

TERMS AND CONDITIONS OF SALE

The following terms and conditions govern the sale and/or delivery of materials, goods, supplies, tools, equipment and/or gear (“Materials”) by George Kellett & Sons, Inc. (“Kellett”), pursuant to any written or oral order placed with Kellett by its customer (“Customer”) through any Kellett representative, employee or salesperson:

I. JURISDICTION, LAW AND VENUE

- A. Every sale and delivery of Materials shall be deemed to have been made in Louisiana, the laws of which shall govern any dispute involving, related to or arising in any way from the Materials.
- B. Sole and exclusive venue for the litigation of any dispute involving, related to or arising in any way from the Materials shall be in a Court of appropriate jurisdiction for Jefferson Parish, Louisiana.
- C. Kellett may, in its sole and exclusive discretion, elect to resolve any dispute involving, related to or arising in any way from the Materials through binding arbitration in accordance with the then current Construction Industry Rules of the American Arbitration Association. Venue for such arbitration shall be in Jefferson Parish, Louisiana.

II. DELIVERY AND ACCEPTANCE OF TITLE TO GOODS

- A. Sale of the Materials is complete, title to the Materials shall pass from Kellett to the Customer and the Customer shall assume all risk and liability of and/or damage –
 - 1. *As to Materials that Kellett delivers to the Customer at Kellett’s place of business:* upon loading of same onto Customer’s conveyance or vehicle. The Customer shall inspect the Materials prior to loading and shall note any claim for shortage, breakage or other nonconformance of the Materials to the terms and conditions of the order on Kellett’s delivery receipt.
 - 2. *As to Materials that Kellett delivers to the Customer’s designated location:* upon unloading of same from Kellett’s truck or other vehicle at said location.
 - a. The Customer (or its agent or representative) shall be present when the Materials are delivered to the designated location and shall accept and sign a receipt acknowledging delivery of same.
 - b. The Customer shall inspect the Materials prior to unloading same and shall note any claim for shortage, damage, breakage or other

nonconformance of the Materials to the terms and conditions of the order on Kellett's delivery receipt at the time of delivery.

- c. Unless the Customer has previously instructed Kellett not to unload the Materials without obtaining a signed delivery receipt, if the Customer is not present at the designated location when the Materials are delivered, then Kellett may unload the Materials curbside without obtaining a signed delivery receipt, at which time sale and delivery of the Materials shall be deemed complete.

3. *As to Materials that are delivered to the Customer via the Customer's carrier:* upon delivery of same to the carrier at their point of origin.

- a. The Customer shall, immediately upon receipt of the Materials from its carrier,
 - 1) inspect same; and
 - 2) note any claim for damage to, shortage, breakage or other nonconformance of the Materials to the terms and conditions of the order on the carrier's delivery receipt.
- b. Kellett shall not be responsible for any such claim, which shall be the sole and exclusive responsibility of the carrier.

B. No credit will be allowed on claims of error or shortage of the Materials unless reported at time of delivery. Kellett shall deliver the Materials curbside at the Customer's designated location, or as close to curbside as is accessible to Kellett's delivery vehicle(s).

C. If the Customer requests delivery of the Materials other than curbside, then the Customer must provide safe access therein and shall defend, indemnify and hold Kellett harmless from all liability, claims, actions and damages associated therewith, including the risk of damage to the premises and the cost of towing Kellett's vehicle(s) if stuck or immobilized.

III. PAYMENTS

A. Any sale of Materials on open account shall be in accordance with the terms and conditions of Kellett's credit application. Unless otherwise stated, terms are NET 10th Prox. Charges made during a calendar month are due and payable by the 10th of the following month. No discounts are allowed.

B. A sale on open account is subject to a service charge of one and one-half percent (1-1/2%) per month (APR 18%), which will be added on all accounts that are not paid within the terms.

- C. If Kellett retains an attorney to protect its rights with regard to payment for the Materials, including but not limited to:
1. sending a notice to owner and/or notice to contractor when permitted or required by applicable law,
 2. filing a lien, bond claim, statement of claim or privilege or sworn statement of claim or privilege,
 3. filing a lawsuit on the Customer's account, and/or
 4. executing upon a judgment rendered against Customer,
- then the Customer shall pay Kellett's costs and expenses incurred thereby, including a reasonable attorney's fee, plus interest and costs.

IV. TAXES

Customer shall pay to Kellett the amount of any and all taxes, excises, or other charges that Kellett may be required to collect for any government, national, state or local agency, or measured by the production, sale, transportation, delivery or use of the Materials.

V. RESTOCKING CHARGE

- A. Materials returned by Customer for refund must be intact, in like new condition and accompanied by the Customer's copy of Kellett's original sales ticket or invoice number.
- B. A twenty percent (20%) restocking charge can be assessed by Kellett on all returned Materials and deducted from Customer's refund.
- C. Kellett will accept no returns after thirty (30) days from delivery of the Materials.
- D. Materials specially or custom ordered, or not ordinarily kept in Kellett's stock, are not returnable, under any circumstances.
- E. Customer agrees to accept Kellett's count on Materials returned.

VI. EVENTS BEYOND KELLETT'S CONTROL

- A. Kellett shall have no liability or responsibility for failure to deliver Materials timely or at all if delivery is made impracticable by the occurrence of any one or more of the following contingencies:
 1. fire, flooding, inclement weather, hurricane, tornado, earthquake or other *force majeure*;

2. war, riot, civil commotion, embargo, new governmental regulations or martial law;
 3. inability to obtain Materials (finished or otherwise) from Kellett's usual sources;
 4. labor stoppage affecting supply, access to, manufacture or delivery of Materials;
 5. shortage of carriers, trucks, or fuel;
 6. delays in transit not the fault of Kellett; and/or
 7. other contingencies of manufacture or shipment whether or not of a class or kind mentioned herein and not reasonably within Kellett's control.
- B. No modification of these "Terms and Conditions of Sale" shall be effected by the acceptance or acknowledgment of a purchase order specifying different conditions, and no modification shall be effective unless in writing and signed by an officer of Kellett.

VII. WARRANTY

- A. **THIS WARRANTY IS MADE IN LIEU OF ANY OTHER WARRANTY OR CONDITIONS, INCLUDING MERCHANTABILITY OR FITNESS OF THE MATERIALS FOR A PARTICULAR OR INTENDED USE AND/OR PURPOSE.**
- B. **THE REMEDIES UNDER THIS WARRANTY ARE EXCLUSIVE. BY ACCEPTING DELIVERY OF THE MATERIALS, THE CUSTOMER AGREES TO THESE CONDITIONS AND WAIVES ANY OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED OR IMPLIED.**
- C. **THE CUSTOMER (OR CUSTOMER'S END USER) SHALL HAVE THE EXCLUSIVE RESPONSIBILITY FOR RECEIVING, DETERMINING AND VERIFYING THAT THE MATERIALS ARE SUITED FOR CUSTOMER'S PARTICULAR OR INTENDED USE AND/OR PURPOSE.**
- D. **KELLETT WILL NOT BE RESPONSIBLE FOR COSTS OF MATERIAL AND/OR LABOR AND/OR DAMAGES CAUSED BY INSTALLATION OF THE INCORRECT PRODUCTS OR FOR MISUSE, MISAPPLICATION OR IMPROPER INSTALLATION OF THE MATERIALS.**

- E. CUSTOMER ASSUMES ALL RISK AND LOSSES WITH RESPECT TO RESULTS OBTAINED BY THE USE OF THE MATERIALS, WHETHER USED ALONE OR IN A COMBINATION WITH OTHER PRODUCTS.**
- F. NO CLAIM OF ANY KIND WHATSOEVER, WHETHER BASED ON BREACH OF WARRANTY, THE ALLEGED FAULT, LIABILITY AND/OR NEGLIGENCE OF KELLETT OR OTHERWISE, WITH RESPECT TO MATERIALS DELIVERED, OR FOR FAILURE TO DELIVER ANY MATERIALS, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE HEREUNDER OF THE MATERIALS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.**
- G. CUSTOMER SHALL DELIVER TO KELLETT WRITTEN NOTICE OF ANY CLAIM PERTAINING TO THE MATERIALS WITHIN THIRTY (30) DAYS AFTER DELIVERY OF THE MATERIALS FOR WHICH A CLAIM IS MADE.**
- H. CUSTOMER'S FAILURE TO GIVE KELLETT TIMELY NOTICE OF A CLAIM SHALL CONSTITUTE A WAIVER BY CUSTOMER OF ALL CLAIMS WITH RESPECT TO SUCH MATERIALS.**

VIII. ESTIMATES

- A. Kellett, at Customer's request, may provide a material takeoff estimate and/or engineered wood product (EWP) layout as a courtesy, but does not warrant or guarantee the accuracy of its Estimates or layouts.
- B. Kellett may revise, amend, correct or withdraw its Estimate at any time.
- C. Every Estimate and EWP layout should be reviewed and approved by a qualified design professional or engineer. Once approved, EWP designs should be made a part of the plans and specifications before use in any project.
- D. Kellett does not guarantee that the Materials set forth in its Estimate are of sufficient quality or quantity to complete construction of the project.
- E. The Customer is responsible for verifying sizes, quantities, dimensions, bearings, capacities, loads (tensile or compressive) and layouts prior to ordering, purchasing or using the Materials.
- F. Unless otherwise set forth in the Estimate, Kellett does not warrant the Materials for resistance and/or exposure to fire, water, rain, rot, moisture, sunlight or infestation by insects or other pests.