the lien retained by Seller to secure such payment. Seller agrees to maintain insurance on the goods prior to shipment from Seller's plant. Seller's insurance coverage may terminate, at Seller's option, once the shipment leaves Seller's plant. Seller is not responsible for damage to the goods which results from or is attributable to road salt damage during shipment.

10. **DELIVERY.** Shipment schedules are approximate and are based upon market and production conditions at the time of Seller's acceptance of Buyer's order as well as shipper availability and schedule. Seller shall in good faith attempt to ship by the date specified. Buyer agrees, however, that Seller shall not be liable for any damages arising from any delay in or failure to make one or more deliveries hereunder if such delay or failure is due to acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, fires, floods, accidents, quarantine, restrictions or other circumstances or causes beyond Seller's control. Acceptance of goods upon delivery shall constitute a waiver by Buyer of any claim for damages on account of delays in delivery or performance. If Buyer (a) requests deferral of shipment of goods that have already been manufactured, and Seller, in its discretion, agrees to the same, or (b) Buyer or third parties otherwise fail to provide information or documentation necessary for Seller to proceed with shipment of manufactured goods in the ordinary course, Seller reserves the right to charge Buyer reasonable storage fees on delayed shipments and, further, Seller may invoice Buyer when and as fabrication of the goods is completed, notwithstanding that the goods have not shipped. Seller is not responsible for any damage to the goods that results from or is attributable to improper storage after delivery.

11. **DAMAGES.** Neither Seller nor Buyer shall be liable for lost profits, special, incidental, consequential, or liquidated damages arising from any breach of warranty, the Contract or under any other theory of recovery.

12. **WARRANTY.** Subject to the provisions of paragraph 10 hereof, Seller warrants that the goods are transferred to Buyer free and clear of any monetary liens or encumbrances, other than the lien granted to Seller under these General Terms to secure payment of the purchase price and/or any other lien or bond claim or rights held by Seller under applicable law as to any portion of the purchase price not paid by Buyer. Where Buyer has in writing provided Seller with the specifications the goods must satisfy, and Seller has expressly agreed in writing that the goods will meet those specifications, then and only in such case the Seller also warrants that the goods will meet the Buyer's written specifications. Seller has reviewed only the specifications that are expressly listed in the quote. Seller makes no representation and gives no warranty regarding adherence to or compliance with any local code or ordinance of any type or nature which may relate to the Goods or the use thereof. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE SHALL NOT APPLY AND ARE DISCLAIMED.

Seller's sole liability and Buyer's exclusive remedy is expressly limited, at Seller's option, to replacement of the goods which do not meet Seller's warranty ("Defective Goods"), to issuance

of a return authorization and credit for purchase price of the Defective Goods, or effecting a purchase price adjustment if Buyer can use the Defective Goods. Seller shall not be liable to Buyer or otherwise for any loss, claim, or damage to the extent it relates to the improper erection of the goods. Seller, in no way, is an instructor or supervisor of the erection of the goods. Seller shall have the right (but not the obligation) to participate in identification of and decision making on field repair solutions, and other changes which are necessary due to shipment of Defective Goods and in the event Seller is not given the opportunity for the same, Seller shall have no obligation for amounts which could have been avoided had Seller been permitted to participate as contemplated herein.

13. **INSPECTION OF GOODS.** Buyer shall promptly inspect the goods upon delivery. Any transit (shipping) related loss or damage to the goods must be reported to Seller within three (3) business days of the goods arriving at the delivery location. All other problems or concerns with the goods and their conformity with contract requirements must be communicated in writing to Seller within three (3) business days of the earlier of discovery or when the same could have been discovered through the exercise of reasonable diligence. Seller and its agents and insurers shall be allowed a reasonable opportunity to inspect the goods when Buyer has concerns about transit damage or non-conformity with contract requirements. Goods may not be returned without Seller's prior consent. Buyer failure to notify Seller in writing by the time periods called for by this Section 13 shall be deemed acceptable of the goods but the Section 12 warranties shall apply. Seller will not be responsible for any inspection or testing fees or costs conducted by third parties.

14. **PERMISSIBLE GENERALS, TOLERANCES AND VARIATIONS; INFORMATION PROVIDED BY OTHERS.** Except as otherwise stated herein or as otherwise agreed to in writing in a separate instrument that is signed by Seller and Buyer and specifically states that it is intended to apply to the sale transaction, all goods shall be produced in accordance with Seller's general practices. All goods, including those produced to meet an exact specification, shall be subject to tolerances and variations consistent with usages of the trade and regular practices concerning dimension, weight, straightness, section, composition and mechanical properties, normal variations in surface, internal conditions and quality, deviations from tolerances and variations consistent with practical testing and inspection methods. Seller shall not be responsible for the correctness, adequacy or consistency of any specifications or other information furnished by Buyer or other third parties (including, without limitation, the project architect and/or project engineer) on drawings, material specifications, coding, structural design or details, plans, bills of material, or any other type of information, regardless of how it is communicated.

15. **ENTIRE AGREEMENT; SUCCESSORS.** These General Terms and the Contract constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contain all the agreements and conditions of purchase and sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms of this Contract shall be binding on, and inure to the benefit of Buyer, Seller, and their respective successors and assigns. Buyer agrees that it may not assign this Contract without the prior written consent of Seller.

16. **SJI AND SDI STANDARDS.** ALL (A) JOISTS SHALL CONFORM ONLY TO THE

