

SALES TERMS AND CONDITIONS

(Structural Mass Plywood Panels)

- 1. Complete Terms:** These Sales Terms and Conditions apply to all quotes and govern sales by **Freres Lumber Co., Inc. dba Freres Engineered Wood ("Freres")** to _____ ("**Buyer**") and constitute the entire binding agreement between Freres and Buyer regarding sales of structural mass plywood panels, crane mats and the like (the "**Product(s)**"). This agreement is final and can only be modified or superseded in writing and signed by both Freres and Buyer.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 the 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 the Products.
- 3. Limited Warranty: THE WARRANTIES IN THIS SECTION ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE PRODUCT, IN WHOLE OR IN PART, IN ANY MANNER.**

Freres warrants that the Product will be free from any defects in materials or workmanship for the expected life of the structure when properly stored, used and installed pursuant to all Product reports and/or specifications. In the case of a defect or defects in materials or workmanship, Freres' sole responsibility shall be to repair or replace the individual Products.

Written notice of any claim under this limited warranty must be delivered to Freres within thirty (30) days of discovery of the alleged defect, and Buyer must afford Freres a reasonable opportunity to inspect the Product in its unaltered condition to evaluate the claims.

There are no other warranties, either of merchantability or fitness, either expressed or implied, other than those explicitly set forth in this section. If the Product is (i) not used in strict conformance with Buyer's design professional's engineering, design or load limits; (ii) is in any way altered; (iii) is not properly handled and stored or otherwise not maintained, used, or installed in accordance with the instructions and specifications of the design professionals; or (iv) defective or fails as a result of, in whole or in part, Buyer's or Buyer's design professional's engineering or design specifications, construction methods, site conditions, exposure to elements, moisture, fire or natural disaster, then all limited warranties are void and Buyer shall be deemed to have waived and released Freres from any liability or claims associated with purchase and use of the Product.

BUYER ACKNOWLEDGES THAT FRERES HAS NO CONTROL OVER INSTALLATION, ENGINEERING, CONSTRUCTION METHODS, SITE CONDITIONS OR OTHER CIRCUMSTANCES RELATED TO THE USE OF THE PRODUCT. AS A RESULT, NO OTHER WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, ARE GIVEN.
- 4. Disclaimer of Warranty for Parts / Parts Indemnification: FRERES MAKES NO WARRANTIES OF ANY KIND OR NATURE CONCERNING ANY PARTS MANUFACTURED OR DELIVERED BY ANY THIRD PARTY. FRERES HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR ANY PARTS MANUFACTURED OR DELIVERED BY ANY THIRD PARTY.**

If Parts are included in the Product purchase order, Freres shall assign and transfer to Buyer, without recourse or liability, any express warranties (if any) Freres received for those Parts from the manufacturer of any Parts. Buyer shall indemnify, defend and hold Freres, its subsidiaries and affiliates, and their

directors, officers, employees and agents harmless from and against any and all claims, demands, complaints or actions, including but not limited to, actions by third parties, arising from or relating to any Parts purchased by Buyer in connection with the use or purchase of the Products, including claims resulting from personal injury, death, products liability, property damage or damage to the environment.

- 5. Exclusive Remedies / Limitation of Liability:** SUBJECT TO NOTICE REQUIREMENTS CONCERNING LIMITED WARRANTY CLAIMS, BUYER'S REMEDIES FOR ANY BREACH OF CONTRACT, PRODUCTS LIABILITY OR NEGLIGENCE, STRICT LIABILITY SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCT INVOLVED OR, AT FRERES' SOLE OPTION AND DISCRETION, RETURN BY FRERES TO BUYER OF THE PURCHASE PRICE PAID FOR ANY INDIVIDUALLY DEFECTIVE PRODUCTS. THESE LIMITED REMEDIES SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY GIVING RISE TO THE CLAIM OR LIABILITY.

IN NO EVENT WILL FRERES BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, DELAY, LIQUIDATED, 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 TO BUYER IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE PRODUCT. THESE LIMITATIONS INCLUDE ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OR OF ANY LIMITED REMEDY PROVIDED HEREIN.
- 6. Product Use / Liability:** Buyer acknowledges that the Product is structurally rated according to the APA Product Report PR-L337 Revised April 12, 2024 (the "**APA Report**"). Buyer will familiarize itself with all information contained in the APA Report including, but not limited to, the Product description, design properties, installation recommendations, limitations, design values, and other reports contained in the APA Report, and furthermore shall be solely responsible for implementing the Product into any design or construction project. The APA Report is available for Buyer's review on Freres' website at: <https://frereswood.com/products-and-services/mass-ply-products/mass-ply-panel/>. Freres reserves the right to update the APA Report at any time without notice to Buyer.
- 7. Title / Shipping:** Freres will convey good and marketable title of Product to Buyer. Sales are FOB Freres' plant at 40519 S. Cedar Mill Road, Lyons, Oregon. Upon Buyer's request, Freres may arrange a carrier(s) to transport the Product to Buyer's specified location. Buyer shall pay Freres commercially reasonable detention fees if unloading of the Product takes longer than 2 hours for reasons outside of Freres' control. Upon transfer to the carrier, all right, title and interest in the Product shall be deemed transferred to the Buyer and all risk of loss or damage will pass to Buyer. 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. 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. Storage:** Upon request, Freres may, at its option, store completed Product at Freres' plant for up to 20 days following completion. Additional storage is subject to availability for an additional fee at the discretion of Freres. Buyer shall pay Freres' standard rates for storage, unless otherwise specified in the Product purchase order. All such storage will be outside Freres plant. Freres shall take reasonable steps to protect the Product during storage pending shipment; however, Buyer assumes all risk of damage or loss, including, without limitation discoloration and staining, that may occur during the storage period. If Buyer fails to pay for storage permitted by Freres, Freres may, after 10 days' notice to Buyer, dispose of the Products in a commercially reasonable manner and charge Buyer for the costs of disposal.
- 9. Design Professionals & Coordination:** Buyer shall be solely responsible to verify that any final shop drawings, if applicable, provided by the Buyer or Buyer's Design Professionals are accurate, satisfy all

applicable construction and building codes and do not diminish the structural integrity of the Product for its intended use. Coordination between Buyer's design professionals, contractors, and all other trades and subcontractors is the sole responsibility of the Buyer.

- 10. Construction Contracts:** Buyer acknowledges that Freres has no knowledge of the terms, conditions or scope of work of any other contracts unless expressly accepted by Freres in writing. Freres shall not be bound by the terms and conditions of any general contract or subcontract between the Buyer and third parties. It is the sole responsibility of the Buyer to inform Freres of any contracts and/or their schedule terms, conditions or scope of work that may reasonably impact Freres' performance under the Product purchase order. In no event, shall Freres be responsible to Buyer or any third party for any damages related to delayed manufacture, CNC Modifications, and/or shipping of the Product and Freres shall not be bound to, or liable for damages of any kind whatsoever, under any other construction contract or schedule.
- 11. 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. There shall be no offsets, holdbacks or reductions in payment as a result of any damage, staining, discoloration or any other defect of the Product that occurs after shipment or otherwise as a result of failure to protect the Product. Freres 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.
- 12. 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://frereswood.com/products-and-services/plywood/>.
- 13. 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. Freres may notify creditors or other parties and record a financing statement to perfect such security interest. Buyer agrees to assist Freres in taking all necessary steps to perfect and maintain said security interest in the Product, and until Freres is paid in full, to protect Freres' interest by adequately insuring the Product against loss or damage with Freres as named insured or co-insured.
- 14. Indemnification:** Buyer shall defend, indemnify, and hold Freres, its subsidiaries and affiliates, and their directors, officers, employees, and agents (hereinafter referred to as "Indemnitees"), harmless from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, orders, and damages of any kind and nature whatsoever (the "Claims") arising out of any act or omission of Buyer, or Buyer's design professionals, contractors or agents or out of the purchase, sale, manufacture, CNC modifications or use of the Product, or otherwise arising under any purchase order or project, including claims of third parties, and including, but not limited to, claims arising from property damage, products liability, personal injury or death, fines, penalties, expenses, costs of litigation, and attorneys' fees and costs. Buyer shall further defend, indemnify and hold Indemnitees harmless against all claims arising out of any alleged design or engineering defect related to the specifications provided by Buyer, or its design professionals, agents, or contractors, including CNC specifications. Such indemnification specifically includes Indemnitees' own products liability and, to the extent permitted by applicable law, negligence whether the claims resulted from the sole actions of Indemnitees or from the actions of Indemnitees combined with Buyer, and/or Buyer's design professionals, agents, or contractors. Buyer shall further defend, indemnify and hold Indemnitees harmless against any and all claims seeking damages or remedies in excess of the limited warranty described herein.
- 15. Termination:** If Buyer terminates the Product purchase order for any reason after manufacturing of the Product is initiated, Buyer shall pay to Freres the full purchase price payable pursuant to said purchase order for any wholly or partially manufactured Product, together with any damages claimed against Freres

by any other supplier or subcontractor resulting from the termination of said purchase order. Buyer shall pay such termination charges within 30 days of invoice.

16. Intellectual Property: The sale of the Product shall not constitute a license, implied or otherwise, for the use of any Intellectual Property of Freres. Freres retains all right, title, and interest in all Intellectual Property related to the Product, whether solely developed or invented by Freres or jointly developed or invented by Freres and Buyer. "Intellectual Property" means copyrights (including the right to use, reproduce, modify, distribute, publicly display, and publicly perform the copyrighted work), trademarks (including trademark, trade names, service marks, and trade dress), patents, patents-pending, processes, or know-how of Freres (including the exclusive right to make, use and sell), trade secrets, rights of publicity, rights of privacy, moral rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence concerning the Product.

17. Default: Buyer will be in default if (i) Buyer fails to pay to Freres any amount when due as provided in any invoice or under the Product purchase order; (ii) Buyer fails for a period of five (5) days after receiving written notice from Freres to fulfill or perform any provisions of said purchase order (other than the prior provision relating to due date of payments); (iii) buyer becomes insolvent or bankrupt, or a petition therefore is filed voluntarily or involuntarily and not dismissed within thirty (30) days from filing; or (iv) buyer makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of Buyer's assets are attached or seized under legal process and not released within thirty (30) days thereafter.

Upon Buyer's default, Freres may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (i) make shipments subject to receipt of cash in advance; (ii) terminate the product purchase order and declare immediately due and payable the obligations of Buyer for Products previously shipped along with any wholly or partially completed Products whether or not shipped, notwithstanding any other provision in these terms and conditions; (iii) demand reclamation; and/or (iv) suspend any further manufacturing, CNC Modifications or shipments until the default is corrected, without releasing Buyer from its obligations under said purchase order. In any event, Buyer shall remain liable for all loss and damage sustained by Freres because of Buyer's default, including, but not limited to, collection fees, reasonable attorneys' fees and costs, and interest at the lower of 1.5% per month (18% per annum) or the maximum rate permitted by applicable law.

18. Taxes: The price quoted in the Product quote or purchase order does not include any duties, sales, excise, use, value added, goods and services, transfer or similar taxes, or any surcharges or escheat requirements, (collectively, the "Taxes") imposed upon any party by the laws of any jurisdiction. All Taxes shall be paid by Buyer in addition to all other sums Buyer may be or may become obligated to pay to Freres.

19. 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. Furthermore, any termination of the Product purchase order shall not relieve or release either party hereto from any rights, liabilities, or obligations, which it has accrued prior to the date of such termination.

20. Excused Performance: If Freres is delayed in manufacturing, CNC Modifications, or shipment of the Product due to unavailability of energy, materials, war, terrorism, pandemic, 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.

21. Dispute Resolution: Each party, at such party's option, shall have the right to require that any claim, controversy, or dispute between the parties, including but not limited to those arising out of or relating to the Product purchase order, the Product and including those based on or arising from any statute, constitution, regulation, ordinance, rule or any alleged tort, be determined by arbitration in accordance

with the then effective arbitration rules of Arbitration Service of Portland, Inc., and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. If litigation has been commenced in court by either party with respect to a dispute (in hope that a default judgment could be obtained): (i) the party who is the defendant or respondent in such litigation shall be deemed to have waived its option to arbitrate said dispute if such party files a general appearance in the litigation prior to filing a claim in arbitration in the manner specified above; (ii) the plaintiff or petitioner in such litigation will be deemed to have waived its right to arbitrate said dispute if such party fails to file a claim for arbitration in the manner specified above within sixty days after a general appearance in the litigation has been filed by the party who is the defendant or respondent in the litigation. This provision is intended to allow either party to commence litigation and seek an order of default without waiving their right to arbitrate in the event the default is not attainable; and (iii) if either party properly exercises its option to arbitrate, arbitration of such dispute shall be mandatory and any pending litigation shall be stayed.

22. Severability: In the event that any term, condition, or provision of these Sales Terms and Conditions shall be found to be void or unenforceable, such findings shall not be construed to render any other provision of these Sales Terms and Conditions either void or unenforceable, and all other provisions shall remain in full force and effect unless the provision(s) which is/are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

23. Governing Law/Venue: In any action or proceeding, including any arbitration, seeking to enforce any provision(s) of, or based on any right(s) arising out of, or related to or concerning the Product purchase order, 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 Marion County, Oregon, and in no other location. The parties further agree that in any such action or proceeding the parties shall appear for deposition at their own expense in Marion County, Oregon at such time as is either mutually agreed upon by the parties or ordered by the court.

24. Entire Agreement: These terms and conditions constitute a final and complete expression of all terms and conditions between the parties concerning the use, purchase, sale, manufacture and/or CNC Modifications of the Product.

25. Binding Effect: These terms and conditions shall be binding upon the successors and permitted assigns of the Parties.



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.

**FRERES LUMBER CO., INC. dba
FRERES ENGINEERED WOOD:**

BUYER:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____