

GENERAL TERMS AND CONDITIONS

Each and all of the following General Terms and Conditions are made part hereof.

1. This agreement contemplates the furnishing of a steel building in accordance with the specifications and requirements for the design, fabrication and erection for buildings as set forth in the MBMA Code of Standard Practices.
2. Seller shall not be liable for loss, damage or delays beyond Seller's reasonable control. Nor shall Seller be liable for any direct consequential, liquidated, incidental, special, or any damages of whatsoever nature, including loss of use for which Purchaser may suffer by reason of Seller's delay in performance of this agreement.
3. No charges for material furnished by Purchaser shall be allowed as a credit herein unless authorized in writing by Seller before the addition /corrective action is taken. The MBMA code of Standard Practices will be the governing authority on claims for misfits.
4. Seller's standard terms are 30% at time of order, with the balance to cash on delivery (COD).
5. All terms are subject to the prior approval of Seller's Credit Department. Reasonable doubt on the part of the Seller of Purchaser's financial responsibility shall entitle Seller to stop operations, decline shipment, or stop any material in transit without liability to Seller until Purchaser shall have paid for all the material referred to in this proposal or satisfied Seller of his financial responsibility. It is further agreed that Purchaser will pay all costs of collection or securing or attempting to collect or secure any indebtedness which may be due hereunder including reasonable attorney fees, whether the same be collected or secured by suit or otherwise.
6. All orders, unless otherwise agreed in writing, are for unrestricted shipment at Seller's convenience. It is understood that Purchaser will not issue instructions to delay manufacture or shipment. Seller reserves the right to submit to purchaser for immediate payment partial invoices as material is shipped or offered to be shipped and labor performed during the course of the project.
7. Seller reserves the right to divide this order into separate shipments and to invoice such shipments separately in which case each shipment shall be deemed a separate contract and payment therefore due in accordance with the terms thereof. If, because of default of Purchaser, any shipment must be diverted or returned to Seller, Purchaser shall pay transportation and other costs incurred as a result thereof.
8. Where there are presently existing structures on the premises, the parties understand that construction called for herein may require existing structures on the premises to be modified, repaired or changed in order to conform to applicable Building Code requirements. Such modification, repairs or changes unless expressly included herein are not included in the work to be performed by Seller and the responsibility and costs for conforming such structures to Building Code requirements shall be solely with Purchaser.
9. Unless stated otherwise in the contract, all taxes are for the account of Purchaser.
10. In the event of cancellation by Purchaser, Purchaser agrees to reimburse Seller for costs and damages incurred, including, but not limited to, engineering and fabrication expenses and reasonable profit and overhead for work performed to the date of cancellation or to pay the Seller a sum equal to 30% of the contract price, whichever is greater.
11. If any work to be performed by Seller hereunder (including, but not limited to, pre-construction engineering design, drawings or details, work-in process, and field work) is stopped for a period of (5) days or more by order or any courts of any other public authority through no fault of the Seller or of anyone employed by him or if the work to be performed by Seller herein is stopped for a period of five (5) days or more because of the act or neglect of Purchaser, then the Seller, upon three (3) days written notice to Purchaser, may stop work or terminate the contract and recover payment from Purchaser for all work completed and for all losses sustained or any materials, machinery, equipment or tools, including reasonable overhead, profit and damages in accordance with number 10 above.
12. Tests, inspections or surveillance of any type which may be imposed by cities, counties, states or other regulatory authorities which are not available without cost to Seller are to be paid for by Purchaser and are not included in the price of the contract. Any such inspections must be made before shipment.
13. Claims for errors, shortages, imperfections, etc., are considered waived by Purchaser unless made within seven (7) days after receipt of goods, and Seller shall not be liable for labor charges or consequential damages arising from the use of defective material. In no event shall Seller's liability exceed the purchase price of the material. In case any material furnished by Seller is not in accordance with this contract, it is agreed that Purchaser will immediately discontinue its use and advise Seller of the fact that Seller may have the opportunity of deciding what shall be done in the circumstances so that possible loss or damage to either party shall be prevented or minimized.
14. SELLER MAKES NO WARRANTIES EXCEPT THAT SELLER'S MATERIAL AND/OR WORK ARE WARRANTED IN ACCORDANCE WITH SELLER'S STANDARD WARRANTIES, IF ANY, THAT ARE IN EFFECT AS OF THE DATE OF THIS PROPOSAL AND ARE MADE A PART OF THIS PROPOSAL AS THOUGH FULLY COPIED HEREIN. ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE ARE EXCLUDED FROM THIS CONTRACT. SELLER'S LIABILITY IS LIMITED AS SET FORTH ON THESE STANDARD WARRANTIES, IF ANY, AND SELLER SHALL NOT BE LIABLE FOR ANY OTHER DAMAGES, WHETHER DIRECT OR CONSEQUENTIAL, INCLUDING LOSS OF USE WHICH MAY BE SUFFERED BY PURCHASER, SELLER MAKES NO WARRANTIES EXPRESS OR IMPLIED.
15. If shipment of the product being purchased herein is delayed beyond 30 days from the planned shipment date shown on the order form the effective date of this contract through the act of neglect of Purchaser or by order of any public authority, then the contract sum will be subject to escalation because of possible changes on supplier prices. If shipment is delayed in excess of 60 days, the order may be considered cancelled in accordance with item number 10 above.
16. In accordance with the best accepted construction practices and the Code of Standard Practice of the American Institute of Steel Construction, Seller's drawings may show grout Pockets and/or grouting, and/or indicate that grouting is required. However, grouting is not the responsibility of the Seller. Under no circumstances will Seller furnish or place grout, nor will Seller pay for the furnishing and placement of grout.
17. Purchaser hereby irrevocably consents that any legal action or proceeding against it under, arising out of, or in any manner relating to this contract may be brought in any court in Dallas County, Texas. Purchaser, by execution and delivery of this contract, expressly and irrevocably consents to and submits to personal jurisdiction of any such court in Dallas County, Texas, in any action or proceeding and waives any claim of defense in any such action or proceeding based on any alleged lack of jurisdiction, improper venue, forum nonconveniens, or any similar basis. At the option of Seller, any controversy or claim arising out of or relating to this purchase order/contract, or the breach thereof, may be settled by arbitration in Dallas, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The choice of jurisdiction set forth in this paragraph shall not be deemed to preclude the bringing of any action by Seller or the enforcement by Seller of any judgment obtained in such jurisdiction or in any other appropriate jurisdiction.
18. While Seller shall be responsible for actual damages caused solely by Seller's negligence, Purchaser agrees to defend and hold harmless Seller from any and all claims, suits, damages, losses and expenses arising out of or in connection with any alleged or real injury (including death or total destruction) to any person or property which results from the work performed or the material supplied hereunder. The Purchaser acknowledging that Sellers work hereunder is performed in accordance with the order and specifications of Purchaser only, without limiting the above if retrofit materials and /or labor are supplied hereunder. Seller's negligence shall not include anything which results from the transfer of any load to the existing structure, the Purchaser acknowledging further that Seller has not performed any test of suitability of the materials or work supplied hereunder, and Purchaser has not relied on Seller's statement, promises, or assurance in regard to such suitability.
19. In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable in any respect, such unenforceability shall not affect any of the other provisions of this agreement, but this shall be construed as if such unenforceable provision had never been contained herein. All questions of enforceability and interpretation, which may arise under this agreement, shall be construed in accordance with and determined by the provisions of the Uniform Commercial Code, and in accordance with applicable law.
20. THIS DOCUMENT TOGETHER WITH ALL ITEMS INCORPORATED BY REFERENCE is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of terms of their agreement. It is specifically understood and agreed that Seller shall have no liability whatsoever under any contract between Purchaser and other parties unless Seller agrees thereto in writing at the time of acceptance of the proposal. Any changes or modification to this agreement must be in writing and executed by both parties.
21. Seller will carry Workman's Compensation insurance as required by the laws of the state in which the work is performed. Seller will also carry General Comprehensive Liability insurance including property damage and auto liability covering work performed by Seller. All other forms of insurance are the responsibility of the Purchaser unless otherwise agreed to in writing. Purchaser agrees that either Purchaser or Owner will procure Builders Risk insurance without cost to Seller, covering Seller's material and equipment and All Risk Perils of Loss.
22. It shall be the responsibility of purchaser to carefully check order acknowledgements immediately upon receipt and to notify seller of any discrepancy.
23. All shipments are made F.O.B. shipping point and delivery of materials is completed by Rainbow Building Systems when placed on board the transportation carrier's vehicle.
24. Purchaser here irrevocably consents that any legal action or proceeding against it under, arising out of or in any manner relating to this contract may be brought in any court in Dallas County, Texas. Purchaser, by execution and delivery of this contract, expressly and irrevocably assents to and submits to personal jurisdiction of any such court in any action or proceeding and waives any claim or defense in any such action or proceeding based on any alleged lack of jurisdiction, improper venue, form non conveniens, or any similar basis.
25. Hourly rate maximum \$25.00 paid for field corrections.