

## TERMS AND CONDITIONS OF SALE

**1. GENERAL** All sales by Pennar Global, Inc. or any of its subsidiaries including Ascent Buildings, LLC and Pennar Global Metals, LLC ("Seller") of any of its products ("Goods"), to any purchaser thereof ("Buyer") are subject to all these Terms and Conditions, which constitute an integral part of any contract for the sale of Goods. The terms set forth herein constitute the sole terms and conditions upon which Seller offers the Goods for sale. No term or condition contained in any purchase order form submitted by Buyer that varies from or conflicts with any of these Terms and Conditions shall become part of the contract for the sale of Goods unless it is expressly accepted in writing by Seller's authorized representative at its home office. Delivery of these Terms and Conditions to Buyer constitutes notification of Seller's objection to any term or condition that varies from or conflicts with those contained herein. No modification or addition to these Terms and Conditions or to any other provision of the contract for the sale of Goods shall be binding on either party unless it is in writing and signed by both parties.

**2. TERMS OF PAYMENT** Payment shall be made in United States dollars on a net thirty (30) days' basis from the bill of lading date, unless otherwise specified in writing by Seller. At Seller's sole option, it may require an irrevocable letter of credit with a bank acceptable to Seller, to be payable upon presentation of the invoice and dock or ship's receipt to the bank issuing the letter of credit, and on such other terms and conditions as Seller may require.

**3. COMPLIANCE; TAXES AND CHARGES** Unless expressly stated otherwise on the reverse hereof, Buyer shall be solely responsible for compliance with all importation and local market requirements as related to the Goods, including but not limited to tariff and importation restrictions, custom controls, product description and labeling, and related local market laws. Buyer is solely liable and agrees to hold Seller harmless with respect to all tariffs, duties, transportation costs, customs and other compliance documentation and taxes (including sales, use, value added, excise or other) or charges levied on Goods sold or exported by Seller to Buyer.

**4. SHIPMENT AND DELIVERY** Unless stated to the contrary on the reverse hereof, delivery (using Seller's standard methods for packaging and shipping) will be made to a carrier selected by Seller unless Buyer requests in writing use of a particular carrier. All Goods are identified and all risks of loss pass to Buyer upon delivery by Seller to the carrier or to Buyer, to Buyer's designated carrier or to any other agent of Buyer. In no case will Buyer be entitled to recover from Seller any damages, consequential or otherwise, caused by any loss or delay in delivery or Seller's failure to meet Buyer's requested delivery date, even when Seller has selected or paid for the services of a particular carrier. Buyer may not reject any shipment, for any reason, beyond ninety (90) days from Buyer's receipt thereof. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer; each shipment will constitute a separate sale, and Buyer shall pay for the Goods shipped whether such shipment is in whole or partial fulfillment of Buyer's order. Seller may, in its discretion, invoice Buyer for any costs associated with contract amendments or shipment change accommodations.

**5. LIMITATIONS ON WARRANTIES, LIABILITY, AND ACTIONS** Buyer agrees that all claims against Seller, other than for breach of warranty (which are restricted under this Section 5), arising from the sale of Goods shall expire and be barred forever unless an action thereon is commenced in a court of competent jurisdiction in the County of Montgomery, State of Texas within one (1) year following Buyer's discovery of facts indicating to Buyer that such claims may exist against Seller.

**NO LAWSUIT PERTAINING TO ANY MATTER ARISING UNDER OR GROWING OUT OF THIS AGREEMENT SHALL BE PROSECUTED IN ANY COURT OTHER THAN A COURT HAVING VENUE IN THE COUNTY OF**

**MONTGOMERY, STATE OF TEXAS, U.S.A. THE WARRANTIES OF SELLER ARE SET FORTH IN SELLER'S STANDARD PRODUCT WARRANTY FOR THE GOODS, IF ANY, AND ARE IN LIEU OF, AND BUYER HEREBY WAIVES, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES OF SELLER, EXPRESS, STATUTORY OR IMPLIED, ARISING OUT OF OR IN CONNECTION WITH THE SALE, RESALE, AND PURCHASE OF SELLER'S GOODS OR PARTS, OR THE USE, REPAIR OR PERFORMANCE THEREOF, OR THE COURSE OF DEALING OR PERFORMANCE UNDER ANY AGREEMENT BETWEEN BUYER AND SELLER TO WHICH THESE TERMS AND CONDITIONS APPLY, EXCEPT AS PROVIDED EXPRESSLY IN SELLER'S STANDARD PRODUCT WARRANTY FOR THE GOODS, IF ANY, SELLER SHALL NOT BE LIABLE TO BUYER, TO BUYER'S CUSTOMERS OR TO ANY OTHER PERSON. BUYER AGREES TO INDEMNIFY SELLER, WITH RESPECT TO ANY CLAIMS AGAINST SELLER FOR INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, PLANT, EQUIPMENT, INFORMATION, PROPERTY OR PRODUCTION, ARISING FROM THE SALE, PURCHASE, RESALE, REPAIR OR SUBSEQUENT USE OF SELLER'S GOODS OR PARTS AND FROM ANY PROMISE OR OFFER TO SELL, PURCHASE OR REPAIR SUCH GOODS OR PARTS, REGARDLESS OF WHETHER SELLER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER AGREES THAT THIS LIMITATION OF DAMAGES IS REASONABLE AND WILL NOT CAUSE IT TO LOSE ANY EXPECTED BENEFITS, RIGHTS OR REMEDIES UNDER ANY AGREEMENT FOR THE SALE OF GOODS. THE MAXIMUM LIABILITY OF SUPPLIER FOR ANY AND ALL CLAIMS IN ANY WAY ARISING OUT OF THE AGREEMENT OR IN ANY WAY RELATED TO THE PRODUCTS, SHALL IN NO CIRCUMSTANCE EXCEED THE AGGREGATE AMOUNT PAID TO SELLER BY BUYER UNDER THIS AGREEMENT FOR THE GOODS GIVING RISE TO THE LIABILITY.**

**6. FORCE MAJEURE** Neither party to this contract shall be responsible to the other party, nor shall either party be liable to the other party or to any third party, for any damages, including without limitation incidental and consequential damages, arising out of nonperformance or delay in performance of any sale of Goods due to acts of God, wars, riots, strikes, unavailability of suitable and sufficient labor, materials or capacity and any unforeseen event beyond its control.

**7. PROPRIETARY RIGHTS** Buyer agrees that Seller retains proprietary rights in and to all product specifications, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other proprietary rights relating to the Goods, except as otherwise agreed to in writing between the parties. The Goods are offered for sale and are sold by Seller subject in every case to the condition that such sale does not itself convey any license, expressly or by implication, estoppel or otherwise, to manufacture, duplicate or otherwise copy or reproduce the Goods. If any of the Goods are to be furnished to Buyer's specifications, Buyer agrees to indemnify Seller against all liabilities and expenses resulting from any claim of infringement of any patent or other propriety right in connection with the production of such Goods.

**8. PRODUCT/COST CHANGES** Seller reserves the right to change, improve or add any product or specifications at any time and to change Seller's prices without notice. If a change causes an increase or decrease in the price of Goods, Seller shall notify Buyer and invoices and payments shall be adjusted accordingly. All Goods shall be subject to tolerances and variations consistent with usual trade practices regarding dimensions, straightness, section, composition and mechanical properties and normal variations in surface and internal conditions and quality and

shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

**9. BUYER'S DEFAULT** In addition to all other remedies Seller may have under the law, Seller may terminate any agreement it has with Buyer and cancel any unfilled order without notice to Buyer in the event that: (a) Buyer defaults in any payment to Seller and such default continues unremedied for a period of ten (10) days; (b) Buyer fails to perform any other obligation, warranty, duty or responsibility or is in default with respect to any term or condition undertaken by Buyer under any agreement to which these Terms and Conditions apply, and such failure or default continues unremedied for a period of twenty (20) days after written notice thereof to Buyer by Seller; (c) Buyer is liquidated or dissolved; (d) any assignment is made of Buyer's business for the benefit of creditors; (e) a receiver, or similar officer, is appointed to take charge of a substantial part of Buyer's assets; (f) if in Seller's judgment reasonable doubt exists as to Buyer's ability to pay its debts as they mature; (g) Buyer fails to respond within ten (10) days to a demand by Seller for adequate assurance of Buyer's ability to perform under any agreement with Seller; or (h) any petition in bankruptcy is filed by or against Buyer, which remains undischarged for thirty (30) days. If applicable law allows the trustee in bankruptcy or Buyer to affirm this contract and perform Buyer's obligations, then said trustee or Buyer shall cure all outstanding defaults within the period determined by the bankruptcy court and provide Seller such adequate assurances as may be necessary to ensure Buyer's continued performance under this contract.

**10. MISCELLANEOUS** (a) No modification of any of these Terms and Conditions shall be binding on either party unless it is in writing and signed by both parties. No waiver of these Terms and Conditions shall be effective unless made in writing. No waiver of any breach of these Terms and Conditions shall constitute a waiver of any subsequent breach of the same or of any other provision of these Terms and Conditions.

(b) Any transaction or agreement to which these Terms and Conditions apply shall be governed by, and construed in accordance with, the substantive laws of the State of Texas, without giving effect to the rules of conflicts of law; and the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any manner to any such transaction or agreement. (c) Seller shall disclose information to be disclosed to Buyer and deliver materials to be delivered to Buyer only in compliance with the export control and sanctions laws and regulations of the United States of America in effect from time to time. Buyer agrees to abide by any limitation of disclosure placed on information revealed to it, and by any limitation of material deliveries which may be placed thereon as a result of such regulations. Buyer shall provide Seller with all documentation necessary or desirable for compliance with all such laws and regulations. Before Buyer purchases Goods that Buyer intends to export, Buyer will notify Seller and will identify the country(ies) of intended destination. Buyer agrees to hold Seller harmless from any liability arising from the failure of Buyer to comply with such laws and regulations, or with the provisions of this paragraph.

(d) Section headings are for convenience only and shall not be considered in the interpretation of these Terms and Conditions. The plural shall include the singular, and the singular shall include the plural, whenever used. All notices required or permitted hereunder shall be in writing and shall be personally delivered or dispatched by prepaid expedited or first class air mail.

(e) The relationship of the parties is that of independent contractors, and there are no third party beneficiaries to this transaction.

(f) Should arbitration or litigation arise between Buyer and Seller concerning any sale of Goods to which these Terms and Conditions apply, the prevailing party shall be entitled to its attorneys' fees, litigation expenses and court costs, including the fees, expenses and costs incurred in collecting on any judgment that may be awarded.