

TERMS AND CONDITIONS

TERMS OF PAYMENT – Terms of payment are set forth on the invoice. If no payment terms are listed on the invoice, then the default terms of payment are payment in full at time of shipment. Payment may be made by check (subject to check clearing), ACH electronic fund transfer, or wire transfer. Payment may be made by credit card only with prior written approval by an authorized Waymark Products, LLC (“Waymark”) representative – additional fees may apply. At Waymark’s request, Customer shall complete or update an Application for Trade Account signed by a corporate officer, managing member, partner, or owner. Customer agrees that prior to Waymark providing or extending credit terms, Waymark shall have the right to demand financial information, including financial data, credit checks, and payment history. Credit terms are subject to change at Waymark’s sole discretion. Waymark reserves the right to withhold shipment on any order for customer accounts that are in arrears until the accounts are paid in full. Customer agrees that accounts not paid within terms will be charged interest at the rate of 1.5% per month, and Customer agrees to pay all amounts due, including interest, fees, and costs of collection upon demand by Waymark. Prices are subject to change without notice.

PLACING ORDERS – All orders must be submitted in writing to Waymark, and must describe with specificity part numbers, color, detailed descriptions, and quantities. Illegible orders will not be accepted. All orders are subject to Waymark’s acceptance, approval, and these Terms and Conditions, whether or not these Terms and Conditions are included in Waymark’s written confirmation to Customer.

CANCELLATION – Following Waymark’s written confirmation of Customer’s order, Customer shall not be permitted to cancel, whether in whole or part, any order and shall be obligated to pay the entire invoice.

SHIPMENT – All prices are F.O.B. Waymark Products, LLC Origin Freight Collect, unless otherwise set forth on the invoice or otherwise agreed upon in writing signed by an authorized Waymark representative. Products listed on the invoice (the “Products”) are invoiced at Waymark’s prices prevailing at time of shipment. Method, origin, and route of shipment are subject to Waymark’s sole discretion unless Customer and an authorized Waymark representative agree in writing to other explicit shipping instructions. Customer bears any and all shipping expenses and costs in excess of those charges explicitly acknowledged in writing by an authorized Waymark representative. Customer is exclusively responsible for providing Waymark a correct shipping address.

FORCE MAJEURE & DELAYS – Waymark is not and shall not be liable for any obligations, delays, or damages incurred by Customer under any purchase order, invoice, or other agreement between the parties if Waymark’s non-performance is or was due to a Force Majeure Event, as described here: any act of God; war; riot; civil strife; act of terrorism, domestic or foreign; embargo; government rule, regulation, or decree; flood, fire, hurricane, tornado, or other casualty; epidemic, pandemic, outbreak of communicable disease, viral outbreak, or quarantine; national or regional emergency; action of any governmental authority; earthquake; strike; lockout, or other labor disturbance; the unavailability of labor or materials to the extent beyond the control of Waymark; any delay in the performance of orders or in the delivery of shipments of products; or any other events or circumstances not within the reasonable control of Waymark, whether similar or dissimilar to any of the foregoing. Upon occurrence of a Force Majeure Event, Waymark shall promptly notify the Customer that such an event has occurred and its anticipated effect on performance, including its expected duration if known. Notwithstanding the foregoing, no Force Majeure Event experienced by Waymark shall excuse Customer’s obligation to make payments due and owing prior to such event.

TAXES – Any and all sales taxes, manufacturer taxes, excise taxes or other charges levied or imposed by any governmental authority, agency or entity, foreign or domestic, upon any Products sold or contracted to be sold shall be paid by Customer and appropriate tax exemption certificates must be delivered in such form to Waymark and with such content as are satisfactory to Waymark.

INSPECTION AND ACCEPTANCE – CUSTOMER SHALL CAREFULLY EXAMINE ALL PRODUCTS DESCRIBED IN THE INVOICE IMMEDIATELY UPON DELIVERY. CUSTOMER MUST PROVIDE WAYMARK WITH WRITTEN NOTICE OF ANY ALLEGED DEFECTIVE PRODUCT WITHIN SIXTY (60) DAYS AFTER DELIVERY. CUSTOMER’S FAILURE TO NOTIFY WAYMARK IN WRITING OF ANY DEFECTS IN THE PRODUCTS WITHIN SIXTY (60) DAYS AFTER DELIVERY CONSTITUTES THE UNQUALIFIED ACCEPTANCE OF SUCH PRODUCTS AND THE WAIVER BY CUSTOMER OF ANY AND ALL CLAIMS OR DEFENSES WITH RESPECT THERETO. Customer is exclusively responsible to unload all Products. Within forty-eight (48) hours of Customer’s receipt of each shipment, Customer shall inspect the shipment and compare all containers and Products to the packing list for the shipment. If the quantities received and the quantities on the packing list are not the same, Customer shall notify Waymark immediately. Within forty-eight (48) hours of Customer’s receipt of each shipment, Customer is responsible to inspect packaging materials and products for dents, tears, breakages, or other visible damage to packaging or products, and to note such matters on shipping documents provided to the freight carrier and Waymark. If Customer fails to notify Waymark within 48 hours after receipt of any such matters, Waymark shall no longer be responsible or liable for damaged items or items missing from the shipment.

CUSTOMER’S EXCLUSIVE REMEDY – The exclusive remedy of Customer shall be limited to any of the following: (1) the replacement of any defective Product by Waymark, (2) the return of any defective Product and refund of the purchase price by Waymark, or (3) the issuance of a credit by Waymark in an amount equal to the purchase price paid by Customer for any defective Product. The selection of any of the aforesaid exclusive remedies shall be at Waymark’s sole discretion. In the event Customer requests a credit for any defective Product, Customer agrees (1) such product shall no longer be covered by Waymark’s warranty, (2) Waymark expressly disclaims any warranty, written or implied, associated with such product, and (3) Customer shall defend and indemnify Waymark against any and all claims associated with such product that Customer thereafter delivers, distributes or sells to third parties.

LIMITED WARRANTY – Waymark warrants that the Products are free of defects in materials and workmanship as set forth in Waymark’s warranty located at www.waymarkproducts.com.

WARRANTY DISCLAIMERS – THE LIMITED WARRANTY AND EXCLUSIVE REMEDY DESCRIBED ABOVE ARE EXPRESSLY IN LIEU OF ANY OTHER REMEDIES AND WARRANTIES, EXPRESSED OR IMPLIED, ON THE PART OF WAYMARK CONCERNING THE PRODUCTS. WAYMARK DISCLAIMS, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WAYMARK DISCLAIMS ANY WARRANTIES NOT EXPRESSLY SET FORTH IN WAYMARK’S WRITTEN WARRANTY SET FORTH AT www.waymarkproducts.com. WAYMARK NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON, FIRM OR CORPORATION TO OBLIGATE WAYMARK WITH RESPECT TO ANY LIABILITY OR OBLIGATIONS IN CONNECTION WITH THE SALE OF WAYMARK PRODUCTS. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATION EXCEPT THOSE MADE HEREIN HAVE BEEN MADE TO CUSTOMER BY OR ON BEHALF OF WAYMARK CONCERNING THE PRODUCTS AND THAT CUSTOMER HAS NOT AND WILL NOT RELY ON ANY OTHER REPRESENTATIONS REGARDING WARRANTIES OR QUALITY OF WAYMARK PRODUCTS EXCEPT AS SET FORTH IN WAYMARK’S WARRANTY SET FORTH AT www.waymarkproducts.com. CUSTOMER AND ANY THIRD PARTIES TO WHOM IT SELLS THE PRODUCTS ARE EXCLUSIVELY RESPONSIBLE FOR DETERMINING WHETHER THE PRODUCTS MEET APPLICABLE LAWS OR LOCAL BUILDING CODES AND WHETHER PRODUCTS ARE SUITABLE FOR THE INTENDED USES OF END-USERS, AND CUSTOMER AGREES WAYMARK IS NOT RESPONSIBLE FOR DETERMINING SUITABILITY FOR INTENDED USES OR SATISFACTION OF APPLICABLE LAWS OR BUILDING CODES.

RISK OF LOSS – Unless otherwise specified herein, all prepaid expenses (e.g., freight, special handling charges such as after-hours loading, etc.) will be added to the order at time of invoicing and described on the invoice. RISK OF LOSS SHALL PASS TO CUSTOMER UPON DELIVERY OF THE PRODUCTS BY WAYMARK TO THE CARRIER, AND CUSTOMER’S SOLE RECOURSE FOR DAMAGE TO OR LOSS OF GOODS IN TRANSIT SHALL BE AGAINST THE CARRIER. WAYMARK WILL PROVIDE NO INSURANCE UNLESS CUSTOMER HAS MADE SPECIFIC ARRANGEMENTS PRIOR TO SHIPMENT AND WAYMARK HAS CONFIRMED SUCH ARRANGEMENTS IN WRITING.

RETURNED MERCHANDISE – All returns of Products for credit must have the prior written approval of an authorized Waymark representative and must be for justifiable reasons. Any credit extended for such approved returns will be based on the invoice price of the returned Products at time of purchase by Customer less a restocking charge of 20%. No Products shall be returned for credit which have been damaged or otherwise rendered unusable, unless otherwise approved in writing by an authorized Waymark representative. Custom and special order items will not be accepted for return. All returned Products shall be returned freight prepaid by Customer with Customer assuming the risk of loss until Waymark receives the Products.

ADDITIONAL LIMITATIONS ON LIABILITY – The invoice, including these Terms and Conditions, sets forth the sole and exclusive remedies available to the Customer and that Waymark’s liabilities to Customer are limited as set forth herein. Waymark has not granted or assumed any other warranties, guarantees, duties, liabilities, or obligations, expressed, implied, statutory, at law or in equity. No breach of warranty or breach of contract or other failure by Waymark to fulfill any other duties or conditions shall constitute a failure of the essential purpose of the exclusive limited remedies set forth herein. WAYMARK SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, including, but not limited to, any damages related or attributable to loss of profits, anticipated revenue, interest, loss of use, loss by reason of plant or facility shutdown, nonoperation, cost of substitute products, equipment, facilities or services, additional usage of utilities, cost incurred in removing defective or nonconforming Products or equipment, delays in installation of the work or the completion of any projects in which equipment is being installed, or other claims arising from any cause whatsoever, whether or not such loss or damage is based in contract, warranty, tort (including negligence), strict liability, indemnity, contribution or otherwise. Customer agrees Waymark shall have no liability whatsoever unless Customer makes payment in full to Waymark for the Products.

DISPUTES – In the event of Customer’s failure to pay amounts due under any invoice, and if Customer has failed to notify Waymark of defective product claims pursuant to the procedures set forth in these Terms and Conditions, Customer agrees to waive any defenses to Waymark’s demands and claims for payment. These Terms and Conditions shall be governed by the laws of the State of Utah (without regard to the conflicts of law provisions thereof). Customer hereto consents to the jurisdiction of the state and federal courts located in Salt Lake County, Utah as the exclusive jurisdiction of the resolution of any claims or disputes related hereto. CUSTOMER WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY JURISDICTION.

SEVERABILITY – In the event that a court of competent jurisdiction determines that a provision or provisions of the invoice, including these Terms and Conditions, is (are) void or unenforceable, such determination shall in no way affect the validity of enforceability of the remaining provisions hereof.

ENTIRE AGREEMENT – These Terms and Conditions, together with any invoice from Waymark, set forth the entire agreement between Waymark and Customer concerning the Products, and may not be changed or modified except in a writing signed by Waymark and Customer. No representations, understandings, or agreements have been made to or relied upon by Customer other than those specifically set forth in the invoice. Customer agrees that Waymark’s Terms and Conditions apply exclusively to the parties’ commercial relationship, unless otherwise agreed upon in a writing signed by Customer and an authorized Waymark representative. By purchasing Waymark’s Products, Customer agrees that any and all terms, conditions or other contractual provisions provided in any writing or communication sent by Customer are null, void, unenforceable, and of no legal effect upon Waymark.