

TERMS AND CONDITIONS OF SALE

1. All sales are subject to the terms and condition set forth herein and in the Credit Agreement with Berg Wholesale, Inc., Berg Wholesale Hardware LLC, Berg Wholesale Hardware Florida LLC or any of its divisions, subsidiaries, or affiliates ("Berg"). Other than Berg's Credit Agreement, there is no other agreement, oral or written, between Berg and Purchaser. Specifically, the terms and conditions of purchase shown on Purchaser's Purchase Order or any other document relating to a sale are not applicable in any way. Berg objects to such additional or different terms. Berg reserves the right to supplement or modify this Terms and Conditions of Sale without notification to Purchaser.

2. Upon approved credit from Berg, the payment terms are net thirty (30) days from the date of invoice unless otherwise stated on the face of this document. Orders for material not considered to be stock material by Berg may require full or partial payment or a letter of credit at the time of order placement. All late payments are subject to one and one half percent (1-1/2%) per month late charge. At the end of each month a monthly periodic rate of 1-1/2% which equals an annual percentage rate of 18% and any legal expense incurred in the recovery of any past due amounts will be charged and is due from the Purchaser without written notice. Sell prices on this order carrying discounts in excess of fifty percent off Berg's current list price may be recalled and the order repriced at full list price if any payment is not received within the payment terms shown on the face of this document. Purchaser agrees that any check that is dishonored or returned for any other reason will be governed by Oregon law and will be subject to handling and collection fee, statutory damages, attorney fees, and other damages and fees. By signing the Credit Application, Purchaser hereby grants Berg a security interest in all goods sold by Berg to Purchaser and authorizes Berg to file an initial financing statement as well as any amendment or supplement. In the event of Purchaser's default in payment, Berg shall have all the rights of a secured party under the Uniform Commercial Code of the applicable jurisdiction, including, without any limitation, the right to have Purchaser assemble the collateral.

3. Shipment is subject to stock on hand. Goods not in stock will be backordered and shipped upon receipt of the goods from the manufacturer unless Purchaser cancels the order when notified of the backorder. All times for delivery of the goods not in stock are at the manufacturer's discretion. Berg is not responsible in any way for the delivery date, material errors or for any liabilities resulting therefrom for goods shipped from Berg's stock or from the manufacturer.

4. All materials are invoiced F.O.B Berg warehouse. When delivered to a carrier, the goods shall be identified to the contract, and risk of loss shall pass to the Purchaser. Deliveries are authorized to be made without signatures.

5. All sales are final. Goods may not be returned unless accompanied by a Return Goods Authorization from Berg. Shipping errors will be credited upon receipt by Berg only if goods are returned in resalable condition as determined by Berg. For all other returns, Purchaser shall bear the cost of returning the goods plus all applicable restocking fees. Once placed with the manufacturer, material considered special order or non-stock by Berg may not be returned or canceled without written authorization. Defective material may be credited, repaired, or replaced at the election of Berg.

6. Berg shall not be liable for loss or damage of any kind resulting from delay or inability to deliver the goods on account of fire, labor troubles, accident, acts of civil or military authorities, or from any other cause beyond our control.

7. All claims of any kind concerning the goods must be submitted in writing to Berg within ten (10) days of receipt of shipment. After this date, goods are accepted as is by Purchaser.

8. DISCLAIMER OF WARRANTIES. BERG EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS SOLD HEREIN, WHETHER AS TO MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF ANY ITEMS. THE ONLY WARRANTIES APPLYING TO THE ITEMS SOLD BY BERG ARE THOSE THAT MAY BE OFFERED BY THE MANUFACTURER.

9. LIMITATION OF BERG'S LIABILITY. IN NO EVENT SHALL BERG BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM ANY CAUSE WHATSOEVER IN EXCESS OF THE PURCHASE PRICE OF THE PARTICULAR GOODS TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT SHALL BERG BE LIABLE FOR ANNY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.

10. The terms and conditions of purchase and the rights and duties of Berg and purchaser shall be governed by the Oregon law without regard to conflict of law principles. The courts of the State of Oregon shall have exclusive jurisdiction over all disputes arising from or related to the terms and conditions and transactions contemplated by the terms and conditions and venue shall be in Clackamas County. The prevailing party shall be entitled to its reasonable legal costs and attorney fees as well as other expenses at trial, on any appeal therefrom, and any bankruptcy (including any case, contested matter, and adversary proceeding).