

## **Builders Hardware and Specialty Company**

### **Standard Terms and Conditions for Purchase Orders**

<http://www.builders-hardware.net/legal/sscpo.pdf>

#### ***ADVERTISING***

**Advertising** – Supplier shall not, without first obtaining the written consent of Builders' Hardware and Specialty Company, in any manner advertise, publish, or otherwise disclose the fact that Supplier has furnished, or contracted to furnish to Builders' Hardware and Specialty Company the materials and/or services ordered hereunder.

#### ***AMENDMENTS AND CHANGES***

**Amendments** – If the articles ordered are to be manufactured in accordance with drawings and specifications furnished by Builders' Hardware and Specialty Company, Builders' Hardware and Specialty Company may make changes in such drawings and specifications. Any difference in Supplier's costs or increase in time required for delivery by the Supplier, resulting from such changes, shall be equitably amended in writing. No change in the articles ordered, or in the terms and conditions of our orders proposed by the Supplier, shall have effect unless the order is amended in writing.

**Changes** – The only changes to this Purchase Order by which Purchaser will be bound are express, written changes, signed by an authorized Purchaser representative. In no event shall Purchaser's silence be construed as acceptance of proposed changes in or additions to this contract

**Cancellation** - Builders' Hardware and Specialty Company may cancel any undelivered portion of orders at any time, by written notice to the Supplier. In the event of such cancellation and if Supplier is not in default, Builders' Hardware and Specialty Company shall pay to the Supplier, such costs incurred by the Supplier pursuant to this order, prior to such cancellation as shall be unrecoverable in the normal course of business.

**Default** - Builders' Hardware and Specialty Company may cancel all of any part of the undelivered portion of an order, if the Supplier does not make deliveries of acceptable quality within the time specified on the order, or if the Supplier otherwise breaches any of the terms or conditions specified thereon. Supplier will not, however, be liable for delay in delivery due to causes beyond the Supplier's control and without Supplier's fault or negligence, provided the Supplier promptly notifies Builders' Hardware and Specialty Company in writing of any such delay or expected delay, as soon as such delay becomes, or should have become apparent.

**Cancellation** – Purchaser reserves the right to cancel any or all of the order prior to date of shipment and any items back ordered. On items not as ordered and items on back order, Purchaser will charge Supplier with all or excess transportation and cartage. Any added costs incurred by Supplier not following Purchaser's detailed shipping and routing instructions, will be charged to Supplier.

**Changes** - Builders' Hardware and Specialty Company may at any time, without invalidating the contract and without notice to Contractor's sureties, if any, order any changes in the work. Builders' Hardware and Specialty Company will issue written orders to Contractor for any such changes provided that, in the event of an emergency which Builders' Hardware and Specialty Company determines endangers life or property, Builders' Hardware and Specialty Company will issue oral orders to Contractor for any work required by reason of such emergency. Such

orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent and nature of such change.

#### ***ASSIGNMENT***

**Substitutions** – Do not substitute without Purchaser’s written consent.

**Subcontracting** – Supplier shall not subcontract or delegate its obligations under this order without the written consent of Builders' Hardware and Specialty Company. Parts and materials normally purchased by Supplier or required by this order shall not be construed as subcontracts or delegations. In addition, Supplier shall not re-export, and except for purchases or parts and materials normally purchased by Supplier, shall not divert to others and Builders' Hardware and Specialty Company specifications, drawings or other data, or any product of such data.

#### ***CONFIDENTIALITY***

**Confidentiality** – Supplier shall not disclose to any person outside of its employ, or use for any purpose other than to fulfill its obligations under this order, any information received from Builders' Hardware and Specialty Company pursuant to this order, which has been disclosed to Supplier by Builders' Hardware and Specialty Company in confidence, except such information which is otherwise publicly available or is publicly disclosed by Builders' Hardware and Specialty Company subsequent to Supplier’s receipt of such information or is rightfully received by Supplier from a third party. Upon termination of this order, Supplier shall return to Builders' Hardware and Specialty Company, upon request, all drawings, blueprints, descriptions, or other material received from Builders' Hardware and Specialty Company and all materials containing said confidential information. Also, Supplier shall not disclose to Builders' Hardware and Specialty Company any information which Supplier deems to be confidential, and it is understood that any information received by Builders' Hardware and Specialty Company, including all manuals, drawings, and documents, will not be of a confidential nature or restrict, in any manner, the use of such information by Builders' Hardware and Specialty Company. Supplier agrees that any legend or other notice on any information supplied by Supplier, which is inconsistent with the provisions of this article, does not create any obligation on the part of Builders' Hardware and Specialty Company.

#### ***FOB – SHIPPING FREIGHT***

**Express charges** – If shipment by express becomes necessary in order to fulfill the Supplier’s delivery obligation, Supplier shall pay express charges and freight charges.

**Routing** – As indicated in transportation guidelines on face of purchase order.

**Cartage** – No charge allowed unless authorized by Builders' Hardware and Specialty Company.

**Premium transportation** – No charge allowed unless authorized by Builders' Hardware and Specialty Company.

#### ***INDEMNIFICATION***

**Indemnification** – Supplier agrees to indemnify, defend, and hold harmless Builders' Hardware and Specialty Company, its trustees, officers, agents, and employees, of, from, and against any and all claims and demands which may arise in any way out of the furnishing of goods or services hereunder including with limitations, claims and demands arising from injury to or death of personnel of Builders' Hardware and Specialty Company or for damage to the property of

Builders' Hardware and Specialty Company, except those arising by reason of the negligent or willful act of Builders' Hardware and Specialty Company, its officers, agents, or employees.

**Indemnification** – Supplier agrees to defend, indemnify, and hold Purchaser harmless of and from any claims, loss, damage, or expense arising out of any defect or nonconformity in Supplier's goods or presence of Supplier's agents or employees on Purchaser's premises, including, without limitation, payment of direct, special, incidental and consequential damages and expenses of defending claims, including attorney's fees at trial or on appeal. This duty to defend, indemnify, and hold harmless extends to any law suit which may arise out of defects or non conformity of Supplier's goods or a claim of defect or nonconformity or claims arising out of the presence of Supplier's agents or employees on Purchaser's premises, whether such law suit may be based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and also extends not only to "third-party claims" but also to any direct loss suffered by Purchaser.

**Workers' compensation** – If Supplier does not have Workers' Compensation or Employers' Liability Insurance, Supplier shall indemnify Builders' Hardware and Specialty Company against all damages sustained by Builders' Hardware and Specialty Company resulting from Suppliers' failure to have such insurance.

### ***INSURANCE***

**Insurance** - No charge allowed unless authorized by Builders' Hardware and Specialty Company.

**Proprietary parts** – All parts and components bailed by Builders' Hardware and Specialty Company to Supplier for incorporation in work being performed for Builders' Hardware and Specialty Company shall be used solely for such purposes.

### ***DELIVERY***

**Order release** – Ship per Purchaser's written release only; Purchaser reserves right to return material not released or material overshipped, at Supplier's expense.

**Late delivery** – Purchaser will not be responsible for merchandise shipped after final date specified in this order. Shipment of goods constitutes acceptance of "Conditions of Order" as specified unless Purchaser has confirmed a change.

**Performance and delivery.** Purchaser may cancel the unreceived portion of this purchase order at anytime if delivery of the goods is not timely. If Supplier can fulfill its delivery obligation only by shipping by premium routing, the premium charges shall be at Supplier's expense and, if shipment is F.O.B. point of shipment, Supplier shall reimburse Purchaser for the premium paid.

**Improper performance** – In addition to other remedies provided by law, Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the order if Supplier fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and condition of a Purchase Order. Acceptance of any part of the order shall not bind the Buyer to accept any future shipments or work nor deprive it of the right to return goods already accepted. At Buyer's option, all disputes arising in connection with a Purchase Order shall be resolved by arbitration.

**Late delivery** – In the event of Supplier's failure to deliver as and when specified, Builders' Hardware and Specialty Company reserves the right to cancel this order or any part thereof without prejudice to its other rights, and Supplier agrees that Builders' Hardware and Specialty

Company may return part of or all of any shipment so made and may charge Supplier with any loss or expense sustained as a result of such failure to deliver.

### ***DEFINITIONS***

**Acceptance** – Supplier’s written acceptance or the commencement of Supplier performance shall constitute acceptance. Acceptance of the order constitutes agreement to all terms, conditions, and instructions thereon.

**Acceptance** – This Purchase Order which incorporates any prior specifications, samples, or descriptions of the goods and all express and implied warranties, becomes the entire and exclusive agreement between Purchaser and Supplier when acknowledged by Supplier in writing or if earlier when Supplier commences performance. This offer to purchase is expressly conditioned on Supplier’s acceptance of these terms and conditions. By accepting this Purchase Order or by shipping goods in response to it, Supplier agrees that Purchaser is not to be bound by any term or condition of Supplier in any written acknowledgment, invoice, or otherwise which is inconsistent with or in addition to the terms and conditions herein and that any such inconsistent or additional terms are understood to be rejected by Purchaser.

**Acceptance** - Builders' Hardware and Specialty Company expressly limits acceptance to the terms set forth on our website or written on our Purchase Orders and any attachments hereto.

**Enforcement of terms** - Builders' Hardware and Specialty Company may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing to the contrary.

### ***ENTIRE AGREEMENT***

**Entire agreement** – This purchase order, including the terms and conditions and any attachments hereto, contains the complete and final agreement between Builders' Hardware and Specialty Company and Supplier. Reference to Supplier’s bids or proposals, if noted on this order, shall not affect terms and conditions

### ***INSPECTION***

**Inspection, rejection, revocation of acceptance** – The acceptance of articles supplied per out orders I subject to inspection and approval by Builders' Hardware and Specialty Company after delivery. Articles rejected by Builders' Hardware and Specialty Company may be returned to the Supplier at Supplier’s expense. No replacement of articles shall be made by the Supplier unless specified by Builders' Hardware and Specialty Company.

In the event materials do not comply with all specifications, the Purchaser shall have the option to reject and return part, or all of such merchandise. The Supplier agrees to pay or reimburse the Purchaser for invoice cost, delivery cost, labor and other expenses incurred in sorting, inspecting and packing said merchandise for return.

### ***LAWS***

**Governing law** – The rights and liabilities regarding Builders' Hardware and Specialty Company purchase contracts shall be governed in all respects by Pennsylvania law. Venue in any lawsuit arising out of any purchase order shall lie exclusively in state and federal courts in the state of Pennsylvania.

**Hazardous materials** – All products covered by this Purchase Order, which contain hazardous substances, are to be labeled in compliance with the Federal Hazardous Substance Labeling Act.

**Federal law compliance** – Supplier shall at all times comply with all applicable Federal, State and local laws, rules and regulations.

**Patent indemnification** – Supplier agrees to indemnify and hold Purchaser, his or her agents and employees harmless from any claims or finding and from any loss, including attorney’s fees arising there from, that any of the goods sold by Supplier to Purchaser violates any patent, copyright, trade secret, or other proprietary rights of any third person.

#### ***PACKAGING***

**Packaging** – No charge will be allowed for boxing, packing, or crating unless agreed upon in writing at the time of purchase.

**Damage** – Damage to any material not packaged to insure proper protection, will be charged to the Supplier or returned at Supplier’s expense, for replacement.

#### ***SHIPPING INSTRUCTIONS***

**Packing list** – A packing list must accompany each shipment, giving descriptions of the material, quantity and purchase order number. Builders' Hardware and Specialty Company count shall be accepted as final on all shipments not accompanied by a packing list.

#### ***TAXES***

**Taxes** – Unless otherwise directed, Supplier shall pay all sales and use taxes imposed by law upon or on account of this order. Where appropriate, Builders' Hardware and Specialty Company will reimburse Supplier for this expense.

#### ***WARRANTY***

**Warranties** – Manufacturer or Supplier guarantees that merchandise ordered and shipped is free of defect. Defective merchandise will be returned at the expense of the shipper.

**Warranties** – Supplier warrants to Purchaser that the goods are of merchantable quality and are free from defects in design, materials, workmanship and title, are fit for purposes for which goods of that type are ordinarily used as well as for any purposes Supplier has specified or advertised and that the goods conform in every respect to the specifications of the Purchase Order and any applicable sample or description given to the Purchaser. In addition, Supplier incorporates by reference and passes on to Purchaser the benefits of all warranties given to Supplier by persons from whom Supplier purchased any of the goods.

**Attorneys’ fees** – In any proceeding brought to enforce this Purchase Order the prevailing party will be entitled to recover reasonable expenses of litigation including attorneys’ fees, at trial and on any appeal or petition for review.