



Hancock Lumber Company, Inc. Terms and Conditions

1. **GOVERNING TERMS AND CONDITIONS.** Hancock's prices are based on these terms and conditions of sale. This document, together with any additional writings signed by Hancock, represents a final, complete, and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained, or waived by parole evidence, Buyer's purchase order, any course of dealing, Hancock's performance or delivery, or in any other way except in writing signed by Hancock through its authorized representative. These terms and conditions are intended to cover all activity of Hancock and Buyer hereunder, including sales and use of products, parts, and work, and all related matters (references to products include parts and references to work include construction and installation). Any reference made herein to Buyer's specifications, work requirements, or similar requirements is made only to describe the products and work covered thereby, and no warranties or other terms therein shall have any force or effect. Both acceptance by the Buyer and Hancock's obligations hereunder are expressly conditional on Buyer's assent to these terms and conditions. Hancock objects to any terms that are different from, or additional to, these terms and conditions. This Agreement is not intended to confer any benefits, rights, or remedies upon any person other than Buyer and Hancock.

2. **RISK OF LOSS AND TITLE.** Full risk of loss (including transportation delays and losses) shall pass to Buyer upon delivery of the products to the F.O.B. point. Hancock, however, retains title, for security purposes only, to all products and work until it has received payment in full in cash. Hancock may, at its option, repossess its products or work upon Buyer's default in payment or other obligations hereunder, and may charge Buyer with any deficiency.

3. **TAXES.** All federal, state, and local taxes imposed on the sale or use of any products or work, or the furnishing of any service, and all other similar taxes, shall be charged to and paid by Buyer, regardless of whether any other document relating to this transaction addresses, or fails to address, the subject of taxes. Hancock may accept a valid exemption certificate from Buyer, if applicable, but if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved, and Hancock is required to pay the tax covered by such exemption certificate, Buyer agrees to reimburse Hancock for the taxes paid.

4. PERFORMANCE, INSPECTION, AND ACCEPTANCE. Buyer shall finally inspect and accept all products within ten (10) days after arrival at point of delivery, and Buyer shall inspect and approve all work by Hancock within ten (10) days after Hancock completes that work. All claims by Buyer (including claims for shortages) which a reasonable inspection would reveal must be asserted in writing by Buyer within said ten (10) day period. Failure of Buyer to give such timely notice of defect, non-conformity, or other claim shall result in waiver and release of such claim and final acceptance of the product or work.

- a. Although Hancock Lumber attempts to photograph all deliveries and requests initialed receipts within its Enterprise Resource Planning (ERP) system, lack of an electronic photograph or signature is not evidence of any failure to make delivery.
- b. RESALEABLE stock materials MAY be returned for full credit at Hancock's sole discretion.
- c. Special Orders are generally not returnable for credit. Exceptions require Hancock General Manager approval and are subject to a 30% restocking fee.

5. EVENTS BEYOND HANCOCK'S CONTROL. Hancock shall not be liable for failure to perform or delay in performance due to any cause beyond its reasonable control, or due to fire, flood, strike, or other labor difficulty, act of God, any governmental authority, or transportation difficulties, delays in usual sources of supply and major changes in economic conditions. In the event of delay in performance due to any such cause, the date of delivery or shipment will be extended by a period of time reasonably necessary to overcome the effect of such delay.

6. WARRANTY AND LIMITATION OF LIABILITY AND REMEDY.

A. Hancock warrants that products of its own manufacture, when shipped, will be of good quality, will be free of defects in material and workmanship, and will conform to applicable specifications, and Hancock warrants that the work it performs will meet applicable work requirements. Hancock makes no warranty with respect to products not manufactured by Hancock, or work performed by other than Hancock, but Hancock will assign to Buyer, upon request at the time of sale, whatever warranty Hancock has received from manufacturers or other providers of work. In no event will Hancock be responsible for damages, if any, caused by improper handling, storage, application, or use of products or work after Hancock ceases to have custody, possession, or control thereof, including without limitation failure to keep products or work dry and safe from environments that create or promote the development or growth of mold. Any Hancock recommendations with respect to the handling, storage, application, or use of the products or work are advisory only and are not warranted. All claims under this warranty must be made in writing immediately after



discovery of any breach thereof and, in any event, within the earlier of the following dates: (1) twelve (12) months from the date of delivery of those products that are the subject of the claim or, in the case of work, within twelve (12) months after the last date of those items of work that are the subject of the claim, or (2) within fifteen (15) months of the date of invoice for the products or work in question. Product or work which is the subject of a warranty claim must be held for Hancock's inspection. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, EXPRESSED, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS.

B. Upon Buyer's submission of a claim, as provided above, and reasonable substantiation of the claim by Hancock, Hancock shall at its option either (i) repair or replace its products or work at the original F.O.B. point or, at Hancock's option, the location of the products or work, or (ii) refund an equitable portion of the purchase price. If Hancock elects to repair or replace its products or work, such repair and replacement shall include repair or replacement of the product itself or the work itself, and shall not include the cost of removing the products or work from the location in which they have been installed, or the cost of reinstalling them. In no event shall Hancock be liable for more than the total purchase price of the product or work.

C. THE FOREGOING IS HANCOCK'S ONLY OBLIGATION AND BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, AND THE FOREGOING IS BUYER'S EXCLUSIVE REMEDY AGAINST HANCOCK FOR ALL CLAIMS ARISING HEREUNDER OR RELATING HERETO, WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES. BUYER'S FAILURE TO SUBMIT A CLAIM AS PROVIDED ABOVE SHALL SPECIFICALLY WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF, INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON LATENT DEFECTS. IN NO EVENT SHALL BUYER BE ENTITLED TO SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. ANY ACTION HEREUNDER OR RELATING HERETO, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OR IT WILL BE BARRED.

7. SHOP DRAWINGS. Any shop drawings furnished by Hancock to Buyer must be approved as to all dimensions, details and sections in writing by Buyer before manufacturing will begin, and Buyer assumes responsibility for any discrepancies or errors in the drawings so approved. Drawings shall be deemed approved if Buyer does not comment on them within 10 days of receipt.

8. GOVERNING LAW. Any dispute regarding this agreement or transaction, or related



thereto, shall be governed by the law of the State of Maine, without regard to conflict of law principles, including the Maine Prompt Payment Act.

9. ARBITRATION. Any dispute arising out of this agreement or transaction, or related thereto, will be decided under the Commercial Rules of the American Arbitration Association, and judgment shall be entered on the award. All arbitration shall take place in Portland, Maine.

10. ATTORNEY'S FEES AND COSTS. If Hancock resorts to arbitration or litigation arising out of this agreement or transaction, or any dispute related thereto, either because Buyer has breached its obligations hereunder or under applicable law, or because Buyer has brought invalid claims against Hancock, Hancock shall be entitled to reasonable attorney's fees and costs. This right shall be in addition to, and not in limitation of, any right Hancock may have under applicable law, including the Maine Prompt Payment Act. Arbitration shall in no respect limit Hancock's rights and remedies under applicable mechanic's lien or similar laws._____

