

## **ZESKINDS TERMS AND CONDITIONS**

1. Acceptance is limited to terms of this Quote. Seller objects to any different or additional terms contained in any purchase order, offer or confirmation sent or to be sent by Buyer, which are expressly rejected. The price quoted is firm only if an executed copy of this Quote is received by Seller at its office within 30 days of the date of this Quote.
2. These terms and conditions, together with the Credit Application (if/when applicable), contain and form the entire Agreement between the Buyer and Seller. This Agreement represents the entire and integrated agreement of the Buyer and Seller and supersedes all prior negotiations, representations or agreements, either oral or written. These terms and conditions shall not be amended, modified or altered in any manner unless such amendment, modification or alteration is in writing and executed by the Buyer and Seller.
3. Seller shall have no obligation to begin or continue performance until adequate credit and funding information is provided, at any time on request of Seller. Seller may stop the manufacture or supply of any labor or materials when it, in its sole discretion, determines that Buyer is in breach of this Agreement or any other contract with Seller, or Seller has insecurity with respect to funding or creditworthiness, until payment is made and any dispute or insecurity has been resolved.
4. The full price is due and payable on each unit when Seller is ready for delivery of each unit of the described materials. Buyer agrees to pay a reasonable storage fee if Seller stores materials after ready for delivery. If Buyer requests to pickup the materials and does not do so within 30 days of notice from Seller of availability for pickup, (a) Buyer authorizes Seller to charge Buyer's credit card the full amount due and, if applicable, to charge Buyer's credit card for storage and other fees and charges due, and (b) Seller shall not be responsible for any materials not picked up. Quoted price is based upon representations made by Buyer to Seller concerning the work and the work schedule. Buyer agrees that Seller shall be compensated at Seller's normal rates for any different or additional work or schedule requested verbally or in writing by Buyer.
5. Unless otherwise noted, all prices are quoted F.O.B. Seller's warehouse and exclude any applicable state and/or local sales taxes. Such taxes will be billed separately in accordance with state sales tax regulations. All delivery charges are to be paid by Buyer. Additional delivery charges may apply based on distance from Seller's warehouse. Seller shall provide "tailgate delivery" to the job site. Seller shall not be responsible in any manner for any damages, losses or inconveniences of any kind whatsoever, monetary or otherwise. Buyer shall be solely responsible for all loading and unloading upon receipt, and shall be solely responsible for all demurrage charges from carriers. Seller shall have no obligation to install, set-up, maintain, test, adjust, and/or service the materials or goods provided. In the event that Buyer arranges for pickup or selects a commercial carrier for delivery, all carriers shall be agents of Buyer.
6. Any layout drawings furnished by Seller are provided only as a service to Buyer to conceptually illustrate the assembly of the materials and/or goods. Such layout drawings are not intended to be fully directive and are not intended to cover all details on Seller's materials and/or goods, nor intended to cover engineering details on Seller's products, or cover anything furnished by third parties, or the interconnection between Seller's materials and/or goods and anything else. Seller does not control job site conditions, assembly, set-up or procedures, or any and/or all materials and/or goods supplied by others; thus, it is Buyer's sole and exclusive responsibility to verify and approve all dimensions and layouts and to integrate Seller's drawings, materials and/or goods.
7. Custom orders require a 50% deposit with the balance to be paid in full prior to delivery. For custom orders, Buyer agrees to provide a credit card on file and, if full payment is not made when due, authorizes Seller to charge Buyer's credit card for the balance due for the custom order. The entire amount of a custom order, not just the deposit, is nonrefundable. There shall be no returns on custom orders.
8. Time of delivery is approximate and is based upon prompt receipt from Buyer of all necessary information and approvals. Seller shall not be liable to Buyer for any loss, damage or delay due to any cause beyond Seller's reasonable control, including without limitation, act of God (such as fire, flood, earthquake, storm, hurricane or other natural disaster); governmental act, regulation or request; transportation interruption; act of terrorism; labor trouble (strikes, disputes, etc.); adverse weather; and/or inability to obtain labor, fuel, power, materials, components or manufacturing facilities. In the event of any such delay, the date of shipment shall be extended for a period equal to the time lost by reasons of the delay. Buyer will be responsible for any unloading and waiting time at the delivery site.
9. Buyer shall make a careful inspection at the time of delivery. Buyer's failure to give written notice specifying any and all claims upon inspection at the time of delivery shall constitute an unqualified acceptance of the labor and materials delivered and a waiver of all claims. Seller will not be liable for any damage, warranty or remedy, and back charges will not be accepted without such prior written notification, an opportunity to view and repair, replace or otherwise cure, and approval by Seller in writing. Back charges will not delay the due date of payments for sums not back charged per this section. No returned product will be accepted without prior approval. Returns, if accepted by Seller, are subject to a restocking charge of twenty five percent (25%).

10. Seller agrees, at Seller's option, to replace or repair any defective goods within a reasonable time. Buyer's sole and exclusive remedy, and Seller's limit of liability, for any and all defects in the materials, loss or damage resulting from defective goods, and/or any other damages shall be in accordance with, subject to, and limited by, the manufacturer's terms, conditions and warranty to Seller. In no event shall Seller be liable for any damages due to delay of any type, nor for indirect, incidental, consequential, liquidated, special or punitive damages. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF TITLE, AGAINST LIENS, INFRINGEMENT, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. In addition to the foregoing, Seller shall not be responsible for any claims associated with any failure to obtain historic tax credits or otherwise comply with historic requirements, or failure to achieve LEED or other similar goals or requirements.

11. Buyer agrees that all funds owed to Buyer from anyone or received by Buyer to the extent those funds result from the labor or materials supplied by Seller shall be held in trust for the benefit of Seller (Trust Funds). Buyer may commingle Trust Funds, but agrees it has no interest in Trust Funds held by anyone and to promptly account for and pay to Seller all such Trust Funds in accordance with the payment terms herein. Buyer further irrevocably assigns to Seller any rights it has to Trust Funds to the extent that sums are justly due to Seller under this Agreement.

12. All mechanic's lien, payment bond or similar waivers or restrictive endorsements on checks shall be effective only to the total dollar amount of payments actually received by Seller without any bankruptcy filing for ninety days thereafter. Buyer agrees that Seller retains its mechanic's lien, payment bond or other legal rights for unpaid deliveries, regardless of what other waiver documents may state or imply otherwise. Customer further agrees that Seller has the right to determine, in its sole discretion, how to apply payments and which invoices to pay with all payments received on this account, despite any advice to the contrary.

13. If and only if Buyer has applied for AND been approved for a Terms Account, Terms of payment are: Net 30 days. Buyer understands and agrees that all past due balances are subject to a finance/service charges at a rate of two percent (2%) per month (twenty-four percent (24%) per annum) in pre-judgment interest. Should this charge exceed that allowed by governing law, the maximum rate allowed by law shall apply. Payments are considered made when received by Seller. If payments are not made when due, Seller may declare all amounts owed to Seller immediately due and payable, and to similarly accelerate the balances under any other Agreement between Buyer and Seller without notice or demand. Seller may also withhold delivery if Buyer is not current with any and/or all of Buyer's obligations under this Agreement. Buyer further agrees to pay the cost of collection, including without limitation attorney's fees equal to one third (1/3) of the total balance due on default whether or not suit is filed.

14. Buyer further agrees to submit to personal jurisdiction in Maryland and that the exclusive forum for any litigation arising out of or relating to this Agreement or any agreement with Seller shall be either the Circuit Court for Baltimore City, Maryland or the Baltimore City District Court. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to its conflicts of laws principles.

15. Buyer shall defend, indemnify and hold harmless the Seller and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or relating to this Agreement, or the described supply of labor or materials, provided that any such claim is attributable to bodily injury, sickness, disease or death or injury to or destruction of tangible property, including the loss of use resulting therefrom, caused in whole or in part by any negligent act or omission of Buyer, any subcontractor, employee, agent, or anyone else directly or indirectly employed by any of them or by any third person, regardless of whether or not it has been caused in part by a party indemnified.

16. The failure of Seller at any time to require performance by Buyer of any provision of this Agreement shall in no way affect the right of Seller hereinafter to enforce the same, nor shall waiver of Seller of any breach of any provision of this Agreement be taken or held to be a waiver of any subsequent breach of such provision, a waiver of the provision itself, or a waiver of any other provision of the Agreement.

17. In the event of any conflict between sections of this Agreement, the most stringent provision shall govern. If any portion of this Agreement is held to be invalid or unenforceable for any reason, that portion of the Agreement shall be severed from the Agreement and the remainder shall be valid and enforceable and continue in full force and effect.

18. Buyer may not delegate its performance or assign its rights without Seller's prior written consent.

19. The person executing this Agreement on behalf of the Buyer and/or Seller warrants and represents that he or she is authorized to do so and thereby binds the party that the person purports to represent.

Signed \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_