

TERMS AND CONDITIONS

1. Deliveries shall be as ordered by Buyer, provided that each order placed by Buyer with GAF Materials LLC (“Seller”) hereunder shall be subject to acceptance by Seller as to quantity, delivery and description. Seller reserves the right not to ship in any one month more than a prorated amount of the maximum quantity of each item of merchandise covered hereby. Seller also reserves the right not to ship to any customer of Buyer.
2. Seller will deliver the merchandise F.O.B. Seller’s place of business. Title to and risk of loss, damage or destruction of or to any of the merchandise will pass to Buyer upon such delivery by Seller. Any stated delivery dates are approximate. Seller will not be liable for any losses, damages, penalties or expenses for failure to meet any delivery date or for failure to perform due to causes beyond the reasonable control of Seller nor shall the carrier be deemed an agent of Seller. In the event of delay caused by such event, the date of delivery shall be extended for a period equal to the time lost. If the merchandise perished while in the custody of the carrier, the Seller shall be deemed to have performed its obligations in full. Delivery of a quantity, which varies from the quantity specified, shall not relieve Buyer of the obligation to accept delivery and pay for the merchandise delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.
3. If Buyer is in default under this or any other contract with Seller, or if Seller at any time shall not be satisfied with Buyer’s financial condition, Seller shall have the right, without prejudice to any other legal remedy, to declare all amounts shown on the face of the invoice to be due and payable immediately, to suspend deliveries hereunder until such default or condition is remedied, or to decline to make further deliveries except upon receipt of cash or security satisfactory to Seller, or upon notice to Buyer at any time during the continuation of such default or condition, to treat same as equivalent to a definite refusal by Buyer to perform any further.
4. Buyer shall pay to Seller the amount of any and all taxes, excises, or other charges which Seller may be required to pay to or to collect for any government, national, state or local, upon, or measured by, the production, sale, transportation, delivery or use of the merchandise sold hereunder.
5. Seller shall have the right to increase any or all of the prices stated herein without prior notice to Buyer. Such price or prices shall be paid for all merchandise shipped hereunder on and after the date the increase becomes effective. If Seller desires to increase any price specified herein pursuant to any provision hereof, but is prevented from doing so by any law, government decree, order or regulation, or any court order, judgment or decree, or if any price at any time in effect hereunder is nullified or reduced by reason of any law, government decree, order or regulation, or any court order, judgment or decree, Seller shall have the right to terminate this contract as to such merchandise by giving 30 days prior written notice to Buyer.
6. Neither party shall be liable for delay or failure to perform in whole or part by reason of contingencies beyond its reasonable control, whether herein specifically enumerated or not, including among others, flood, earthquakes, elements of nature or acts of God, acts of war, terrorism, revolution, civil commotion, riot, acts of public enemies, blockade or embargo, delays of carriers, car shortage, fire, explosion, breakdown of plant, failure of sources of supply of labor, raw materials, power or supplies, or excessive cost thereof, contingencies interfering with the production or with customary or usual means of transportation of the merchandise herein described, or with the supply of coal or fuel or any raw material of which sold articles are a product or which may be used in their manufacture, delays of vendors, or, where merchandise covered hereby is not manufactured by Seller, then lack of failure of sources of supply of said merchandise, or by reason of any law, order, proclamation, regulation, ordinance, demand, requisition or requirement or any other act of any governmental authority, national, state, or local, including court orders, judgments, or decrees, or any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of the party. Quantities so affected may be eliminated by Seller from this contract without liability. If by reason of any of the foregoing contingencies or of national emergency, the quantities of merchandise covered hereby, or any materials used in the production thereof, reasonably available to Seller shall be less than Seller’s total needs for its own use and for sale, Seller may distribute its available supply, among any or all purchasers or Seller’s own departments, divisions, or branches, on any basis Seller deems fair and practical, without liability for any failure to perform this contract which may result therefrom.
7. Seller reserves the right to discontinue, without liability hereunder, deliveries of any merchandise, the manufacture, use and/or sale of which, in the opinion of Seller, would infringe any patent now or hereafter issued and under which Seller is not licensed.
8. BUYER ACKNOWLEDGES THAT ITS USE OF THE MERCHANDISE IS AT ITS OWN RISK. THE MERCHANDISE IS BEING SOLD ON AN “AS IS,” “WHERE IS” BASIS WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR CONDITION ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AND SELLER HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES. BUYER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED BY ANY STATEMENTS OR REPRESENTATIONS OF ANY PERSON WITH RESPECT TO THE QUALITY OR CONDITION OF THE MERCHANDISE AND THAT NO SUCH STATEMENTS OR REPRESENTATIONS HAVE BEEN MADE. FURTHERMORE, SELLER MAKES NO WARRANTY REGARDING THE USE, OR THE RESULTS TO BE OBTAINED FROM THE USE, OF THE MERCHANDISE. BUYER’S SOLE AND EXCLUSIVE REMEDY ARISING OUT OF OR RELATED TO THIS CONTRACT OR THE TRANSACTIONS IT CONTEMPLATES, REGARDLESS OF THE THEORY ON WHICH A CLAIM MAY BE BASED, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, CONTRACT, BREACH OF WARRANTY, STRICT PRODUCT LIABILITY OR MISREPRESENTATION, IS THE PURCHASE PRICE STATED ON THE FRONT OF THE INVOICE IN RESPECT OF WHICH DAMAGES ARE CLAIMED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF OR RELATED TO THIS CONTRACT OR THE TRANSACTIONS IT CONTEMPLATES, REGARDLESS OF THE THEORY ON WHICH A CLAIM MAY BE BASED, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, CONTRACT, BREACH OF WARRANTY, STRICT PRODUCT LIABILITY OR MISREPRESENTATION, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. BUYER’S FAILURE TO GIVE WRITTEN NOTICE OF ANY CLAIM WITHIN SIXTY (60) DAYS AFTER DELIVERY OF THE MERCHANDISE SHALL CONSTITUTE AN UNQUALIFIED ACCEPTANCE OF THE MERCHANDISE AND WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT THERETO.
9. This document sets forth the entire understanding of the parties and supersedes (a) all prior or contemporaneous understandings, negotiations, representations, whether oral or written, and dealings between the parties with respect to the purchase and sale of the merchandise covered herein; and (b) any terms and conditions contained in your order. Any modification to this contract will not be effective unless contained in a writing signed by Seller and Buyer. NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS THAT MAY BE EMBODIED IN YOUR ORDER, THIS ACCEPTANCE IS EXPRESSLY CONDITIONAL ON YOUR ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SET FORTH HEREIN. IF THESE TERMS AND CONDITIONS ARE NOT ACCEPTABLE, YOU SHOULD NOTIFY US AT ONCE.
10. This contract is not assignable by Buyer, in whole or part, except with the prior written consent of Seller.
11. If any provision of this contract shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
12. The validity, interpretation, performance and enforcement of this contract and any disputes arising from or in connection with the contract or any transaction contemplated thereunder, whether in contract, tort or other legal theory, shall be governed by the laws of the State of New York, without

giving effect to its conflict of laws provisions. The parties expressly exclude the application of the *United Nations Convention on Contracts for the International Sale of Goods (1980)*. BUYER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK. NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND REGARDLESS OF THE CLAIMS INVOLVED, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL.