

# J•JOSEPHSON, INC.

## INVOICE TERMS AND CONDITIONS

### 1. ACCEPTANCE

The terms and conditions set forth herein contain the sole, entire and exclusive agreement between the Seller and the Buyer in this transaction superceding all prior discussions, proposals, negotiations, representations, and agreements. Any additional or conflicting terms, whether or not material, shall not, in any manner by implication, by waiver, or otherwise, govern the relationship between Seller and Buyer. Any waiver, modification or amendment of these terms and conditions shall only be effective as against Seller if such waiver, modification or amendment is contained in a written instrument duly executed by or on behalf of Seller. Acceptance of this Agreement by Seller is specifically conditioned upon the terms and conditions set forth herein.

### 2. SHIPMENTS

(A) Shipment dates are based upon Seller's best judgment, are subject to production limitations and factory schedules, and hence are not guaranteed.

(B) All sales, unless otherwise specified herein, are F.O.B. Seller's plant. Buyer is solely responsible for notifying the carrier as to any damage to or loss in transit of materials.

(C) Claims for shortages shall not be accepted by Seller unless such claims are received by Seller in writing within forty-eight (48) hours after delivery of materials to Buyer and are accompanied by a reference to Seller's shipping slip number. Seller shall be given a reasonable opportunity to inspect any shipment claimed by Buyer to contain a shortage. Use of materials by Buyer prior to such inspection by Seller shall constitute acceptance of the materials and a waiver of all claims by Buyer.

### 3. PRICE

(A) All orders shall be priced in accordance with Seller's prices in effect on the date of shipment.

(B) Except as set forth on the face hereof, Seller's price does not include any tax or other charge now or hereafter imposed by law or regulation, domestic or foreign, upon any material herein sold or on the production, manufacture, sale, transportation, disposal or delivery thereof. Accordingly, in addition to the price specified herein, the amount of any such tax or other charge applicable to this transaction herein shall be paid by Buyer, or, in the proper governmental authority. At its option, Seller may initially pay any such tax or other charges for Buyer's account and thereafter invoice Buyer for same.

### 4. PAYMENT

(A) Payment for all shipments hereunder shall be made by Buyer against Seller's invoice within thirty (30) days from the date of invoice, terms net cash, unless otherwise indicated on the face hereof.

(B) If at any time, in Seller's opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory security before making further shipments to Buyer.

(C) In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, Seller may defer further delivery of goods hereunder or may, at its option, cancel all further delivery of goods hereunder or may, at its option, cancel all further delivery of goods to Buyer.

(D) In the event Seller is required to commence collection action to recover unpaid invoices for goods sold and delivered. Seller shall be entitled to interest on the unpaid balance at the highest legal rate permitted from the due date of invoice, attorney's fees of 15% of the amount due, and costs of suit.

### 5. FORCE MAJEURE

(A) Any delays in or any failure of performance or delivery by Seller shall not constitute default or give rise to any claims for damages if and to the extent caused, directly or indirectly, by acts of God, acts of the Buyer, acts, rules or regulations of governmental authority (civil or military, executive, legislative, judicial or otherwise), strikes or other concerted acts of workers, lockout, labor difficulties, fires, floods, store, accident, earthquakes, tidal waves, or other natural disasters, epidemics, war, riots, rebellion, sabotage, insurrection, difficulties or delays in public transportation or in public or postal delivery services, car shortages, fuel shortages, inability to obtain from Seller's usual sources of supply, inability to obtain suitable or sufficient energy, labor, machinery, facilities, supplies or materials, as when required, failure of any third party to honor it's contractual dissimilar nature.

(B) When any such circumstance or circumstances exist as enumerated in 5 (A). Seller shall have the right, in its sole discretion to allocate its available production, deliveries, services, raw materials or other resources among any or all purchasers, as well as among departments, divisions, subsidiaries and affiliates of Seller, upon any such basis as Seller may determine, without liability to Seller whatsoever for any failure of performance for Buyer which may result therefrom. In any event, Seller may determine not to allocate any of its available production, deliveries, services, raw materials or other resources to Buyer, without liability to Buyer whatsoever for any failure to perform which may result therefrom.

### 6. PATENT INFRINGEMENT

Seller agrees to defend Buyer in any suit alleging infringement by Buyer of any U.S. patent, trademark, copyright or trade secret based on the manufacture and sale of the materials purchased by Buyer hereunder (except materials manufactured or sold by Seller in accordance with Buyer's specifications, requirements or designs) under this agreement and to indemnify Buyer against liability for any such infringement claim, provided that Buyer notify Seller within ten (10) days after receipt by it of any notice of commencement of any suit based upon such alleged infringement and provided further that Seller shall control and remain in control of any and all proceedings taken in defending such suit, including without limitation, utilization solely of counsel of Seller's own selection to defend such suit. The use of materials purchased by Buyer, its subsidiaries, affiliated companies, and customers, in combination with other materials or in the operation of any process is beyond the control of Seller, and Seller shall have no obligation or liability whatsoever in connection with any suit claiming infringement by means of the use of such materials.

### 7. LIMITED AND EXCLUSIVE WARRANTY

J. Josephson warrants to the purchaser that for a period of five years after delivery our vinyl wallcovering products will be free of manufacturing defects, will conform to our published specifications and will not separate from backing or exhibit bleeding or staining caused by defects in the products. Purchaser's sole and exclusive remedy shall be replacement of defective product or refund of the purchase price, at J. Josephson's option.

This limited warranty does not cover and expressly excludes any claim, damage, loss or expense arising out of or relating to: (a) accident or vandalism; (b) abuse, misuse or unapproved use of the product; (c) installation contrary to the Hanging Instructions and good installation practices; (d) mold or mildew; (e) abnormal conditions of use; (f) improper maintenance or failure to maintain; (g) improper storage, handling or shipment; (h) use of incompatible adhesive, materials, tools or equipment; and (i) design, installation or construction deficiencies of any kind or nature.

THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY J. JOSEPHSON WITH RESPECT TO THIS PRODUCT. ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR CLAIMED TO ARISE FROM COURSE OF DEALING OR USAGE AND TRADE PRACTICE.

### 8. LIMITATION OF DAMAGES

(A) In no event will J. Josephson be liable for indirect, consequential, special or exemplary damages, whether based in contract, tort, strict liability, warranty or otherwise.

(B) In no event shall the aggregate liabilities of Seller to Buyer arising out of or relating to the transactions, herein exceed the purchase price paid by Buyer to Seller hereunder of the materials in respect of which such claim is made.

(C) The provisions of the Seller's current Hanging Instructions are hereby incorporated by reference into this agreement as if fully set forth herein. The use of goods sold to the Buyer by the Seller is governed by all provisions of Seller's current Hanging Instructions. Buyer shall obtain and follow Seller's current Hanging Instructions before installing or otherwise using the goods and shall furnish the Hanging Instructions to all other person(s) involved in installing or using the goods. Seller's warranty obligations are conditioned upon installation and use of the goods in strict accordance with its current Hanging Instructions.

(D) All Claims for defects hereunder must be presented to Seller in writing within ten (10) days after delivery to Buyer. Failure of Buyer to give such notice shall constitute a waiver by Buyer of all claims in respect thereto. Seller shall have an opportunity of verifying any such defect before materials are used by Buyer, where the defective or nonconforming materials are replaced by Seller or Seller refunds the sales price received from Buyer for such materials, if requested by Seller. Failure to comply with these provisions shall invalidate any claim by Buyer for defects in materials by Buyer.

### 9. INDEMNIFICATION

Buyer assumes all risk and liability for loss, damages or injury to persons or to the property of the Buyer or others arising out of the use of presence of the materials purchased hereunder. Buyer agrees to indemnify and hold harmless Seller against any liability, damages, losses, costs, and expenses in connection with any suit or claim including but not limited to, any loss of use, loss of profits, damages or injuries to persons or property arising out of or relating to any use of materials purchased by Buyer, Buyer's customers, or other third parties.

### 10. CANCELLATION

Seller may cancel this Agreement at any time in the event that Buyer shall fail to perform or observe any term or condition hereof by giving Buyer ten (10) days written notice of cancellation. Cancellation hereunder shall not prevent Seller from pursuing any other remedy available to Seller by law or from seeking all such damages to which Seller may be entitled.

### 11. GENERAL

(A) Buyer shall not assign or transfer the Agreement or the benefits thereof without the prior written consent of Seller.

(B) This Agreement shall be governed by and construed according to the laws of the State of New Jersey.

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