

## TERMS AND CONDITIONS

These Terms and Conditions are incorporated into the attached Purchase Order (the "P.O.") issued by CWalla Building Materials Company, LLC ("Buyer") to you (the "Seller"). Issuance of this P.O. is conditioned upon Seller's acceptance of the following:

**1. Acceptance:** This P.O. constitutes Buyer's offer and may be accepted by Seller by: (i) Seller's signature and return of the acknowledgment; or (ii) commencement of work, shipment of goods, or furnishing of services. Buyer rejects any modifications to the terms in Seller's acceptance that add to, vary or conflict with these terms. The terms herein constitute the complete and exclusive statement of the terms and conditions applicable to this P.O. If this P.O. has been issued by Buyer in response to a quotation, proposal or other offer, and if any of these terms are in addition to or different from any terms of such offer, the issuance of this P.O. constitutes acceptance of such offer conditioned upon Seller assenting to the terms and conditions of this P.O. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary within three (3) business days after receipt of this P.O.

**2. Prices; Terms of Payment; Taxes:** The prices and payment terms are as stated on the P.O. Buyer shall have no obligation to honor invoices with increased prices unless Buyer accepts such increase in writing. Charges not stated on the P.O. will not be allowed unless agreed to in writing by Buyer.

Payments are conditioned upon acceptance by Buyer of the goods or services. Discount periods begin on the date of Buyer's receipt of invoice. Seller certifies that its quotation relating to this P.O. was based on Seller's current pricing which is no higher than offered to other customers ordering similar quantities of the same goods or services.

All applicable federal, state and local taxes shall be stated separately on the invoice. Prices do not include any tax to which an exemption is available or for which Buyer has furnished Seller a lawful exemption. If Buyer pays a tax that was not required to be collected, Seller shall notify Buyer, promptly take steps necessary to obtain a refund, and pay such refund to Buyer.

**3. Rescheduling and Cancellation:** Buyer may, by written notice: (i) extend the delivery date(s), for no more than thirty (30) days from the original scheduled delivery date; or (ii) cancel all or a portion of this P.O., provided that Buyer pays Seller's actual direct costs incurred in good faith prior to Seller's receipt of the cancellation notice; however, Buyer accepts no liability for Seller's commitments in excess of the P.O. quantities or in advance of the time necessary to meet the scheduled delivery date.

**4. Order Modification:** Seller may not modify this P.O. without Buyer's prior written approval. Seller may not substitute materials, accessories or options without Buyer's prior written consent.

Buyer may, with ten (10) business days' prior notice to Seller, propose a change in the quantity of the goods or services ordered. If the change exceeds ten (10%) of the original P.O. quantity and will impact the unit price or delivery date, Seller shall, within three (3) business days, so notify Buyer. Failure of Seller to so notify shall be deemed to be acceptance of the change. Buyer has three (3) business days to notify Seller of its acceptance of the prices and/or delivery date change, or, Buyer's request for the quantity change shall be considered to be withdrawn.

**5. Packing and Marking:** Unless otherwise specified Seller shall: (i) pack and mark the goods to secure the lowest transportation costs while meeting carrier requirements and assuring delivery free of damage and deterioration; and (ii) be responsible for all risk of loss and damage until the goods are delivered to the F.O.B. point. Damage discovered after transfer of title resulting from faulty packaging shall be Seller's responsibility. Unless otherwise stated on the P.O. all prices include all charges and expenses for containers, packing, crating, and transportation to the F.O.B. location. Seller shall be responsible for all transportation costs to the F.O.B. location unless otherwise specified.

The P.O. number must be shown on all packing slips, invoices, packages, cartons and crates. Each bill-of-lading must contain a packing slip showing the number of pieces. A \$25.00 charge may be assessed for Seller's failure to comply with these requirements.

**6. Delivery:** Orders shall be shipped to arrive at Buyer on the delivery date. Buyer may reject: (i) quantities of goods in excess of the quantity stated on the P.O.; and (ii) shipments received more than five (5) working days before the scheduled delivery date, and return such rejected goods at Seller's expense. If an order is not delivered within three (3) business days from the scheduled delivery date, Buyer may: (a) direct expedited shipping with all excess shipping charges to be paid by Seller; or (b) cancel this P.O. with no penalty.

**7. Force Majeure:** Neither party shall be liable for delays or failures to perform its obligations due to circumstances beyond its reasonable control, (a "Force Majeure Event"). Supplier shall promptly notify Buyer if it is delayed or unable to perform its obligations due to a Force Majeure Event. For as long as the obligations of either party are affected by a Force Majeure Event, such obligations shall be suspended; provided, however, that should Seller fail to comply with Buyer's delivery schedule, Buyer may terminate this P.O. without any liability.

**8. Acceptance:** Orders are subject to Buyer's inspection prior to acceptance. If any of the goods are defective or do not conform to this P.O. ("Rejected Goods") Buyer may, at its option and at Seller's sole expense: (i) return the Rejected Goods to Seller; or (ii) require Seller to promptly correct or replace the Rejected Goods.

**9. Warranty:** Seller warrants that the goods and services shall: (i) be free of all liens, imperfections in title, claims or other encumbrances; (ii) during the warranty period, be free from defects in material and workmanship; and (iii) conform to the specifications.

This warranty shall survive delivery, acceptance and payment for the goods or services, and shall inure to the benefit of Buyer, its successors, assigns and customers. Buyer may, at its option and at Seller's sole expense: (i) return defective goods for credit or refund; or (ii) require prompt correction or replacement of the defective goods or services.

**10. Buyer Property:** Buyer shall retain title and all rights of ownership to all: (i) specifications, drawings, technical information and data ("Documents"); and (ii) tools, equipment and material ("Property"), provided by Buyer to Seller pursuant to this P.O. Unless authorized in writing by Buyer, Seller shall only use Documents and Property for the sole purpose of fulfilling its obligations under this P.O., and shall not disclose the contents of the Documents to any third party.

Wherever practical each individual Property shall be identified by Seller as "property of CWalla", and shall be stored in a safe and secure manner separate from Seller's property. While in Seller's custody or control: (i) such Property shall be held at Seller's risk; and (ii) Seller shall maintain replacement cost insurance in an amount no less than the replacement cost, with loss payable to Buyer. Upon Buyer's request Seller shall promptly return all Property and Documents at Seller's expense.

**11. Patents:** Seller warrants that the goods do not infringe any U.S. or foreign patent, copyright, or trademark ("IP"). If the sale or use of the goods constitutes an IP infringement and their use enjoined, Buyer may, at its option, pursue all remedies available at law, including, but not limited to, requiring Seller to either procure for Buyer the right to continue using the goods, modify the goods so that they become non-infringing, or remove the goods and refund to Buyer the original purchase price.

**12. Assignment:** Seller may not assign any right or obligation under this P.O., including the right to receive payments due or to become due, without the prior written consent of Buyer.

**13. Compliance with Laws:** Seller represents that it is in compliance with all applicable federal, state and local laws, rules, regulations, standards and ordinances, including Executive orders (collectively "Laws"), with respect to the manufacture and sale of the goods and the performance of the services pursuant to this P.O. Such Laws include, but are not limited to: the Occupational Safety and Health Act of 1970, as amended; the Fair Labor Standards Act of 1938, as amended; the Rehabilitation Act of 1973, as amended; and Federal Acquisition Regulations published in Title 48 of the Code of Federal Regulations.

**14. Services:** For services performed on the property of Buyer or a Buyer customer, Seller shall take all necessary precautions to prevent the occurrence of any accident, injury, death or loss to any person or property, and except to the extent caused solely by the negligence of Buyer or its customer, shall indemnify and hold Buyer against all claims and losses resulting in any way from Seller's negligence or intentional acts. Seller shall maintain adequate public liability, property damage and worker's compensation insurance.

For P.O.s for construction services work, Buyer may withhold retainage up to 5% from contractor as a trust fund for the satisfactory completion of the work. Said retainage shall be released to the contractor upon the later of 30 days after final completion or work or final acceptance of work by Buyer.

**15. Indemnification; Limitation of Liability:** Seller shall defend, indemnify and save harmless Buyer from and against all losses, liabilities, judgments, settlements, expenses (including attorney's fees), or claims based on injuries or damages to any person or property arising out of or in any way related to Seller's: (i) breach of this P.O.; (ii) breach of its warranty obligations; (iii) defective goods or services; or (iv) negligent acts or omissions.

**In no event shall Buyer be liable for lost profits, incidental, consequential or exemplary damages ("Damages") arising out of this P.O.** Buyer's entire liability for Damages of any kind arising out of, connected with, or resulting from this P.O. is limited to the price of the goods or services giving rise to the claim. Buyer shall not be liable for penalties of any description.

**16. Default:** Buyer may, without liability (except for previously made deliveries of goods or services), terminate this P.O. and pursue all further remedies available at law or in equity if Seller: (i) becomes insolvent or suspends its business; (ii) has a trustee or receiver is appointed for all or a substantial portion of its assets (iii) files a voluntary petition for bankruptcy or reorganization, or such petition is filed against Seller; (iv) is adjudged bankrupt; or (v) has the jurisdiction of its assets assumed by a court or other authority.

**17. Choice of Law:** This P.O. shall be governed by the laws of the State of Washington without reference to its choice of law principles.