

# FRAMECO INC., TERMS AND CONDITIONS OF SALE:

**1. General:** Goods supplied by Metal Framing Industries, LLC d/b/a FrameCo Inc. ("FrameCo") are supplied upon the following Terms and Conditions of Sale (these "Terms and Conditions"), and not otherwise. FrameCo expressly rejects any conditional sales order placed by the purchaser ("Customer").

CUSTOMER UNDERSTANDS AND AGREES THAT, NOTWITHSTANDING THE FACT THAT CUSTOMER MAY NOT EXECUTE THESE TERMS AND CONDITIONS, FRAMECO SHALL PROVIDE THE GOODS IN RELIANCE ON THE PROVISIONS OF THESE TERMS AND CONDITIONS, UNMODIFIED BY ANY ORAL OR WRITTEN STATEMENTS BY CUSTOMER OR BY ANY TERMS CONTAINED IN A PURCHASE ORDER OR OTHER WRITING OF CUSTOMER. ALL ORDERS PLACED WITH FRAMECO CONSTITUTE THE ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS STATED HEREIN.

**2. Purchase Orders:** A Purchase Order shall be deemed an offer by Customer to purchase the Goods, which offer shall include these Terms and Conditions in their entirety. All orders for Goods shall be subject to acceptance by FrameCo as directed by FrameCo. FrameCo may accept such offer by either dispatching the Goods to Customer or by giving written notice to Customer of its intent to accept such offer.

CUSTOMER UNDERSTANDS AND AGREES THAT ANY AND ALL TERMS AND CONDITIONS THAT MAY BE SET FORTH IN A CUSTOMER PURCHASE ORDER (AND ALL OTHER DOCUMENTS SUBMITTED BY CUSTOMER TO FRAMECO IN CONNECTION THEREWITH) THAT ARE NOT CONSISTENT WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, SHALL BE VOID AND OF NO EFFECT WHATSOEVER. AS SUCH, FRAMECO SHALL NOT BE DEEMED TO HAVE ACCEPTED ANY TERMS AND CONDITIONS IN A CUSTOMER PURCHASE ORDER THAT ARE INCONSISTENT WITH THESE TERMS AND CONDITIONS.

**3. Return:** Customer shall not return any Goods actually delivered to Customer without the written consent of, and upon terms agreed to, by FrameCo. FrameCo may, in its absolute discretion, accept the return of standard Goods to the credit of the Customer provided that such Goods are returned to its factory unused and undamaged before the expiration of 14 days after their delivery to Customer and Customer agrees to pay a handling and administration charge equal to 10 percent of the price. No returns of special products will be accepted.

**4. Claims:** No claims in reference to items covered by these Terms and Conditions will be recognized unless made in writing within 7 days of delivery. If no such claim is made, FrameCo and Customer will understand that the Goods have been accepted. By accepting the Goods, Customer acknowledges that FrameCo's performance has fully satisfied all terms, conditions, and specifications.

**5. Price:** The price is that price quoted by FrameCo in respect of the particular order and not in any brochure or other product information published. Prices do not include sales, use, excise, or similar taxes. Consequently, the amount of any present or future sales, use or other similar tax applicable to the sale or use of the Goods shall be paid by Customer. The Customer shall arrange or bear the cost of delivery, freight and insurance, unless otherwise agreed to in writing by FrameCo. A price quotation not accepted by Customer within 30 days may be changed by FrameCo.

**6. Payment/Delinquency Charge:** Payment terms are thirty (30) days from the date of FrameCo's invoice. FrameCo reserves the right to charge interest at one and one-half (1 1/2) percent per month, or eighteen (18) percent per annum, on all balances not paid by Customer within the designated net terms. FrameCo reserves the right to require payment prior to the time of shipment if, in FrameCo's opinion, exercised in FrameCo's subjective judgement, Customer's financial condition has deteriorated or the risk of non-payment has otherwise increased.

**7. Delivery and Freight Charges:** All delivery dates are approximations only and are based upon prompt receipt of all necessary information from Customer. Notwithstanding any request by Customer, FrameCo may ship Goods to Customer via transportation as determined by FrameCo, which will be observed subject only to FrameCo's ability to effect transport by available means. Risk of loss shall pass to Customer at the F.O.B. shipping point. FrameCo will not be responsible or liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages, resulting from any delay in or failure of performance of supply or delivery of Goods whatsoever.

**8. Limited Warranty/Damages:** FrameCo warrants for a period of 12 months after delivery that Goods sold hereunder shall be free from defects in material and workmanship at the time of shipment from FrameCo's facility or other place of shipment. THIS LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY FRAMECO, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED AND EXCLUDED. IN NO EVENT SHALL FRAMECO BE LIABLE (AND CUSTOMER SHALL NOT ASSERT ANY CLAIM) FOR PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES UNDER THIS WARRANTY SHALL BE LIMITED AT FRAMECO'S EXCLUSIVE DISCRETION, TO: (1) REPLACEMENT OF ANY DEFECTIVE GOODS OR PART THEREOF; (2) REPAIR OF ANY DEFECTIVE GOODS OR PART THEREOF; OR (3) RETURN OF THE PURCHASE PRICE FOR ANY DEFECTIVE GOOD OR PART THEREOF. The warranty and remedy set forth above are conditioned upon the proper storage, use and maintenance of the Goods and conformance with all applicable recommendations of FrameCo with respect to the Goods. No agent, employee or representative of FrameCo (or any distributor, dealer or sales representative of FrameCo) has the authority to bind FrameCo to any affirmation, representation or warranty concerning the Goods sold hereunder, and unless such affirmation, representation or warranty is specifically included in these Terms and Conditions, it shall not form a part of the basis of these Terms and Conditions and shall in no way be binding upon FrameCo or enforceable by Customer. Except as expressly agreed to by FrameCo in writing, the Goods are not rated or certified for any particular application or environment. The warranty set forth in this Section 8 shall expire 12 months after the delivery of the Goods.

**9. Indemnity:** Except as otherwise expressly set forth in these Terms and Conditions, Customer hereby releases and agrees to defend, indemnify and hold FrameCo, and its respective employees and agents, harmless from and against any and all claims, losses, liabilities, damages or expenses whatsoever, including any arising from any alleged injury to person, property or business, arising from or in any way relating, directly or indirectly, to the delivery, assembly, erection, installation, use or repair of the Goods and/or any related or other claims or losses, whether or not caused by Customer and/or its agents or employees or any of their acts, omissions or negligence.

**10. Failure by Customer:** If Customer fails to perform any of its obligations under these Terms and Conditions, or in the event of death, bankruptcy or insolvency of Customer, dissolution or modification of Customer, or non-payment for the Goods shipped, FrameCo shall have the right to cancel this contract with Customer or to postpone the shipment, or to stop the Goods in transit, and Customer shall reimburse FrameCo for any loss, damage and expense sustained therefrom.

**11. Retention of Title:** All Goods are supplied subject to retention of title by FrameCo. The Goods remain the property of FrameCo until complete payment of all amounts due to FrameCo arising from all business transactions between FrameCo and the Customer. Prior to use or resale of the Goods, the Customer shall maintain them in an identifiable condition in store or on site. The Customer may resell the Goods in the ordinary course of business, subject to maintaining FrameCo's rights against the Goods, and acting as fiduciary in recovering payment for the Goods and segregating such proceeds for the account of FrameCo until FrameCo is paid in full. The Customer assigns to FrameCo any claim or rights against sub-purchasers in order to enable FrameCo to make full recovery of monies owed. In the event of the failure of Customer to pay for the Goods or in the event of the appointment of a receiver, trustee, assignee for benefit of creditors, liquidator, or other agent in possession, or in the event of the filing of an execution against the Goods, FrameCo may enter the Customer's premises or the location where the Goods may be stored or installed and recover them, or appoint an agent in writing to do so. The Customer acknowledges and guarantees such right of entry during normal business hours. The Customer hereby irrevocably grants in favor of FrameCo an irrevocable license to attend at and access any premises at which any of the Goods supplied by FrameCo are located for the purposes of retrieval of the same in the event of default in payment by the Customer for such Goods.

**12. Compliance With Laws and Standards, and Safety Precautions:** Customer shall comply with and be responsible for all federal, state, and local laws, regulations and ordinances (including building codes) and all industry standards which are or may hereafter be in effect from time to time with respect to selection, installation and/or use of the Goods. Customer shall exercise suitable safety precautions, and shall require employees to follow all installation and use procedures and recommendations as may be published by FrameCo, including preventing injury or damage to person or property. It is Customer's responsibility to provide all the means that may be necessary to effectively protect all employees and other persons from serious bodily injury which otherwise may result from the method of installation or use of the Goods. If Customer fails to comply with the provisions of this paragraph or the applicable standards or regulations aforementioned, Customer shall indemnify and save FrameCo, and its respective employees and agents, harmless from and against any and all claims, losses or damages arising therefrom.

**13. Force Majeure:** FrameCo's obligations hereunder are subject to, and FrameCo shall not be held responsible for, any delay or failure to make delivery of all or any part of the Goods due to acts or circumstances beyond the control of FrameCo, including, but not limited to, labor difficulties, fires, casualties, accidents, acts of God, acts of war or terror, transportation difficulties, inability to obtain products, materials or components or qualified labor sufficient to timely perform part or all of any obligation, or governmental regulations or actions. In the event of the occurrence of any of the foregoing at the option of FrameCo, FrameCo shall be excused from the performance hereunder or the performance of the FrameCo shall be correspondingly extended.

**14. Confidential Information:** All non-public, confidential or proprietary information of FrameCo, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, lists, pricing, discounts or rebates, disclosed by FrameCo to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with these Terms and Conditions is confidential, solely for the use of performing these Terms and Conditions and may not be disclosed or copied unless authorized in advance by FrameCo in writing. Upon FrameCo's request, Customer shall promptly return all documents and other materials received from FrameCo. FrameCo shall be entitled to injunctive relief for any violation of this paragraph. This paragraph does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

**15. No Waiver:** FrameCo does not waive any of its legal rights or remedies in respect of these Terms and Conditions or the Goods, and shall not be bound by any waiver made by its employees or agents on a particular occasion. Any failure by FrameCo to enforce at any time any term or condition hereof shall not be considered a waiver of FrameCo's right thereafter to enforce the same or any other term or condition hereof.

**16. Governing Law:** These Terms and Conditions and any sale of Goods to Customer shall be deemed to have been made in and governed by the substantive laws of the State of Ohio, without regard to choice-of-law provisions. Any dispute concerning the Goods or the terms of their purchase and sale may only be litigated in the courts in Cuyahoga County, Ohio, and Customer expressly consents and submits to the jurisdiction of said courts.

**17. Effect of Other Agreements:** These Terms and Conditions, and the FrameCo quotation or purchase order to which they are attached, constitute the entire agreement between FrameCo and Customer as it relates to the Customer's purchase and sale of Goods from FrameCo, and FrameCo's liability therefor, and supersede any and all prior or contemporaneous written or oral agreements, correspondence, quotations, understandings, negotiations or discussions between the parties relating to the subject matter hereof. It is expressly agreed that any brochures, sales literature, on-line materials or other materials of FrameCo, have been provided for informational purposes only, have not been relied upon by Customer, do not form or give rise to any warranty, and are superseded by these Terms and Conditions.

**18. Severability:** If any term or condition or part of these Terms and Conditions is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the remaining terms and conditions hereof shall not be affected thereby and the effect thereof shall be confined to the provisions as to which such adjudication is made.

**19. Binding Effect:** These Terms and Conditions shall be binding upon the successors, legal representatives, and permitted assigns of Customer and FrameCo. Customer shall not assign any of its rights or delegate any of its obligations under these Terms and Conditions without the prior written consent of FrameCo. Any purported assignment or delegation in violation of this paragraph is null and void. No assignment or delegation relieves Customer of any of its obligations under these Terms and Conditions.

**20. Modification:** These Terms and Conditions may not be modified, cancelled, or assigned unless FrameCo agrees in writing.

**21. Attorney's Fees:** Reasonable attorney's fees and costs shall be awarded to FrameCo if it is the prevailing party in any legal proceedings to recover amounts due for Goods sold to Customer, or in any legal proceedings involving the enforcement or interpretation of these Terms and Conditions.