

Builders Hardware and Specialty Company

Sellers Standard Terms & Conditions (<http://www.builders-hardware.net/legal/sstc.pdf>)

1. **ACCEPTANCE.** Each purchase order constitutes an offer on the part of Purchaser upon the terms and conditions stated herein and on the face of the purchase order, and these terms and conditions constitute an integral part of the purchase order. This order will be accepted and will constitute a binding contract upon Purchaser upon (i) Seller's written acknowledgment of the purchase order, or (ii) commencement of the performance described in this purchase order by Seller, or (iii) delivery of any part of the goods or services described on the face hereof to Purchaser or Purchaser's designated shipper. This order is expressly made conditioned on assent to the terms hereof as the exclusive terms of agreement between the parties, and Seller shall be deemed to so assent by any of the actions described in the preceding sentence. The terms and conditions contained in this purchase order shall not be changed, added to or otherwise altered, whether by Seller's form of acknowledgment or otherwise, and each shipment of goods or performance of services by the Seller shall be deemed to be furnished upon these terms and conditions, unless any such change, addition or alteration is set forth in a written instrument signed by an authorized representative of the Purchaser. Each shipment received by Purchaser from Seller shall be deemed to be only upon the terms and conditions contained in this purchase order including these terms and conditions except as they may be so added to, modified, superseded or otherwise altered, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Purchaser's act of accepting or paying for any shipment or similar act of Purchaser. All specifications, drawings and other data, if any, submitted to the Seller in connection with this order are incorporated herein and form a part of this purchase order. In case of any discrepancies or questions, Seller shall refer to Purchaser for decision, instructions or interpretation.
2. **QUOTATIONS.** All quotations are good for 60 Days unless otherwise noted on the quotation supplied.
3. **PAYMENT TERMS.** To approved credit, payment terms are net 30 days from the date of Seller's invoice with no retainage. Past due balances are subject to 1.5% per month interest. Buyer expressly waives any contingent payment terms. Nothing will require Seller to continue performance if timely payments are not made to Seller for work performed or stored materials. Buyer will pay all costs of collection, including court and reasonable attorney fees to collect delinquent balances. There will be a \$25 processing fee for all checks returned by the bank for any reason. When a check is returned, Seller reserves the right to require payment by cash or certified funds.
4. **CREDIT.** Unless cash is paid at time of order, all sales are conditioned upon approval of credit by Seller on the Buyer and project financing at the time of sale. Buyer will provide Seller, upon request, with the legal description of the property, the name, address and representative of the Owner, a copy of any performance and payment bond, and evidence of adequate owner project financing. The Buyer will promptly notify Seller of material changes

in the Buyer's or Owner's identity or financial arrangements. Seller will not be obligated to commence or continue work unless adequate assurance of payment is received.

5. **TAXES AND OTHER CHARGES.** All sales tax, use tax, occupation tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any government authority will be paid by Buyer unless otherwise stated in writing by Seller.
6. **UNIT PRICING.** No prices will be binding on Seller as unit pricing unless otherwise stated in writing by Seller. If applicable, Seller's unit prices will be firm for additions until the time of approval of shop drawings by the Architect; after approval add 33% for lost discounts, additional freight and handling. Deletions are as listed less 25% until time of approval; after which deletion may no longer apply. Unit prices are based on normal factory lead times.
7. **GLASS, GLAZING AND FINISH PAINTING** is excluded unless stated in writing by Seller.
8. **ALUMINUM DOORS, FRAMES AND HARDWARE AND OVERHEAD DOORS** are excluded unless stated in writing by the Seller.
9. **BITUMINOUS ASPHALT EMULSION** for hollow metal frames is excluded unless stated in writing by the Seller.
10. **DRILLING AND TAPPING OF DOORS** for application of surface applied hardware is excluded unless stated in writing by Seller.
11. **ACCESS CONTROL PRODUCTS** are furnished less installation and termination unless stated in writing by Seller.
12. **MATERIALS ONLY.** No hoisting, staging, labor, glass, installation or erection of material is included unless otherwise stated in writing by Seller.
13. **TIME AND SCHEDULE.** Upon receipt and acceptance of this order, Seller shall provide Purchaser with a schedule for progress and completion conforming with any requirements specified or referred to on the face of this order. Seller shall keep Purchaser apprised of progress of performance and shall promptly notify Purchaser of any actual or anticipated delay in performance. Time is of the essence on this contract, and if delivery of goods or rendering of services is not completed within any time specified or promised, Purchaser reserves the right without liability, and in addition to whatever other rights or remedies it may have, to cancel this agreement upon notice to the Seller, substitute goods or services elsewhere and charge the Seller with any loss incurred.
14. **LABELING, MARKING AND PACKAGING.** If the Seller includes shop drawings, Seller will label hardware packages with it's standard hardware codes found in the related hardware schedule which will be provided to Buyer. Only those hardware items that are door specific

(such as locksets with keyed cylinders) will be marked by door number. Hardware will be packaged on a like-kind basis. Hardware will not be packaged on a set by set basis. All packages will be marked with the related hardware schedule code (not hardware set numbers). Seller will mark opening numbers on all doors and frames.

15. **CHANGES TO CONTRACT OR SALES ORDER.** No verbal text or voicemail changes will be accepted by the Seller. All changes must be executed by the Purchaser in writing and accepted by the Seller. Purchaser reserves the right, by written notice to the Seller, after the issuance of this purchase order but prior to shipment of goods or performance of service, to make changes in this purchase order, in the specifications, drawings or data furnished with respect to this purchase order, or changes in the place or time of delivery. If any such changes cause an increase or decrease in the cost of or time required for performance, an equitable adjustment shall be made in the price or the delivery schedule or both. If Seller claims any change increases the price, such claim shall be made within fifteen days of receipt of the notice of change or Seller shall be deemed to have waived any such claim. Price increases or extensions of time for delivery shall not be binding on the Purchaser unless evidenced by a written instrument signed by an authorized representative of the Purchaser.
16. **SHOP DRAWINGS.** If Seller provides shop drawings, they will be submitted in vertical form listing each opening individually by item number sequence and this form will be accepted by Buyer.
17. **FIELD VERIFICATION.** No field verification or measuring is included unless stated in writing by Seller. Seller is entitled to rely on the accuracy and completeness of the plans and specifications provided to it.
18. **ESCALATION.** If Seller includes shop drawings, Seller's prices are subject to change upon notice unless Buyer provides approvals and answers to engineering questions to Seller within 30 days from receipt of shop drawings. In all other cases, Seller's reserves the right to change prices.
19. **CONFIDENTIALITY, OWNERSHIP OF DRAWINGS AND SPECIFICATIONS AND SELLERS MASTER KEY SYSTEMS** Seller agrees that it shall maintain in confidence and secrecy all information and data, whether patentable or not, regarding Purchaser, its plans, programs, facilities, processes, products, costs, equipment or customers, including all proprietary and competitively sensitive data and information which comes within the knowledge of Seller in the performance of work for Purchaser or in connection with Seller's dealings with Purchaser, its property or facilities. Any design, manufacturing drawing or other information or materials provided by Purchaser to Seller shall remain the sole property of Purchaser. Seller shall have no right in, or license under, any present or future idea, invention, patent, trade secret, proprietary information or data, copyright, mask work, proprietary keyways, trade name or trademark hereunder or pursuant hereto nor may any such right or license be implied by the disclosure or receipt of any information or data hereunder.

20. **INSTALLATION.** Installation is excluded unless stated in writing by the Seller. If installation is included in Seller's scope of work, then the project schedule and any modification will allow Seller a reasonable time to complete it's work in an efficient manner considering the completion date. Seller will be entitled to an equitable adjustment in the price of the work, including but not limited to any increased costs of labor, including overtime, or materials, resulting from any change of schedule, acceleration, out of sequence work or delay caused by others for whom Seller is not responsible. Seller will not be required to commence or continue work unless sufficient areas are ready to ensure continuous work. Buyer will supply all temporary site facilities and utilities without cost to Seller unless specifically accepted in writing by Seller. Buyer will allow Seller to utilize non-union labor at Seller's sole discretion. The Seller agrees, in addition to the other requirements hereof (a) that such labor will be performed in a good and workmanlike manner in exact accordance with this purchase order or any drawings, specifications or other data forming a part hereof; (b) to procure, at its own expense and keep in full force and effect worker's compensation insurance as required by any state in which the work is to be performed; (c) to procure and maintain automobile liability and ongoing and completed operations insurance coverage naming the Buyer as an additional named insured; and (d) if this order includes installation, Purchaser may withhold 10% of the price, or any greater amount specified in this purchaser order, until inspection after installation, but any such withholding of a portion of the price shall in no way limit Seller's liability for improper performance of this purchase order.
21. **INSTALLATION INSTRUCTIONS.** The buyer shall access the manufacturer's website for the most current furnished material installation instructions. Search for the manufacturers name via the Intranet and navigate to the manufacturer's website. Look for product search, knowledge base, resource library, document library, or something of that sort. In the event the buyer is unable to locate the installation instructions online from the manufacturer's website, please contact the manufacturers customer service or technical support team for assistance. The manufacturers phone number to their customer service team can generally be found on their website under "contact us", or something similar. If additional help is needed, the seller's customer service team shall make all efforts to assist in locating the installation instructions as needed from the manufacturer and provide them to the buyer.
22. **BACKCHARGES.** Seller will be given advance notice and a reasonable opportunity to correct any problems caused by it. No back charges will be valid unless agreed upon in writing by Seller before the work is executed.
23. **RETURNS.** Special order materials are non-returnable. At the sellers discretion, special order items may be offered back to the manufacturer for a minimum restocking fee of 50%. No Special order materials are returnable after 30 days from delivery. No refunds of any nature will apply to electronic hardware or parts. In - stock materials may not be returned nor credit allowed without the Seller's prior authorization. Authorized returns of in - stock materials in good saleable condition are credited at invoice price less restocking (25%) and handling charges. Saleable condition means new merchandise in original, undamaged and unmarked boxes accompanied by a valid receipt and returned within 90 days. All items purchased by check require a 15 - day waiting period before a return may be authorized. All items purchased by credit card will be credited to the original credit card only.

24. **SCOPE OF WORK AND PERFORMANCE.** Seller's scope of work will include only the work set forth in Seller's quotation. No terms or conditions or other document that Buyer includes in any agreement by reference will be binding on Seller unless a copy of any such terms or conditions or document has been furnished to Seller prior to time of sale and unless expressly accepted in writing by Seller. Notwithstanding any higher standard stated elsewhere, Seller's work will be of commercially acceptable quality and free from defects not inherent in the type of work. Seller will have no obligation to proceed with changes to the scope of work unless the changes are billable and agreed upon in writing by the Seller. Seller's entitlement to adjustments in time or price for changes in work will not be contingent upon or limited to the amount that the Buyer receives from its customer.

Under no circumstances does Seller waive its right to payment for extra work performed by Seller pursuant to instructions from the Buyer. Under no circumstances will Seller be required to provide copies of invoices, quotes or other documents of sensitive nature relating to manufacturer pricing.

25. **PRESCRIPTIVE SPECIFICATIONS AND CODE COMPLIANCE.** Seller includes all materials reasonably inferable from architectural documents furnished to Seller to produce the indicated results. The architect has sole design responsibility and is responsible for providing complete and accurate architectural documents that ensure the specified components operate well and in compliance with all codes and regulations. If Builders Hardware discovers or is made known of any noncompliance with codes and regulations, Builders Hardware will promptly report it to the Buyer. However, any cost associated with materials that are not indicated in the architectural documents but needed to comply with the codes and regulations will entitle Builders Hardware to a reasonable price adjustment.

26. **DELIVERY AND FORCE MAJEURE.** All Seller delivery is FOB jobsite to the tailgate of the delivery truck unless otherwise stated in writing by Seller. Hollow Metal Frames too large to be shipped in one piece will be spliced for field welding by the purchaser. No sorting or sequencing is included. Buyer is responsible for unloading, hoisting and staging of materials. Seller reserves the right to make delivery in installments. Risk of loss and responsibility for securing and protecting the materials shifts to the Buyer after delivery of materials by Seller. To facilitate the processing of freight claims, the Buyer is responsible for checking materials upon receipt, for noting any shortage or damage on the carrier's delivery receipt, and for notifying Seller in writing of any shortage or damage within 10 calendar days after delivery. Failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by Buyer. Buyer will secure any damaged material for a reasonable amount of time to allow for inspection and or salvage by the carrier.

Deliveries will be made within Seller's quoted factory lead times. Seller will not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including, without limitation, any act of God, act of Buyer, embargo, or other governmental act, regulation, or request, fire, accident, war, natural catastrophes, sabotage, civil insurrection, labor disputes, delay in transportation, or inability to obtain necessary materials. In the event of such delay, the date of delivery will be extended for a

period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for the Seller's inability to deliver for any reason will be rescission of this agreement. Buyer expressly waives and Seller disclaims all consequential, contingent and liquidated damages whatsoever.

In the event Buyer requests delivery of materials in advance of Seller's factory lead times and Seller in its sole discretion can accommodate such a request, then Buyer will be responsible to pay Seller for extra quick ship charges. Buyer will receive materials from Seller when the materials are ready to ship. In the event Buyer does not have suitable space for the materials when they are ready to ship and Seller, in its sole discretion, agrees to store materials in its own warehouse, Buyer will pay Seller for the stored materials within payment terms described above. Seller will provide an invoice, proof of insurance, photos. Any other requirements including but not limited to physical inspection and bonding will be the sole cost of the Buyer.

27. **WARRANTIES.** SELLER'S WARRANTY FOR DEFECTIVE MATERIALS AND WORKMANSHIP WILL BE FOR A PERIOD OF 90 DAYS FROM THE DATE OF SUBSTANTIAL COMPLETION OF SELLER'S WORK UNLESS OTHERWISE SPECIFICALLY AGREED TO IN WRITING SIGNED BY SELLER. ADDITIONAL WARRANTIES BY MANUFACTURERS MAY APPLY AND ARE SUBJECT TO CHANGE AT ANY TIME. SELLER'S ONLY LIABILITY WHETHER IN TORT, OR IN CONTRACT UNDER THIS WARRANTY IS TO REPLACE OR REPAIR PRODUCTS FOUND TO BE DEFECTIVE IN MATERIAL AND/OR WORKMANSHIP. SELLER WILL HAVE NO LIABILITY TO PAY ANY COST FOR REPAIR WORK PERFORMED BY ANYONE OTHER THAN SELLER, UNLESS IN EACH INSTANCE SELLER HAS GIVEN PRIOR WRITTEN APPROVAL OF SUCH REPAIR. THIS WARRANTY EXCLUDES IMPROPER INSTALLATION, ORDINARY WEAR AND TEAR, FAILURE TO EXERCISE NORMAL MAINTENANCE, MISUSE AND NEGLIGENCE BY OTHERS AND IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER.
28. **ASSIGNMENT.** Seller shall not assign, subcontract, delegate or transfer in any way, the purchase order, in whole or in part, without the prior written consent of Purchaser and any such assignment, subcontract, delegation or transfer without Purchaser's prior written consent shall be void. Seller shall not be relieved of any of its obligations under the purchase order notwithstanding any such written consent by Purchaser.
29. **PATENTS.** Seller agrees to defend at its own cost and expense any suit or proceeding for the actual or alleged infringement of United States or foreign patents or other intellectual property on account of the use or sale of the goods specified in this purchase order, and agrees to pay all judgments or decrees which may be rendered in any such suit or proceeding, and otherwise agrees to indemnify and hold harmless the Indemnities from any and all Damages on account of any such actual or alleged infringement.

30. **TRADE NAMES ON PRODUCT.** Seller will be permitted to provide products with trade names on them.
31. **CONTRACT PROCEDURES.** Buyer will not require any contract procedures or any forms that have not been provided to Seller prior to time of sale and unless expressly accepted by Seller in writing. All lien waiver or release forms requested prior to payment will be expressly conditioned upon receipt of actual payment by Seller.
32. **RELEASES.** Any form or contract language wherein Seller purports to release the Buyer, Owner or design professional is hereby qualified by the following language whether or not Seller specifically adds the language: "This release will apply only to work for which payment has been received in full by Seller; will not apply to retention; will not apply to unbilled changes, to claims which have been asserted in writing or which have not yet become known to Seller; and will be conditional upon receipt of funds to Seller's account."
33. **MBE/WBE/DBE.** No minority, women, or disadvantaged participation, residency, or other similar requirements included unless otherwise stated in writing by Seller.
34. **INSPECTION.** Buyer will not have the right to inspect the facilities, books and records of the Seller.
35. **COMPLIANCE WITH LAW.** Seller represents that in the manufacture and furnishing of goods, or the rendition of services, pursuant to this purchase order, it has and will comply with all Federal, State and local laws, rules, standards and regulations applicable thereto (including without limitation the Fair Labor Standards Act), and that any goods furnished (including any labeling thereof) comply with and can be used in compliance with all such laws, rules, standards and regulations.
36. **INDEMNIFICATION AND INSURANCE.** UNLESS MODIFIED BY ATTACHEMENT THE FOLLOWING APPLIES: Seller agrees to indemnify, defend and hold harmless Purchaser, its officers, agents, employees and its vendees ("Indemnities"), from and against any and all demands, claims, suits, damages, loss, liability, cost or expense of any character ("Damages") for or on account of any injury, death or damages sustained by any person, and for damage to property, arising under any legal theory with respect to any goods or services provided hereunder, except only where such injury, death or damage is caused by or results from the sole negligence of Purchaser. Seller agrees to obtain and keep in effect commercial general liability insurance with broad form coverage including product liability, property damage, completed operations, contractual coverage's and blanket contractual coverage including the liabilities of Seller assumes hereunder with a combined single limit (bodily injury and property damage) of not less than \$1,000,000, naming Purchaser as an additional insured. Seller shall provide Purchaser with insurance certificates evidencing such insurance. Seller agrees that such coverage's may not be materially changed or canceled without 30 days prior written notice to Purchaser. In addition, Seller agrees to indemnify and hold harmless the Indemnities from and against all Damages, or claims therefore, arising out of or in connection with any product recall, repair or modification program or other compliance

program or efforts, pursuant to any applicable statute or regulation or any governmental authority, whether the same be voluntary on the part of Purchaser or mutually agreed upon by the Purchaser and Seller, or required by such governmental authority to the extent such recall, repair or modification program or other compliance program or efforts are caused by defects in the goods supplied hereunder.

37. **TERMINATION.** In the event of any termination by the Owner or by the Buyer which is not justified by a default of Seller, Seller will be entitled to payment from the Buyer for all costs incurred by Seller for which Seller has not received payment, including, but not limited to, reasonable overhead, profit, expenses and damages, including attorneys' fees and interest.
38. **LIEN AND CLAIM RIGHTS.** Seller may take all steps reasonably necessary to preserve and enforce its lien and bond rights, and make any claims against the Buyer, the project, or otherwise as allowed by law.
39. **DISPUTE RESOLUTION.** The rights of Purchaser hereunder shall be in addition to its rights and remedies at law or in equity. Failure of Purchaser to enforce any of its rights shall not constitute a waiver of such rights or of any other rights. In no event shall Seller be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages. Purchaser, at its sole option, may elect to have any disputes with Seller relating to the purchase order, these Terms and Conditions or the goods or services submitted to binding arbitration pursuant to the rules of the American Arbitration Association. Any federal or state court sitting in Erie County, Pennsylvania shall have personal jurisdiction over Seller in connection with any litigation relating hereto and Seller consents to venue in such court. Should either party employ an attorney to institute litigation or arbitration the prevailing party will be entitled to recover reasonable attorneys' fees, costs and expenses incurred.
40. **GOVERNING PROVISIONS. THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER, AND SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF PENNSYLVANIA AND THE U.S. (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THERE ARE NO CONDITIONS AFFECTING THIS AGREEMENT, WHICH ARE NOT EXPRESSED HEREIN.**