

AUGUST & JOSEPH

TERMS AND CONDITIONS OF SALE

- Agreement.** All sales by August & Joseph, LLC (“Seller”) shall be subject to and governed by the terms and conditions set forth herein. The agreement with respect to the sale of goods between Seller and Purchaser shall consist only of the terms appearing herein and in the Seller’s quotation or acknowledgment, together with any terms mutually agreed to in writing hereafter by Seller and Purchaser. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in any other communication from Purchaser to Seller. Further, no action by Seller, such as delivery of goods or the commencement of work on goods to be specially manufactured for Purchaser, will be deemed an acceptance by Seller of any terms different from or additional to those contained herein or in Seller’s offer.
- Prices.** Unless otherwise noted, all prices are F.O.B. Charleston, South Carolina. Prices do not include any present or future applicable Federal, state, or local sales, use, excise, value added or other taxes or charges. Seller shall have the right to invoice separately any such tax or charge as may be imposed at a later time. Applicable sales tax exemption certificates must accompany any order to which the same apply. Purchaser agrees to indemnify and save Seller harmless for any such taxes or charges.
- Payment Terms.** Unless otherwise specified on the invoice, payment shall be due: (a) fifty (50%) percent upon acceptance by Seller of Purchaser’s order; and (b) the entire balance due prior to shipping. All sums paid shall be non-refundable and cancellation of any order, at any time or for any reason, shall result in the forfeiture of all sums paid. All amounts not paid within thirty (30) days of invoicing shall be considered past due. A finance charge of one and one-half percent (1.5%) per month, or the maximum rate allowable by law, whichever is less, shall be charged on all past due amounts. Purchaser shall pay Seller for all collection costs, court costs, administration costs, investigation costs, attorneys’ fees and all other incidental costs, charges or expenses incurred in the collection of past due amounts. All amounts due to Seller shall be payable at Seller’s address set forth on the Invoice or at such other place as Seller may designate in writing.
- Delivery Terms.** All delivery and shipping costs shall be paid by Purchaser and shall be due prior to shipping. Delivery dates are approximate and are provided by Seller in good faith but are not guaranteed unless specifically agreed to by Seller in writing. Seller will not be liable for any delay in performance of this contract or delivery of goods when the delay is caused directly or indirectly by events not within its control, including but not limited to, fire, flood or other severe weather conditions, accident, riot, acts of God, war, governmental interference, strikes or other labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, failure of tooling or the repair, maintenance or rehabilitation of the tooling, or any other cause or causes whatsoever beyond its control. In the event delivery is delayed by Purchaser or at Purchaser’s request, Purchaser is responsible for any resulting increase in cost, including handling and insurance charges and storage charges, and Seller may invoice for all of the same, payment for which is due prior to shipment.
- Risk of Loss.** Purchaser assumes all risk of loss of goods when the goods are made ready for delivery from Seller’s facility or, if the goods are to be shipped via common carrier, title and risk of loss shall pass to Purchaser when the goods are delivered to the common carrier.

6. **Product Warranty, Remedies, and Limitation of Liabilities**. Seller's products are not for outdoor use and must be maintained under stable temperature and humidity for this warranty to apply. Purchaser is solely and absolutely responsible for immediate and proper sealing and finishing of Seller's product to maintain wood stability. Seller warrants to Purchaser only that the goods are free from defects in material and workmanship and any defects in same must be reported upon receipt of product by Purchaser and prior to installation. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY SPECIFICALLY DISCLAIMED. Seller's warranty does not apply to any goods to the extent that they have been subject to (1) other than normal wear and tear, or (2) improper installation, alteration, modification, or repair, tampering, negligence, abuse or accident, or (3) improper storage. Seller's sole obligation under the foregoing warranties is limited to either, at Seller's option, replacing or repairing defective goods or refunding the purchase price paid for such goods previously paid by Purchaser. Purchaser's exclusive remedy for breach of any of such warranties will be enforcement of such obligation of Seller. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES, LOST PROFITS, RECALL EXPENSES, OR DOWN TIME OF PURCHASER OR PURCHASER'S CUSTOMER OR A CUSTOMER REMOTE TO PURCHASER, NOR SHALL SELLER'S LIABILITY ON ANY CLAIM FOR DAMAGES ARISING OUT OF OR CONNECTED WITH THE CONTRACT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE GOODS EXCEED THE PURCHASE PRICE OF THE GOODS PREVIOUSLY PAID BY PURCHASER TO SELLER.

7. **Nonconformity; Delivery Error**. Purchaser shall have ten (10) days from delivery of the goods to inspect them and notify Seller of any nonconformity. Purchaser's notification to Seller of nonconforming goods shall state in full particulars the faults or failure to meet specifications. Purchaser's failure to notify Seller as provided herein shall constitute a waiver by Purchaser of any claims with respect to delivery of nonconforming goods. All claims for shortages or errors must be made within ten (10) days from delivery of the goods.

8. **Indemnification**. Purchaser shall indemnify Seller against, and hold Seller harmless from, any and all claims and liabilities, including reasonable attorney's fees, arising out of, connected with, or resulting from the goods, including but not limited to, their design, manufacture, selection, delivery, possession, use or operation of the goods, including, without limitation, to claims or liabilities arising in whole or in part out of or by reason of the failure of Purchaser, its agents, servants, employees or customers to follow instructions, warnings or recommendations furnished by Seller in connection with the goods or by reason of the failure of Purchaser, its agents, servants, employees or customers to comply with all applicable Federal, state and local laws applicable to the installation and use of the goods (including all building codes and the Occupational Safety and Health Act of 1970), or by reason of the negligence of the Purchaser, its agents, servants, employees or customers.

9. **Governing Law and Forum**. The agreement with respect to the sale of goods between Seller and Purchaser shall be governed by and construed in accordance with laws of the State of Ohio without regard to the conflicts of law principles thereof. The parties agree that all litigation between Seller and Purchaser which may arise out of or in connection with the sale or any transaction between them shall be subject to the exclusive jurisdiction of the courts of Hamilton County, Ohio or of the federal courts with jurisdiction over said County, and each hereby consents to the jurisdiction of such courts. Purchaser agrees that any and all processes directed to it in any such litigation may be served upon it outside of Ohio with the same force and effect as if such service had been made within Ohio.