

## TERMS AND CONDITIONS OF SALE

- 1. PRICE:** Quoted prices are valid for five (5) days provided shipment is scheduled within lead time stated on quote. Shipments made after this date are subject to prices in effect at the time of shipment. Estimated delivery is based on current backlog which is subject to change depending on actual order date. Prices are quantity sensitive. Any changes to quantity, components, or dimensions may alter original or revised price and delivery.
- 2. STEEL PRICE ADJUSTMENTS:** The total amount of the final invoice may be adjusted based on increases or decreases in steel prices between the date of the purchase order and the date steel is purchased for that order. These adjustments may be made regardless of the requested delivery date of the order. Price adjustments may be applied to the total weight of the order, or to any portions of the order affected by the price increases or decreases.
- 3. PURCHASES OF FINISHED GOODS AND SERVICES:** The amount of final invoice of purchased may be adjusted based on increases or decreases in prices between the date of the purchase order and the date steel is purchased for that order. These adjustments may be made regardless of the requested delivery date of the order.
- 4. ORDER ACCEPTANCE:** All purchase orders are accepted only under the terms and conditions as stated herein, including price adjustments as described herein. No verbal agreement nor any change or amendment hereof, not agreed to in writing by an officer of Rack Builders, Inc. (“Seller” or “RBI”), shall be of any force or effect whatsoever.
- 5. PAYMENT TERMS:** Net thirty (30) days from date of invoice. A one and one-half percent (1-1/2%) per month charge will be assessed after thirty (30) days. Orders of more than \$30,000 are subject to a down payment requirement of at least thirty (30) percent of the original purchase order, due upon receipt of invoice. Down payments will be applied to the final invoice.
- 6. TAXES:** Prices do not include any taxes or any other governmental charge in connection with the sale of our products. Any taxes or charges which may arise from the sale and be collectable from either party, shall be the responsibility of Buyer, who shall pay same or reimburse Seller if Seller is required to pay the same. Buyer shall be responsible for furnishing Seller with a tax exemption certificate.
- 7. SHIPMENTS F.O.B. ORIGIN:** Unless otherwise specified, shipments shall be FOB Origin, *and all charges shall be “freight collect” or third-party billed.* Notwithstanding anything to the contrary, title shall pass upon delivery of the materials to the common carrier, or in the case of delivery on Seller’s trucks, title shall pass upon the earlier of (a) when the materials are properly tagged, banded, and prepared for shipment; or (b) when the materials are loaded on Seller’s truck at Seller’s facility. Buyer bears the risk of loss or damage to or the destruction of the materials from the time of their delivery by Seller to the common carrier or in the event delivery will occur on Seller’s truck when the materials are placed on Seller’s truck for shipment to Buyer. All claims for loss, damage, or destruction attributable to shipping should be made directly to the carrier, and unless they are shipped on Seller’s truck, Seller shall not be responsible for any such loss, damage, or destruction. The common carrier, although and even if selected by Seller, shall be deemed Buyer’s agent. Prepaid shipments are subject to a percentage mark-up, with minimum \$100 shipping and handling fee for small orders.
- 8. REVISIONS / DELAYS / CANCELLATION:** Orders placed may not be cancelled after Seller’s acceptance thereof, except as otherwise mutually agreed to in writing as described in Section 4. Additionally, except for Prices described in Section 1 and Steel Price Adjustments described in Section 2, orders placed may not be revised after Seller’s acceptance thereof, nor may delivery of goods made up, or in process, be deferred by Buyer beyond date originally specified, without written consent from Seller. Seller may elect to charge Buyer, and buyer shall be liable for any of Seller’s engineering, revision, storage, and/or cancellation charges for Buyer’s cancellation of order, revision of order, or deferral of order delivery.

9. **DESIGN SPECIFICATION:** Quotations are designed in accordance with ANSI MH16.1 based on loading and site information provided by the Buyer. Requests for specific products without loading and site information are quoted as “parts-only.” Seller does not certify the capacity of “parts-only” quotations. Unless otherwise specified, calculations and drawings for building permits are not included in the price.

10. **CONFIDENTIALITY:** All drawings and calculations are the property of Seller and are not to be used or copied without written consent from Seller.

11. **BACK CHARGES / CREDITS:** All back charges and credits must be approved by Seller in advance of any expense being incurred. Seller will issue a Credit Memo to Buyer for any amount approved by Seller.

12. **RETURNS:** Materials once shipped cannot be returned without prior written authorization from Seller. Authorized returns must be shipped within 30 days of such authorization and prepaid at the expense of the Buyer. Orders for non-standard, specially fabricated or non-stocked materials may not be returned. No credit will be allowed on any parts that have been altered or defaced, in any way, or upon which any additional operation has been performed or it has been determined, upon our inspection, to have been abused or misapplied. All authorized returned materials will be subject to a minimum 25% restocking charge, providing materials are received undamaged, in like new condition fit for resale and are consistent with current standard products. Further, all returned material is subject to rework charges, if required, to restore to a saleable condition.

13. **DISCLAIMER:** Seller shall not be liable for any delay or non-performance caused in whole or in part by any act of God, or the public enemy, or by labor troubles, strikes, lock-outs, riots, fires, storms, explosions, breakdowns of machinery, Railroad embargoes, Government embargoes or interventions, failure or delay of persons from whom we are obtaining machinery equipment, materials or supplies to deliver same, or any other causes beyond our control and affecting us, our manufacturing facilities or our sources of supply, whether such other causes be of the classes herein specifically specified or not, and whether or not the causes of delay or non-performance are existing at the date of contract.

14. **LIMITATION OF LIABILITY:** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES INCLUDING LOSS OF PROFITS, REVENUE, OR DATA, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. WITHOUT PREJUDICE TO THE OTHER LIMITATIONS OF THE ORDER, INCLUDING THESE TERMS AND CONDITIONS, SELLER’S MAXIMUM AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH ANY ORDER, WHETHER ARISING IN BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY BUYER UNDER THE RELEVANT ORDER.

15. **LIMITED WARRANTY:** Notwithstanding anything to the contrary set forth in the Order, Seller's sole warranties pursuant to the Order shall be that, at the time of delivery, the Materials supplied under the Order conform to the specifications agreed to in writing by the Seller and description of the type and quality specified on the face hereof, subject to tolerances and variations consistent with the usual trade practices. Buyer shall have a term of two (2) years from the date of delivery to submit warranty claims to Seller so long as Buyer notifies Seller in writing at the address listed below of its claim under this warranty within thirty (30) days from the date which Buyer discovers such nonconformance with specifications. Seller has not authorized any party to make any representation or warranty other than as expressly set forth. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY, WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF EITHER MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER HEREBY DISCLAIMS AND EXCLUDES ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER'S SOLE REMEDY AGAINST SELLER FOR THE BREACH OF ANY OBLIGATION ARISING OUT OF THE WARRANTY SHALL BE LIMITED, AT SELLER'S SOLE OPTION, TO REPLACEMENT OR REFUND.** Seller does not warrant its products against corrosion due to outdoor weather conditions, excessive water or dust, or application of soap, lubricants, powders or chemicals of any kind.

16. **INDEMNIFICATION.** Subject to the limitation of liability hereunder, Seller shall indemnify and hold harmless the Buyer and its agents and employees only from and against all third-party claims, costs, losses, and damages for personal injury, death, or property damage (including reasonable attorney's fees and court costs) arising from and to the extent Seller's materials fail to meet specifications. Buyer shall indemnify and hold harmless Seller and its directors, officers, employees, and agents from and against all claims, costs, losses, and damages (including reasonable attorney's fees and court costs) to the extent arising from negligent specifications, installation or use of the materials.

17. **INTELLECTUAL PROPERTY RIGHTS.** Any inventions, modifications, improvements, techniques or know-how affecting the manufacture of the materials sold pursuant to the Order, whether arising prior to the Order, or made or gained in the course of performing the Order, shall belong to Seller. Seller's indemnity for patent, trademark and copyright claims, if any, shall not extend to infringements based on any designs, plans or other specifications provided to Seller by Buyer.

18. **JURISDICTION AND VENUE.** Seller and Buyer hereby agree that the sale transaction shall be governed by Illinois law. By ordering product from Seller, Buyer hereby consents to personal jurisdiction in the State of Illinois and exclusive venue in the circuit court located in Adams County, Illinois for any dispute related to this transaction.