

TERMS AND CONDITIONS

1. DEFINED TERMS. "MASCO" or "Seller" shall mean Masons Supply Company and its related and affiliated entities and all of their officers, agents, and insurers. Wherever MASCO's signature or approval is required, it must be by an Officer of MASCO.
2. GENERAL AGREEMENT. All sales are expressly conditioned on these terms and conditions. No additional or different terms shall apply (whether a part of Buyer's purchase order or other communication from Buyer unless expressly agreed to in writing by an Officer of MASCO. Any acceptance by Buyer with additional or different terms proposed in the acceptance shall be deemed null and void and shall not be construed as a counteroffer. Any attempt to vary any of the terms of this offer shall be deemed a material alteration and such different or additional terms shall not be binding upon MASCO. Acceptance of or payment for any of goods constitutes Buyer's agreement to each and every of these Terms and Conditions. If these terms and conditions are incorporated by reference in a Purchase Agreement, Sales Agreement or other Agreement with Buyer, these provisions shall control notwithstanding anything to the contrary therein.
3. **WARRANTIES. MASCO MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO WORKMANSHIP, PERFORMANCE, QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY OR MERCHANTABILITY FOR ANY OF THE PRODUCTS SOLD. THIS DISCLAIMER IS FOR ALL LIABILITY INCLUDING LIABILITY FOR CONSEQUENTIAL SPECIAL DAMAGES, OR ANY LOSS OR DAMAGE, WHETHER TO PROPERTY OR INJURY TO PERSONS, RESULTING, DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF ANY PRODUCT SOLD. MASCO AGREES TO ASSIGN AND PASS-THROUGH TO BUYER ANY WARRANTIES EXPRESSLY PROVIDED BY THE MANUFACTURER OF THE PRODUCT PURCHASED, WHICH SHALL BE BUYER'S EXCLUSIVE RIGHTS OF WARRANTY. BUYER'S REMEDIES ARE SUBJECT TO ANY LIMITATIONS CONTAINED IN MANUFACTURER'S TERMS AND CONDITIONS TO MASCO. IF THERE IS NO WARRANTY PROVIDED BY THE MANUFACTURER, THEN THE GOODS ARE SOLD "AS IS." WHILE MASCO MAY PROVIDE MANUFACTURER WARRANTY INFORMATION, IT DOES NOT WARRANT OR GUARANTEE ANY SUCH ADVICE. THE WARRANTY EXPRESSED IN THIS PARAGRAPH 3, AND THE OBLIGATIONS AND LIABILITIES OF MASCO HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND BUYER HEREBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES OR LIABILITIES WHETHER OR NOT OCCASIONED BY MASCO'S NEGLIGENCE IN WHOLE OR IN PART. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN OFFICER OF MASCO AND BUYER. MASCO MAKES NO REPRESENTATION WHATSOEVER WITH REGARD TO WHETHER ANY GOODS COMPLY WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA), THE AMERICANS WITH DISABILITIES ACT (ADA), OR ANY OTHER FEDERAL, STATE, OR LOCAL STATUTE, LAW, ORDINANCE, OR RULING.**
4. **LIABILITY. MASCO SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND FROM THE USE OR LOSS OF USE OF ANY PRODUCT OR DUE TO, ARISING OUT OF OR CONNECTED WITH THIS PURCHASE, THE GOODS, OR THIS AGREEMENT. IN ADDITION TO THE ASSIGNMENT OF MANUFACTURER WARRANTY STATED ABOVE. BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM AGAINST MASCO IS FOR MASCO, AT ITS OPTION, TO REPAIR OR REPLACE THE GOODS, OR FOR MASCO TO REQUEST RETURN OF THE PRODUCT AND TENDER TO BUYER THE PURCHASE PRICE PAID UPON REDELIVERY.**
THE REMEDIES OF BUYER AS SET FORTH HEREIN ARE EXCLUSIVE, AND THE LIABILITY OF MASCO WITH RESPECT TO ANY CONTRACT OF SALE OR ANYTHING DONE IN CONNECTION THEREIN, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, INDEMNITY OR UNDER ANY LEGAL THEORY, WARRANTY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS ON WHICH SUCH LIABILITY IS BASED.
5. DELIVERY. Shipping dates given in advance of actual shipment are estimated. MASCO shall not be liable for delay in performance regardless of cause. All direct shipments are F.O.B. point of shipment, and each shipment or delivery shall be considered a separate and independent transaction. Responsibility for filing claims with the manufacturer or carrier, as the case may be, rest with the Buyer.
6. PALLETS: Certain of the products, goods and materials delivered and provided by MASCO hereunder ("Products") may be delivered on pallets to assist MASCO with the loading, delivery, transport and storage of such Products. Following delivery of any such Products by MASCO, any action taken by Buyer, Buyer's agents, employees or otherwise ("Buyer Parties") with regard to such pallets, including but not limited to the movement or relocation of any such pallets is at the sole discretion and liability of the Buyer Parties and should only be done with the use of forklift type equipment that is designed for pallet use and is proper under the circumstances. Buyer hereby releases and indemnifies MASCO from any liability arising out of or related to actions by the Buyer Parties with regard to such pallets.
7. ACCEPTANCE OF GOODS. Buyer shall make an examination of any goods delivered hereunder immediately upon its receipt. Buyer's failure to give written notice of any claim within 7 days after the receipt of such material shall constitute Buyer's unqualified acceptance of such material and a waiver by Buyer of all claims with respect thereto including any right to revoke acceptance. Upon acceptance, Buyer assumes all risks and liability for the results obtained in its business by the use of any materials delivered or by the use of such materials in combination with other goods or materials. In no event may customer set-off payment for any rejected or revoked acceptance goods against payment due on goods accepted.
8. NOTICE OF CLAIM FOR DEFECTIVE DELIVERY. Buyer will be conclusively deemed to have accepted and agreed to any invoice from MASCO (including but not limited to the price, quantity, quality, and description of the goods as stated on the invoice and any and all terms, provisions, conditions, agreements, representations, and warranties on the invoices), unless MASCO receives written objection to the invoice from Buyer within 7 days after the date the invoice is sent to Buyer. Written objection must be sent by letter to MASCO at its main office by registered mail specifying the nature of the complaint. Buyer's compliance with these conditions precedent shall not constitute an admission by MASCO of the merits or amount of Buyer's claim or defense.
9. **LIMITATION OF ACTIONS. NO ACTION FOR BREACH OF ANY TERM OF SALE OR ANY OTHER DUTY OF MASCO WITH RESPECT TO GOODS OR SERVICES MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE DATE ON WHICH THE GOODS ARE DELIVERED.**
10. PAYMENT. Buyer's obligation to pay MASCO for the goods and services provided are not conditioned upon Buyer obtaining acceptance or approval from any third party or receiving payment from any third party.
11. TAXES. The prices for goods do not include any sales, use or other taxes or charges payable to state or local authorities. Buyer shall be responsible for and shall pay all federal, state and local sales, use, property, excise, freight or other taxes imposed on or with respect to the goods. To the extent that such taxes do not appear as an itemized charge, Buyer certifies that the sale of the goods is exempt from such taxes and Buyer assumes the liability for any such tax which may be found to be due, and agrees to indemnify and hold MASCO harmless with respect thereto.
12. RETURNS. ALL SPECIAL ORDER OR LARGE QUANTITY PURCHASES ARE FINAL. NO RETURNS OR REFUNDS WITHOUT MANUFACTURER'S WRITTEN ACCEPTANCE AND TERMS. No returns on special cuts, or repackaged merchandise. No credit will be issued for normally stocked materials returned 45 days after original purchase. In no case are goods to be returned without first obtaining MASCO's permission. Buyers shall pay the costs of return of any goods and shall use its best efforts to insure that all packaging materials that MASCO supplies are maintained in suitable storage areas to protect them from damage, including, without limitation, from forklifts and weather. Goods must be securely packed to reach MASCO without damage. Material accepted for credit will be subject to a 15% service charge plus all transportation charges.
Credit for returned goods will be allowed only to the extent agreed to in writing by a duly authorized representative of MASCO and no application for credit will be processed unless Buyer provides the original invoice number and date.
13. **APPLICABLE LAW, ARBITRATION AND ATTORNEY FEES. THE VALIDITY, CONSTRUCTION AND PERFORMANCE OF ANY AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF OREGON. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS ORDER OR THE PERFORMANCE OR BREACH THEREOF SHALL BE SETTLED BY ARBITRATION IN THE CITY PORTLAND, OREGON, IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION. IF AN ATTORNEY IS EMPLOYED TO ENFORCE THIS AGREEMENT, MASONS SHALL BE ENTITLED TO ATTORNEY FEES AND COSTS, IRRESPECTIVE OF WHETHER ANY LEGAL PROCEEDING IS COMMENCED. IN THE EVENT OF A SUIT OR ACTION TO COLLECT UNPAID AMOUNTS FOR GOOD SOLD, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER, IN ADDITION TO ALL OTHER AMOUNTS, ITS ATTORNEY FEES AND COSTS AT TRIAL, ARBITRATION, AND APPEAL.**
14. WAIVERS BY BUYER. Buyer waives demand, notice, protest, notice of acceptance of this agreement, notice of credit extended, notice of collateral delivered or received, and all other notices.
15. AUTHORITY OF MASCO'S AGENTS. MASCO's agents, employees, and representatives have no authority to bind MASCO to any affirmation, waiver, representation, or warranty inconsistent with these terms and conditions, unless expressly agreed to in writing by an Officer of MASCO.
16. AUTHORIZATION. In consideration of MASCO selling goods to Buyer, the person signing any such acceptance or agreement on behalf of Buyer represents and warrants that he or she is authorized to sign on behalf of Buyer. The parent company, if any, of Buyer also guarantees performance of the agreement and payment by Buyer. The person signing and Buyer warrant that the information given to MASCO IS true and correct in all respects.
17. THIRD PARTY CONTRACT OBLIGATIONS. In the event that Buyer has contracted for or otherwise assumed with any other Party any obligation or liability to an Owner, Contractor, Construction Manager or any other person or entity responsible for the completion of any portion of any project in which MASCO's goods will be used, the Parties agree that MASCO is not a party to such contract, and MASCO does not assume any liability or obligation under any such contract or agreement. Buyer releases and agrees to defend, indemnify and hold MASCO harmless for any claims of any nature whatsoever related to any obligation, risk, liability or responsibility which was Buyer's under any contract or which was assumed by Buyer towards any Owner, Contractor, Construction Manager or other party involving the goods or work supplied by MASCO to fulfill any contractual requirement.
18. **OTHER TERMS AND CONDITIONS. NO TERMS AND CONDITIONS OTHER THAN THOSE HEREIN STATED, AND NO AGREEMENT OR UNDERSTANDING, INCLUDING BUT NOT LIMITED TO ANY PROVISIONS, TERMS AND CONDITIONS CONTAINED IN ANY CONFIRMATION ORDER OR OTHER WRITING BY BUYER, IN ANY WAY PURPORTING TO MODIFY THESE TERMS OR CONDITIONS SHALL BE BINDING UPON MASCO UNLESS CONSENTED TO IN WRITING BY AN OFFICER OF MASCO. MASCO'S ACCEPTANCE OF YOUR PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THESE TERMS AND CONDITIONS AND ON YOUR AGREEMENT THAT SUCH TERMS AND CONDITIONS SHALL CONSTITUTE THE SOLE TERMS AND CONDITIONS OF THE ORDER. THE CONDITIONS STATED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS, AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON MASCO, INCLUDING BUT NOT LIMITED TO, PROVISIONS OR CONDITIONS WHICH DEEM PARTIAL PERFORMANCE OR FAILURE TO OBJECT AS ACCEPTANCE BY MASCO OF BUYERS TERMS AND CONDITIONS, UNLESS ACCEPTED BY MASCO IN WRITING.**
19. ENTIRE AGREEMENT. These terms and conditions shall constitute the entire agreement between the parties with regard to the subject matter. The parties shall not be bound by any agent's or employee's representation, promise, or inducement not set forth in these terms or the signed agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of these terms and conditions. Acceptance of or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of these terms and conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings or agreements have been made or relied upon in the making of the agreement other than those specifically set forth herein. These terms and conditions can only be modified by a writing signed by the parties hereto or their duly authorized agents.