

CLARKWESTERN DIETRICH BUILDING SYSTEMS LLC – STANDARD TERMS AND CONDITIONS OF SALE

- 1. Terms of Agreement:** The sale, shipment and delivery by Clarkwestern Dietrich Building Systems LLC (“Seller”) of products (“Products”) will be subject only to and governed exclusively by the terms and conditions set forth herein and in Seller’s quotation or acknowledgement, as applicable. **THE ACCEPTANCE OF ANY OFFER MADE BY SELLER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY ACCEPTANCE BY SELLER IS MADE EXPRESSLY CONDITIONAL UPON THE PURCHASER’S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN.** Any terms and conditions contained in the Purchaser’s purchase order, request for quotation or other document which are different from, in addition to, or vary Seller’s terms and conditions shall not be binding upon Seller and Seller hereby objects thereto. Any conduct by Purchaser which recognizes the existence of a contract between Seller and Purchaser including, without limitation, acceptance of delivery of any of the Products, shall be conclusive evidence of Purchaser’s acceptance of, and assent to, the terms and conditions set forth herein. Any cancellation or amendment to an order must be approved by Seller in writing and may be subject to restocking charges and other charges. Seller reserves the right to cancel an order upon breach thereof by the Purchaser, failure by the Purchaser to make payment required by an order or any other agreement, or the insolvency or bankruptcy of the Purchaser. Purchaser shall not return any products without Seller’s prior written authorization and such return may be subject to restocking charges and other charges.
- 2. Prices:** Unless otherwise noted, all prices are F.O.B. point of shipment. Prices do not include any present or future applicable Federal, state, or local sales, use, excise, value added or other tax or charges. Seller shall have the right to invoice separately any such tax or charge as may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same applies. Purchaser agrees to indemnify and save Seller harmless for any such taxes or charges.
- 3. Payment Terms:** Payments to Seller are due 30 days after the invoice date, unless otherwise agreed in writing. A finance charge of 1 1/2 % per month (an annual percentage rate of 18%), but not more than the maximum rate permitted by law, may be charged on all past due accounts and Purchaser shall pay Seller all costs incurred in collecting any past due amounts from Purchaser, including court costs and attorney fees. If, in the opinion of Seller, the financial condition of Purchaser at any time fails to justify the terms of payment specified, Seller reserves the right to require full or partial payment or other adequate assurance of performance from Purchaser before goods are manufactured or shipped. In addition, seller may terminate any and all discounts, incentive programs or other special payment provisions offered to Purchaser.
- 4. Delivery Terms:** Shipping and delivery dates, if any, are approximate and are given by Seller in good faith, but are not guaranteed unless otherwise specifically agreed in writing. If delivery as originally scheduled is delayed by Purchaser, Seller may invoice Purchaser and store the Products at Purchaser’s expense. Delay in the delivery of the Products hereunder shall not relieve Purchaser of its obligations to accept and pay for products under any other agreement or purchase order.
- 5. Product Warranty:** Seller warrants to Purchaser only the Products to be free from defects in material and workmanship for a period of one year from the date of delivery, subject to Seller’s standard manufacturing and commercial variations and practice. **SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING THE PRODUCTS AND EXPRESSLY DISCLAIMS ALL OTHER IMPLIED OR EXPRESS WARRANTIES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller’s Product warranty does not apply to any Product to the extent it has been subject to (1) other than normal wear and tear, or (2) improper installation, alteration, modification, or repair, tampering, negligence, abuse or accident, or (3) improper storage. **LIABILITY IS LIMITED TO REPAIR OR REPLACEMENT, AT SELLER’S OPTION, OF ANY DEFECTIVE PRODUCT.** Seller will repair or replace, at its option, Products which upon inspection it finds to be defective, based on claims made in writing to Seller within a reasonable time after discovery. Products alleged to be defective must be returned, freight prepaid, within thirty (30) days to Seller with the return authorization number, obtained from Seller, clearly marked on the outside of the return container for repair or replacement by Seller. **THE ABOVE WARRANTY SHALL CONSTITUTE PURCHASER’S EXCLUSIVE REMEDY WITH RESPECT TO THE PRODUCTS FURNISHED HEREUNDER. IN NO EVENT SHALL SELLER BE LIABLE OR RESPONSIBLE TO PURCHASER OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY OF LAW, EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGES, ALL SUCH DAMAGES AND CLAIMS BEING SPECIFICALLY DISCLAIMED. IN NO EVENT SHALL SELLER’S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT.**
- 6. Notice: Time Limitations:** Purchaser shall have ten (10) days from delivery of the Products to inspect the Products and notify Seller of any nonconformity. Failure to provide notice as provided herein shall constitute a waiver by Purchaser of any claims with respect to nonconforming Products. All claims for shortage or errors must be made within ten (10) days from delivery of the Products. **ALL CLAIMS WITH RESPECT TO THE PURCHASE AND USE OF THE PRODUCTS, WHETHER BASED ON CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE MUST BE MADE WITHIN TWELVE (12) MONTHS OF THE ACCRUAL OF THE CAUSE OF ACTION.**
- 7. Force Majeure:** Seller shall not be liable for damages or delays in performance due to circumstances beyond its reasonable control, including without limitation, any priority system established by any governmental agency, fires, floods, storms and other acts of God, labor disruptions (including strikes, lockouts, and slowdowns), terrorism, war, shortages of materials, lack of transportation, inability to procure power, supplies or raw materials, severe weather conditions, substantial increase in price of power, raw materials or supplies, and failure of performance of subcontractors and/or suppliers for similar reasons. Failure of Seller to perform for these reasons aforesaid shall not be grounds for Purchaser’s cancellation of an order but the delivery date shall be extended accordingly.
- 8. Indemnification:** Purchaser agrees to indemnify and hold harmless Seller from any and all claims or liabilities asserted against Seller in connection with the manufacture, sale, delivery or repair of any Products furnished by Seller, arising in whole or in part out of or by reason of the failure of Purchaser, its agents, servants, employees or customers to follow instructions, warnings or recommendations furnished by Seller in connection with such Products (including but not limited to failure to comply with the American Society for Testing and Materials – ASTM #C754, 8.1 Product Storage Standard) or by reason of the failure of Purchaser, its agents, servants, employees or customers to comply with all applicable Federal, state and local laws applicable to the installation and use of the Products (including but not limited to all building codes and the Occupational Safety and Health Act of 1970), or by reason of the negligence of Purchaser, its agents, servants, employees or customers.
- 9. Miscellaneous:** Seller’s failure to insist, in one or more instances, upon the performance of any term or terms contained herein shall not be construed as a waiver or relinquishment of its rights to such performance or the future performance of such term or terms and Purchaser’s obligation with respect thereto shall continue in full force and effect. Any notice or other communication from Purchaser required or permitted hereunder shall be given in writing by registered or certified mail, postage prepaid, to Seller at its business address. The invalidity, in whole or in part, of any provision of these terms and conditions shall not affect the validity or enforceability of any other of its provisions. All transactions shall be governed by the laws of the State of Ohio (including, without limitation, the provisions of the Ohio Uniform Commercial Code), without giving affect to any conflict of law rule or principle of such state. The United Nations Convention for the International Sale of Goods shall not apply to this agreement.