

STANDARD TERMS AND CONDITIONS OF SALE

1. **BUYER'S PURCHASE ORDER** – Buyer's purchase order, based upon O'Keeffe's Inc.'s ("Seller") quotation, is hereby accepted, without any accompanying terms and conditions; this sale is made pursuant to these Standard Terms and Conditions of Sale ("Terms and Conditions"). Buyer has read, understands, and accepts these Terms and Conditions. Should Buyer accept Seller's quotation but use its own form for purchase, it is understood and agreed that these Terms and Conditions govern and preempt Buyer's terms and conditions.
2. **BUYER SUPPLIED SPECIFICATIONS** – Seller is not responsible to ensure that any plans and/or specifications supplied to Seller meet applicable laws, statutes, ordinances, codes, rules, and/or regulations. Plans and specifications provided to Seller are accepted for design and construction purposes only. Seller is a manufacturer and not responsible for any field measurements, scheduling, and/or coordination with any trades affected by the goods purchased by Buyer from Seller. If Seller is requested to prepare shop drawings, Buyer shall timely provide all necessary plans, specifications, and pertinent information to Seller. Seller's approved shop drawings shall govern, and supersede all plans, specifications, and information supplied by Buyer.
3. **SITE STRUCTURAL DESIGN AND ON-SITE WORK** – Site structural design and on-site work, including, but not limited to, framing, steel erection, concrete work, masonry work, and adjoining construction, necessary for the installation of Seller's goods, are excluded. Site structural design and on-site work must be adequate to support Seller's goods. If additional structural support or other structural elements are required for the installation of Seller's goods, such support, and all associated costs and time impacts are the sole and exclusive responsibility of others. Seller is not responsible for any on-site structural calculations or structural considerations. If it is determined that changes are required in the layout, configuration, aesthetic design, fabrication, and/or schedule of Seller's goods, such changes may entail additional costs, and must be agreed to and approved by Buyer and Seller in writing.
4. **TESTING AND MOCK-UPS** – Any testing, mock-ups, engineering, and/or project related fees are the sole and exclusive responsibility of Buyer. Buyer and Seller may agree to testing, mock-ups, engineering, and/or other project related fees if specifically described in detail and included in Seller's quotation, or negotiated and agreed to in writing at a later date.
5. **CREDIT APPROVAL** – Shipments, deliveries, and the performance of any work by Seller shall be at all times subject to Seller's review and approval of a completed credit application from Buyer. Any delay in receiving credit information from Buyer may delay Seller's fabrication of goods. Seller may delay making any shipment or delivery, or performing any work, if payment terms are not adhered to.
6. **TERMS OF PAYMENT** – Orders may be subject to a mutually agreed upon payment schedule, or invoices may be presented for work completed to date. Should Buyer fail to make timely payment against any invoice, Seller's fabrication or delivery of goods may be affected. Buyer agrees to participate in a joint check agreement when requested. Payment to Seller is not contingent upon payment to Buyer from any third party. No retention shall be withheld from any payment due Seller. Delinquent accounts may be placed on hold, result in a revocation of credit terms, or require payment in advance for future orders. Payments later than terms established will accrue interest, compounded daily, at 10 percent per year (.833% per month). Buyer agrees to pay any collection costs, including reasonable attorneys' fees and costs, incurred by Seller to enforce these Terms and Conditions.
7. **TAXES, BONDS, AND PERMITS** – Unless otherwise stated, taxes, bonds, and permits are excluded from the purchase price. Sales or other taxes, which Seller may be required to pay or collect for the account of Buyer shall be paid promptly upon request. To support any claimed use for sale or resale, where tax is not applicable to Buyer, a tax exemption certificate acceptable to the appropriate taxing authorities shall be provided.
8. **INDEMNIFICATION** – Buyer shall indemnify and hold harmless Seller and its directors, officers, employees, agents, stockholders, affiliates, subcontractors, and customers from and against all allegations, claims, actions, suits, demands, damages (including liquidated damages), liabilities, obligations, losses, settlements, judgments, costs, and expenses (including, without limitation, attorneys' fees and costs) which arise out of, relate to, or result from any act or omission of Buyer in its handling, provision, construction, or installation of the goods provided by Seller.
9. **CANCELLATION** – If Buyer cancels an order purchased or contracted for, Buyer shall pay Seller a cancellation fee of 10% or four times the direct costs of work performed at the time of cancellation, up to the full amount of the order.
10. **SHIPMENT** – Unless otherwise stated, standard transportation costs are included in Seller's quotation. These goods are sold FOB Origin, and risk of loss shall transfer to Buyer upon delivery of the goods to a common carrier. Seller's responsibility for the goods ceases upon delivery of such goods in good order to the common carrier. If Buyer requests a specific mode of transportation, special handling or shipping terms, and/or insurance, Buyer must notify Seller in writing prior to shipment. Buyer agrees to pay all additional costs incurred for any such special requests or instructions. Should Buyer be unable to take receipt of the goods due to construction schedule delays or lack of storage at destination, Seller may charge storage fees to Buyer.
11. **FREIGHT CLAIMS** – Upon receipt of the goods, Buyer shall inspect the exterior of the crate or container and document any damage on the carrier's bill of lading or delivery receipt. Buyer must open the crate or container and fully inspect all goods for damage, shortage, and/or other non-conformity upon delivery. If damage, shortage, and/or other non-conformity exist, it is Buyer's sole responsibility to report to and/or file a claim with the carrier. In addition, Buyer must notify Seller in writing of such damage, shortage, and/or other non-conformity within twenty (20) business days of delivery. Seller shall not approve credits for freight damage from the purchase price. If Buyer fails to notify carrier and Seller of the foregoing, Buyer shall have been deemed to have accepted the goods as delivered and waives any and all claims that Buyer may otherwise have against Seller due to damage, shortage, and/or other non-conformity. Seller shall not accept goods for return after such goods are accepted by Buyer. Buyer agrees and acknowledges that the rights provided in this provision are Buyer's exclusive and sole remedies due to damage, shortage, and/or other non-conformity.

12. **MAINTENANCE, CLEANING, PROTECTION, AND STORAGE** – Buyer agrees and acknowledges that the maintenance, cleaning, protection, and storage of the goods, including special storage instructions, are the sole responsibility of Buyer after delivery, including any breakage or damage occurring after the goods have been delivered.
13. **WARRANTY** – Seller provides no warranty except for Seller's "Limited Warranty", which shall commence from the date of delivery, and which supersedes and stands in place of any and all other warranties. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO ANY OF THE GOODS, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY UNDER TORT, CONTRACT, OR ANY OTHER THEORY FOR LOSS OF BUSINESS OR PROFIT, OR ANY OTHER ECONOMIC LOSS OR ANY INCIDENTAL, DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. BUYER HOLDS SELLER HARMLESS UNDER ALL CONDITIONS COVERED HEREIN. SELLER'S WARRANTY DOES NOT APPLY TO PRODUCTS WHICH HAVE BEEN ALTERED, CONVERTED, OR CHANGED BY BUYER.
14. **BACKCHARGES** – Buyer waives the right to any and all backcharges, or any other claim not specifically covered under Seller's warranty.
15. **DELAY/FORCE MAJEURE** – Seller shall not be liable for any delay in shipment or delivery caused by acts of God, action by any governmental authority (whether valid or invalid), natural disasters (including, but not limited to, fires, floods, windstorms, and earthquakes), explosions, riots, wars, sabotage, labor issues (including strikes and lockouts), delays in transportation, unavailability of materials, or court any liability for damage or loss incurred by Buyer due to such delay.
16. **CHANGES TO SELLER'S QUOTATION** – Any changes after Buyer's acceptance of Seller's quotation shall require a written change order signed by Buyer and Seller. NO VERBAL CHANGES ARE VALID.
17. **ENTIRE AGREEMENT/MODIFICATIONS** – These Terms and Conditions constitute the complete and final agreement between Buyer and Seller with respect to the subject matter hereof, and supersede all prior oral or written agreements, and may not be modified or amended by any form of Buyer; it may only be amended by a writing signed by Seller and entitled "Modification to Terms and Conditions". Seller does not incorporate herein, or accept any terms of, or obligations under, any contract, subcontract, or plans or specifications for any project for which Buyer intends to use Seller's product.
18. **WAIVER/ASSIGNMENT** – Waiver by Seller of any provision hereunder shall not be deemed a waiver of the right to require future compliance with any provision of these Terms and Conditions. No right or interest in these Terms and Conditions shall be assigned by Buyer, and no delegation of any obligation by Buyer shall be made without the prior written consent of Seller. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes unless made in conformity with this provision.
19. **SEVERABILITY** – If any provision within these Terms and Conditions is determined to be invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions of these Terms and Conditions shall be unaffected, and such provision shall be reformed to the extent necessary to be valid, legal, and enforceable.
20. **GOVERNING LAWS/JURISDICTION** – These Terms and Conditions are governed by the laws of the State of California without regard to conflict of law principles. Any controversy or claim arising out of or relating to this order, or the performance or breach thereof, shall be settled by arbitration by a single arbitrator, administered in San Francisco, California, by the American Arbitration Association, in accordance with its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof located in San Francisco, California, and both parties to this agreement stipulate to the jurisdiction of those courts. The arbitrator shall base his or her decision on California substantive law.
21. **ENFORCEABILITY** – If the Buyer fails to perform in any way under or with respect to these Terms and Conditions, Seller expressly reserves any and all rights and remedies permitted by law, and may recover all reasonable attorneys' fees, court fees, or any other costs incurred to enforce Buyer's obligations under or with respect to these Terms and Conditions. All rights and remedies of Seller are cumulative.
22. **RELATIONSHIP OF THE PARTIES** – Buyer is an independent contractor and not an employee, agent, or partner of Seller, and nothing contained in these Terms and Conditions shall make either party the agent or legal representative of the other for any purpose whatsoever.
23. **AUTHORITY** – Buyer warrants that the person accepting Seller's quotation and these Terms and Conditions on its behalf is duly authorized to do so. The signature by Buyer or Buyer's authorized representative on Seller's quotation establishes acceptance of these Terms and Conditions.