



Archived

PRIMESOURCE BUILDING PRODUCTS, INC. TERMS AND CONDITIONS OF PURCHASE,
Effective May 1st, 2016

1. APPLICABILITY. PrimeSource Building Products, Inc. ("Buyer") acquires and resells equipment, building supplies, materials and other products sourced from a network of suppliers, including the "Seller" identified in a purchase order submitted by Buyer to Seller ("Order") attaching, referencing or otherwise subject to these Terms and Conditions of Purchase ("Terms"). Each Order placed by Buyer for any product purchased from Seller or its affiliates ("Goods") is expressly made conditional upon such Order being subject to these Terms. Any different or additional terms contained in any acceptance or other form provided by Seller (including any "shrink-wrap" terms) shall be without force or effect, and these Terms shall govern in the event of a conflict. Together with the specific terms set forth in an Order, these Terms constitute the entire agreement of the Parties with respect to Buyer's purchase of the Goods, and replace and supersede all prior or contemporaneous understandings or agreements, whether written or oral, or established by course of performance. Any amendment of these Terms must be in writing and signed by each party.

2. Orders. Seller shall, in writing, either accept or reject an Order within ten (10) days following Seller's receipt of the Order, and if Seller fails to do so, such Order shall be deemed accepted by Seller, without liability to Seller.

3. Payments, Invoices and Taxes. Buyer will pay each undisputed invoice for an Order of Goods within thirty (30) days or such other period as the parties may agree in writing. Seller will issue invoices only after the selected carrier's receipt of the applicable Goods provided for in the applicable Order. If Buyer disputes an invoice, Buyer may elect to pay only the undisputed amount. Buyer's payment for Goods shall not be deemed to constitute acceptance of any Good or a waiver by Buyer of any right or remedy to which Buyer may be entitled. Buyer may make payments via check, wire transfer, automated clearinghouse (ACH), Buyer

procurement card or other means chosen by Buyer. Buyer will be responsible for all excise, sales, use, transfer and other similar taxes or duties imposed by any governmental authority with respect to Buyer's purchase of Goods ("Taxes"); provided that Taxes will not include any other tax, including any tax based on the income, revenue, or earnings of Seller or another party. In order for Buyer to be responsible for such Taxes, Seller must properly reflect such Taxes in each invoice.

4. Delivery Terms, Passage of Title and Risk of Loss. The Goods shall be shipped in accordance with the INCOTERM 2010 specified in the Order. Seller will properly pack the Goods in accordance with industry best practices or any instructions that Buyer may provide. Seller will furnish all shipping documents that Buyer may require, and plainly mark Buyer's name and the identity of the delivery destination on all packages and associated documents. Unless Seller obtains Buyer's prior written consent, Seller will only ship full Orders of Goods, and not partial Orders. Seller must make all deliveries of Goods in accordance with the delivery date specified in the Order. TIME IS OF THE ESSENCE IN MAKING ALL DELIVERIES OF GOODS UNDER THESE TERMS. If the importation of the Goods results in the assessment of a countervailing duty on Buyer as the importer, Seller will reimburse such countervailing duty to Buyer if such reimbursement is permitted under applicable law. If the acts or omissions of Seller (or any individual or entity acting under the direct control of Seller) result in a failure by Seller to meet the delivery schedule, Seller will select a premium freight option and ship the affected Goods to Buyer as quickly as possible, all at Seller's sole expense.

5. Import/Export. Transferrable credits or benefits associated with the Goods purchased under these Terms, including trade credits, export credits, customs drawbacks, rights to the refund of duties, tax and fee rebates and the like (collectively, "Trade Credits") relating to these Terms will belong to Buyer, unless prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Goods and any other information or cooperation necessary for Buyer to (1) receive the Trade Credits, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, (4) participate in any duty deferral or free trade zone programs of the country of import, and (5) establish the country of origin and value of the Goods, including affidavits of manufacture and NAFTA certificate of origin. Seller will obtain all export licenses and authorizations and pay all export taxes, tariffs, duties, and fees associated with the manufacturing and provision of the Goods and any associated services, unless otherwise agreed in writing, in which case Seller will

provide all information and records necessary to enable Buyer to obtain such export licenses or authorizations. If Seller is shipping Goods into the United States from locations outside the United States, Seller accepts responsibility for, and will implement security measures, to ensure the safe and secure transportation of goods throughout the supply chain, and will adhere to all applicable security requirements (including factory and shipping container security) required under the Customs-Trade Partnership Act Against Terrorism sponsored by the United States Customs and Border Protection Agency.

6. Inspections, Good Warranties, Non-Conforming Goods, and Recalls. Buyer may, but is not obligated to inspect Goods to confirm that the Goods conform to the requirements of these Terms and any specifications or quality standards required by Buyer in writing. Buyer will provide reasonable notice (but in any event, no more than three (3) business days' notice) to Seller of Buyer's intent to inspect a facility, and Seller shall provide (or cause the owner or operator of the facility to provide) Buyer or its designee with reasonable access to the facility for purposes of the inspection. Seller warrants that at delivery, each Good shall (i) be new and (ii) be delivered with good title, free and clear of any security interest, claim, demand, lien or any other encumbrance; and at delivery and for two years following delivery to Buyer, each Good shall (iii) be free from material defects in design, material and workmanship, (iv) be merchantable and fit for its intended purpose(s), (v) in substantial conformity with all specifications, drawings, samples, quality standards and performance requirements or other descriptions furnished by Buyer or its customer(s), including any private labeling or branding specifications, (vi) comply with all applicable laws of the countries and jurisdictions in which the Goods are to be sold (including each North American and European country), and (vii) not misappropriate any trade secret or infringe, violate, trespass or in any other manner contravene or constitute the unauthorized use of any patent, trademark, copyright or other intellectual property right. These warranties are in addition to any warranties implied or provided for by law or otherwise made by Seller and will survive acceptance and payment by Buyer. Any Good that does not conform to the requirements of these Terms, including the warranties, or for which the manufacturing of such Good does not conform to the requirements of these Terms, is a "Non-Conforming Good". At any time before or after taking title to Goods, Buyer may reject Non-Conforming Goods. Buyer may elect to return the Non-Conforming Goods to Seller, in which instance Seller shall, at Buyer's election, (i) promptly refund all amounts that Buyer paid to Seller for the Non-Conforming Goods, and all other amounts that Buyer incurred in connection with such Non-Conforming Goods, including freight, Taxes, storage fees, and any difference in price between

the Non-Conforming Goods and any replacement products procured by Buyer from a third party, or (ii) promptly refund all amounts as set forth in (i) above, and provide replacement products with expedited shipping by a carrier selected by Buyer. Seller shall refund all amounts owed to Buyer in U.S. dollars within no more than 30 days. If Buyer has not yet paid Seller for the affected Non-Conforming Goods, Buyer shall have no obligation to pay Seller for such Non-Conforming Goods. If Buyer requests that Seller provide return or other instructions for Non-Conforming Goods, Seller shall respond within fifteen (15) days and if Seller fails to respond, Buyer may dispose of the Non-Conforming Goods without liability to Seller. If Seller, Buyer, customer of Buyer, or any governmental authority determines that any recall, market withdrawal, inventory retrieval or similar action ("Recall") is reasonably necessary due to any Goods' failure to conform to applicable law or specifications, Seller will be responsible for all of Buyer's costs and expenses resulting from such Recall.

7. Seller's Representations and Warranties. By accepting an Order, Seller represents and warrants to Buyer that: (a) its sale of the Goods to Buyer does not and will not violate any applicable law or any contract to which Seller or any of its owners or affiliates is a party, and Seller is in compliance with all applicable laws; (b) it has all requisite legal and corporate power and authority to carry out and perform all of its obligations under these Terms; and (c) it holds and shall maintain and is in compliance with any applicable permits, licenses, and other approvals required to carry out its obligations under these Terms. Seller will perform its obligations under these Terms in compliance with all applicable laws, including, but not limited to (i) U.S. Foreign Corrupt Practices Act of 1977, as amended, or any such other applicable anti-bribery or anti-corruption laws and (ii) labor and employment laws. Prior to the shipment of any Goods, Seller will provide Buyer with (x) any and all material safety data sheets that are related, directly or indirectly, to the Goods (or products used in subassemblies or in the manufacture or production of the Goods), and (y) such other documentation as Buyer may request from time to time that is prepared pursuant to any applicable law and any and all Buyer requirements relating to environmental or similar matters. Seller will promptly notify Buyer of any changes to such documentation.

8. Intellectual Property. Seller agrees that Buyer owns the exclusive rights to the trademarks "PrimeSource", "Grip-Rite," "Pro-Twist," "PrimeGuard," and any other trademarks or brands identified to Seller by Buyer as being exclusive to Buyer and possesses certain rights and licenses in and to all third-party trademarks so identified to Seller by Buyer (the "Marks"). Seller is granted a limited license during

the Term to produce packaging material bearing the Marks solely for producing products hereunder and otherwise fulfilling an Order. Seller agrees that all rights and benefits associated with use of the Marks will be for the benefit of Buyer or the third-party owner, and Seller agrees to fully support the efforts of Buyer or the third-party owner to protect their rights, respectively, in and to the Marks. Except as expressly granted herein, Seller shall not have any right to use any of the Marks or other intellectual property of Buyer or any third-party. Buyer may use the logos, trademarks, trade names and/or service names associated with the Goods in Buyer's promotion of the Goods; provided that Buyer will comply with any reasonable instructions issued by Seller with respect to such usage. These Terms do not grant either party any intellectual property rights whatsoever in the other party's products or services.

9. Confidential Information. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return or destroy all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section XV. This Section XV does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

10. Publicity and Nondisclosure. Supplier shall not disclose, advertise, or publish the existence of, or the terms or conditions of, this Agreement without the prior written consent of Company.

11. Indemnification. Seller shall, at its expense, indemnify, hold harmless and, at Buyer's option, defend Buyer and its affiliates and customers and each of their directors, officers, principals (partners, shareholders, or holders of an ownership interest), employees, representatives, and agents from and against any and all claims, judgments, losses, damages, demands, payments, fines, costs, expenses (including reasonable attorneys' fees and court costs), liabilities, and recoveries of any nature or description incurred by an Indemnified party, arising from or relating to: (i) the personal injury to or death of any person, or any property damage,

alleged to have been caused by or caused by or attributable to any Good, or any act or omission of Seller or any of its employees, agents, or representatives, including any fault or negligence relating to product liability; or (ii) Seller's breach of these Terms.

12. Governing law; Venue. The rights and obligations of the Parties under these Terms or otherwise related to the Parties' relationship or the Goods shall be governed by and interpreted, construed, and enforced in accordance with the internal laws of the State of Texas, without giving effect to its principles of conflict of laws. The U.N. Convention on Contracts for the International Sale of Goods does not apply to transactions under these Terms. The Parties hereby submit to the exclusive jurisdiction of the state courts of Dallas County, Texas and the federal courts of the Northern District of Texas with respect to the adjudication of any dispute or controversy, relating to these Terms or otherwise, and expressly waive any objecting to the laying of venue in such forums.

13. MISCELLANEOUS These Terms shall not create any partnership, franchise, joint venture, agency or employment relationship and each party is an independent contractor. Neither party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor may either party bind the other party. These Terms are not exclusive. Seller may sell the Goods to any other party, and Buyer may procure the Goods from any other supplier. All notices, approvals, consents, requests therefor any other communications required or permitted by these Terms shall be in writing, given by personal delivery, by reliable overnight delivery service, or by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the addresses specified in the Order. Notices shall be effective upon receipt, or upon refusal to accept, or of non-deliverability of a notice properly addressed, or upon the next business day if delivered by overnight delivery service. Unless otherwise expressly provided by these Terms, all remedies are cumulative, and a party may seek any other remedy to which it may be entitled. Headings used in these Terms are for convenience only, and are not to be considered in interpreting these Terms. If any provision of these Terms is void or unenforceable, then such provision shall be severed from the remainder of the provisions of these Terms and, if feasible, replaced by a valid and enforceable provision that will achieve the intent of the Parties. The remaining provisions of these Terms shall remain in full force and effect. No waiver of any term or condition of these Terms shall be valid or binding unless in writing and signed by the party granting such waiver. The failure of either party to enforce any provision of these Terms or to require performance shall not be construed as a

present or future waiver or affect such party's ability to enforce these Terms in the future. All warranties, indemnification obligations and other obligations that expressly or by their nature survive the delivery of the Goods and payment therefor shall so survive

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