

# SALES TERMS AND CONDITIONS

## (Non-Structural Mass Plywood Panels)

- 1. Complete Terms:** These Sales Terms and Conditions govern sales by *Freres Lumber Co., Inc.* ("**Freres**") to \_\_\_\_\_ ("**Buyer**") and constitute the entire binding agreement between Freres and Buyer and sales of products, including non-structural mass plywood panels, crane mats and the like ("**product**") to Buyer are conditioned on Buyer's acceptance of all and only these terms. This agreement is final and can only be modified or superseded in writing and signed by both Freres and Buyer. To the extent that these Sales Terms and Conditions conflict with, or are different from those contained in any order, procurement document, Buyer's website or otherwise, these terms and conditions will control. Excluding product price and quantity stated in an order accepted by Freres in writing, any other terms, obligations, promises, statements, representations or warranties, whether oral or written, that are not contained within these Terms and Conditions are void and shall be of no force or effect.
- 2. Terms of Payment:** Buyer shall make payments in accordance with the schedule included in Quote issued by Freres. Should an invoice be issued, payment shall be due upon receipt of invoice or as indicated in Quote and/or invoice. Except as otherwise agreed in writing, the Buyer agrees that there shall be no retention or holdback of the purchase price for product. If Buyer fails to pay any sum owed hereunder when due, interest shall accrue to Freres' credit on such sum at the rate of one and one-half percent (1.5%) per month (18% per annum) or the maximum rate permitted by applicable law. If Freres, in its sole discretion, finds it necessary to employ an attorney and/or collection agency to collect any past due sum owed hereunder, it may collect, in addition to any other sum owed hereunder, reasonable attorney's fees and costs.
- 3. Limited Warranty:** FRERES EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO SALES TO BUYER, IN WHOLE OR IN PART, IN ANY MANNER. However, Freres warrants that the quantity of product supplied shall conform to Buyer's order.
- 4. Exclusive Remedies:** Buyer's remedies for breach shall be limited to replacement by Freres of the product involved (to point of delivery specified in the applicable accepted order) or, at Freres' option, return by Freres to Buyer of the purchase price of the products involved in such breach. IN NO EVENT WILL FRERES BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED FROM ANY CAUSE OR ARISING OUT OF ANY LEGAL THEORY, WHETHER CONTRACT, NEGLIGENCE, STRICT TORT LIABILITY, OR OTHERWISE. IN NO EVENT SHALL FRERES BE LIABLE IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE PRODUCT. THESE LIMITATIONS INCLUDE ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS. ANY LAWSUIT BY CUSTOMER AGAINST FRERES SHALL BE FILED WITHIN ONE (1) YEAR FROM SHIPMENT OF THE SUBJECT PRODUCT BY FRERES.
- 5. Product Use/Liability:** Buyer acknowledges that product is not structurally rated or graded material and Buyer represents that it will not use or resell the product for use in any type of structural application. Buyer hereby assumes all liability and risk associated with the sale or use of the product. Buyer is solely responsible to determine the proper implementation, use and storage of the product.
- 6. No License:** The sale of its product by Freres does not constitute a license, implied or otherwise, for the use of any patents, patents-pending, processes, or know-how of Freres.
- 7. Title/Shipping:** Freres will convey good and marketable title of product to Buyer. Sales are FOB Freres' plant (Lyons, Oregon); however upon Buyer's request, Freres may arrange a carrier(s) to transport the product to Buyer's specified location. Title to and risk of loss or damage will pass to Buyer upon Freres' delivery of product to carrier. In all cases, Buyer will be responsible for making claims against carrier; provided, however, that Freres will provide reasonable assistance with any such claims. In all instances, Buyer will be responsible for the cost of freight, but Buyer may have it included in the total amount being invoiced by Freres and reflect it as "prepaid". Any estimated shipping dates provided by Freres are approximate. Freres will make commercially reasonable efforts to meet estimated shipping schedules, if any, but shall otherwise not be responsible for any damages related to delayed shipping.
- 8. Product Handling:** Protection of the product is the sole responsibility of Buyer. All products sold by Freres, whether wrapped or unwrapped, are subject to staining and mold. Seller makes no representations or warranties of any kind concerning existence or nonexistence of staining or mold and Buyer waives and releases any such claims. Buyer is solely responsible to determine adequate protections of product from moisture exposure during transit, storage, and use, including without limitation, transit to, storage at, and use on any jobsite.

9. **Material Safety Data Sheet (MSDS):** Buyer will familiarize itself with all information and precautions disclosed in safety and health information, including, but not limited to, any MSDS, transmitted to Buyer by Freres, or any information supplied to Buyer by Freres or otherwise available to Buyer from Freres at any time. The MSDS is available for Buyer's review on Freres' website at <https://frereslumber.com/products-and-services/plywood/>.
10. **Seller's Lien:** Until the purchase price is paid in full by Buyer, Freres shall have a lien on the products sold for all unpaid amounts. Buyer grants to Seller a security interest in the products to secure payment of such amounts.
11. **Acceptance:** Buyer shall accept or reject products within five (5) days of receipt. Failure to notify Freres in writing of nonconforming product within such period shall be deemed an unqualified acceptance.
12. **Cancellation:** Buyer's order may only be cancelled only by mutual written consent of the parties. If Buyer requests cancellation for any reason after fabrication is initiated, Buyer shall pay to Freres the full purchase price payable pursuant to the order for any wholly or partially completed product.
13. **Taxes:** All sales, use, excise, value added, goods and services, transfer or other forms of taxes levied against transactions under this agreement shall be the sole responsibility of and will be paid directly by Buyer.
14. **Indemnity:** Buyer will indemnify, defend, and hold harmless Freres and its directors, officers, employees, agents, stockholders, affiliates, successors and assigns from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys' fees, expenses and court costs) which arise out of, relate to or result from Buyer's or Buyer's customer's use of the products or any act or omission of Buyer.
15. **Waiver:** No waiver of any provision of these Terms and Conditions shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
16. **Excused Performance:** If Freres is delayed in the performance of its work by reason of unavailability of materials, war, terrorism, pestilence, act of God, mechanical malfunction, accident, fire, explosion, public protest, or governmental actions or legislation, then either: (a) Freres may, at its sole and non-reviewable discretion, terminate the order in which case the Buyer shall only be responsible for payment for the product delivered; or (b) the estimated shipping schedule shall be extended by the length of such delay without penalty or consequence to Freres.
17. **Governing Law/Venue:** Transactions under this agreement shall be governed by the laws of Oregon. In any action or proceeding, including any arbitration (if arbitration is mutually agreed to by the parties), seeking to enforce any provision(s) of, or based on any right(s) arising out of, or related to or concerning the subject matter of this agreement, the parties hereto consent to the exclusive jurisdiction of the courts of the State of Oregon and of any duly appointed arbitrator. In any such action or proceeding, venue shall lie exclusively in Linn County, Oregon, and in no other location.



**WARNING:** Drilling, sawing, sanding or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or other safeguards for personal protection. For more information go to [www.P65Warnings.ca.gov/wood](http://www.P65Warnings.ca.gov/wood).

**FRERES LUMBER CO., INC.:**

**BUYER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_