

**GENTEK BUILDING PRODUCTS LTD.**

**TERMS AND CONDITIONS OF SALE**

As used herein, "Buyer" includes a buyer under any purchase order or other procurement document, or a person to whom a quotation or offer is issued by Seller, its subsidiaries and affiliates; "Seller" includes Associated Materials, LLC and its subsidiaries and affiliates, including but not limited to Gentek Building Products. Buyer and Seller agree as follows:

**1. SCOPE**

These Invoice Terms and Conditions ("Terms") shall apply to all sales, quotations and offers made by, and purchase orders accepted by, Seller. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. In the event the Terms conflict with any of the terms and conditions affixed to or referenced in the purchase order or other procurement document issued by the Buyer, these Terms shall govern, and placement of Buyer's order is conditioned upon Buyer's acceptance of these Terms, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein.

**2. BUYER'S ORDER**

**a. Pricing & Taxes**

Shipping and handling fees are additional charges unless otherwise expressly indicated at the time of sale. Prices are subject to change on seven (7) days' notice to Buyer. Any order that can be cancelled and rescheduled pursuant to this Section 2 is subject to a price change in Seller's discretion. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by Seller are those current at the date of quotation and are subject to change by Seller.

**b. Cancellation**

- (1) Buyer's Cancellation: Buyer may cancel or reschedule any order only for standard products (products regularly kept in Seller's normal inventory), provided both (i) the size of the order is within normal volume levels of such product regularly maintained in inventory by Seller and (ii) Seller receives notice of such cancellation in writing no later than seven (7) days prior to the scheduled shipment date. Buyer may not cancel any order for nonstandard parts, custom products, special order products or standard parts with minimum usage. In the event of any cancellation or rescheduling permitted hereunder, Buyer shall pay promptly to Seller the costs of settling and paying claims arising out of the termination of work under Seller's subcontracts or vendors and any accounting, legal, and clerical costs arising out of the cancellation. All cancellation notices must be consistent with Section's 13(e) requirements.
- (2) Seller's Cancellation: Seller shall have the right to cancel any pending purchase order or any delivery in progress without notice to Buyer upon the occurrence of an event of default by Buyer. Any order that can be cancelled or rescheduled by Buyer pursuant to Section 2.b(1) may be cancelled or rescheduled by Seller if like notice is given to Buyer.

**c. Return Policy**

Buyer may only return products provided (i) Seller's authorized representative approves such return, which approval shall be in Seller's sole discretion, (ii) Buyer returns products with a restocking fee equal to 20% of the invoice amount for the returned product, (iii) the products have not been used, modified, altered or damaged, and (iv) the products are returned within forty-five (45) days of delivery by Seller to Buyer, with transportation and shipping charges prepaid by Buyer. Special orders or non-stock items cannot be returned.

Credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in a salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges.

**d. Special Orders**

With respect to any special order products supplied in accordance with Buyer's designs, specifications or instructions, Buyer shall indemnify, defend and hold harmless Seller, its officers, directors, agents and employees from and against all actions, claims (regardless of the merits thereof), liability, loss, damage, and expense, including court costs and attorneys' fees and disbursements, resulting from any actual or alleged infringement of patent rights, copyrights, moral rights, rights in proprietary information, database rights, trademark rights and other intellectual property rights (collectively, "Intellectual Property Rights"), whether domestic or foreign, or any litigation based thereon. Such obligation shall survive acceptance of goods and payment by Buyer hereunder.

**e. Alteration of Product**

From time to time, in its sole and absolute discretion, Seller may modify or change the standards and specifications of its product.

**3. PAYMENT TERMS**

Unless otherwise agreed to in writing, payment terms shall be net thirty (30) days from the date of invoice. Buyer shall notify Seller in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute and any substantiating documentation) within seven (7) days of the date of such invoice. Where available pursuant to applicable law, Seller shall retain a security interest in the products and any proceeds therefrom until Buyer makes its final payment to Seller for the products. Where available pursuant to applicable law, Seller may file a financing statement for such security interest and Buyer shall execute any such statements or other documentation necessary to perfect Seller's security interest in such products. Buyer agrees to pay interest on any overdue balance at an annual rate, determined on the day the balance becomes due, equal to five percentage points above the variable rate of interest per annum that the principal office of Royal Bank of Canada (or such other Schedule I bank as may be designated by Seller from time to time) in Toronto, Ontario then publishes as its "prime rate," or such maximum lesser rate as may be permitted by law. Unless otherwise agreed in writing, all payments are to be made in Canadian dollars. Where payment is made by letter of credit, all costs of collection shall be charged to Buyer. In the event it becomes necessary to incur any expense for collection of any overdue account, including the cost to bring legal action, reasonable collection charges, including reasonable attorneys' fees and costs of suit, will be added to the balance due and Buyer shall pay all such charges. Buyer shall not withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller or any of its affiliates, whether under these Terms or otherwise, against any other amount owed (or to become due and owing) to it by Seller or Seller's affiliates.

**4. SELLER'S REMEDIES**

Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order pursuant to Section 2.b(2) or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt, (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller, or (f) if Seller, in good faith, believes that Buyer's prospect of performance under these Terms is impaired. Upon any event of default by Buyer under these Terms, Buyer agrees to reimburse Seller

for all attorneys' fees and costs incurred by Seller in connection therewith. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law.

## 5. DELIVERY; SHIPPING; RISK OF LOSS

Shipping dates are estimates only. Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller.

All products are sold FOB shipping point with transportation at the expense of Buyer. Title and risk of loss to products pass from Seller to Buyer on shipment from Seller's facility. Loss or damage that occurs during shipment is Buyer's responsibility regardless of whether the carrier was selected by Seller or Buyer and regardless of whether the cost of shipment is borne by Seller or Buyer. If Buyer should fail to pick up any scheduled products from Seller's facility within twenty-four (24) hours from the scheduled pick up time, Buyer shall be liable to Seller for reasonable storage fees for such products.

Buyer shall notify Seller within ten (10) days of receipt of the products if Buyer believes any portion of Buyer's order is missing, incorrect or damaged. Failure to notify Seller in writing of any such missing, incorrect or damaged products within such period shall be deemed an unqualified waiver of any right to return products on a basis that Buyer's order has missing, incorrect or damaged products.

## 6. WARRANTY

Products shall be warranted pursuant to the manufacturer's published warranties for each such product. Notwithstanding the foregoing, no warranties shall apply to any products which have (i) been subject to misuse, neglect, accident, modification, alteration, or misapplication (ii) been altered such that they are not capable of being tested under normal test conditions, or (iii) not been applied in strict accordance with manufacturer's published specifications. Seller shall make the final determination as to whether any product is defective. Seller's sole obligation for products found to be defective, and subject to the terms of the applicable warranty, shall be, at its option, to either (a) issue a credit in the amount of Buyer's original purchase price for the product, less any installation costs or costs previously incurred by Seller for replacement of the product under the warranty, or (b) repair or replace the defective product, or portion of any product which portion is determined to be defective, as the case may be. In order to make a valid claim under the warranty, (1) the product claimed to be defective must be returned to Seller, (2) a written claim, including a reasonable, detailed description of the defect, must accompany the product being returned, (3) the written claim and returned products must be received by Seller no later than fourteen (14) days after the expiration of the applicable warranty period, and (4) Seller must determine, in its sole discretion, that the product was defective under the terms of the warranty and that such defect is not the result of misuse, neglect, accident, modification, alteration or misapplication which would cause the warranty to not apply. **THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

## 7. INTELLECTUAL PROPERTY

Seller retains all Intellectual Property Rights in all the products it sells aside from outside or third-party products. The sale of any products hereunder does not convey any explicit or implicit license to the Buyer. Seller retains all Intellectual Property Rights in all documents, catalogs and plans supplied to Buyer pursuant to or ancillary to any purchase or contract. Unless otherwise agreed in writing, Buyer shall obtain no Intellectual Property Rights in any Seller product.

## 8. LIMITATION ON LIABILITY & REMEDIES OF BUYER

UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL SELLER, ITS SUBSIDIARIES, AFFILIATES

OR THEIR RESPECTIVE SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (I) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF BUYER ADVISES OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (II) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST SELLER BY ANY THIRD PARTY; OR (III) ANY UNAVAILABILITY OF THE PRODUCT. SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE PRODUCTS PROVIDED HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY BUYER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM; OR (B) \$50,000.00.

## 9. COMPLIANCE WITH LAWS

Buyer shall comply fully with all applicable international, federal, provincial, municipal and local laws, regulations, rules, orders and ordinances in the performance of its obligations under these Terms including, but not limited to, all applicable employment, tax, export control, international economic sanctions and environmental laws and regulations.

## 10. INSURANCE

Buyer shall be solely responsible for maintaining adequate general liability, including product liability, and other insurance, as is required by law or as is the common practice in Buyer's trade or business, whichever affords greater coverage, and in amounts sufficient to cover all claims under this Agreement. Upon request, Buyer shall provide Seller with certificates of insurance or evidence of coverage before Seller commences performance under any Purchase Order.

## 11. INDEMNIFICATION

Buyer shall indemnify, hold harmless, and defend Seller, its officers, directors, customers, agents and employees, from and against all actions or claims (regardless of the merits thereof), liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with (i) the sale, application or use of any product provided by Seller to Buyer pursuant to these Terms, including any claim with regard to damages, personal injuries, or contract liability, (ii) any misrepresentation by any of Buyer, its affiliates and their respective directors, officers, employees, agents or representatives (collectively, the "Customer Parties") in regard to any product provided by Seller, including off-label uses, mishandling, misuse, adulteration, alteration, modification, or improper storage by any Customer Party, (iii) any negligent, reckless or willful conduct by any Customer Party, (iv) any statement, representations, warranties, or advertisements concerning the products made by any Customer Party which exceed in scope or are different in meaning from Seller's limited warranty or the statements made in

literature provided by Seller, (v) any modification to any product by any Customer Party for the purpose of satisfying any Customer Party's needs, including without limitation, relating to any alleged infringement or actual infringement of Intellectual Property Rights of another party and (vi) any breach of these Terms by any Customer Party. This right to indemnity shall extend beyond the expiration or termination of these Terms until the expiration of any applicable statute of limitations in any jurisdiction in which the products are sold, applied and/or utilized.

## 12. CONFIDENTIALITY

This Section 12 shall apply unless there is a confidentiality agreement, between Buyer and Seller in effect, in which case the terms and conditions of such confidentiality agreement shall supersede the terms and conditions set forth in this Section. Upon the expiration or earlier termination of such confidentiality agreement, this Section 12 will apply for the remainder of the term of this Agreement.

Any Seller Confidential Information (as defined below) acquired by Buyer in connection with its performance under these Terms shall be kept confidential by Buyer during and following termination or expiration of these Terms. "Seller Confidential Information" includes, but is not limited to, all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods or manufacture, trade secrets, business plans, customers, vendors, finances, personnel data and other material or information considered proprietary by Seller relating to the current or anticipated business or affairs of Seller which is disclosed directly or indirectly to Buyer. In addition, Seller Confidential Information means any third party's proprietary or confidential information disclosed to Buyer in the course of providing products to Buyer. Seller Confidential Information does not include any information (i) which Buyer lawfully knew without restriction on disclosure before Seller disclosed it to Buyer, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Buyer, (iii) which Buyer developed independently without use of the Seller Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Buyer by a third party as a matter of right and without restriction on disclosure. In addition, Buyer may disclose Seller Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Buyer provides prompt notice to Seller of such requirement prior to disclosure.

Buyer agrees not to copy, alter, or directly or indirectly disclose any Seller Confidential Information except to Buyer's employees, agents and representatives who (a) have a need to know, (b) are informed by Buyer of the confidential nature of the Seller Confidential Information, and (c) are subject to confidentiality provisions no less restrictive than those set forth herein. Buyer shall use no less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the disclosure or unauthorized use of Seller Confidential Information.

Buyer further agrees not to use the Seller Confidential Information except in the course of performing hereunder and will not use such Seller Confidential Information for its own benefit or for the benefit of any third party. The mingling of Seller Confidential Information with information of Buyer shall not affect the confidential nature or ownership of the same. All Seller Confidential Information is and shall remain the property of Seller. Upon Seller's written request, Buyer will promptly (a) deliver to Seller all such Seller Confidential Information, or (b) destroy all such Seller Confidential Information and certify in writing to Seller that it has complied with the requirements of this clause.

## 13. MISCELLANEOUS

### a. Force Majeure

Seller shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of God, acts of the Buyer, act of civil or military authority, war, riots, labour difficulties, accidents, shortages of materials, delays of carriers, contractors or suppliers or any other causes beyond the reasonable control of Seller. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision. Furthermore, if Seller is unable to supply Buyer's total demand for its products because of an event under this provision,

Seller may allocate its available supply of raw materials and/or products among its customers, including Buyer, in its sole and absolute discretion.

### b. Assignment

Buyer may not assign, delegate or otherwise transfer all or any part of its rights or obligations under the Terms, without prior written consent of Seller. Any such attempted assignment, delegation, or transfer will be null and void. Seller shall be entitled at all times to assign its rights under these Terms (in whole or in part) or to subcontract any part of the work to be provided hereunder as it deems necessary or desirable.

### c. Governing Law; Venue; Remedies

THESE TERMS AND ANY SALE OF PRODUCTS HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE LAWS OF CANADA APPLICABLE THEREIN, EXCLUDING ANY CHOICE OF LAW RULES THAT MIGHT DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. ANY LITIGATION WILL BE BROUGHT EXCLUSIVELY IN THE FEDERAL AND PROVINCIAL COURTS LOCATED IN THE PROVINCE OF ONTARIO, AND BUYER SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHALLENGE VENUE. BUYER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and it shall not apply to these Terms or any sale of product by Seller. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms after the earlier of (i) the expiration of one (1) year following the date of sale of the product, or (ii) the expiration of the statute of limitations applicable to such action. Seller's rights and remedies under these Terms are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

### d. Survival

Any provisions in these Terms which by their terms survive or by their nature extend beyond the termination or expiration of any sale of products will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.

### e. Notices

All notices and other communications hereunder shall be in writing and addressed to Buyer or to an authorized Seller representative, and shall be considered given when (a) delivered personally, (b) sent by confirmed facsimile, (c) sent by commercial overnight courier, or (d) three (3) days after having been sent, postage prepaid, by first class or registered mail. All notices to Seller shall include a copy to General Counsel, Associated Materials, LLC, 3773 State Road, Cuyahoga Falls, OH 44223.

### f. Entire Agreement; Severability

These Terms, along with any confidentiality agreement between Buyer and Seller, credit application, terms and conditions, and/or guarantee entered into by Seller and Buyer, represent the entire agreement between Seller and Buyer regarding Buyer's purchase of products, and supersedes and replaces any previous communications, representations, or agreements, or Buyer's additional or inconsistent terms, whether oral or written. In the event any provision of these Terms is held invalid or unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.

### g. Waiver

Failure by Seller to exercise or delay in exercising any of its rights hereunder shall not be deemed to be a waiver or forfeiture of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

**h. No Joint Venture**

Nothing contained in these Terms shall be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.

**i. Modification**

Customer hereby expressly reserves the right at any time and from time to time to revise, amend, modify, alter or supplement these Terms by publishing such revision, amendment, modification, alteration or supplement on its website at [www.associatedmaterials.com](http://www.associatedmaterials.com).

**j. Conflicting Provisions**

Should any provision of these Terms conflict with the labels on any products sold or any terms or postings published on [www.associatedmaterials.com](http://www.associatedmaterials.com), these Terms shall control.

**k. Language**

The parties expressly acknowledge that they have requested that these Terms and all ancillary and related documents thereto be drafted in the English language only. LES PARTIES AUX PRÉSENTES RECONNAISSENT AVOIR EXIGÉ QUE LES PRÉSENTES MODALITÉS ET TOUS LES DOCUMENTS QUI Y SONT ACCESSOIRES SOIENT RÉDIGÉS EN ANGLAIS SEULEMENT.

**l. Rejection of Other Terms and Conditions**

Any additional, inconsistent or different terms or conditions contained in Buyer's purchase order or other documents submitted by or on behalf of Buyer at any time, whether before or after the date hereof, shall be deemed a material alteration, and are hereby expressly rejected by Seller. These terms and conditions shall be deemed accepted by Buyer without any such additional, inconsistent or different terms and conditions, except to the extent expressly accepted in writing signed by both Parties.