

## Applegate General Terms and Conditions of Sale

We at Applegate value our business relationship with you. The purpose of this attachment is to set forth the terms of our business agreement with you.

1. **Exclusivity of Terms.** These terms and conditions, together with any terms and conditions contained on the front side, constitute the entire agreement of APPLGATE ("Seller") and the purchaser named on the front side ("Buyer") and supersedes all previous correspondence, all prior discussions, representations, amendments or understandings of every kind and nature between Buyer and Seller, both written and oral, including any purchase orders that may have been submitted by the Buyer. Any term specified on the front supercedes any term on this side of the Agreement.
2. **Purchase Price.** All prices are exclusive of freight, fuel surcharges, tariffs, customs duties, storage or other charges incident to transportation or delivery. The purchase price is exclusive of any sales, use or other taxes. Taxes will be added to the purchase price unless the Buyer provides a valid exemption certificate.
3. **Terms of Payment.** Unless otherwise specified by the Seller, all prices are 30 days, net cash, subject to Seller's approval of Buyer's credit. If any payment is not made when due, Seller may impose interest on the unpaid balance of the purchase price up to the rate of 18% PER ANNUM, unless such rate is prohibited by law, in which case the maximum rate permitted by law shall apply. Additionally, Buyer shall pay all costs of collection incurred by Seller, including reasonable attorneys' fees. If Buyer fails to pay any sum when due under this Agreement, Seller may declare all payments owing under this Agreement and any other agreement with Buyer to be immediately due and payable and may refuse to perform any obligations then remaining unperformed under this Agreement or any agreement with Buyer.
4. **Delivery.** Any term of delivery specified is tied to the date Seller receives Buyer's signed order, and is only an estimate. Seller does not guarantee the delivery date, but will use reasonable efforts to do so. Seller may make partial shipments and submit a separate invoice for each shipment. All shipments will be F.O.B. Seller's plant of choice, unless otherwise specified. All orders are shipped at Buyer's risk, and Seller shall incur no liability for any order damaged, broken or lost in transit. Seller shall not be liable for any failure to deliver, or for any delay in the manufacture or delivery of, any order sold or to be sold by it if such a failure or delay is caused by delay or inability to obtain transportation; inability to obtain materials; shortage of fuel; failure of sources of supplies; labor disputes; accident; riot; war; terrorist act; embargo, restraint or demand of the United States or of any other government; nonfulfillment by Buyer of conditions of payment; natural disaster; or any other cause beyond the control of Seller. If at any time Seller shall be prevented by any of the above causes from the supplying all or any part of Buyers order and to its other customers under contract, Seller shall have the right to prorate the quantity then deliverable to Buyer and to its other customers.
5. **Acceptance.** Buyer agrees to promptly inspect each order received from Seller. Buyer shall be deemed to have accepted an order within 10 days following receipt unless it has previously notified Seller in writing of any claim. All claims for damage in transit shall be submitted directly to the carrier.
6. **Security Interest.** Seller retains a purchase money security interest in all unpaid goods and these goods shall remain personal property until the unpaid purchase price, and any collection costs, are paid in full. By signing any quote, purchase order, request for purchase ("RFP"), order confirmation or contract Buyer shall be deemed to have provided an authenticated signature under the Michigan Uniform Commercial Code ("UCC") and these terms shall be deemed incorporated by reference into all such writings. Buyer shall allow Seller to file any financing statement evidencing this security interest and these terms shall be deemed by the parties to constitute a security agreement under the UCC. Until paid in full, Buyer shall not encumber, allow any lien to attach or convey the goods. Buyer shall be responsible for maintaining insurance on all unpaid goods for the invoice amount.
7. **Installation.** This Agreement is limited solely to the sale of the order described on the front side, and Seller has no obligation to install the order. Buyer assumes all liability for installation of the order and shall be responsible for ensuring that the installation complies with (i) federal, state and local health, building and safety laws, codes and regulations; and (ii) Seller's instructions for the installation, curing, and drying of the product. Buyer indemnifies, holds harmless and agrees to defend Seller from any and all claims, damages, liabilities and expenses (including attorneys fees) resulting from negligent or improper installation of the product, installation that does not comply with such laws, codes or regulations, or violation of any such law, code or regulation.
8. **Warranty.** The Seller warrants to the Buyer that any order, manufactured and sold by the Seller, if properly installed, in an unmodified condition, in accordance with the Seller's installation instructions, operated, and maintained, and used under normal conditions, shall be free from material and manufacturing defects and meets current Consumer Product Safety Commission requirements as well as all other applicable specifications and requirements of the Federal Government for cellulose insulation in effect at the time of manufacturing ("Warranty"). This Warranty commences on the date of a properly cured installation and shall continue for the life of the premises in which it is installed. This Warranty does not apply to materials manufactured by third parties, if other brands of insulation are used with Seller's insulation, or for any work or modifications performed by third parties. The obligation of the Seller, and the Buyer's SOLE AND EXCLUSIVE REMEDY, shall be limited to the repair or replacement of defective materials or refund in accordance with these general terms and conditions of sale. Seller shall have no obligation under this Warranty for physical damage, claims of mold, improper installation or modification, improper or inadequate maintenance or inspection or if the order as used or installed does not comply with local, state, and federal laws, codes or regulations.
9. **Warranty Performance Procedure.** If Buyer believes the Seller may be responsible for the performance of any Warranty obligation, the Buyer must immediately send written notice of the claimed defect. No attempted repair of the claimed defect may be made without the prior written consent of the Seller. Upon notification, the Seller, or Seller's designated agent, shall be given access to the product for inspection or testing (including removal or destructive testing of the product). Buyer must contact the Seller and request a Return Authorization. Upon the Buyer's receipt of the Return Authorization form, the unused product may be shipped, F.O.B. Seller's plant, freight prepaid, to the facility designated on the Return Authorization. All product returned for replacement, or refund (which refund may be made in the form of a credit to the Buyer's account), must be accompanied by the Return Authorization. All other returned product is subject to a twenty percent (20%) handling/reshelving charge.
10. **Disclaimers of Warranties.** THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESSED OR IMPLIED WARRANTIES, OR ANY OTHER OBLIGATION ON THE PART OF THE SELLER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller undertakes no responsibility for quality of the product, nor any responsibility that the goods will be fit for the purpose for which Buyer may be buying these goods, except as otherwise provided in this Agreement. Any plans, specifications, affirmations of fact, promises or other communications by the Seller with reference to the order, or the performance of the order are solely for the convenience of the Buyer and shall not in any way modify the expressed warranties and disclaimers set forth. No agents or other parties are authorized to make any warranties on behalf of the Company or to assume for the Company any other liability or obligation in connection with the order.
11. **Consequential Damages.** The Seller shall not be liable for any incidental or consequential damages arising from the order, the breach of any warranties, the failure to deliver, delay in delivery, delay on nonconforming condition, or for any other breach of contract or duty between Seller and Buyer. Buyer's exclusive remedy and Seller's exclusive liability for any and all claims as to products delivered, whether or not such liability arises in equity, at common law, by statute (including but not limited to the Michigan deceptive trade practices act or similar statute of other jurisdiction), or under the law of contracts, torts (including without limitation, negligence and strict liability without regard to fault), or property, shall be limited, at Seller's option, to the repayment of the purchase price for the product with respect to which such claim is made plus transportation costs, if any, paid by buyer for such product, or the replacement of such product at Buyer's destination.
12. **Limitation of Actions.** Any action against the Seller must be commenced within one (1) year after the cause of action accrues.
13. **Cancellation, Suspension, or Delay.** This Agreement cannot be cancelled, suspended or delayed by Buyer without Seller's prior written consent. If Seller agrees to a cancellation, suspension or delay of Seller's work, Buyer shall pay Seller all costs incurred by Seller up to the date of such cancellation, suspension or delay.
14. **Backcharges.** Seller will not approve or accept returns or backcharges for labor, materials, or other costs incurred in modification, adjustment, service or repair of an order unless previously approved by Seller in writing.
15. **Changes in Design.** Seller reserves the right to modify the design and construction of the product to incorporate improvements or to substitute material equal or superior to that originally specified.
16. **Governing Law; Venue.** This Agreement, is made in Michigan shall be governed by the laws of Michigan without application of conflicts of laws. The parties agree that any action shall be brought in the court of appropriate jurisdiction in Ingham County, Michigan or U.S. District Court for the Western District located in Lansing, Michigan. The parties consent to jurisdiction and waive all claims of improper venue and *forum non-conviens*.
17. **Proper Notices.** All notices and other communications required or permitted under this Agreement shall be deemed to have been given if mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or messenger, fax or telegram, to the parties at the address listed on page 1, or to such other changed address as such party may have given by notice.
18. **Amendments.** Any amendment, alteration, supplement, modification or waiver shall be invalid unless it is set forth in writing, signed by the party intending to be bound thereby.
19. **Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without the provision.
20. **Assignability.** Buyer may not assign this Agreement without the prior written consent of Seller.
21. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
22. **Captions.** Captions contained in this Agreement are inserted for reference and in no way define, limit, extend or describe the Agreement or the intent of any provision herein.
23. **Counterparts and Facsimile.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties containing either an original signature or a copy sent by facsimile. The parties agree that signatures on this Agreement, as well as any other documents to be executed pursuant to this Agreement, may be delivered by facsimile in lieu of an original signature, and the parties agree to treat facsimile signatures as original signatures.
24. **Pronouns.** All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the parties may require.
25. **Attorneys Fees.** The prevailing party in any litigation involving this Agreement shall be entitled to recover, in addition to any other relief obtained, the costs and expenses, including reasonable attorney's fees and expenses, incurred by the prevailing party.