



All sales of construction products by East Jordan Iron Works, Inc. ("Seller") are made on the following terms and conditions. In these Terms of Sale, any construction product materials sold by Seller to the buyer named in Seller's quotation or acknowledgment ("Buyer") are referred to below as "goods."

1. **Prices.** Prices do not include (i) any applicable sales, use or other tax or (ii) the cost of non-returnable pallets, separators, tops, wire-bound boxes or any other special containers. Such items may be invoiced separately.

2. **Quotations.** Quoted terms shall remain in effect for 30 days or such other time as is stated on Seller's quotation. Seller's quotations require Seller's interpretation of the materials required by the plans or specifications provided by Buyer or Buyer's representatives. Seller makes no representations or warranties as to the accuracy or appropriateness of Seller's quotation. Stenographical and clerical errors in quotations are subject to correction. Buyer shall be solely responsible for determining the materials and quantities required for a particular project or order. Seller's quotation is based on various business factors and considerations and may not be used by any other contractor or any other person or entity without Seller's written consent. All orders placed pursuant to a quotation are subject to approval by Seller's credit department and must be accepted in writing by an authorized representative of Seller.

3. **Payment Terms.** Unless otherwise specified in Seller's quotation or acknowledgment, payment in full of the price is due at the location designated by Seller thirty (30) days after shipment of the goods, as evidenced by Seller's signed or unsigned delivery tickets or delivery records. Any payment that is not made when it is due shall accrue a finance charge of 1-1/2% per month. Seller may require payment in advance or withhold future deliveries upon any late payment or reasonable uncertainty as to Buyer's ability to pay. Seller may change its quoted prices upon an unusual or unforeseen increase in Seller's costs.

4. **Delivery and Risk of Loss.** Unless otherwise agreed in writing, Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Seller's facility indicated on Seller's quotation or acknowledgment. Seller shall use reasonable commercial efforts to meet scheduled shipping, delivery and performance. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right, but not the obligation, to determine the method of shipment and routing of the goods, unless otherwise stated in Seller's quotation or acknowledgment. Buyer or its carrier shall be responsible for supervising the loading of goods and for securing all loads for safe transport, and shall indemnify and hold Seller harmless from any liability for personal injury, death or property damage resulting from the loading, transport or delivery of the goods.

5. **Unavoidable Delay.** If Seller is not able to finish and deliver the goods to Buyer, or to perform the services, on time because of anything Seller cannot control (such as casualty, labor trouble, accidents, unavailability of supplies or transportation, or Buyer's failure to approve production samples), then the estimated delivery or performance time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay.

6. **Defects; Remedies.** Buyer agrees to inspect the goods immediately upon receipt of such goods from Seller. If any item of goods that

is manufactured by Seller and is not subject to alteration, improper installation, abuse or misuse proves to be defective (as defined below) within five days following the date of shipment and prior to installation (in the case of a patent defect) or one year following the date of shipment (in the case of a latent defect), and if Buyer gives written notice to Seller of such defect within that period and does not alter the goods, then Seller shall, at Seller's option, either repair or replace the defective item, at Seller's expense. Hydrants and valves manufactured by Seller shall have a warranty period of ten years. Seller shall not be responsible, however, for the expense of locating or removing the defective goods or re-installing any repaired or replacement goods. Notice of a breach of Seller's warranty must be made in writing addressed to Seller, setting forth sufficient detail to permit identification by Seller of the claimed defect. Samples should accompany such notification. If Buyer alters the goods or fails to notify Seller within the one year period following shipment of the goods, or if the goods are installed improperly, then any claim for breach of warranty shall be conclusively deemed to have been waived by Buyer with respect to the alleged defect. In the event of a defect in any goods constituting a breach of the warranty provided herein, Seller shall furnish instructions for the disposition of the defective goods. Seller shall have the option of requiring the return of the defective goods, transportation prepaid, and proof that the goods were not altered or subject to misuse or abuse to establish the claim. No goods shall be returned to Seller without its prior consent. The acceptance of any goods returned to Seller shall not be deemed an admission that the goods are defective or in breach of any warranty, and if Seller determines that the goods are not defective, they may be returned to Buyer at Buyer's expense.

If Seller fails to repair or replace any defective item within a reasonable time, then Seller shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by a third party, or (ii) that part of the purchase price of the defective goods that shall have been paid by Buyer, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least fifteen (15) days prior written notice, during which time Seller may repair or replace the defective item. An item shall be considered "defective" if it is found by Seller to have been defective in materials or workmanship and if the defect materially impairs the value of the goods to Buyer, except that the goods shall not be defective to the extent that (i) they conform with drawings of or specifications for or a sample of goods that have been approved by Buyer, (ii) they are inspected and not rejected by governmental authorities upon final installation, (iii) they conform with goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by Buyer or (iv) they are damaged due to the method or length of storage or in the course of installation. Seller does not warrant the workmanship of others who have performed work on or installed the goods. If Buyer's representative agrees, either orally or in writing, to a change in or waiver of the specifications for any item of goods, then such goods shall not be considered defective to the extent they conform to the specifications as so changed or waived. This paragraph sets forth Buyer's sole and exclusive remedies for any defect in the goods. Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the goods. Any statements to the contrary are hereby rendered null and void unless made in a writing signed by an authorized officer of Seller.

7. **Limitations.** EXCEPT AS STATED IN PARAGRAPH 6, SELLER DOES NOT MAKE ANY WARRANTY AS TO THE GOODS OR SERVICES AND, IN

PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS. Seller's warranty applies only to goods that it manufactures. All other goods are sold AS IS, without warranty; provided, however, that Seller assigns to Buyer any warranties provided by the manufacturers of such goods, to the extent that they are assignable. Seller shall not have any tort liability to Buyer or any other person with respect to any of the goods and shall not be liable for consequential, incidental, special, exemplary, indirect or punitive damages arising from any product defect, delay, nondelivery, recall or other breach.

8. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Seller retains a security interest in the goods to secure payment of the price and all other indebtedness that Buyer now and in the future owes to Seller.

9. **Resale.** On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent that Paragraphs 6 and 7 above limit Buyer's rights and remedies.

10. **Quantities.** Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods (subject to any adjustment under the preceding sentence) must be submitted to Seller in writing within five days after Buyer receives the goods. If Buyer fails to do so, then it shall be conclusively presumed that the proper quantity was delivered.

11. **Tooling.** If Seller imposes and Buyer pays a separately-identified charge for tooling to be used in the manufacture of the goods, then the tooling shall be the property of Buyer, subject to the following: (1) risk of loss of the tooling shall at all times remain with Buyer; (2) Seller retains a security interest in the tooling to secure all obligations that Buyer at any time owes to Seller; (3) Buyer shall not have any right to possess the tooling as long as Seller has any outstanding obligation to sell to Buyer goods whose manufacture requires use of the tooling; (4) Buyer shall reimburse Seller on demand for all costs of modifications of the tooling that are made reasonably necessary by changes in the specifications for the goods; and (5) upon Seller's demand, Buyer shall immediately remove the tooling from Seller's premises, at Buyer's expense, and if Buyer fails to do so within ten days after that demand, then Seller may destroy or otherwise dispose of the tooling, without further notice or liability to Buyer.

12. **Cancellation; Returns.**

(a) Buyer does not have any right to cancel its agreement to buy the goods or services from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts that Seller determines) for (1) the realizable value to Seller of any standard components that Seller purchased or ordered before cancellation, (2) the realizable scrap value to Seller of the remaining material and tooling that Seller purchased, fabricated or ordered before cancellation and (3) any direct labor costs that Seller saved by reason of the cancellation.

(b) Buyer may not return any custom or labeled goods. All other resaleable and undamaged goods are subject to return only for credit

and only with Seller's prior written consent. Seller may request certain information from Buyer prior to authorizing a return, and may impose a restocking fee.

(c) If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller, then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell goods or services to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

13. **Indemnity.** Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including attorney fees, that Seller incurs as a result of Buyer's breach of any of Buyer's obligations under these Terms of Sale or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods, or performance of the services, to Buyer's specifications.

Seller shall indemnify and hold harmless Buyer with respect to all damages, losses, claims and expenses, including attorney fees, that Buyer incurs as a result of Seller's breach of any of Seller's obligations under these Terms of Sale.

14. **Seller's Rights.** Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right.

15. **Time For Bringing Action.** Any action that Buyer brings against Seller for breach of this Agreement or for any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery or the services must be brought within one year after the cause of action accrues.

16. **Applicable Law.** This agreement between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in Charlevoix or Kent County, Michigan that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

17. **Complete Agreement; Amendment.** If Buyer has not otherwise agreed to these Terms of Sale, then Buyer's acceptance of delivery of, or payment for, the goods or services shall constitute Buyer's agreement to these Terms. This agreement will not be amended or supplemented by additional or inconsistent terms contained in a purchase order or another standard form. The terms on Seller's quotation and acknowledgment and these standard Terms of Sale contain the entire agreement between Buyer and Seller. Any change in this agreement must be by a writing signed by an authorized officer of Seller.

VISIT OUR WEBSITE AT [EJIW.COM](http://EJIW.COM) FOR CURRENT TERMS AND CONDITIONS.