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## **TERMS AND CONDITIONS OF SALES (September 2018)**

Certified Wood Products, Inc.<sup>TM</sup> (CWPI<sup>TM</sup>) is a supplier and distributor of Division 06 forest products and related building products and materials.

**We want our transactions with you to be positive and transparent. We have developed these Terms and Conditions of Sales so that you know what you can expect from us and so that you know how best to work with us to buy the forest products that meet the needs of your project. Our goal is to be your long-term business partner and these Terms and Conditions of Sales will help facilitate our relationship with you. Thank you for choosing us to be your supplier of Division 06 and related building products and materials!**

So ... our transactions with you, our customer (referred to as “buyer” in this document), are governed by the following Terms and Conditions of Sales. Your purchase of products/materials from us signifies your acceptance and adherence to these Terms and Conditions of Sales. In this document, the terms “product” and “material” are used interchangeably.

Please read these Terms and Conditions of Sales carefully and contact us with any questions, concerns or need for clarification: 320-963-1500.

From time to time, we may need to modify these terms and conditions. The current version will be posted on our website or given to you by email, fax, postal delivery, etc.

### **GENERAL TERMS**

CWPI's Order Acknowledgement documents the sale between you as buyer and CWPI as seller. Order Acknowledgements are entered with the understanding that buyer understands, agrees with, accepts and will comply with these Terms and Conditions of Sales, unless otherwise agreed in writing between buyer and CWPI. CWPI may cancel any order because of buyer's failure to comply with any of the terms in this Terms and Conditions of Sales and CWPI's Order Acknowledgement and CWPI's Invoice terms. CWPI's cancellation rights are not its exclusive remedy and it retains all other rights and remedies available to it.

- A Quotation will be finalized on CWPI's Order Acknowledgement by the deadline stated in the Quotation. The Order Acknowledgement must be accepted by buyer either through signing and returning the Order Acknowledgement to CWPI or by granting approval of the Order Acknowledgement to CWPI through buyer's email.
- Once CWPI places a custom order with its vendors, the order cannot be cancelled or terminated except upon payment for CWPI's loss, damage and expenses arising from the cancellation/termination.
- If buyer cancels a non-custom order after it has been shipped to buyer or if buyer refuses delivery, the cancellation will be treated as a return. The buyer is responsible for paying CWPI all applicable costs and fees - including restocking and cancellation fees.
- Order modifications are handled on a case by case basis with both appropriate and prior CWPI's and buyer's written approvals and documentation.

- Modifications include Change Orders. CWPI recognizes that the signer of the Change Order is the authorized signer with full authority to approve the order, shipment and payment for any and all material ordered through the Change Order.
- Products sold by CWPI will be free and clear of all liens and encumbrances.
- If applicable and upon request, CWPI will provide the buyer with available Material Safety Data Sheets.
- If buyer's project is subject to the Buy American Act, CWPI will supply buyer with only domestic grown and harvested forest products.
- CWPI complies with The Lacey Act.
- CWPI's sale of products is never subject to a Master Contract, or any other contract, between the buyer and his/her client, owner, sub-contractor, etc.
- Buyer's acceptance of purchased products, from CWPI, will not constitute CWPI's acceptance of any buyer's additional or different terms or conditions, not specifically accepted in writing, by CWPI, in advance of the purchase.

CWPI may be asked to estimate project needs for the product it will be supplying – and we can do that!

- All quantities stated by CWPI are good faith estimates only. Buyer is responsible for determining and ordering the actual items and the actual quantities required for completion of the scope of the work.
- Prices quoted are based upon the items and quantities shown on CWPI's Order Acknowledgement.

### **SHIPMENT AND DELIVERIES**

- If buyer requests product be delivered by a certain date, buyer must discuss with CWPI to verify product and shipping availability. CWPI makes every effort to supply buyers what they need and when they need it. However, all listed shipping and delivery times are good faith estimates only and cannot be guaranteed by CWPI. CWPI is not liable for costs or damages incurred by buyer by reason of delay or untimely delivery. When CWPI learns of a delay in shipping or delivery, it will notify buyer as soon as reasonably possible.
- In the rare occurrence that the ordered product becomes unavailable, CWPI will work with buyer to find an acceptable replacement product or, if necessary, cancel the order. CWPI is not liable for costs or damages incurred by buyer due to product change or unavailability.
- Once Orders have been placed, products are shipped via common carrier freight or dedicated truck load carrier unless otherwise specified. CWPI may ship the entire order at one time or any portion(s) of the order on one or more vehicles within the requested time of shipment and/or loading agreed upon in the Order Acknowledgement.
- Freight deliveries that are dock to dock require the receiving party to remove the product from the truck via a loading dock or with a forklift. For residential (or other non-dock) deliveries, the freight company is required to move the product to the tailgate of the truck and the receiving party is required to unload the product.
- In the case of offshore shipments, if the buyer's choice of port is unavailable to CWPI, CWPI will choose an alternate port of arrival and will notify the buyer of the required change and any additional transportation costs for the port changes.
- Buyer, or buyer's representative, must sign the Pick List and/or Bill of Lading upon receipt of the product.

### **INVOICE AND PAYMENT TERMS**

- New customers need to complete an Application for Credit which includes a credit check and an agreement to abide by these Terms and Conditions of Sales. When approved, CWPI will notify the customer via letter.
  - Based on purchasing history, customers may be asked to complete a new Application for Credit.
- All shipments are subject to CWPI's prior approval of buyer's credit. If not approved, or at any time buyer's credit worthiness becomes impaired or unsatisfactory, other arrangements may be discussed and approved by CWPI.
- Billing:
  - Invoices are issued to the buyer on CWPI's Invoice document when the product is shipped. Buyer is accountable and responsible for paying any and all Invoices issued by or on behalf of CWPI.
  - CWPI Order Acknowledgements and Invoices are never subject to "Paid When Paid" and/or "Paid If Paid" conditions. CWPI sells the buyer on good faith that the buyer will pay CWPI for any and all products and

materials they purchase from us, per CWPI's Invoice terms. When buyer places an order with CWPI, buyer agrees to pay CWPI per CWPI's Invoice terms.

- o If CWPI submits Invoices to the buyer through the AIA Application for Payment form, the buyer is accountable and responsible for paying CWPI for any and all submitted Invoices. Any and all Invoices that CWPI submits through the AIA Application for Payment form are never subject to "Paid When Paid" and/or "Paid If Paid" conditions. CWPI considers submittal through the AIA Application for Payment Form to be a submitting process only and not an approval process. Approval for payment was given when the order was placed per the Order Acknowledgement, Change Order or Contract.
- o Invoices are payable in USA currency unless otherwise agreed to in writing.
- When requested, CWPI will provide the buyer with a Lien Waiver for payment received and honored by CWPI's bank. CWPI will waive only payment lien rights and only for the period of work for which payment was made. No additional contractual terms, written in the Lien Waiver, will be approved by CWPI –lined out or not lined out by CWPI on the Lien Waiver form.
- Buyer is liable for all expenses (including legal fees) incurred by CWPI in collecting past due amounts from buyer.
- Terms are 1% 10 Days (ADF, ADT & ADI) or Net 30 from the Invoice date, unless otherwise agreed to in writing and/or noted on the Invoice.
  - o ADF means After Deducting Freight, ADT means After Deducting Taxes and ADI means After Date of Invoice.
- CWPI Order Acknowledgements, Change Orders and Invoices, including invoices submitted through an AIA Application for Payment form, are never subject to "Paid When Paid" and/or "Paid If Paid" conditions. CWPI sells the buyer on good faith that the buyer will pay CWPI for any and all products and materials they purchase from us. When buyer places an order with CWPI, buyer agrees to pay CWPI per CWPI's Invoice terms.
- No Retainage may be withheld by buyer.
- All amounts due bear interest during the time they remain unpaid and may be charged interest at a rate of 1.5% per month (18% per annum).
- If buyer fails to make payments according to the terms agreed upon, CWPI will defer or cancel further shipments until such payments, including interest and cancellation fees, are made. CWPI may pursue other available remedies.
- CWPI may cancel any order upon buyer's filing for bankruptcy, appointment of a receiver or otherwise becoming subject to third party administration. Cancellation fees will apply.

### **TAXES & DUTIES**

- All applicable taxes are paid by buyer. If buyer is exempt from tax liability, the appropriate exemption form needs to be completed and submitted to CWPI in advance of invoicing.
- For shipments to any foreign nation, all applicable duties, VAT, taxes and charges are paid by buyer in addition to the price of the products/materials.

### **RETURN OF PRODUCTS OR MATERIALS**

- CWPI cannot accept returns on custom orders.
- For non-custom orders, CWPI has a 30-day return policy, subject to its prior written approval, a 20% restocking fee and pre-paid return freight. CWPI may refuse returns if the product/material is not in re-saleable condition per CWPI's standards of quality.
- CWPI will not accept the return of products that have been changed, altered, damaged, marred, stained, discolored, etc., due to care, handling, storage, use, etc., once the products/materials have been delivered to the buyer at the site designated by the buyer.

### **CLAIMS**

CWPI wants buyers to get the product they ordered per the specifications agreed to in the Order Acknowledgement. We make every effort to keep claims from happening. We work very hard to rectify any claims or disputes that rarely, but can, happen.

- In the case of a dispute or claim concerning the product's grade, shipments are subject to reinspection by the agency which published the rules under which the product is graded. The conclusion from a reinspection by such agency, or any other re-inspector agreeable to both buyer and CWPI, shall be taken as a basis for final settlement.
- Buyer shall promptly unload, properly store, handle, care for and cover by insurance any shipments which are the subject of a dispute or claim. Buyer shall document all claims and disputes with photos of the product that is at the subject of a dispute or claim. Unless otherwise agreed upon between buyer and CWPI, disputes and claims are addressed in accordance with the reinspection rules of the agency which published the rules under which the product is graded. Buyer shall pay invoices when due.
- Buyer shall promptly inspect for product defects upon delivery of the product. Product disputes and claims must be made within 20 days of delivery of the product. CWPI will deem that good delivery was made if no dispute or claim is made within this time limit.
- In the event of a dispute or claim, 100% of the product must be available for inspection or buyer's right to a dispute or claim is forfeited. Buyer must make full payment for the product, when due, under CWPI's Invoice terms.
- If the quantity delivered is proven to be less than the contracted amount, CWPI will, without delay, make good the shortage unless the shortage is acceptable to buyer, or for some reason, the product is no longer available. In the case of a tally discrepancy, buyer must call CWPI within 20 days of delivery. Buyer will be invoiced only for the exact quantity delivered. Buyer shall make payment, when due, under the terms of the Invoice.
- If buyer makes any disputes or claims, buyer shall make full payment for the shipment in accordance with the terms of payment contained in the Invoice. Buyer is not entitled to deduct, from the price invoiced to it by CWPI, the amount of any claim made, unless CWPI has agreed, in writing, to such deductions.
- If buyer rejects the delivered product for proven defective quality, or rejection is awarded by inspections, CWPI will, without delay, replace the defective product or issue a credit note to the buyer equal to the value of the defective product. If the defective quality is proven, but does not result in buyer's rejection of the product, buyer may pay a negotiated reduced value for the defective product and will not be entitled to any other compensation.
- If the buyer wishes to remedy any defective or damaged product, CWPI must approve any changes to the invoiced cost of the product prior to such remedy/repair, if applicable. CWPI is not responsible for any direct or indirect results or consequences of buyer's remedies.

## **FREIGHT AND SHIPPING**

Freight is FOB delivered unless stated otherwise. If buyer requests product to be shipped from or delivered to a location other than the quoted shipping point, buyer is responsible for any additional freight cost.

Unfortunately, but rarely, items may be damaged in transit. Please inspect the product as soon as possible after delivery. If you believe the product is damaged in any way, please do not refuse the product.

- If you believe product damage occurred during transit, ask the delivery carrier to immediately inspect the product. All damage must be noted on the Delivery Receipt (Bill of Lading) in detail and signed by the delivery carrier.
- All freight claims must be submitted to CWPI, via email or phone contact, within 48 hours of delivery or delivery carriers may deny the claim.
- A copy of the Delivery Receipt must be faxed, emailed or mailed to CWPI in order for a damage claim to be filed with the delivery company and in order for replacement product to be sent to the buyer.
- Buyer should photograph the damaged product on the truck and off the truck for evidence that will assist with a product damage claim. Photos must be emailed or mailed to CWPI.
- The delivery carrier has the right to inspect and/or claim 100 % of the product if a damage claim is filed. Failure to allow this may forfeit the claim. Damaged product may need to be shipped back to CWPI.
- Should buyer refuse the product, this does not excuse buyer of re-delivery or return shipping costs and fees.

## **FORCE MAJEURE**

CWPI is not responsible for any direct or indirect damages caused by delays beyond the control of CWPI. This includes:

- “Force Majeure” - any Act of God, or governmental agencies, war, mobilization, strike, lockout or other labor disturbance, drought, flood, total or partial fire, obstruction of navigation, strike at port of loading or discharge, or loss, damage or detention at sea, reduction, suspension or shutdown of operations, other contingencies/causes, etc., beyond CWPI’s control which prevents the order, manufacture, shipment and/or delivery of product, or beyond the buyer’s control which prevents the receipt of product.
- Buyer or CWPI, as the case may be, may suspend performance under CWPI’s Order Acknowledgement for a Force Majeure event with neither party being responsible to the other party for any damage resulting from such suspension. CWPI may, without liability, cancel such portion of its contracted volume with buyer which, as a consequence of a Force Majeure event, could not be obtained or delivered through CWPI.
- Buyer or CWPI, as the case may be, will give prompt notice to the other party of any Force Majeure event which may affect the performance under the Order Acknowledgment and also when such Force Majeure event ceases, and as soon as practicable, notify to what extent it will be necessary to suspend or cancel any order volume. When any suspensions are concluded, shipments will be resumed according to the Order Acknowledgment, unless the ordered product/material cannot be obtained or delivered through CWPI as a consequence of a Force Majeure event. CWPI will coordinate shipments with the buyer.

### **LIMITED LIABILITY**

- CWPI has no control, responsibility or accountability over the handling and use of the products it sells the buyer. Once product is delivered to the buyer’s location of choice, CWPI assumes no liability for any direct, indirect, incidental or consequential loss, damage or expenses connected with the product’s care, handling, storage, installation, use, application, resale, physical or chemical change/alteration to the product, or inability to use, etc. Buyer takes full responsibility for product once delivered on-site, except as noted in the Claims section.
- CWPI’s liability for personal injury and/or property damage arising from the purchase of products distributed by CWPI will be limited to the damages that are proven to have resulted from the gross negligence of CWPI or its directors, officers or employees. CWPI’s liability to buyer will never exceed the purchase price of the products sold to buyer.
- CWPI makes no warranty, express or implied, as to the suitability, sufficiency or fitness for any application, purpose or use of any product. These are at the discretion of the buyer, not CWPI.

### **CONDUCT BUSINESS WITH US ETHICALLY AND TRANSPARENTLY**

We help our customers be successful by learning about their needs and their customers’ needs and consulting with them to make the right product purchases for function, quality and market value. We like to be flexible in our approach in order to accommodate our buyer’s schedules and pressures. We commit to do business with our buyers/customers with a high degree of integrity and transparency. We expect buyers, in return, to do the same. This means:

- All the information provided us by the buyer (written and/or verbal) is complete, accurate and not false or misleading.
- We are not responsible for plans, drawings and specifications that do not work. We rely on the adequacy and accuracy of all plans/drawings/specifications and purchase orders we receive. Therefore, we will not incur any damages, costs or fees for project delays if plans/drawings/specifications and purchase orders do not work and need to be revised. However, we will make every reasonable effort to assist the buyer in finding a remedy.
- Our general practice is to supply products to buyers only after they have accepted our Order Acknowledgement. On occasion, however, buying requests (including Change Order types of purchases) are made verbally or through an informal email. We trust these requests are made honestly and honorably. Buyers, therefore, must honor their requests by paying for any and all products they purchase from us – no excuses, no exceptions and no delays in paying invoices. And of course, buyers agree to these Terms and Conditions of Sales when they purchase products from us.
- If a signed Change Order is required for buying products from us, but not forthcoming, we will not be able to supply the products until we receive the signed Change Order. We will not incur any damages, costs or fees for resulting project delays.

## **CLAIMS, GOVERNING LAW AND VENUE**

CWPI's goal is to provide excellent service and quality products to its customers. Current customers refer us to others because of this. Consequently, we want to settle, amicably and with integrity, any dispute or claim that arises from either party from the transaction this Terms and Condition of Sales applies to - - our history and our reputation speak to this!

We desire and encourage honest and direct negotiations and discussions in a cooperative manner and good faith effort so that our business relationships with our buyers can be productive, meaningful and positive – and ethical!

- If, however, this proves impossible, buyer and CWPI each agree to participate, in good faith, in non-binding mediation upon the written request of the other party.
- If a mutual resolution is not agreed upon through mediation, the buyer and CWPI each agree to enter into binding arbitration, using the current Construction Industry Arbitration Rules of the American Arbitration Association, or buyer and CWPI may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the buyer and CWPI.
- This document will be governed by and construed under the laws of the State of Minnesota and will be venued in the Minnesota District Court for Hennepin County, Minnesota or the federal District Court for the District of Minnesota.