

## TERMS AND CONDITIONS OF SALE

The following provisions apply to all sales of finished goods, components and other products (individually, a "Product" and collectively, "Products") to you by either R & B Wagner, Inc. or Wagner Architectural (in either case, "Seller").

- ACCEPTANCE.** CONTRACT FORMATION BETWEEN YOU AND SELLER IS HEREBY EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO ALL OF THE TERMS AND CONDITIONS OF SALE SET FORTH HEREIN AND IN ANY INVOICE OR OTHER DOCUMENTS PROVIDED BY SELLER IN CONNECTION WITH THE SALE OF ITS PRODUCTS (ALL OF SUCH TERMS AND CONDITIONS BEING REFERRED TO HEREIN COLLECTIVELY AS THESE "TERMS"). ORDERING ANY PRODUCTS FROM SELLER SHALL INDICATE YOUR UNDERSTANDING AND ACKNOWLEDGMENT OF SUCH CONDITION AND ASSENT TO BE BOUND BY THESE TERMS. ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY YOU AT ANY TIME, WHETHER PROPOSED BEFORE, ON OR AFTER THE DATE OF SALE, ORALLY OR IN WRITING, UNLESS SUCH TERMS AND CONDITIONS ARE AGREED TO IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER, ARE HEREBY REJECTED IN THEIR ENTIRETY BY SELLER AND SHALL BE DEEMED BY SELLER A MATERIAL ALTERATION OF THESE TERMS. NO COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY TO ANY SALE OF PRODUCTS UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER.
- ORDER CHANGES.** You may not cancel or make changes to your order except by a written instrument signed by a duly authorized representative of Seller.
- PRICE.** Products are invoiced at prices in effect at the time of the order and Seller's prices are subject to change without notice. You understand that Seller's prices do not include taxes and other charges, including, without limitation, shipping, which Seller may be required to pay in connection with the sale and/or transportation of Products hereunder, which shall be paid by you in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes or charges, you agree to promptly reimburse Seller in full for such amounts.
- ENGINEERING APPROVAL:** Approval drawings are generated by Seller based on information provided to Seller by Buyer or agents acting on behalf of Buyer. Approval drawings are interpretations of field conditions as depicted within Buyer communications or as directed by Buyer to Seller. These drawings are accurate to the extent that Buyer-provided communications accurately depict ultimate field conditions. **VERIFYING FIELD CONDITIONS TO SELLER-GENERATED APPROVAL DRAWINGS IS THE RESPONSIBILITY OF THE BUYER.** Seller cannot be held liable for rework, damages, back-charges or schedule delays due to incorrect Approval Drawings.
- DELIVERY.** All Products are shipped F.O.B. Seller's applicable manufacturing facility. All Products are shipped by carrier(s) of Seller's choice, unless you specifically request in writing, at the time of order, that such Products be shipped by your designated carrier, in which case such Products are shipped F.O.B. Seller's applicable manufacturing facility, Freight Collect. If Seller is unable to meet any shipping date requested by you, you shall have no claim for damages, whether incidental, consequential, punitive or otherwise (even if Seller has been advised of the possibility of such damages), resulting from any such delay in delivery.

6. **PAYMENT.** Orders may be prepaid by check or credit card. Terms of 30 days net with a 1% discount for payments within 10 days from date of invoice are available upon approval of credit. Payment for Products must be made within thirty (30) days of the invoice date unless otherwise agreed in writing by Seller. Payments not made when due shall be subject to a late charge accruing from the date due until paid in full at the fixed rate of 1.5% per month (but not exceeding the maximum charge permitted by applicable law.) You shall pay Seller all costs and expenses, including, without limitation, attorneys' fees, incurred by Seller in connection with its collection of your overdue account.
7. **(a) Limited Warranty.** Warranty shall be governed by attached statement of product warranty
8. **INDEMNIFICATION.** To the maximum extent allowed by law, you shall defend, indemnify and hold harmless Seller and each of its directors, officers, employees, shareholders, affiliates, agents, representatives, successors and assigns (each, an "Indemnified Party") against all claims, actions, demands, legal proceedings, judgments, settlements, sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including, without limitation, attorneys' fees) that any Indemnified Party may incur or be legally obligated to pay as a result of (i) your negligence, use, ownership, maintenance, transfer, transportation or disposal of any Products; (ii) any infringement or alleged infringement of the intellectual property rights of third parties arising from your plans, specifications or adjustment of Products ordered by you; (iii) your violation or alleged violation of any federal, state, county or local laws or regulations; or (iv) your breach of any of these Terms. Seller's remedies under these Terms are cumulative and in addition to any other remedies available to Seller at law, in equity, by contract or otherwise. No purported limitation on Seller's remedies contained in any purchase order or other agreement, instrument or document provided by you shall operate to reduce your indemnification obligations hereunder.
9. **SET-OFF.** Seller may, at any time and from time to time, set-off any amount owing from Seller to you or any of your affiliates against any amount owing by you or any of such affiliates to Seller.
10. **NON-WAIVER.** Seller's failure to enforce any provisions of these Terms shall not operate as a complete or partial waiver of such provisions or rights and the same shall remain in full force and effect.
11. **FORCE MAJEURE.** Seller shall not be liable to you or any other person for any delay in delivery or failure to deliver Products, directly or indirectly caused by fire, explosion, accident, flood, labor difficulties or shortage, war, act of terrorism, act or regulation of any governmental body, act of God or any other circumstance or cause beyond the control of Seller.
12. **ASSIGNMENT.** You may not assign any of your rights or obligations under these Terms without the prior written consent of Seller and any attempted assignment without such consent shall be null and void.
13. **SEVERABILITY.** If any provision of these Terms shall under any circumstances be deemed invalid or inoperative, these Terms shall be construed with such invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly.

14. **GOVERNING LAW; VENUE.** These Terms and all transactions between Seller and you shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without regard to any conflicts of law principles. Any action or proceeding involving any dispute, claim or controversy relating to or arising from these Terms or such transactions, which cannot be resolved amicably, shall be commenced exclusively in the federal or state courts located within Milwaukee County, Wisconsin, and you consent to the exclusive jurisdiction of such courts and waive any objection to such jurisdiction.
15. **MODIFICATION.** These Terms shall not be amended, supplemented or otherwise modified except by a written agreement executed by duly authorized representatives of you and Seller.
16. **BINDING EFFECT.** These Terms shall be binding on, and inure to the benefit of, each of you and Seller and our respective successors and permitted assigns.