

## Winkler Woods LLC

### TERMS AND CONDITIONS OF SALE

**PLEASE READ THESE TERMS AND CONDITIONS OF SALE VERY CAREFULLY. THE TERMS AND CONDITIONS OF SALE ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY FORMS DELIVERED BY YOU ("BUYER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN. BY ACCEPTING DELIVERY OF THE PRODUCTS FROM WINKLER WOODS LLC IDENTIFIED ON THE INVOICE OR OTHER WINKLER WOODS LLC DOCUMENTATION ("SELLER"). THE SALE OF GOODS DESCRIBED HEREOF ("GOODS") IS MADE ON THE EXPRESS CONDITION THAT BUYER ASSENTS TO THE PROMISES, TERMS, AND CONDITIONS SET FORTH BELOW, WHETHER OR NOT THEY ARE ADDITIONAL TO OR DIFFERENT FROM ANY TERMS AND CONDITIONS PROPOSED BY BUYER.**

These Terms and Conditions of Sale constitute a binding contract between Buyer and Seller and are referred to herein as either "Terms and Conditions of Product Sales" or this "Agreement". Buyer accepts these Terms and Conditions of Sale by making a purchase, placing an order, whether by phone, fax, email or other electronic means, or otherwise shopping on Seller's Website (the "Site"). These Terms and Conditions of Sale are subject to change without prior notice, except that the Terms and Conditions of Sale posted on the Site at the time Customer places an order will govern the order in question, unless otherwise agreed in writing by Seller and Buyer.

**TERMS OF PURCHASE ORDER ACCEPTANCE AND COMPLETE AGREEMENT.** All orders received by Seller are subject to revision and possible rejection by Seller within seven (7) business days after its receipt of the same at its home office, notwithstanding the fact that the same may have been signed by Seller's field personnel. Unless revised or rejected, any such order shall become a firm Purchase Order upon the passage of such seven (7) days. Buyer's order is subject to the following terms and conditions, which constitute the complete agreement between the parties. Buyer's acceptance of product delivery evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products sold hereunder (including any made or implied from past dealings). No additional or different terms and conditions stated in or attached to Buyer's communications to Seller, including but not limited to Buyer's purchase orders, are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**PRODUCTION AND DELIVERIES.** The Goods will be delivered Ex Works Winkler Woods LLC's Facility Incoterm 2000. Unless otherwise specified on Buyer's order, shipment may be made by the method or carrier deemed most feasible by Seller. Freight allowances, if any, are based on rates prevailing on the date of price quotation; Buyer shall pay increases due upon due date for payments of Goods. Due to rapid changes in production levels and customer requirements, Seller cannot commence fabrication nor commit to an estimated schedule until it has received an acceptable Purchase Order or Contract, approved drawings (as may be applicable), clarifications to issues identified and verified/guaranteed dimensions, and monies due. Seller will schedule fabrication of materials based on available production capacity at the time of receipt of all necessary information and payments required. The completion of the order is subject to many factors, including but not limited to the following which hereinafter shall be known as "Nonliability Events": action by governmental authority, public enemy, insurrection, rebellion, or riot; fire; explosion; flood; severe weather conditions; accidents; strikes and labor shortages; delays caused by

governments (including government priority, preference or allocation); shortage of inventory, raw material, power or fuel; default, delays, or difficulties with Seller's suppliers in furnishing materials or services; difficulties with equipment or transportation; or acts of God or any other cause or events beyond Seller's control. In the event of delays in delivery or nondelivery of the Goods which, directly or indirectly, were caused by a Nonliability Event or to which a Nonliability Event contributed, Seller shall not be liable for damages, whether direct, incidental or consequential, and Seller will reschedule the order into the next available production cycle. Buyer will reimburse Seller for all costs incurred by Seller due to any delay caused by Buyer (which may include processing fees for rescheduling, storage charges or escalation fees in the event that a shipment is to be delivered in a calendar year other than the year in which the products were originally scheduled for delivery), Buyer's agents, Buyer's customers or any other entity working in conjunction with Buyer upon presentation of reasonable supporting documentation. If and once established, shipping dates are estimates and are not guaranteed. Seller reserves the right to make partial shipments.

**CANCELLATION.** Buyer acknowledges and agrees that products supplied by Seller are custom fabricated products and are not stocked items, unless otherwise stated. Orders placed by Buyer with Seller may not be canceled prior to fabrication except upon Seller's written consent, and subject to Buyer's acceptance of Seller's cancellation and/or restocking charges that shall protect Seller against applicable costs and losses. Buyer may not cancel an order once Seller has begun the fabrication process, which includes but not limited to cutting trees or lumber to fulfill Buyer's order. Seller reserves the right to cancel any sale hereunder without liability to Buyer (except for refund of monies already paid) if the manufacture or sale of the products is or becomes technically or economically impractical. No product may be returned except with the prior written approval of Seller as evidenced by a Return Materials Authorization (RMA).

**MANUFACTURE.** Seller reserves the right to discontinue the manufacture of, or to change or modify the design or construction of the products sold, without incurring any obligation to Buyer.

**DELIVERY, TITLE AND RISK OF LOSS.** Title to and risk of loss for the products shall pass to Buyer Ex Works Seller's facility (Incoterms 2000) unless otherwise expressly agreed to in writing

by Seller. Although Seller may elect to assist Buyer in connection with pursuing any claim for damages, Seller shall not thereby assume any obligations for such damage or continue to assist Buyer in the presentation of its claim to any carrier. If delivery of the Goods to a carrier is elected, and in other circumstances as provided by law, Buyer shall bear all risks of loss, whether or not the products so delivered are conforming or non-conforming, whether or not a right of rejection exists in Buyer's favor, and whether or not Buyer rightfully revokes acceptance. The occurrence of any such risk shall not release Buyer from its obligations hereunder.

**WARRANTIES AND EXCLUSIONS OF WARRANTIES.** THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE IS NO WARRANTY WITH RESPECT TO NONINFRINGEMENT OF THE PATENT RIGHTS OF OTHERS. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE.

**CREDIT.** Credit is not offered by Seller.

**PAYMENT TERMS.** Payment is due prior to shipment. Any amounts not paid when due shall bear interest at the lesser rate of (i) 1 1/2% per month or (ii) at the highest rate permitted by law; from the date of shipment until paid. Seller reserves a purchase money security interest in each product shipped that will be satisfied by payment in full. Seller has the right to file a copy of this document as a financing statement, and Buyer hereby authorizes Seller to execute any and all documents necessary to secure and perfect its interest.

**MODIFICATION.** No modification of any promise, term or condition of sale shall be of any force or effect unless signed by an officer of Seller.

**CLAIMS OF BUYER.** As a condition precedent to recovery of any claim of any kind, Buyer must comply with the following. All claims of any kind, except nonreceipt, must be made to Seller within seven days after receipt of shipment. Claims for nonreceipt must be made in writing delivered to Seller within thirty days after receipt of an invoice. Seller's liability for breach of warranty or contract shall arise only upon prompt return of the products claimed to be defective at Buyer's expense and after due notice to Seller of the claimed breach, as set forth in this paragraph.

**BUYER'S EXCLUSIVE REMEDIES; EXCLUSION OF REMEDIES.** Any claim for nonreceipt of all or part of Buyer's order or any other claim of any kind

except breach of warranty shall be limited to the purchase price of the goods affected, as shown on the reverse side hereof. Seller's liability for breach of warranty shall be limited to the furnishing of a like quantity of the same products free from defects, or at Seller's option, to the refunding of the purchase price of the defective product. The foregoing shall constitute the Buyer's exclusive remedies. SELLER IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER OR NOT ANY OTHER OF BUYER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSES. BUYER WAIVES ALL RIGHT OF OFFSET FOR ANY ALLEGED OBLIGATION OF SELLER NOT ARISING FROM THIS DOCUMENT IN THIS TRANSACTION. BUYER WAIVES AND AGREES NOT TO SUE UPON, AND RELEASES SELLER FROM, ANY AND ALL LIABILITIES FOR SELLER'S BREACH OF CONTRACT AND BREACH OF WARRANTY (EXCEPT AS EXPRESSLY SET FORTH HEREIN), NEGLIGENCE, STRICT LIABILITY IN TORT, AND/OR OTHER TORT. THE WAIVER, AGREEMENT AND RELEASE IN THE FOREGOING SENTENCE IS BINDING UPON BUYER'S SUCCESSORS IN TITLE AND ASSIGNS.

**TAXES AND OTHER ADDITIONAL CHARGES.** In addition to the price for the Goods, Buyer will pay Seller the amount of any excise, sales, use, or similar tax relating to the Goods or their sale, and any freight (unless there is an express freight allowance) stop-over charge, lot loading charge, demurrage charges or the like relating to the transportation or storage of the Goods, which Seller is legally obliged to pay, within ten days after the date of an invoice for the charge.

**ASSIGNMENT.** The contract for sale of the Goods is not assignable in whole or in part by buyer without the written approval of Seller, and any attempted assignment shall be void.

**INSPECTION.** Buyer has no right of inspection; inspection shall not be a condition to Buyer's duty to pay or to any other duty.

Buyer's Initials \_\_\_\_\_

**NO SALES "on Approval" OR "Sale or Return".** No sale is made on approval or under a sale or return. Seller may, however, at its option, allow a return. Any such return shall be at Buyer's sole risk and expense; return shall be effected only upon actual delivery to Seller or as otherwise instructed by it in writing. No credit, whether by refund on monies paid or by allowance against monies due, shall be given until such actual receipt by Seller of return products in the same condition as they were when delivered to the carrier by Seller for original shipment to Buyer.

**SELLER'S NON-EXCLUSIVE REMEDIES.** Upon any breach by Buyer of any promise, term, and/or condition contained herein, including, but not limited to, the nonpayment by Buyer of any amount due hereunder, or if Seller deems itself insecure, Seller may, at its option, and without prejudice to or limitation of any other legal remedy hereunder, by law, or otherwise, resort to one or more of the following remedies: (a) Suspend further deliveries, even though partial payment for undelivered Goods has been received. (b) Demand adequate assurance of due performance, including, but not limited to, the delivery to Seller of a third-party bond satisfactory to Seller. (c) Identify to the contract finished or unfinished Goods at Buyer's sole risk of loss, which will then immediately pass to the Buyer. (d) Declare the unpaid balance of the contract immediately due and payable. (e) Collect from Buyer all costs of collection, including, but not limited to reasonable attorney's fees, incurred in enforcing any right or remedy hereunder or in law, pertaining in whole or in part to the Goods. (f) Repossess and/or reclaim the Goods or any part thereof. Buyer hereby agrees, upon demand, to assemble the Goods or any part thereof to Seller, at Buyer's expense, all in accordance with Seller's instructions. Buyer hereby grants Seller a security interest in the Goods and any and all proceeds thereof and accessions thereto to secure all of Buyer's obligations hereunder under this or any other agreement. Buyer hereby irrevocably appoints Seller as the Buyer's lawful

attorney-in-fact to execute and file all documents necessary or desirable to effectuate the purpose of this paragraph, including but not limited to, appropriate financing statements. A photostatic copy of this document may be filed as a financing statement.

**INTEGRATION CLAUSE.** This document constitutes the entire agreement of the parties as to the subject matter hereof.

**NO GUARANTEE OF KILN-DRIED OR TREATED LUMBER.** Unless expressly agreed on the other side using a specific reference to kiln-dried or treated lumber, Seller does not warrant that kiln-dried or treated lumber contain any particular amount of treatment material, nor will any lumber supplied by Seller be dry to any specific moisture content, nor that treated or kiln-dried lumber will be suitable for installation on or below ground, nor that kiln-dried or treated lumber conform to the rules of any association or usage for trade.

**LUMBER GRADES.** Lumber grades shall be determined by the rules of applicable trade associations (National Hardwood Lumber Association for hardwoods and cypress) or, in the absence of such rules, on procedures which are customary in the industry and on other trade customs. In case of conflict among trade associations, the rules of the trade association of which the Seller is a member, or which is relied upon by Seller in the ordinary course of business, shall control. Specialty woods, such as Hawaiian Koa, have proprietary grading criteria which are at the discretion of the Seller and final determination is made by the Seller. Seller makes no claim regarding color, consistency, figure, curl, or any other unique attributes of wood will be supplied, match, or be anything other than what it is.

**SOLVENCY.** Buyer's order represents that Buyer is solvent and able to pay for products ordered. If Buyer fails to make payment when due or makes an assignment for the benefit of creditors or if bankruptcy or insolvency proceedings

are instituted by or against Buyer, Buyer will be deemed to be in default, and Seller will have the right to terminate its obligations by written notice to Buyer, but such termination will not affect Buyer's obligation to pay for products delivered and works in progress. Buyer shall reimburse Seller for all administrative and legal costs incurred by Seller to enforce any portion of an order, including costs associated with the collection of any unpaid amounts.

**WAIVER.** No failure or delay by Seller in exercising any right hereunder will operate as a waiver thereof nor will any single or partial exercise of any right hereunder preclude further exercise of the same.

**JURISDICTION AND DISPUTES.** These terms and conditions shall be governed by the laws of the State of Hawaii, USA, without regard to conflict of law provisions. Unless otherwise agreed by both parties, disputes related to the sale of products hereunder shall be resolved by the state and federal courts located in the District of Hilo, Hawaii County, Hawaii, and the parties hereby consent to such jurisdiction, agree to accept service process by mail, and hereby waive any jurisdiction or venue defenses otherwise available.

**VALIDITY OF PROVISIONS.** In the event any provision or portion of any provision of these terms and conditions shall be held invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.

**PROVISIONS FOR INTERNATIONAL TRANSACTIONS.** The following provisions apply to sales to customers located outside the United States: (a) the 1980 United Nations Conventions on Contracts for the International Sale of Goods shall not apply; (b) except as otherwise agreed upon by Seller in writing, Buyer will pay all customs fees, import duties, cargo insurance, taxes and other charges imposed on or relating to

the purchase or sale of the products in addition to the stated price; (c) except as otherwise agreed upon by Seller in writing, payment shall be made by issuance to Seller of an irrevocable letter of credit which (i) is issued and confirmed by a U.S. bank acceptable to Seller (ii) is governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500 effective January 1, 1994) and otherwise acceptable in form and substance to Seller, and (iii) provides for payment to Seller of the full amount of the purchase price plus pre-paid freight in U.S. dollars upon presentation by Seller of sight drafts, Seller's invoice and such other documents as shall be required by the letter of credit. All banking and other charges for such letter of credit will be for the account of Buyer; (d) unless otherwise agreed upon by Seller in writing, prices are based on packing for domestic shipment, regardless of ultimate destination. Buyer will bear any additional expenses required to satisfy Buyer's specifications. Packages will be marked in accordance with Buyer's reasonable instructions, if any. Seller will furnish packing list and such other information as may be necessary to enable Buyer's agent to prepare documents required for export shipment. Buyer shall supply Seller with all necessary information and assistance for the most expeditious clearance of such shipment through customs; (e) all shipments hereunder are subject to compliance with the U.S. Export Administration Act, as amended, regulations thereunder and all other U.S. laws and regulations concerning exports. Buyer agrees to comply with all such laws and regulations concerning the use, disposition, re-export and sale of products as provided hereunder. Without limiting the foregoing, Buyer agrees to provide Seller in writing with the ultimate destination and the identity of the end-user prior to shipment and represents and warrants it will secure licensing for items, end uses and end users of control under U.S. exporting regulations and present said licenses to Seller, if required.

*Revised May 31, 2007. This revision supersedes all previous revisions and versions.*

I have read, understood, and agree to these terms and conditions:

Name (Print): \_\_\_\_\_

Date: \_\_\_\_\_

Name (sign): \_\_\_\_\_