

# Terms and Conditions of Sale

1. **Applicability.** These terms and conditions of sale (these "Terms and Conditions") are the only terms which will govern the sales of the Products by Plycem to Distributor. The accompanying quote, invoice, or confirmation of sale (the "Sales Confirmation" or "Order Acknowledgement") and these Terms and Conditions (the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, unless there is a Master Agreement governing the parties in effect at the time of sale in which case the Master Agreement terms shall control to the extent it conflicts with these Terms and Conditions. The Parties agree that the terms of the Agreement shall prevail over any conflicting terms and conditions or attempts to add obligations in any purchase order or any other instrument or document provided by Distributor unless the parties have agreed in writing otherwise. Any additional or different terms or conditions in any purchase order or other instrument or submission from Distributor to Plycem ("Purchase Order") shall be deemed objected to by Plycem without the need of any further or additional notice of objection, and such additional or different term(s) shall be of no effect or in any way binding upon Plycem. Purchase Orders shall not be binding on Plycem until the earlier of (a) written acceptance by an authorized representative of Plycem or (b) shipment, provided that acceptance by shipment shall only be binding as to the portion of the Purchase Order actually shipped by Plycem. Fulfillment of Distributor's order does not constitute acceptance of any of Distributor's terms and conditions and does not serve to modify or amend the Agreement. Acceptance of the Agreement, including these Terms and Conditions, shall be deemed given upon the occurrence of any of the following: (a) Distributor signing and returning the acknowledgement copy, (b) requesting an order for Product that is the subject of the Agreement, or (c) acceptance of Product that is the subject of the Agreement, whichever is first.

2. **Definitions.** As used in these Terms and Conditions of Sale, each of the following capitalized terms shall have the meaning ascribed to such term in this Section. All capitalized terms not defined in this Section shall have the meaning ascribed to such terms in the body of these Terms and Conditions.

"Distributor" – Means the person(s), firm, company, organization, partnership or corporation to whom these Terms and Conditions are issued.

"Product" – Means the siding, trim, decking, and other building products manufactured or sold by Plycem and purchased by Distributor and where applicable, any alternative and substituted products as determine by Plycem in its reasonable discretion subject to the Agreement.

"Plycem" – Means Plycem USA LLC, a Delaware limited liability company.

"Non-Conforming" – Means any goods received by Distributor from Seller pursuant to a Purchase Order that: (i) do not conform to the [make/model number/UPC/SKU/OTHER IDENTIFIER] listed in the applicable Purchase Order; (ii) do not significantly conform to the ASTM Specifications; or (iii) materially exceed the quantity of Goods ordered by Distributor pursuant to this Agreement or any Purchase Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

## 3. Price and Payment.

(a) **Price.** The purchase price of the Product shall be the price set forth in (i) Plycem's price list in effect as of the date Plycem accepts Distributor's Purchase Order or (ii) a quote issued by Plycem, subject to and contingent upon Distributor purchasing the entire quantity set for therein (the "Price"), unless otherwise agreed by the Parties in writing. Plycem reserves the right to correct any obvious clerical or computational errors in the Agreement to be effective upon written notification to Distributor; provided that all other terms contained therein shall remain in effect. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Distributor. Distributor shall be responsible for all such charges, costs and taxes; provided that, Distributor shall not be responsible for any taxes imposed on, or with respect to, Plycem's income, revenues, gross receipts, personal or real or personal property or other assets.

(b) **Payment.** Distributor shall pay all invoiced amounts due to Plycem within thirty (30) days from the date of Plycem's invoice, unless otherwise mutually agreed by the parties in writing. All late payments may incur interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Distributor shall reimburse Plycem for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Distributor shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Plycem, whether relating to Plycem's breach, bankruptcy or otherwise. In addition to all other remedies available under the Agreements or at law (which Plycem does not waive by the exercise of any rights hereunder), Plycem shall be entitled to suspend the delivery of any Products if Distributor fails to pay any amounts when due without liability.

4. **Additional or Escalation Costs.** The price of any Products may be adjusted by Plycem at its sole discretion. Any surcharge or increase in Plycem's cost of supplying the Products caused by any level of governmental law, regulation, tax, or other burden imposed after the acceptance of Distributor's Purchase Order on the manufacturing (including, without limitation, raw material price increases), ownership, storage, processing, production, transportation (including, without limitation, fuel and freight surcharges), distribution, use or sale of the Products covered by the Agreement will be added to the Price without notice to Distributor.

5. **Delivery.** Delivery dates are estimates, and time is not of the essence. The failure to meet any indicated delivery date shall not constitute a breach of the Agreement. In no event shall Plycem be responsible to Distributor for any damages, whether direct or indirect, arising out of or relating to any failure of the Product to be delivered by any specified delivery date. ACCEPTANCE OF THE PRODUCT BY DISTRIBUTOR UPON DELIVERY SHALL CONSTITUTE A WAIVER BY DISTRIBUTOR OF ANY CLAIM FOR DAMAGES ON ACCOUNT OF DELAY IN DELIVERY OR PERFORMANCE. Unless otherwise agreed to in writing, Plycem shall have the right to deliver the Product in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure of Distributor to pay for any installment when due shall excuse Plycem from making any further deliveries. Delay in delivery of any installment shall not relieve Distributor of its obligation to accept and pay for remaining installments.

6. **Non-conforming Product.** Distributor shall have the right to inspect the Product upon receipt. Distributor shall notify Plycem in writing with respect to any non-conforming Product within five (5) days from receipt by Distributor and furnishes written evidence or other documentation as required by Plycem that the Products: (a) are damaged, defective, or otherwise do not conform to the Products identifier. If Distributor notifies Plycem pursuant to this Section, then Plycem shall determine, in its sole discretion, whether to repair or replace the Products or provide a credit or refund of the price for the Products, together with all shipping expenses incurred by Distributor in connection therewith. **THE FAILURE TO NOTIFY PLYCEM OF ANY SUCH CLAIM WITHIN THE TIME SPECIFIED IN THIS SECTION SHALL CONSTITUTE A WAIVER OF DISTRIBUTOR'S RIGHT TO INSPECT AND/OR REJECT THE PRODUCT FOR NON-CONFORMITY AND SHALL CONSTITUTE AN IRREVOCABLE ACCEPTANCE OF THE PRODUCT BY DISTRIBUTOR. PLYCEM SHALL HAVE THE RIGHT TO TEST, INSPECT, OR TAKE SAMPLES OF THE PRODUCT CLAIMED BY DISTRIBUTOR TO BE NON-CONFORMING AND IF, UPON SUCH TEST OR INSPECTION, THE PRODUCT IS FOUND TO BE CONFORMING, ALL COST EXPENDED BY PLYCEM IN CONNECTION WITH SUCH INSPECTION, TESTING, AND SAMPLING SHALL BE CHARGED TO AND BORNE BY DISTRIBUTOR.**

## 7. Disputes and Termination.

(a) For all disputes, whether monetary or non-monetary, Plycem and Distributor agree that before resorting to any remedies provided in this Agreement, each Party will first notify the other Party in writing of the item(s) of dispute. For a period of ten (10) business days following such written notice, the Parties agree to work together in good faith to resolve such dispute.

(b) If the Parties are unable to resolve the dispute during such ten (10) business day period and a Party believes a breach has occurred, such Party may give the other Party written notice describing in reasonable detail the breach. Upon the receipt of such written notice of breach, the Party receiving the notice shall have a period of sixty (60) days to cure such breach. Distributor's sole and exclusive remedy for a non-monetary breach not cured by the expiration of such sixty (60) day period is to terminate this Agreement by giving Plycem written notice that Distributor is terminating this Agreement.

8. **Title and Risk of Loss.** Title and risk of loss passes to Distributor upon delivery of the Products to the designated delivery location. To secure Distributor's full and prompt payment of the Price, Distributor hereby grants, and Plycem hereby retains, a first priority PMSI in and to all the Products set forth in the Agreement and all products or proceeds therefrom (collectively, the "Collateral"). Distributor authorizes Plycem to file a UCC financing statement and any other documents deemed necessary to perfect this security interest at any time, and Distributor shall take all reasonable steps to cooperate with Plycem in perfecting this security interest. Distributor shall keep all the Collateral subject to this security interest fully insured against damage due to fire, theft, accident and the elements under a policy in form satisfactory to Plycem, which names Plycem as loss payee. Distributor shall pay, before delinquency, all taxes and other charges assessed against the Collateral referenced herein and keep said Collateral free from all liens and security interest other than that created hereby.

9. **Warranties. EXCEPT FOR THE WARRANTIES SET OUT UNDER THE APPLICABLE PRODUCTS' LIMITED WARRANTY AS PROVIDED BY PLYCEM, NEITHER PLYCEM NOR ANY PERSON ON PLYCEM'S BEHALF HAS MADE OR MAKES FOR DISTRIBUTOR'S BENEFIT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE; (iii) TITLE; OR (iv) NON-INFRINGEMENT; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. DISTRIBUTOR ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY PLYCEM, OR ANY OTHER PERSON ON PLYCEM'S BEHALF.**

10. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth on the Commercial Section or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested and postage prepaid). Except as otherwise provided in this Agreement, a notice is

effective only (a) on receipt by the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.

11. **Confidential Information.** All non-public, confidential or proprietary information of Plycem, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Plycem to Distributor, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement, and may not be disclosed or copied unless authorized in advance by Plycem in writing. Upon Plycem's request, Distributor shall promptly return all documents and other Products received from Plycem. Plycem shall be entitled to injunctive relief for any violation of this Section. Such information shall at all times remain the property of Plycem. If Distributor receives a request to disclose all or any part of Plycem's Confidential Information under the terms of a discovery request, subpoena, decree or order issued by a court or tribunal of competent jurisdiction, or by a governmental or regulatory body or agency (a "Disclosure Request"), Distributor hereby agrees promptly to notify Plycem, in writing, of the existence, terms and circumstances surrounding the Disclosure Request. If Plycem seeks a protective order, Distributor agrees to cooperate fully with respect thereto.

12. **Amendments.** No amendment to this Agreement is effective unless it is in writing, specifically states that it amends the Agreement, and signed by an authorized representative of each Party.

13. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14. **Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15. **Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding this paragraph, the Parties intend that Distributor's rights under Sections 6, and 9 are Distributor's exclusive remedies for the events specified therein.

16. **Assignment.** Distributor shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Plycem. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Distributor of any of its obligations hereunder. Notwithstanding the foregoing, this Agreement may be assigned by either Party in connection with a merger, consolidation, sale of all of the equity interest of the party, or a sale of all or substantially all of the assets of the party to which this Agreement relates.

17. **No Liability for Consequential or Indirect Damages. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THE AGREEMENT, NEITHER PLYCEM NOR ITS REPRESENTATIVES SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT PLYCEM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. PLYCEM'S AGGREGATE LIABILITY UNDER THE AGREEMENT FOR ANY DIRECT DAMAGES SHALL NOT EXCEED THE PRICE PAID OR PAYABLE BY DISTRIBUTOR TO PLYCEM UNDER THE AGREEMENT IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.**

18. **Force Majeure.** Plycem shall not be liable or responsible to Distributor, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing its obligations under the Agreement when and to the extent that such failure or delay is caused by or results from acts or circumstance beyond the reasonable control of Plycem, including, but not limited to, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, Products or telecommunication breakdown or power outage, mill or facility conditions, temporary or permanent mill or facility closures. Plycem shall endeavor to promptly provide Distributor with notice of the occurrence of such an event.

19. **Compliance with Laws.** Distributor represents, warrants and covenants that it shall comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Product.

20. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

21. **No Third-Party Beneficiaries.** This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

22. **Choice of Law.** All matters arising out of or related to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas. The parties expressly waive the jurisdiction and application of the United Nations Convention for the International Sale of Goods.

23. **Binding Arbitration.** Except for any and all controversies, disputes or claims pertaining to non-payment or confidentiality, the parties agreed that any and all other controversies, disputes, or claims pertaining in any manner whatsoever to the purchase of the Product shall be resolved exclusively by binding Arbitration administered by the American Arbitration Association. This agreement to arbitrate is intended to and shall be broadly interpreted and covers all controversies, disputes, and claims arising out of or relating to a Product purchase including, but not limited to contract claims, tort claims and statutory claims, or any combination of claims. The arbitration proceeding shall take place exclusively in Houston, Harris County, Texas. The American Arbitration Association shall administer the arbitration, and the American Arbitration Association's Consumer Arbitration Rules (the "Rules"). Any arbitration under the Agreement will take place on an individual basis. Class arbitrations and class actions are not permitted. Distributor agrees that, by use and/or application of the Product, Distributor is waiving the right to a trial by jury or to participate in a class action. This binding agreement to arbitrate shall be governed by and interpreted under the United States Federal Arbitration Act (Title 9, U.S. Code, sections 1-16). For any and all controversies, disputes or claims pertaining to non-payment or confidentiality, the Parties agree to venue in the state or federal courts in Harris County, Texas and agree to waive and do hereby waive any defenses and/or arguments based on improper venue and/or lack of personal jurisdiction. By entering into this Agreement, the Parties agree to personal jurisdiction in the state and federal courts in Harris County, Texas.

24. **WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

25. **Attorneys' Fees.** Should any dispute result in litigation between the parties, the prevailing Party in such litigation shall be entitled to recover from the losing Party its reasonable attorneys' fees and related costs and expenses.

26. **Counterparts.** This Agreement may be executed in any number of counterparts and each counterpart will constitute an original instrument, but all such separate counterparts will constitute one and the same agreement. Notwithstanding anything to the contrary in this Section, a signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

27. **No Franchise or Business Opportunity Agreement.** The Parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Plycem and Distributor. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished.

28. **Not Construed Against Drafter.** Plycem and Distributor acknowledge that they have read these Agreements, have had the opportunity to review with an attorney of their respective choice, and have agreed to all its terms. Under these circumstances, Plycem and Distributor agree that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting the Agreement and that in the event of any ambiguity in any of the terms or conditions of the Agreement, including exhibits, schedules attachments and appendices attached hereto, such ambiguity shall not be construed for or against any Party on the basis that such Party did or did not author same.