

DELTA MILLWORKS
General Terms and Conditions of Sale

1. Applicability.

(a) These terms and conditions of sale (these “Terms”) are the only terms which govern the sale of the goods (“Goods”) by Delta Millworks U.S., LLC (“Seller”) to the buyer (“Buyer”) designated on the attached invoice (the “Order”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The Order and these Terms (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) The goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods FOB Seller’s facility located at 4701 East 5th Street, Austin, Texas 78702 (the “Shipping Point”) using Seller’s standard methods for packaging and shipping such Goods. Title and risk of loss of the Goods will pass to the Buyer upon such delivery by the Seller. The Seller will not be liable for any losses, damages, penalties or expenses for failure to meet any delivery date.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(d) If the Buyer fails to accept delivery of the Goods by the date that Buyer requested, the Seller may impose a monthly charge equal to the greater of (i) five percent (5.0%) of the purchase price or (ii) \$400 per crate after such date until the Buyer accepts delivery.

3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from the Shipping Point is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Inspection.

(a) Buyer shall have the right to immediately inspect the Goods with regard to any defects upon arrival at Buyer’s facility, but in any case, no later than ten (10) business days after delivery of the Goods (the “Inspection Period”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “Nonconforming Goods” means only the following: (i) product shipped is different than identified in the Order; or (ii) the condition, quality or grade of the Goods or non-conformance to the Order. Seller may, at its option, inspect the Goods at Buyer’s facilities to confirm that the Goods are Nonconforming Goods.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with

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any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its risk of loss, the Nonconforming Goods to Seller's facility located at 4701 East 5th Street, Austin, Texas 78702. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's risk of loss, the replaced Goods. Seller may elect to charge Buyer for the expenses of shipping any Nonconforming Goods or replaced Goods under this Section 4(b).

(c) Buyer acknowledges and agrees that the remedies set forth in Section 4(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 4(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

5. Price and Payment Terms.

(a) Buyer shall purchase the Goods from Seller at the price(s) (the "Price(s)") set forth in the Order. If the Price should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased price(s) were originally inserted in the Order, and Buyer shall be billed by Seller on the basis of such increased price(s).

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

(c) Buyer shall pay all invoiced amounts due to Seller on the terms specified in the Order. Buyer shall make all payments hereunder in US dollars. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

(d) As collateral security for the payment of the Price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Texas Uniform Commercial Code.

(e) Buyer acknowledges that all deposits made with respect to the Goods are nonrefundable.

6. Resale and Reproduction. Buyer will not resell or re-label the Goods under any other name than "Delta Millworks." Buyer acknowledges that Seller maintains the sole and exclusive right to reproduce the Goods. Accordingly, Buyer will not attempt to copy or reproduce the Goods in any way.

7. Disclaimer of Warranty; Due Diligence.

(a) Seller warrants to Buyer that for a period of twelve (12) months from the date of shipment of the Goods (the "Warranty Period"), that such Goods furnished hereunder will materially conform to the specifications contained in the Order. Otherwise, the Goods are being sold "as is," and Seller disclaims all other warranties of quality, whether express or implied, and any variation in color, tone, grain, or other natural characteristics contingent on the Seller's grading standards.

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (III) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY;] WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

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(c) The Seller shall not be liable for a breach of the warranty set forth in Section 7(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective. The Seller shall not be liable for a breach of the warranty set forth in Section 7(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(d) Subject to Section 7(c) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the Price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller. THE REMEDIES SET FORTH IN SECTION 7(D) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 7(A).

(e) The Buyer acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Goods and that no such statements or representations have been made. The Buyer acknowledges that it has relied solely on the investigations, examinations, and inspections as the Buyer has chosen to make and that the Seller has afforded the Buyer the opportunity for full and complete investigations, examinations, and inspections.

8. Limitation of Liability; Indemnification.

(a) IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES (WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, OR OTHER FORM OF ACTION) AND IRRESPECTIVE OF WHETHER THE SELLER HAS BEEN ADVISED, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF ANY SUCH DAMAGE. IN NO EVENT WILL THE SELLER'S LIABILITY EXCEED THE PRICE THE BUYER PAID TO THE SELLER FOR THE SPECIFIC GOODS PROVIDED BY THE SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER REMEDIES.

(b) Buyer acknowledges that the Goods of Seller are natural products, which are subject to degradation and changes over time as any other naturally occurring product. Seller will fill the Order from Buyer, but will not otherwise guarantee the Goods other than as expressly set forth herein under the limited warranty below. Buyer acknowledges that many factors affecting the Goods are outside the control of Seller and are naturally occurring, such as temperature, moisture, transportation, and the condition of the wood at the time received by Seller, none of which can be controlled by Seller. Therefore, Seller has no liability whatsoever for these naturally occurring conditions or the effect that they may have on the Goods. In addition to the other disclaimer provisions set forth herein, Seller offers certain guidance in its installation and maintenance guidelines ("Guidelines") provided to the Buyer at the time of purchase, but these do not constitute a warranty or guarantee regarding the Goods being sold.

(c) Seller accepts no liability or responsibility to any harm to people or damage to property that may result from the use or additional processing of the Goods. Seller shall not be responsible for any damage or injury resulting to or caused by any products for any reason, including without limitation, by reason of installation by Buyer, improper storage, unauthorized service, alteration of the products, neglect or abuse or the use of the products in a manner inconsistent with its design, and any other items referenced in the Guidelines.

(d) Buyer shall indemnify, defend, and hold Seller, its officers, employees, directors, representatives, shareholders, agents, successors and assigns harmless against any and all losses, claims, damages, judgments, liabilities, or expenses, including, without limitation, reasonable attorney fees and expenses, incurred by Seller as a result of or arising out of: (i) Buyer's breach of any of this Agreement; (ii) the use of the Goods by Buyer or any other third party; or (iii) any act or omission of Buyer or its agents, employees, representatives or subcontractors.

9. Limitation of Actions. No action arising out of or relating to this Agreement or the transactions it contemplates may be commenced against the Seller more than twelve (12) months after the basis for such claim could reasonably have been discovered.

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10. Governing Law and Designation of Forum. The laws of the State of Texas, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance, and enforcement. A party bringing a legal action or proceeding against the other party arising out of or relating to this Order or the transactions it contemplates must bring the legal action or proceeding in any court of the State of Texas sitting in Travis County. Each party to this Order consents to the exclusive jurisdiction of the courts of the State of Texas sitting in Travis County and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this Order or the transactions it contemplates.

11. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail (with confirmation of receipt) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

12. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

13. Entire Agreement. This Agreement and any such amendments attached hereto and accepted by both parties constitutes the final written expression of all terms between the parties regarding the subject matter thereof and is a complete and exclusive statement of those terms.

14. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. 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 all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section 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.

16. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

17. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

18. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

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19. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

20. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information Governing Law and Designation of Forum, and Survival.