

# Terms and Conditions of Sale

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## **SALES POLICY:**

Gypsum and Ceilings products will be sold in such areas at such prices and to such customers as CertainTeed Gypsum and CertainTeed Ceilings (CertainTeed) shall specify from time to time in Area Price Bulletins. Notice of changes in policy will be given at CertainTeed's discretion. All orders are subject to acceptance by CertainTeed at its headquarters in Valley Forge, PA, and are not binding on CertainTeed until and unless so accepted.

## **ENTIRE AGREEMENT:**

These terms and conditions of sale represent the entire agreement between the parties with respect to the subject matter hereof. This acceptance constitutes a complete and binding contract which cannot be modified or canceled without written consent of both parties.

## **TERMS OF PAYMENT:**

Contact CertainTeed's Credit Department. ALL COMMUNICATIONS REGARDING BILLING DISPUTES AND ALL PAYMENTS OF ANY DISPUTED OR DELINQUENT AMOUNT, ALSO MUST BE SENT TO CERTAINTEED'S CREDIT DEPARTMENT.

## **DELIVERY:**

Prices are F.O.B. shipping point. Freight charges will be prepaid for customer's account and added as a separate item on the invoice. CertainTeed will make every effort to deliver orders at the time requested; however, no delivery delay will support a charge back, set off or claim for damage.

## **TITLE AND RISK OF LOSS:**

Title and risk of loss passes to the Purchaser upon delivery of the goods by CertainTeed to the carrier at the shipping point.

## **SECURITY INTEREST:**

CertainTeed reserves and Purchaser grants to CertainTeed a purchase money security interest in all products sold and any cash receivables or cash from resale thereof to secure the full payment and performance by Purchaser of its liabilities and obligations to CertainTeed. Purchaser acknowledges that this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such documents as CertainTeed may request in order to perfect its security interest.

## **TRANSPORTATION CHARGES/TYPE OF SHIPMENT:**

Contact CertainTeed's Transportation Department.

## **RETURN POLICY:**

Products returned to a plant will not be accepted unless approval is given in advance by a CertainTeed Regional Sales Manager (through Product Manager or Plant Manager). Any defective product will be replaced with comparable replacement product or a refund will be given in the amount of the purchase price of original invoice (at CertainTeed's option). Non-defective returns may be subject to a reconditioning/restocking fee of 20% of the invoice price of the products returned.

## **PRICE DECREASE:**

Upon publication of a price decrease, all unshipped orders will be billed at the new and lower prices. Unless otherwise notified or agreed, inventory adjustments will not be allowed.

## **PRICE INCREASE:**

In the event of a price increase, all unshipped orders accepted by CertainTeed prior to the effective date of the price increase will be invoiced at the increased prices in effect at the time of shipment unless otherwise notified or agreed.

## **PROTECTION OF SPECIFIC JOBS:**

Unless otherwise notified or agreed, no price protection will be granted on specific jobs, except that shipments for construction on Federal Government owned property financed with Federal funds may be made at the price that was in effect on the date contract was awarded to the general contractor, regardless of the date of shipment.

## **WARRANTIES:**

GOODS ARE WARRANTED AGAINST DEFECTS IN MANUFACTURE FOR ONE YEAR. CERTAINTEED DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LIMITATION OF LIABILITY: CERTAINTEED'S LIABILITY FOR WARRANTY CLAIMS SHALL BE LIMITED TO THE REPAIR OR FURNISHING OF REPLACEMENT PRODUCTS FOR MATERIALS FOUND TO BE DEFECTIVE. CERTAINTEED SHALL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR FOR OTHER PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. THE MAXIMUM LIABILITY OF SELLER FOR DIRECT DAMAGES, IF ANY, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE INVOICE PRICE OF THE PARTICULAR GOODS. CERTAINTEED IS NOT RESPONSIBLE FOR LABOR CHARGES ASSOCIATED WITH THE REMOVAL OR REPLACEMENT OF DEFECTIVE PRODUCTS.

## **CLAIMS:**

In case of warranty claims against CertainTeed for defect in manufacture, written notice of the basis for the claim and sample of product illustrating such defect must be submitted to CertainTeed. CertainTeed shall have 60 days from date of receipt of such notice to inspect and dispose of defective material if such claim is allowed. Under no circumstances are products to be returned to CertainTeed unless the Purchaser has received CertainTeed's written instructions to do so. The Purchaser shall have no right to deduct the amount of any claim from CertainTeed's invoice until the claim is allowed by CertainTeed or adjudicated by proper authority. Unless otherwise agreed, all claims for loss or damage to products in transit must be filed with the carrier by the Purchaser. CertainTeed will give all reasonable assistance to the Purchaser in collecting loss or damage claims from carriers by furnishing duplicate invoice, affidavits showing count when loaded, method of loading, etc. Purchaser should in all cases immediately report loss and/or damages to carrier and request inspection in case of damage. On loss claims, Purchaser should secure car or truck seal numbers and a signed exception report from carrier.

**FORCE MAJEURE:**

CertainTeed will not be liable for any loss or damage for its failure to ship any order in accordance with the terms of the order where such failure is caused by any requirement of a governmental agency or authority, shortage of raw material, strikes or other labor trouble, fire, riots, wars, acts of God or other causes beyond the control of CertainTeed.

**TAX:**

An amount equal to any tax or other governmental charge upon the production, sale, occupation of selling, shipment or use of material which is now or may be hereafter imposed by Federal, State, Municipal, or any other governmental authorities upon either the Purchaser or CertainTeed which CertainTeed is obliged to pay or collect shall be added to the price and shall be paid by the Purchaser.

**COMPLIANCE:**

CertainTeed certifies that these goods were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the Administrator of the Wage and Hour Division issued pursuant thereto.

**GOVERNING LAW:**

This agreement and any sales hereunder shall be governed by the laws of the State of Florida, without regard to conflicts of law rules. Both parties consent to the jurisdiction of Hillsborough County, Florida courts over any matters arising out this agreement or any sales hereunder.

**SEVERABILITY:**

If any provision of these terms and conditions of sale shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any other provisions hereof, which together shall be construed as if such illegal or unenforceable provisions had not been included herein.

**ATTORNEYS FEES AND COSTS OF ENFORCEMENT:**

CertainTeed and Purchaser agree that should it become necessary for any party hereto to employ an attorney to enforce any of such party's rights hereunder against the other party hereto, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement from the non-prevailing party of all costs and expenses, including but not limited to reasonable attorneys fees, costs of arbitration and court costs incurred, including fees and costs incurred in any bankruptcy case, matter or proceeding or any appeal taken in any state or federal court or any other tribunal.