

TERMS AND CONDITIONS OF SALE

1. Custom-Bilt Metals (“CBM”) agrees to sell the goods set forth on this invoice to the buyer (hereinafter, “You”) pursuant to the terms in any CBM Credit Application executed by You and the following terms and conditions.
2. Until You have executed CBM’s Credit Application and established a CBM credit line, all orders must be paid in advance of delivery.
3. **Payment in full is due on invoice due date.** Any payment after the invoice due date is past due. Any agreement to the contrary is only valid if in writing and executed by both You and CBM.
4. **A SERVICE CHARGE of the lesser of 1.5% per month (18% annually) or the maximum rate permitted by law** will be charged on any balance not paid by the due date. If the state law in which a transaction takes place requires a different rate, CBM will apply that rate. A fee of \$40.00 will be assessed for any returned check.
5. Unless otherwise specified in the remittance of payment from Buyer, CBM may apply payments received in any manner it deems proper towards Your unpaid balance.
6. CBM may elect, at its option, to serve preliminary notices related to all projects for which materials or labor are purchased and may, at its option, enforce any and all mechanic’s lien, stop notice and/or bond rights, and related remedies. The availability of such multiple remedies shall not, in any way, affect Your obligation to pay for all goods purchased pursuant to the open account being applied for herein or any purchases made thereon. The failure of CBM to enforce such third-party rights shall not diminish, dilute, or be a defense to any claims against You.
7. Any applicable taxes or other government charges imposed shall be added to the purchase price and paid by You unless valid documentation allowing exemptions is timely delivered to CBM.
8. You and Guarantor(s) agree that any dispute arising from the terms and conditions herein, including without limitation any action by CBM to enforce payment terms and conditions in effect with You, shall be governed by and under the substantive law of the state of Texas, without regard to choice-of-law rules. **You expressly agree that any action, proceeding, or lawsuit arising out of or related to the terms and conditions herein must be brought solely and exclusively in the state or federal courts of Dallas County, Texas. Venue is improper in any other jurisdiction.**
9. **Any controversy or claim arising out of or relating to the terms and conditions herein, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.**
10. You agree to pay all costs incurred by CBM in the enforcement of these terms and conditions, including, without limitation, costs of collection, attorney’s fees, and court costs.
11. It is Your responsibility to open and inspect all items upon receipt, checking for damage and comparing contents with the packing slip. Any claim for shortages, damaged stock, or errors in filling an order are waived unless the claim is received by CBM in writing within 48 hours of delivery. Failure to make a claim on the receipt or bill of lading shall constitute a waiver of Your right to a refund or credit for shortages, damaged tock, or errors in filling an order.
12. You acknowledge, guarantee, and warrant to CBM that the person signing this invoice for goods or materials purchased from CBM is authorized to sign same.
13. You agree to provide the written warranty information accompanying each CBM product to the owner of any building, home, or other structure for which goods purchased hereunder are installed. You further agree that, in the event You register any warranty for any good purchased from CBM hereunder, You are acting as the agent for the owner of the building, home, or other structure for which the good is installed and You have authority from the owner to do so.
14. **CBM shall not be responsible for any delays or for any consequential or special damages arising out of, or in connection with any sale, invoice, receipt, or bill of lading for goods or materials purchased from CBM.** CBM’s liability is limited to repayment of the purchase price of non-conforming items upon return of the items. This remedy is Your exclusive remedy. CBM shall not be liable for any damages attributable to product abuse, misuse, neglect, or any other cause that is not the fault of CBM.
15. Risk of loss to all goods sold shall pass to You upon delivery to carrier at point of shipment whether or not CBM pays any part of the freight unless such materials are delivered by CBM’s trucks, in which case, risk of loss shall pass to You upon delivery to You at Your destination point. If You require a means of transportation other than that selected by CBM, then any extra cost incurred by reason of using other means shall be paid by You.
16. **Indemnification. You agree to indemnify, defend, and hold harmless CBM from any claim, demand, action, causes of action, suits, costs, expenses, losses, damages, compensation, liabilities, and obligations of any kind or nature that arise from or in connection with any breach of paragraph 13 above, including, but not limited to, failure to provide warranty information, provision of incorrect information on a warranty registration, or registering any warranty without authority from the owner, including all costs, expenses, attorney’s fees, and court costs.**
17. YOUR SATISFACTION IS GUARANTEED. If You are not satisfied with Your purchase, You may return it within 30 days and CBM will refund the purchase price, less our shipping and handling costs as outlined in the CBM terms and conditions herein and CBM’s Return Policy Procedure set forth below. If CBM picks up the returned items, there will be a minimum charge of \$15.00 for shipping and handling. Return of non-defective items will incur a 25% restocking fee. CBM’s Return Policy Procedure:

- Call branch where order was made to obtain a Return Merchandise Authorization (“RMA”) prior to returning material. The RMA must accompany the shipment with a copy of Your receipt. No returns will be accepted without the original receipt, packing list, or invoice number. Refunds will not be made on returned merchandise received without an RMA number.
 - Non-refundable items include, but are not limited to, discontinued gutter items, off-rolled coil, special cut flashing, custom or specially ordered items, and material damaged by You, Guarantor(s), or a third party.
 - CBM’s drivers are not authorized to pick up material without an RMA number and proper documentation signed by You or Your agent.
 - The merchandise must be in re-saleable condition and properly packaged in order to receive a refund. Refunds cannot be processed for items that are damaged or in poor condition.
 - All credits will be issued within 15 days after the merchandise is returned, inspected, and approved to be in re-saleable condition.

 - All freight on return shipments must be pre-paid. No COD deliveries of returned goods will be accepted.
18. You agree that the invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of any other provision of these terms and conditions, which shall remain in full force and effect.