



GENERAL TERMS AND CONDITIONS

PART 1: SUPPLY OF GOODS

1. **Acceptance of Terms.** Upon the signing of an acknowledgement of the purchase order from Kent Building Supplies, a division of J. D. Irving, Limited or its affiliates M.F. Schurman Company, Limited or Maritime Home Improvement Limited (collectively, “**Irving**”) issuing the purchase order or the commencement of the supply of goods thereunder by supplier named in the purchase order (the “**Supplier**”), whichever is earlier, a contract (the “**Contract**”) will be constituted for the provision of the goods described in the purchase order (the goods, equipment, or other materials are collectively referred to as the “**Goods**”, between Supplier and Irving. The signing or commencement of supply will constitute Supplier’s unqualified acceptance of the Contract, which will consist solely of these general terms and conditions for supply of goods (the “**General Terms**”), the purchase order, and the documents referred to on the purchase order. The Contract specifically excludes any terms of Supplier which may be communicated to Irving at any time before, concurrently with or after the date of the Contract, and regardless of whether the Supplier terms form part of any other prior or current contract with Irving unless specifically accepted by Irving in writing. The Contract of which these General Terms form a part supersedes any prior offers, negotiations, and agreements and constitutes the entire agreement between the parties concerning the subject matter. Should there be any conflict of terms between the written documents of the Contract, the following will be the order of priority: the purchase order; and these General Terms.

2. **Performance and Warranty.** Supplier guarantees and warrants that: (i) it has full power and authority to enter into the Contract and perform its obligations, (ii) the Contract is a binding obligation of Supplier, enforceable against Supplier in accordance with its terms, (iii) the Goods will conform to their specifications, description, drawings, standards, quality and performance levels, (iv) the Goods are fit for the intended purpose of Irving, including re-sale to Irving’s customers, and (v) title to all the Goods supplied under the Contract will be free and clear from all liens, claims, encumbrances and any other charges whatsoever.

3. **Insurance.** Without limiting Supplier’s liability under the Contract, Supplier shall provide, maintain and pay for the following insurance coverage: **COMPREHENSIVE GENERAL LIABILITY INSURANCE** covering Supplier’s liability for bodily injury (including death) and property damage with limits of not less than \$3,000,000 per occurrence. The comprehensive general liability policy will include Irving as additional insured with respect to liabilities arising out of or in any way connected with Supplier’s operations and will include contingent employer’s liability, broad form property damage, and a cross liability clause. All liability cover will be maintained for Products Liability and Contractual Liability. The insurance will state that it is primary insurance and that any other insurance carried by Irving will be specific excess and not contributing therewith. All insurance obtained by Supplier will include the requirement that the insurer will endeavour to provide Irving with 30 days advance notice of any cancellation of coverage. Supplier shall provide Irving with a certificate of insurance evidencing the insurance prior to delivery of the Goods, and at other times as requested by Irving. Unless otherwise



stipulated, the insurance will be in force for the duration of the Contract. Supplier shall immediately advise Irving in writing in the event that any such insurance coverage is cancelled, terminated, or materially reduced.

4. **Indemnity.** Supplier shall defend, indemnify and hold harmless Irving and its affiliates and their respective agents, officers, directors and employees from and against any and all suits, legal proceedings, claims, demands, damages, liabilities, losses, fines, penalties, costs and expenses including reasonable legal fees arising out of or attributable to: (i) any negligent act or omission of Supplier, its agents, employees and subcontractors, (ii) any breach by Supplier of any representation, warranty, obligation or covenant under the Contract, (iii) bodily injury, sickness or death of any of Supplier's or any subcontractor's employees, or loss or damage to Supplier's or any subcontractor's property, (iv) any defect or failure in Supplier's Goods purchased by Irving's customers, including any lien, charge, encumbrance or claim affecting the Goods, and (v) any infringement or claimed infringement of any patents or other intellectual property rights by the manufacture, sale or use of any Goods, software, materials, apparatus, or methods furnished by Supplier under the Contract.

5. **Taxes and other amounts.** Unless stated otherwise in the purchase order, all applicable taxes, duties, packaging, shipping and freight charges are included in the purchase price and are for the account of Supplier, save and except the goods and services tax, harmonized sales tax, or any other value added taxes as may be applicable during the term of the Contract. Supplier shall pay all contributions, taxes, premiums and insurance required under federal, provincial/state or local laws in relation to its employees engaged in the furnishing of the Goods, and all sales, use, excise, transportation, occupation and other taxes and duties applicable to Goods furnished hereunder which Supplier is required by law to pay. Supplier will co-operate with Irving in the recovery of any sales taxes paid by Supplier on Goods supplied which were used in an exempt application.

6. **Price Changes.** If there is any reduction in Supplier's regular selling price for the Goods before shipment, Supplier agrees the price specified on the corresponding purchase order will be reduced to Supplier's regular selling price prevailing at the time of shipment of such Goods. However, nothing herein contained shall permit an increase in the price specified on the purchase order unless approved in writing by Irving.

7. **Packaging, Shipping and Invoicing.** Supplier warrants that all Goods to be shipped hereunder will be properly classified, described, packaged, marked and labelled, and will be in the proper condition for transportation in accordance with all applicable laws or regulations (including national hazard communication standards). A detailed packing slip showing Irving's purchase order number, Supplier's firm name and the shipper's name will be included in or attached to each package or pallet. If routing instructions are not followed, Supplier may be held liable for any additional transportation costs incurred. When shipments of Goods are made from other than a Canadian location, the shipments will be made in accordance with Irving's customs instructions (which are available to Supplier upon request) and Canadian Customs regulations. Invoices must be sent directly at the following email address: KBSAP@kent.ca. Failure to comply with this clause may result, at Irving's option, in the rejection of



Supplier's invoice and/or the shipment. Payment terms will not commence until receipt by Irving of a proper invoice.

8. **Title and Risk of Loss.** Title to the Goods (including documents, designs, drawings, specifications, plans, reports, information and other deliverables and risk of loss will pass to Irving upon delivery at Irving's facility, unless otherwise specified on the purchase order.

9. **Recall.** In the event Industry Canada or other federal, provincial or local agency, or any other governmental or quasi-governmental authority having jurisdiction (the "Commission") issues an order pursuant to any consumer protection law (hereinafter referred to as the "Act") requiring either Irving or Supplier to recall replace, repair or make refunds with respect to all or part of any Goods (a "Recall"), Supplier shall do so at its expense (including without limitation, reimbursements to Irving for its out of pocket expenses) in such reasonable manner as is determined by Supplier (but subject to Irving's concurrence with respect to the manner, which shall not be unreasonably withheld) that will satisfy the requirements of the Act. Where both parties agree or where either party determines in its reasonable discretion that a Recall is warranted prior to or without regard to any proceeding or determination by the Commission, Supplier shall assume all costs and expenses of such Recall (including reimbursement to Irving for its out of pocket expenses) and such Recall shall be effectuated in a manner agreed upon between Supplier and Irving. In any event, Supplier shall accept return of all of Irving's inventory of the Goods involved in a Recall and Supplier shall refund to Irving all monies paid for said inventory. In no event shall Supplier treat Irving less favourably than any other customer in the event of a Recall or potential Recall. Nothing contained in this section shall prevent Irving from taking any actions as may be required of it under the Act and Supplier shall pay Irving all costs and expenses incurred by Irving in doing so.

10. **Independent Contractor.** Supplier will be an independent contractor and not an agent or representative of Irving. Supplier, its agents, employees and subcontractors, shall not bind Irving to any obligation with a third party, nor hold themselves out as having authority to bind or obligate Irving. None of the persons engaged by Supplier or any of its subcontractors in the performance of the Contract will be considered employees of Irving.

11. **Force Majeure.** Any delay caused to either Supplier or Irving by reason of acts of God, force majeure, or other causes beyond a party's reasonable control and occurring without a party's fault or negligence, including strikes, lockouts and labour unrest, will not be regarded as a default in performance by Supplier or by Irving. Notice of any anticipated delay will be given by the delayed party to the other as soon as possible under the circumstances. Performance under the Contract will resume as soon as practicable, and the party affected by the delay will at its own cost take all commercially reasonable measures to minimize the impact of the event on the other party, including through the devising and implementation of work-around plans, re-sequencing and resuming performance under the Contract as soon as possible. In these circumstances, Irving will have the right to adjust the contracted quantity of the Goods, or adjust delivery schedules and/or completion date(s), as the case may be. No extension will be made for delay unless written notice of claim is given to Irving within 10 days of the commencement of the delay. Any extension for delay will be for the period of time as agreed upon in



writing between the parties. In the event that a force majeure event lasts for more than 30 days, Irving will have the right to terminate the Contract for the applicable Goods without penalty.

12. **Notice.** Any notice required or permitted to be given under the Contract must be forwarded by email with a confirming copy mailed by prepaid mail, or by courier, to the address of the parties shown on the purchase order. The notice will be deemed to be received one day following the sending of the email message and the mailing of the confirming copy. In the case of Irving, copies of the notice will be delivered to the following addresses: P.O Box 5888, 300 Union Street, Saint John, New Brunswick, E2L 4L4, Attention: Secretary, and P. O. Box 1200, 300 Union Street, Saint John, New Brunswick, E2L 4M3, Attention: Director of Supply Chain.

13. **Limitation of Liability.** Under no circumstances will Irving, its directors, officers and employees be liable to Supplier or any other person or entity for special, incidental, consequential, punitive, exemplary or indirect damages, loss of goodwill or business revenues or profits, work stoppage, downtime costs, loss of use of equipment or facilities, cost of capital, data loss, or any and all other commercial damages or loss whether based in contract, warranty, tort, negligence, gross negligence or statute, and in no event will Irving's liability exceed the value of the Contract.

14. **Confidentiality.** Supplier acknowledges that in order to provide the Goods, certain proprietary and/or confidential information may be disclosed to Supplier or may be observed and/or acquired by Supplier in the performance of the Contract. Supplier shall hold all information in the strictest confidence and shall ensure it is not disclosed, published or disseminated to any third party. Supplier shall ensure that its employees, agents, subcontractors and representatives assume the same obligation of confidentiality before communicating the information or know-how to that person. The confidential information will not be used by Supplier, except to provide the Goods.

15. **Intellectual Property.** Supplier grants to Irving the non-exclusive, worldwide, royalty-free right and licence to use and display any product information, data, images, and/or intellectual property Supplier furnishes to Irving in relation to this Contract (the "Supplier Content"). The Supplier Content shall be provided for use by Irving in various marketing and in-store activities including, without limitation, for use in Irving's internet initiatives. Supplier acknowledges that Irving is reliant upon Supplier to ensure that all Supplier Content is accurate and complete. Supplier agrees to revised, update, and resubmit Supplier Content promptly upon discovering it is inaccurate or incomplete. Irving agrees that it will not make modifications or alterations to Supplier's product specifications, images, intellectual property or product warranty information without prior approval. Except for the limited license granted to Irving, Supplier retains all right, title and interest in and to the Supplier Content. Supplier acknowledges and agrees that all patents, designs, trade names, trademarks, copyrights, trade secrets, or any other proprietary rights or entitlements ("Intellectual Property") owned or controlled by Irving shall be the sole property of Irving.

16. **No publicity.** Unless the Supplier has received prior written consent from Irving's communications department (which consent may be withheld in Irving's absolute discretion); Supplier shall not publicize, announce or otherwise distribute any information in any format or media, whether such formats or media are now known or later devised, including any so-called "social media", in respect



of (i) the Contract, (ii) Supplier's relationship with Irving, or (iii) or any information about Irving, including Irving's activities, operations, brands, trademarks, products, services, personnel, other relationships, practices, policies, intellectual property, know how, or financial matters.

17. **In-Store Services.** In the event Supplier and/or its employees and agents provide in-store services in any location owned or controlled by Irving, Supplier agrees that the in-store services shall be performed and completed in a good and workmanlike manner with the skill and care to comply with all applicable laws and all applicable rules and regulations of Irving. In addition to the indemnity obligations set forth in this Contract, Supplier shall be fully responsible for the acts or omissions of any employees or agents providing in-store services. Supplier shall also have complete responsibility to communicate all necessary and legally required instructions, warnings or safety information regarding Supplier's merchandise.

18. **Records Retention.** Supplier shall retain, for at least five years following the end of any applicable warranty period or the final settlement date of any outstanding claims or disputes, whichever is later, the following: (i) all invoices and receipts relating to the Goods; (ii) all pertinent commercial documentation in respect of the Contract and all subcontracts, including copies of invoices, freight bills, dock receipts, freight forwarded receipts, bills of lading, certificates of origin, and any other pertinent documents; and (iii) all documents recording or evidencing Supplier's compliance with the Contract. All of the foregoing will at all times be open to audit, inspection and examination by the authorized representatives of Irving, who may make copies and take extracts, but only for the limited purpose of (a) verification of Supplier's compliance with the terms of the Contract, (b) enforcement of Irving's rights under the Contract, or (c) ascertaining amounts owed by Irving, where relevant.

19. **Governing Law.** The Contract is to be governed, both with respect to its construction and performance, by the laws of the Province of New Brunswick, Canada and the parties agree to submit to the exclusive jurisdiction of the courts of that Province.

20. **Set-off.** In addition to any right of set-off or recoupment provided by law, Irving may at any time and without notice set-off claims by Supplier for amounts due or to become due from Irving under the Contract against any claims that Irving or any of Irving's affiliates has or may have arising out of the Contract or any other transaction between Irving or Irving's affiliates and Supplier or any of Supplier's affiliates.

21. **International Trade Reporting and Documentation.** Supplier shall provide all information necessary for Irving to comply with all applicable laws, including legal reporting obligations, in the country(ies) of origin and destination. Supplier shall provide all documentation, including certificates of origin, and/or electronic transaction records to allow Irving to meet customs-related obligations, and local content or origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable. Supplier further agrees, upon request by Irving, to participate in trusted trader, trade security or other similar government programs with a view to eliminating or minimizing security related delays at the border. Supplier shall assume any and all financial responsibility arising from Supplier's failure to comply with these requirements and/or to supply Irving with information required to meet legal reporting obligations, including any fines, penalties, forfeitures,



unnecessary duties or counsel fees incurred or imposed as a result of actions taken by the importing or exporting country's government.

22. **Termination.** Irving may terminate the Contract immediately and/or suspend the Contract without prejudice to any other right Irving may have if: (i) Supplier makes assignment or is petitioned into bankruptcy, or if a receiver is appointed to administer the affairs of Supplier, (ii) Supplier breaches any of the terms or conditions of the Contract and refuses or is unable to rectify any breach to Irving's satisfaction within five days following receipt of notice of the breach, or (iii) Irving reasonably believes that Supplier will be unable to satisfactorily perform its obligations under the Contract. Irving may without penalty terminate the Contract or suspend the Contract for a reasonable period of time without cause subject to the payment to Supplier of reasonable direct costs (excluding overhead expenses and lost profits) incurred by Supplier as a result of the termination or suspension.

23. **Irving Companies.** Supplier shall, whenever feasible, use the services and/or goods of Irving related companies, provided the company is cost competitive (see www.jdirving.com for a description of Irving related companies).

24. **Additional.** Supplier will not assign the Contract or any portion of the Contract without the prior written consent of Irving, which consent may be withheld by Irving in its absolute discretion. Irving will have the right to assign the Contract or any portion of the Contract, without Supplier's consent, to any of Irving's affiliates or to any purchaser or successor to Irving's relevant business. The Contract will be binding on and enure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns. Any failure by Irving at any time, or from time to time, to enforce or require the strict keeping and performance by Supplier of any of the terms or conditions of the Contract, will not constitute a waiver by Irving or a breach of any terms or conditions, and will not affect or impair the terms or conditions in any way, or the right of Irving at any time to avail itself of the remedies as it may have for any breach or breaches of the terms or conditions. Supplier acknowledges that it understands that time is of the essence in the performance of its obligations under the Contract. No modification of, nor additions to the terms of the Contract will be effective until expressly accepted in writing by Irving. Each paragraph and provision of the Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of the Contract will remain in full force and effect. The headings used herein are for convenience of reference only and will not be considered part or affect the interpretation of the Contract. Words expressed in the singular include the plural and vice-versa and words of one gender include all genders. "Including" will mean including without limitation and "include" and "includes" will have a corresponding meaning.

PART 2: ILDC TERMS AND CONDITIONS OF SALE

If the Contract involves the supply of Goods by an ILDC Designated Supplier (as defined below), the following Part 2: ILDC Terms and Conditions of Sale ("Part 2") amends the General Terms as follows:



25. The term "Designated Suppliers" refers to a supplier who has an arrangement with Independent Lumber Dealers Co-operative ("ILDC") for a continuing discount, rebate, allowance, price concession or advantage and who has been notified in writing of its appointment as a Designated Supplier of ILDC. The term "Supplier" refers to all Suppliers, whether Designated Suppliers or not.
26. The liability of ILDC to any single Designated Supplier in respect of the total of all purchases made from it by the Members of ILDC acting as individual purchasing agents for ILDC shall be the lesser of \$10,000 or the total amount of all purchases made by all Members of ILDC for a period of thirty (30) days next following the earliest purchase made by any one Member of ILDC for which payment has been made. ILDC shall not be liable to any Designated Supplier for any amount in excess of its liability set out in this paragraph.
27. ILDC shall be liable to Designated Suppliers for purchases made by Members of ILDC on its behalf subject to limitation contained in Paragraph 22 herein.
28. There shall be no liability upon ILDC to other than Designated Suppliers, notwithstanding the use of this purchase order and sales by such suppliers to Members of ILDC shall be for the sole account of the respective individual Member of ILDC.
29. All Designated Suppliers shall notify the head office of ILDC on or before the seventh working day after an account has become overdue according to the terms of sale as agreed with ILDC.
30. All Suppliers shall quote the relevant purchase order number on all correspondence, shipping documents, invoices and other documents.
31. All Suppliers shall forward promptly a bill of lading or shipping notice to the destination of the goods set out on the face of the purchase order on the same date that shipment is made.
32. The Supplier shall not put through any price increase without having first obtained written authority for such change from ILDC.
33. Neither ILDC nor Members of ILDC shall be liable to any Supplier in the event that any one or more of the herein terms is not adhered to strictly by the Suppliers or if the Designated Supplier deviates from the terms of payment as agreed upon with ILDC.
34. If the Supplier is not the carrier of the goods then the name of the carrier must appear on the invoice.
35. The purchase order shall include all charges for packing, cartage and transportation unless specifically excluded in the Supplier Buying Agreement.
36. Where the Supplier is to perform any work on the premises of ILDC or of the Member of ILDC or of the Member of ILDC's customers, the Supplier undertakes to indemnify and save harmless ILDC and



the Member of ILDC for all damages, injury or loss resulting to ILDC or to the Member of ILDC or its customer's property until the due completion of the performance of the work.

37. The Supplier's insurance under paragraph 3 of the General Terms shall comply with the following:

- i) Be taken out in a form with insurers acceptable to ILDC.
- ii) Name Member(s) of ILDC as additional insured with respect to the "Products and Completed Operations" following distribution or sale of the Supplier's Goods under this agreement.

38. All contracts arising out of the acceptance of Member of ILDC's Purchase orders shall be governed by the laws of the Province of Ontario.

39. Should there be any conflict of terms between the General Terms and Part 2, the provisions of Part 2 shall govern.