

## LODGE LUMBER COMPANY, INC. – TERMS AND CONDITIONS

Lodge Lumber Company, Inc., a Texas corporation ("Seller") provides its customers ("Buyer") purchase orders ("Purchase Orders" or "Invoices"), delivery tickets ("Delivery Tickets") and/or credit applications ("Credit Applications") in connection with its sale of lumber and other related materials ("Materials"). These Terms and Conditions are attached to and incorporated by reference into the Purchase Orders, Delivery Tickets and Credit Applications and shall apply without exception to all such Purchase Orders, Delivery Tickets and/or Credit Applications (collectively referred to herein as the "Agreement"). All sales by Seller of any nature to Buyer shall be made under the provisions of these Terms and Conditions only.

**PAYMENT**—Payments under this Agreement and any other payments due to Seller by Buyer under any other agreement shall be paid to Seller at its office in Houston, Texas. In Seller's sole discretion, all orders shall either be pre-paid or cash payable on delivery. All credit terms shall be subject to the prior written approval of Seller. Except as otherwise agreed in writing, all sums owed by Buyer to Seller with respect to this sale are due and payable upon the date of the Invoice. Buyer shall pay Seller the amount of any and all taxes, excises, or other charges which Seller may be required to pay to or collect for any government, national, state or local, upon, or measured by the production, sale, transportation, delivery or use of the Materials. If Buyer fails to fulfill the terms of payment applicable hereto, Seller may defer further shipments, or in its sole discretion, cancel the unshipped balances of any unfilled orders. If Buyer is in default of this Agreement or any agreement with Seller, Seller shall have the right, in addition to all other rights herein, as well as in law or equity, to without delivery and demand adequate assurances of Buyer's ability to perform Buyer's obligations. In the event that the payment of any sums due hereunder is not made by Buyer within thirty (30) days after the due date thereof, such amount shall bear interest until paid in full at a rate per annum that is equal to the lesser of (i) the highest lawful rate, or (ii) eighteen percent (18%). Additionally, if any Invoice becomes past due, and is placed in the hands of an attorney for collection, in addition to any other amounts or damages recovered by Seller, Buyer agrees to pay Seller any and all attorneys' fees and costs incurred as a result, together with interest, expenses, costs and any other charges. Seller may assign its right to receive from Buyer any payments called for hereunder at any time on reasonable notification to Buyer as it to the assignee for receipt of such payments.

**DELIVERY/TITLE TO MATERIALS**—(a) Delivery by Seller. If delivery is made by Seller, title to the Materials shall pass from Seller to Buyer upon delivery thereof to Buyer or Buyer's agent, and thereafter shall be at Buyer's risk. If, upon Seller's delivery, an employee or agent of Buyer authorized to accept delivery and sign a Delivery Ticket evidencing delivery of the Materials as listed on the Purchase Order or Invoice is not present, Seller reserves the right to deposit the Materials at the delivery area previously designated by Buyer without obtaining a signed receipt therefore, and Buyer agrees to accept the Invoice as if it were signed by an authorized employee or agent of Buyer, unless Buyer has previously instructed the Seller not to deposit material at the designated delivery area without obtaining a signed delivery receipt from an authorized agent of the Buyer. All Materials will be unloaded by Buyer's labor and/or equipment unless otherwise agreed to in writing at the time of order. If a "dump" load is requested by Buyer, unloading the Materials remains Buyer's sole responsibility. Seller shall not be responsible for any damage or breakage of Material or property due to dumping. Upon Seller's delivery, demerge charges of \$35.00 per hour will be added after 30 minutes of free time by Seller's agent or employee upon arrival caused by Buyer's delay. Any increase in freight charges prior to date of shipment, or handling charges prior to date of arrival, or any increases in taxes or duty, shall be paid for by Buyer. (b) Delivery by Common Carrier. If delivery is by common carrier, delivery by Seller to the carrier at point of origin shall pass title to the Materials from Buyer to Seller, shall constitute delivery to Buyer, thereafter the Materials shall be at Buyer's risk, and claims for loss or damage must be filed by Buyer against the carrier. Any increase in freight charges prior to date of shipment, or handling charges prior to date of arrival, or any increases in taxes or duty, shall be paid for by Buyer. (c) Buyer Pick-Up. Title to goods loaded onto Buyer's conveyance at Seller's warehouse passes to the Buyer at Seller's loading dock, and thereafter the Materials are at Buyer's risk.

**ACCEPTANCE OF MATERIALS**—All Materials are deemed to be received by Buyer in the condition and grade as ordered, unless exception is noted on the Delivery Ticket by Buyer or Buyer's agent. Claims for shortages, breakage or for any nonconformance with the Agreement shall be noted on the Delivery Ticket by the Buyer or Buyer's agent, at the time of delivery; otherwise, the Seller shall not be responsible for any such claims. The portion of the shipment containing the stock in dispute must be held intact until settlement is made. All claims for grade, shortage, damage, etc., must be made within five (5) days of delivery, and must be accompanied by tally and affidavit. Materials in dispute must be unloaded and stored properly to insure grade and moisture content until settlement is made. The failure of Buyer to timely make any such claims for grade, shortage, and/or damage within the time period provided, or the failure of Buyer to properly store the Materials, shall constitute a waiver of Buyer's grade, shortage and/or damage claims. Unless otherwise specified in writing, Materials will be graded on the official grading rules of the applicable manufacturer's association in effect at the time the order is accepted by Seller. In case of dispute over grade, the official re-inspection report of said manufacturer's association shall be controlling, and all costs associated with such re-inspection shall be paid in accordance with rules of such manufacturer's association.

**RETURN POLICY**—Subject to the terms and conditions herein, returns are accepted within thirty (30) days of the date of delivery or pick-up for a credit to Buyer's account with Seller. Such credit shall be in the amount of the Invoice attributable to such returned Materials, less a re-stocking fee in the amount of fifteen percent (15%). Seller will not accept any Material returns after thirty (30) days from delivery or pick up; however, Buyer will not accept damaged Materials after three (3) days from delivery or pick-up unless noted on Seller's Delivery Ticket by Buyer or Buyer's agent. Any custom manufactured Materials are not subject to return. Any Materials that have been worn, used or altered with not be accepted for return.

**GOVERNING LAW**—The Agreement shall in all respects be subject to and governed by the laws of the State of Texas without regard to conflicts of laws principles and shall be performable in Harris County, Texas. Buyer hereby acknowledges and agrees that (i) any and all claims, proceedings or causes of action relating to the validity, performance, interpretation, and/or enforcement hereof shall be submitted exclusively to a court of competent jurisdiction in Houston, Harris County, Texas, (ii) to the maximum extent practicable, this Agreement is deemed to call for performance in Houston, Harris County, Texas, (iii) Buyer irrevocably submits itself to the jurisdiction of the State and Federal courts in Houston, Harris County, Texas, and (iv) Buyer irrevocably waives any claims that litigation brought in such courts are in an inconvenient forum. The scope of the foregoing is intended to be all encompassing, and Buyer acknowledges the foregoing waivers are material inducements for Seller to enter in a business relationship with Buyer, and that Seller has relied on these waivers in entering into this Agreement. Buyer warrants and represents it has reviewed these waivers with its legal counsel, and that it knowingly and voluntarily agrees such waivers.

**FORCE MAJEURE**—Under no circumstance shall Seller be liable in any way to Buyer or any other party for delay in delivery or non-delivery, in whole or in part, and any delay in delivery or non-delivery shall not be a breach of the Agreement if performance is made impracticable by the occurrence of one or more of the following contingencies, the non-occurrence of which is a basic assumption on which the agreement is made; (a) fires, floods, or other casualties; (b) wars, riots, civil commotion, embargoes, governmental regulations or martial law; (c) inability to obtain necessary supplies or materials (finished or otherwise) from Seller's usual sources of supply; (d) inability to obtain fuel or transportation facilities; (e) delays in transit; (f) existing or future strikes or other labor troubles affecting production or shipment, whether involving employees of Seller or employees of others, and regardless of responsibility or fault on the part of the employer; and (g) other contingencies of manufacture or shipment, whether or not of a class or kind mentioned herein and not reasonably within Seller's control.

**EXPRESS WARRANTY**—Upon Seller's receipt of Buyer's payment in full of all outstanding Invoices with Seller, and subject to the terms and conditions set forth herein, Seller hereby warrants the Materials to Buyer only against failure due to defective material or workmanship for a period of one (1) year from date of shipment. Any damage to the Materials not directly and wholly attributable to the sole negligence or fault of Seller, or due to Buyer's or any other party's misuse and abuse, lack of proper maintenance, or normal wear and tear are not covered by this warranty. Seller's sole obligation and Buyer's sole and exclusive remedy, in Seller's sole discretion, with respect to the foregoing warranty is expressly limited to repair of defective Materials or furnishing necessary replacements. Seconds, shop rejects, and damaged goods are sold "as is", "where is" and are without warranty or guarantee of any kind.

**DISCLAIMER OF WARRANTY**—EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE MATERIALS AND ANY AND ALL IMPLIED WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE OBLIGATION OF SELLER FOR THE MATTERS SET FORTH HEREIN WHETHER ON WARRANTY, CONTRACT, NEGLIGENCE OR STRICT LIABILITY, IS THE PURCHASE PRICE ACTUALLY PAID BY BUYER TO SELLER WITH RESPECT TO THE MATERIALS. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, LIQUIDATED, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES EVEN IF INJURY, PROPERTY DAMAGE, DAMAGE OR LOSS OF EQUIPMENT, LOST PROFITS, LABOR COSTS OR EXPENSES, OR ANY OTHER LOSSES OR EXPENSES AS A RESULT OF BUYER'S NEGLIGENCE, WHETHER DEEMED ACTIVE OR PASSIVE AND WHETHER OR NOT ANY SUCH NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF ANY SUCH DAMAGE, LOSS OR EXPENSE. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE INTENDED TO LIMIT SELLER'S LIABILITY AND WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. The parties acknowledge that it is not unconscionable under the commercial circumstances of this Agreement to limit an award of consequential damages as contemplated herein. Except for the obligations of Seller under the Express Warranty herein, all responsibility of Seller for the Materials ceases upon passage of title as contemplated herein. Any claims against a carrier for damage to or loss of any Materials shall be made solely by Buyer. No claims of any kind whatsoever, whether based on breach of warranty, alleged negligence of Seller, or otherwise, with respect to Materials delivered or for failure to deliver any Materials shall be greater in amount than the actual purchase price paid hereunder of the Materials in respect to which damages are claimed. Failure of Buyer to give written notice of a claim within 5 days after delivery of Materials shall constitute a waiver of Buyer of all claims with respect to such Materials.

**SEVERABILITY**—The invalidity or unenforceability of any provision of the Agreement shall not in any way affect the validity or enforceability of any other provision and the Agreement shall be construed in all respects as if such invalid or unenforceable provision had never been in the Proposal.