

## Sunbelt Marketing Investment Corp Terms and Conditions

**Controlling Provisions:** These terms and conditions (these "**Terms**") of sale are the only terms that govern the sale of the goods ("**Goods**") by Sunbelt Marketing Investment Corp., a Georgia Corporation (the "**Seller**") to Buyer. The accompanying invoice and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understanding, agreements, negotiations, represents and warranties, and communications, both written and oral and the rights of the parties shall be governed exclusively by the provisions, terms, and conditions hereof. Seller makes no representations or warranties concerning this order except as expressly contained herein. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

**Payment:** Buyer shall pay all invoiced amounts due to Seller on the date listed on the invoice or if no date is listed on the invoice, within 30 days of the date of Seller's invoice. Buyer shall make all payments hereunder by ACH, wire transfer, or check and in US dollars. Seller reserves the right to charge, and if applicable, Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees, restocking charges, freight, and other applicable charges. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder. Seller shall be entitled to suspend credit or to change credit terms in its sole discretion including but not limited to requiring prepayment or satisfactory security from Buyer.

**Delivery:** Seller shall not be liable for any delays, loss, or damage in transit. Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the address listed on the accompanying invoice (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall be responsible for all unloading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. 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 units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, freight, redelivery expenses, storage, and insurance). The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) business days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Georgia Uniform Commercial Code.

**Freight:** Shipments from Seller are sent F.O.B. Destination with freight costs charged to Buyer; provided, however, Seller will prepay freight ("**Freight Allowance**") on orders meeting one of the following requirements: (i) orders having a minimum value of \$7500 net that include pipe products or Florestone shower bases, (ii) orders having a minimum value of \$3500 net that include palletized products without pipe products or Florestone shower bases, or (iii) such other Freight Allowance terms published by Seller or agreed to in writing in advance of the shipment. Notwithstanding anything contained herein, Buyer shall forfeit Freight Allowance and be charged for freight if the invoice is not paid according to the terms of such invoice. Jobsite deliveries shall incur an additional \$250 charge regardless of whether Buyer meets Freight Allowance.

**Inspection and Rejection of Nonconforming Goods:** Unless otherwise agreed to and specified in writing, Buyer shall inspect the Goods within (24) twenty-four hours of receipt for copper tube or within five (5) business days of receipt for all non-copper tube Goods (individually and collectively the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order, (ii) product's label or packaging incorrectly identifies its contents, or (iii) product is damaged and such damage was not reasonably assessable at time of receipt. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Except as otherwise agreed to, Buyer shall ship the Nonconforming Goods to a facility of Seller's choice and at Seller's expense. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Seller's expense and risk of loss, the replaced Goods to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this section are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Notwithstanding anything to the contrary contained herein, return of Goods for any other reason shall be at the discretion of Seller and at the expense of Buyer. Any and all returns must be authorized in writing prior to return.

**Limited Warranties:** Unless otherwise stated, all Goods are manufactured by a third party ("**Third Party Product**"). For all purposes herein, Seller shall be considered a "Product Seller" as defined in O.C.G.A. Section 51-1-11.1 or as any similar defined product distributor under any other state or federal statute, law, rule, regulation, or case to which this contract may be subject. The Goods may carry a manufacturer's warranty, which Seller can provide upon request. Third-Party Products are not covered by any Seller warranty. The Seller shall not be liable for a breach of the warranty but will use commercial reasonable efforts to work with the manufacturer of the Third-Party Product provided that Buyer gives written notice of the defect, reasonably described, to Seller within fifteen (15) days of the time when Buyer discovers or ought to have discovered the defect. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING ON SELLER'S SKILL OR JUDGEMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR USE AND THAT THERE ARE NOT WARRANTIES WHICH EXTEND BEYOND THE TERMS. SELLER SHALL IN NO EVENT BE LIABLE FOR ANY BREACH OF WARRANTY. THE MANUFACTURER'S WARRANTY AND THE OBLIGATIONS AND LIABILITIES OF THE MANUFACTURER THEREUNDER, IF ANY, ARE EXCLUSIVE AND BUYER HERBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTIES OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF SELLER WITH RESPECT TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR INCIDENTAL AND CONSEQUENTIAL DAMAGES) EXCEPT WHEN OCCASIONED BY SELLER'S GROSS NEGLIGENCE.**

**Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER. The limitation of liability set forth in this Section above shall not apply to liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts.

**Terms and Conditions:** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**Governing Law and Jurisdiction.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Georgia in each case located in the City of Austell and County of Cobb, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

**Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the invoice or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**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.