

# TERMS & CONDITIONS

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## **1. APPLICABILITY AND ACCEPTANCE OF TERMS AND CONDITIONS**

These Terms and Conditions apply to all transactions between UMH and Customer unless otherwise expressly agreed upon in a separate written document signed by UMH and Customer. Delivery of Products or Services, acceptance of payment or any other action by UMH shall not constitute UMH's consent to or acceptance of any additional or different terms or conditions. Any conflicting statements or terms listed on Customer's purchase orders, invoices or confirmations or other documents created, provided or offered by Customer (Customer's Documents) are subject to these Terms and Conditions and all differences or additional terms and conditions contained in any Customer's Documents are hereby expressly objected to by UMH. No agent, employee or representative of UMH has any authority to bind UMH to any affirmation, representation or warranty covering the Products sold by UMH to Customer, and unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included within these Terms and Conditions or within a written document signed by authorized officers of UMH and Customer.

## **2. PRICE**

The purchase price of any goods sold hereunder shall be as stated on the applicable UMH's order acknowledgment or accepted purchase order; provided, however, that any increase in UMH's cost of the subject materials after the date of the applicable UMH's order acknowledgment or accepted purchase order, including, but not limited to, any price increase or surcharge may result in an increase in such price effective for any goods scheduled for shipment beginning immediately on the date such increase in UMH's cost of the subject material is imposed on UMH. Such price changes may be made effective by UMH without prior notice to Customer and may be adjusted by UMH periodically to reflect a change in such costs. UMH shall be bound as to purchase price only upon shipment and acceptance of all or any part of the goods ordered.

## **3. PAYMENT TERMS; LATE FEES; ATTORNEYS' FEES AND COSTS; WAIVER**

Except as otherwise agreed in writing by UMH and Customer, all sums due and owing to UMH for any Product and/or Services shall be paid on a net 30-day basis from date of delivery and installation. UMH reserves the right to require the payment of an advance deposit, prior to the commencement of any work. UMH's prices do not include sales, use, excise or similar taxes, duties or levies, unless stated in the contract. Customer shall be responsible for payment of any applicable sales, use, excise or similar taxes, duties or levies now or hereafter imposed by any government-

tal authority on the manufacture, sale, delivery and/or use of any Products, or in lieu thereof, shall provide UMH with tax exemption certificates acceptable to the taxing authorities as required. Customer agrees to pay a Service Charge on any payments over 30 days past due at the lesser of 1 ½% per month or the maximum rate permitted by law. In the event of any default in pursuant to the terms and conditions set forth herein, Customer shall pay all costs and fees, including reasonable attorneys' fees and costs, incurred by UMH in collecting from any unpaid amounts due UMH. UMH may, at its sole option, refuse, delay, or change the terms of shipments to Customer upon failure by Customer to timely pay any payments due UMH. The waiver by UMH of any breach hereof or default in any payment shall not constitute a waiver of any breach or default. In the event of default, UMH shall have all the remedies provided in these Terms and Conditions, and under the California Commercial Code, which shall be cumulative with any other remedies that UMH may have, without limitation, at law, or in equity. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or any other remedy at any time.

For contracts greater than \$50,000, a deposit of 35% is required, with 35% payable upon delivery of Product, and the remaining 30% payable upon completion of the physical installation and the issuance of permits, as required.

In the event that Customer's project is delayed as a result of the delay or failure of Customer to obtain permits (after UMH has delivered and installed the Products), or Product is delivered and/or installed prior to Customer obtaining applicable permits, any outstanding sums due for Product and/or installation are to be paid immediately, notwithstanding the delay or failure of Customer to obtain permits.

#### **4. WARRANTIES FOR NEW GOODS MANUFACTURED BY OTHERS**

All new goods not manufactured by UMH are warranted only in accordance with the warranty provided by the manufacturer.

#### **5. USED GOODS**

Used goods are sold as is. Customer must carefully inspect these for signs of defects. It is possible that goods are not uniform in size or condition. THE CAPACITY OF USED GOODS IS NOT WARRANTED IN ANY WAY.

#### **6. CHANGE ORDERS AND CANCELLATION**

If it is desired to make a change to an order, UMH will attempt to accommodate the request without cost to the Customer. If, however, materials have been ordered and/or fabricated for the specific project in question, or require extensive additional engineering time, or require additional shipping costs, the costs of the change will be calculated and presented for approval, prior to initiating the change. Customer

accepts responsibility for the costs of such changes. Changes that increase quantities or adding items to the order are to be entered as separate orders subject to the then-current lead time. Cancellation and/or Restocking Fees will be billed at the greater of either \$250 or 20% of the total order cost.

## **7. MATERIALS PROVIDED BY CUSTOMER**

If goods or products are to include or incorporate items or other materials to be provided by Customer (or by any third party on behalf of Customer), UMH's performance, and any prices quoted by UMH, are conditioned upon such items or other materials being received by UMH upon agreed times, in such quantities and condition as specified and agreed upon by UMH and Customer and with all freight, transportation and all other charges related thereto shall be prepaid by Customer. Customer shall be responsible for all defects contained in or relating to all items or other materials to be provided by Customer (or by any third party on behalf of Customer). Customer shall pay UMH for all time, labor and expense incurred by UMH, including, but not limited to, work or labor spent, or materials used, in producing or attempting to produce any goods or products, by reason of or caused by any defective items or other material to be provided by Customer (or by any third party on behalf of Customer).

## **8. INSTALLMENTS / DELIVERY**

Unless otherwise expressly stated, UMH shall have the right to make delivery in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure of Customer to pay for any installment when due, shall excuse UMH from making further deliveries. Delay in delivery on any installment shall not relieve Customer of its obligations to accept and pay for remaining installments.

## **9. DELIVERY; INSTALLATION; QUANTITY**

Estimates of delivery and installation times are subject to revision upon receipt of complete ordering information by UMH. Delivery or tender of delivery of any installment of any goods or products within fifteen (15) days after the date specified for delivery shall be deemed timely performance by UMH. There shall be no liability for failure or delay of delivery due to acts of God, acts of Customer, Government action, fire, flood, war, accident, strike, casualty, lockout, boycott, embargo, strikes at the port, terrorism, riot, labor trouble or shortage; inability to obtain material equipment or transportation, or other causes beyond the reasonable control of UMH. All express and delivery charges shall be paid by Customer without discount. Delivery or tender of ninety (90) percent of the quantity specified for an installment shall constitute performance and installments shall be accepted by Customer and paid for at contract prices and terms. Title and risk of loss or damage shall pass to Customer

on delivery to Customer's carrier or dock (Freight on Board/point of shipment.)

## **10. INSTALLATION INDEMNIFICATION**

Customer is responsible to inspect the completed installation prior to usage. If any laws in installation are noted, Customer must notify UMH prior to usage. In the absence of notification of any problems, it is understood that the job is accepted in its entirety. UMH does not assume any liability for damage resulting from a faulty installation. Customer agrees to indemnify and hold UMH harmless from all liability and expense arising out of or attributable to such faulty installation. UMH shall not be liable for consequential or incidental damages. In the case of an installation of used material, the Customer acknowledges that the material, which is to be installed, may not be in prime condition.

## **11. FREIGHT AND SECURING LOADS**

Customer is responsible for the securing of all loads of material transported from UMH's facility in Customer's vehicle, as well as for flagging or otherwise marking such material for transport. If a third party freight carrier transports material from UMH's facility, the freight carrier shall be responsible for securing the load, flagging, or otherwise marking the material for transport. UMH shall not have any liability to Customer or any third party for (1) damage to, or loss of, any vehicle used to carry material purchased by Customer from UMH, whether such vehicle belongs to Customer or a third party, or to any other vehicle belonging to a third party, (2) damage to, or loss of, the material purchased by Customer from UMH or to a third party's property (real or personal), (3) injury to any person (whether the driver of the vehicle carrying the material or an unassociated third person), or (4) any other loss of any kind, resulting from a failure by Customer or a freight carrier to properly secure a load of material purchased from UMH and transported from UMH's facility in Customer's vehicle or on a vehicle belonging to a freight carrier. Where applicable, and by request, freight may be billed "third party" subject to carrier's approval of reseller's credit. "Prepay and Add" freight charges subject to a 10% surcharge to the freight costs only. When billed "Prepay and Add" there will be no credit extended for reduction in shipping costs. Quoted freight rates do not include any applicable local, county, state, or federal taxes. Applicable taxes may be added to the quoted freight amount at the time of invoicing. Customer is responsible for all fuel surcharges invoiced by the carrier at the time of shipment. It is the Customer's responsibility to verify quantities and condition of goods received.

## **12. OFFLOADING MATERIAL**

Customer is expressly prohibited from manually offloading material from UMH's trucks. Customer is expected to have the proper equipment and manpower to offload material without assistance from UMH's driver. If Customer does not have a

safe, conventional means of offloading the material, UMH's driver will be required to return to UMH's facility with the material and Customer may be charged for the expense of the trip.

### **13. LIMITATIONS / WARRANTIES**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN SUBSEQUENT WRITING BY CUSTOMER AND UMH, UMH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UMH MAKES NO WARRANTY WITH RESPECT TO WHETHER THE PRODUCTS INFRINGE ANY PATENT, COPYRIGHT OR TRADEMARK; U.S. OR FOREIGN; AND CUSTOMER REPRESENTS AND WARRANTS THAT, TO THE BEST OF ITS KNOWLEDGE, PRODUCTS OR USE OF SUCH PRODUCTS DO NOT VIOLATE ANY PATENT, COPYRIGHT OR TRADEMARK; U.S. OR FOREIGN.

### **14. LIMITATION OF REMEDIES**

UMH makes no warranties express or implied to cover damage, breakage, loss or injury arising from accident, misuse, excessive loading, or failure to maintain the material in accordance with the manufacturer's instructions. Customer agrees with UMH that Customer shall have the responsibility to determine the adequacy of its slab or floor for installation of any fixture purchased from UMH, taking into consideration the loads that may foreseeably be placed on that fixture. Customer represents to UMH that it is not relying upon UMH's determination or advice with respect to the adequacy of its slab or floor.

CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, REGARDLESS OF THE FORM OR ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING WITHOUT LIMITATION NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE: (i) FOR DELAYS IN THE DELIVERY BY FORCE MAJEURE CAUSES, CUSTOMER'S SOLE REMEDY SHALL BE TO CANCEL THE ORDER WITHOUT INCURRING CANCELLATION CHARGES; OR (ii) FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR FOR WHICH UMH'S SOLE NEGLIGENCE WAS ALLEGED TO THE PROXIMATE CAUSE; AND FOR CLAIMS OTHER THAN THOSE SET FORTH ABOVE, UMH'S LIABILITY SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCTS. UMH SHALL NOT BE LIABLE IN ANY EVENT FOR THE FOLLOWING TYPES OF DAMAGES: INCIDENTAL DAMAGES, PUNITIVE DAMAGES, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS OR LOST REVENUES OF ANY KIND WHETHER OR NOT UMH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PARAGRAPH SHALL SURVIVE THE FAILURE OF ANY EXCLUSIVE REMEDY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE PRODUCTS FURNISHED OR SERVICES RENDERED BY UMH, MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS

ACCRUED.

## **15. FINANCIAL RESPONSIBILITY**

Reasonable doubt on the part of UMH concerning the financial responsibility of Customer (including but not limited to, Customer's failure to pay on the net due date for goods shipped) shall entitle UMH to stop operation, decline shipment, or stop any material in transit without liability, until the material has been paid for or until UMH is furnished reasonable satisfactory proof of Customer's financial responsibility. UMH may, in its discretion, require any order placed by Customer to be paid on a COD and/or prepayment basis.

## **16. LITIGATION AND COLLECTION**

Any controversy or claim arising out of or relating to this sale shall be mediated by a mutually agreed upon mediator in Riverside County, California. The cost of the mediation shall be shared equally. In the event the dispute is not resolved through mediation, any litigation shall be brought in Riverside County, California, which courts shall have the exclusive jurisdiction over any such litigation. Customer and UMH hereby expressly consent to the jurisdiction and venue of said courts. If any default is made in payment of amounts due for the sale of goods and materials hereunder or upon any other breach of the terms and conditions set forth herein, Customer agrees to pay UMH's reasonable cost of collection and/or compliance, including reasonable attorneys' fees and costs, not to exceed an amount allowed by law.

## **17. ARBITRATION OF DISPUTES**

In the event of any dispute (not resolved by mediation) arising out of or relating to any agreement between the Parties or under these Terms and Conditions, the parties' exclusive remedy shall be binding arbitration. All such arbitration proceedings pursuant to this section shall be held in Riverside County, California, with Judicial Arbitration and Mediation Services (JAMS), before single arbitration in accordance with JAMS' expedited procedures then in effect. The decision of the arbitrator shall be final and binding. The arbitrator need not follow any particular rules of evidence or procedure, but shall be requested in good faith follow as nearly as practicable the rules of JAMS relating to the arbitration of commercial disputes. Except as provided herein, any cost of arbitration shall be borne equally by each party, with the prevailing party being entitled to recover such costs, including reasonable attorneys' fees. The arbitrator's decision shall be specifically enforceable in any court of competent jurisdiction. Notwithstanding any contrary provision in this section, the parties may apply to any court of competent jurisdiction for interim for provisional relief pending the arbitrator's decision.

## **18. GOVERNING LAW AND INTERPRETATION**

The Agreement and performance by the parties arising from or related to the Products provided by UMH shall be construed in accordance with the laws (excluding the laws related to conflicts) of the State of California. Venue and jurisdiction in any action shall lie solely in Riverside County, California.