

## SALES AGREEMENT AND LIMITED WARRANTY

1. **SOLE & EXCLUSIVE SALES AGREEMENT.** All sales by T. M. Cobb Company dba T. M. Cobb and dba Haley Brothers, Inc. (collectively "**Cobb**") to any buyer (**Buyer**) shall be governed exclusively by this Agreement. The provisions of all purchase orders from Buyer, except for the quantity and description of the goods, shall be deemed null and void. All sales are final. No agreement between Cobb and Buyer shall create a third party beneficiary agreement. No general contractor or other third party may rely upon performance of this Agreement by Cobb.
2. **PAYMENT, SERVICE CHARGES, AND DEFAULT.** Payment terms will be established upon approval of credit and the terms will be printed on all invoices from Cobb to Buyer. Invoices shall not be considered past due if they are paid within 30 days of the due date, but Cobb may suspend any further credit sales or may reduce the amount of credit allowed if any invoice is not paid on or before the due date. Buyer shall pay a time-price differential, sometimes called a "service charge", on any invoice not paid when due. The time price differential rate shall be 1.5% per month. If Buyer fails to pay any invoice within 20 days after the due date, the payment must be delivered to Cobb at 16027 Ventura Blvd., Suite 503 Encino, California 91436. Any of the following shall be deemed a default: Buyer's failure to pay any invoice within thirty days after the due date; the material inaccuracy of any representation or warranty in Buyer's Credit Application to Cobb; the loss, theft, damage, or destruction of a material portion of Buyer's assets; any circumstances that, pursuant to the California Commercial Code, would entitle Cobb to require adequate assurance of payment; the dissolution or insolvency of Buyer; the cessation of Buyer's business; the demise of any Guarantor; the appointment of a Receiver; the suspension of Buyer's contractor's license; an assignment for benefit of creditors; or, the bankruptcy of Buyer. In the event of a default, all indebtedness of Buyer to Cobb shall become immediately due and payable.
3. **DELAYS.** All delivery dates given by Cobb are estimates only. Buyer is cautioned to make allowance for delays and Buyer is warned and agrees that Cobb shall not be liable to Buyer, nor to anyone else, for delays.
4. **QUOTATIONS.** No verbal quotation shall be binding, until or unless confirmed by Cobb in a written quotation, confirmation, or invoice and then **the provisions of this Agreement shall constitute the sole, exclusive, and entire agreement.** All price quotations expire 30 days from the date of the quotation, or, if the quotation is not dated, 30 days from delivery of the quotation to Buyer, unless otherwise provided in the written quotation. If the Order Confirmation description of specially manufactured goods is different from the description in the Purchase Order, the Order Confirmation description shall be controlling unless Buyer objects in writing within 48 hours of receipt of the Order Confirmation. Any purchase order based upon a price quotation shall be deemed to provide for delivery of the goods to Buyer within 30 days of the purchase order or as soon as they are available from the manufacturer. If Buyer does not take delivery within such time, the prices may be increased by Cobb, unless otherwise provided in the written quotation. Buyer shall pay reasonable storage fees if the goods ordered by Buyer have to be stored by Cobb for 30 days or more after the date of the purchase order.
5. **JOB SITE DELIVERY.** If Buyer orders delivery of goods to a job site and no employee or representative of Buyer is on the job site and willing to sign for delivery, Cobb may unload the materials on the job site. In such event, Buyer shall be obligated to pay for the goods and waives all claims based upon damage, shortage, or failure to deliver the goods.
6. **CLAIMS PROCEDURE.** Buyer must make any claim for shortage, defect, nonconformity, incorrect price, damage, non-delivery, or for any other reason to Cobb, in writing, by certified return receipt requested mail, within ten days of the date Buyer discovered or could have reasonably discovered the problem, but in no event later than 30 days from the date the goods are delivered (or, in the case of non-delivery, within 30 days of the date Cobb sends Buyer an invoice). Buyer must prove that it gave timely notice by producing a post office proof of delivery to Cobb at the address given for Cobb on Cobb's invoices. Claims for breakage or shortages must be noted on the delivery ticket at the time of receipt by Buyer. **Buyer's failure to strictly comply with the claims procedure set forth in this section, or to prove that Buyer gave timely notice in the manner set forth in this Section 6, shall be a complete waiver and bar to any claim or to any set-off against Cobb,** unless Cobb acknowledges, in writing, the timely receipt of the claim. Any suit against Cobb must be filed within one year after the invoice date. **Buyer's Failure to file suit within one year shall be a complete waiver and bar to any set-off or to any recovery against Cobb.**
7. **RETURNS.** All sales are final. Goods may not be returned to Cobb for credit without Cobb's prior written consent and inspection. After return and inspection, the amount of credit, if any, will be based upon the condition of the goods and a restocking charge. **Buyer must examine the goods prior to installing, altering, or otherwise using the goods.** If the claimed defect, non-conformity, or damage could have been discovered through the exercise of reasonable investigation and care, Buyer may not return the used goods for credit.

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8. **LIMITED WARRANTY.** THE GOODS ARE SOLD AS IS EXCEPT FOR MANUFACTURERS' WARRANTY CLAIMS. COBB'S SOLE OBLIGATION TO BUYER IS TO ASSIST BUYER IN PRESENTING ITS WARRANTY CLAIMS TO THE MANUFACTURER. COBB'S SOLE LIABILITY WITH RESPECT TO THE CONDITION OF THE GOODS SOLD TO BUYER IS LIMITED TO THE ADJUSTMENT, IF ANY, PROVIDED BY THE MANUFACTURER OF THE DEFECTIVE OR NONCONFORMING GOODS. EXCEPT AS TO TITLE, THERE ARE NO OTHER WARRANTIES, WRITTEN, ORAL, OR IMPLIED, WITH RESPECT TO THE GOODS. BUYER WAIVES ALL CLAIMS BASED UPON IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ACKNOWLEDGES THAT COBB STRICTLY FORBIDS ITS EMPLOYEES TO WARRANT THE MERCHANTABILITY OR FITNESS OF GOODS FOR A PARTICULAR PURPOSE.

9. **LIMITATIONS OF LIABILITY.** Cobb's liability to Buyer, whether arising out of or related in any way to any contract, negligence, strict tort, warranty, statute, or any other legal basis for liability, shall be limited to Cobb's choice of any one of the following: (a) the repair of goods by Cobb; (b) the replacement of the allegedly defective goods exclusive of the cost of removal and installations; or (c) the cancellation of the contract, Buyer's return of the goods in question to Cobb, and Cobb's refund of the purchase price to Buyer. **These remedies are exclusive, and Buyer waives all other remedies and claims.** Buyer's failure or refusal to give Cobb a timely and reasonable opportunity to inspect and repair defective goods shall be a complete bar to any claim against Cobb. In addition, **Cobb shall not, under any circumstances, be responsible for special, economic, consequential or incidental damages** such as, but not limited to: loss of profits, revenue, good will, business opportunity, or reputation; loss of purchased or replaced goods; damage to other goods; labor expenses; or damages caused by delays, back-charges, or loss of use. **The goods are sold as is. Risk of loss shall transfer to Buyer upon delivery of goods to a common carrier, to Buyer's place of business, to Buyer's employees or agents, to a job site, or to any other location specified by Buyer.**

10. **DESIGN SPECIFICATIONS OF GOODS.** Cobb's sole obligation with respect to the design specifications of the goods is to manufacture them in accordance with the specifications included in the Order Confirmation. An order confirmation shall supersede all descriptions and specifications contained in the Purchase Order. If the Order Confirmation does not include all needed manufacturing specifications ("**Discretionary Specs**"), Cobb shall manufacture the goods using its choice of any Discretionary Specs and shall not be liable for any damages if its choice falls within the range of specifications allowed by applicable building codes and statutes. Cobb shall not be liable for any damages if the specifications in the Purchase Order or the Order Confirmation do not conform or comply with the owner's/architect's specifications, building codes, and any applicable statutes, including but not limited to the ADA. Any changes to the Order Confirmation must be signed by both Buyer and Cobb, and must specify no change in price, or the amount of the increase in price, or the amount of decrease in price.

11. **ATTORNEYS FEES AND VENUE.** In any action by Cobb to recover payment for goods sold by Cobb to Buyer, the prevailing party shall be entitled to attorneys' fees in the following amount: (i) 40% (but not less than \$1,500.00) of the claim, if the claim is \$10,000.00 or less; or (ii) 33.3% of the claim, if the claim is over \$10,000.00. However, if the Buyer files an Answer (even if the Answer is allowed to be filed by the Court after a default has been entered and/or even if the Answer is ultimately stricken), the prevailing party shall be entitled to reasonable attorneys' fees to be determined by the court. In addition, the successful party shall be entitled to request and receive post judgment collection costs and attorneys' fees, whether the judgment awarding attorneys' fees was based on the percentage formula or on the reasonable attorneys' fee provision.

Any suit, whether arising from contract, tort, or otherwise, must be brought in the Los Angeles Superior Court [Northwest District (Van Nuys) or Central District], or in the Federal District Court in Los Angeles. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

12. **PERSONAL GUARANTY.** If a personal guaranty has been executed as part of Cobb's Credit Agreement, the following constitute the terms of the Guaranty: Guarantor jointly and severally personally guarantees payment of all present and future indebtedness of Buyer to Cobb including all renewals, modifications, and extensions of such indebtedness. Guarantor waives all notices from Cobb and waives the right to require Cobb to proceed against Buyer. Guarantor agrees that Guarantor's personal guaranty shall not be deemed to be suspended, stayed, released, terminated, or discharged by any of the following: any modification, substitution, settlement, supplement, extension of time, or compromise granted to Buyer; any change in the relationship between Guarantor and Buyer, including the sale of any or all of Guarantor's ownership interest in Buyer; the execution of new or additional guarantees by Guarantor or by others; any change whatsoever in the,

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business relationship between Cobb and Buyer, including but not limited to any change in credit terms, amount of credit or amount of interest or service charges; any transfer of new or additional security by anyone for payment of Buyer's indebtedness to Cobb; the bankruptcy of Buyer; the release or discharge of Buyer's debt to Cobb; an automatic stay of proceedings against Buyer; Cobb's failure to exercise diligence against Buyer or against any Guarantor, including Guarantor; a failure or refusal by Buyer to execute a new or updated Credit Agreement and/or personal guaranty; or, Cobb's knowledge that Guarantor is not an officer or owner of Buyer. **This is an absolute and continuing Guaranty.** Guarantor specifically authorizes Cobb to obtain consumer credit reports on Guarantor for any purpose. It shall be conclusively presumed that all sales by Cobb to Buyer are made in reliance upon Guarantor's personal guaranty.

13. **USE OF BUYER'S ACCOUNT BY OTHERS.** Buyer and Guarantor agree that they shall be jointly and severally liable to Cobb for any goods purchased on Buyer's account by any company, employee of a company, or individual (**Affiliated Buyer**), if Buyer or Guarantor knew or had reason to believe that the Affiliated Buyer(s) was using Buyer's account. Each Affiliated Buyer and each principal or agent of an Affiliated Buyer is hereby warned that they shall also be held jointly and severally liable to Cobb for payment for all goods charged to Buyer's account regardless of their use of a name other than Buyer's on payment checks, correspondence, emails, purchase orders, or in conversation.

14. **SEVERABILITY.** If any part of this Agreement is held invalid or unconscionable, that part shall be fully severable, and the remaining provisions shall remain in full force and effect.

15. **ENTIRE AGREEMENT.** This document, any Credit Agreement signed by Buyer, and all guarantees constitute the entire and exclusive understanding among Buyer, Cobb, and all Guarantors and supersede all prior written or oral representations, warranties, statements, promises, and understandings, and may not be modified or terminated, except by a document, in writing, signed by the party against whom enforcement is sought. Cobb has not made any promises or representations to induce Buyer or Guarantors to purchase goods from Cobb pursuant to this Agreement, or any other agreement, and Buyer and Guarantors are not relying upon any promise or representation not contained in this Agreement or any other agreement signed by Buyer or Guarantors, except that the goods conform to the description of quantity and kind stated on Cobb's invoices to Buyer. In the event that any provision in this document is inconsistent or in conflict with the provisions in such other signed documents, the conflicting or inconsistent provision in the signed documents shall be controlling. If Cobb changes any provisions of this Agreement and sends the new version to Buyer and any Guarantor, by email, fax or US mail with a subject line entitled "IMPORTANT CHANGES TO YOUR AGREEMENT", the new version shall replace this Agreement, shall be deemed incorporated into Buyer's Credit Agreement, and shall govern all purchases made after the transmission of the revised Agreement to Buyer and any Guarantor.

16. **WAIVERS.** Cobb may delay exercising or may omit to exercise any right or remedy without waiving that or any other past, present, or future right or remedy. Cobb's consistent waiver of any right or remedy shall not modify the terms of this Agreement, nor establish a "course of dealing" which could be construed as a waiver of any of the provisions of this Agreement.

17. **COLLATERAL RECOVERY.** If Cobb seeks to recover payment from a collateral source (for example, against the owner of real property on a Mechanic's Lien claim), Cobb shall only be required to credit against Buyer's account the net amount recovered after deducting costs and actual attorneys' fees incurred. Furthermore, in the event that Cobb is unsuccessful in its attempt to recover from a collateral source, Cobb's reasonable costs and reasonable attorneys' fees incurred in the unsuccessful attempt shall be added to Buyer's account. Cobb may proceed against a collateral source at any time regardless of the aging of Buyer's invoices.

18. **INDEMNIFICATION.** Buyer shall defend, indemnify, and hold Cobb harmless from and against any and all claims by third parties for delays or other damages that are excluded by Sections 3, 4, 8, and 9 of this Document.

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