

BLUELINX STANDARD  
TERMS AND CONDITIONS OF SALE

**BLUELINX CORPORATION AGREES TO SUPPLY ORDERED GOODS AND SERVICES ONLY UPON THE FOLLOWING TERMS AND CONDITIONS. SELLER'S ACCEPTANCE OF A BUYER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS SET FORTH BELOW.**

- 1. TERMS AND CONDITIONS.** Seller's commencement of the delivery of the goods and/or services ordered by Buyer and Buyer's acceptance of such deliveries shall constitute a firm contract on the terms stated in Seller's confirmation and these Terms and Conditions. Seller's confirmation of Buyer's Purchase Order is not subject to any other terms and conditions unless such terms and conditions are set forth in an agreement signed by both Seller and Buyer and that references and specifically amends these Terms and Conditions.
- 2. PRICES; PAYMENT.** Confirmed prices are based on labor, freight, material costs prevailing at the time of Seller's confirmation. Increases in such Seller's costs prior to Seller's shipment of the ordered goods, may result in Seller notifying Buyer of a price increase. In the event Buyer does not agree to accept such price increase, Buyer may terminate this confirmation by notifying Seller of the termination in writing at least five (5) days prior to shipment of the ordered goods. In the event Buyer does not terminate this confirmation as provided in the preceding sentence, Seller may in invoice the Buyer for the increased price. Unless as otherwise agreed to in writing by Seller, payment of Seller's invoices shall be due and payable as provided on the front of Seller's invoice. Seller may, at its option, impose a late payment charge on any past due invoice equal to the lesser of 1.0% per month or the maximum rate allowed by law on the entire outstanding balance, until the outstanding balance is paid in full.
- 3. DELIVERY.** Unless otherwise specified in this confirmation, all deliveries are FOB Shipping Point. All delivery dates are approximate and Seller shall not be responsible for any damage of any kind resulting from any delay. Seller shall not be liable for any default or delay in performance if caused directly or indirectly, by acts of God; war; force of arms; acts of terrorism; fire; flood; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay in transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material or equipment used in the manufacture of the goods; failure of any party to perform any contract with Seller relative to the production of the goods; or from any cause whatsoever beyond Seller's control.
- 4. WARRANTY.** All of the goods furnished hereunder are furnished by suppliers to Seller and are warranted by Seller only to the extent of the original warranties provided to Seller by its supplier and, if Seller's supplier is not the manufacturer of the ordered goods, by the original manufacturer of the ordered goods. Seller will provide all reasonable assistance to Buyer in obtaining the benefits of such warranties. All services provided hereunder shall be provided in a professional and workmanlike manner. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SUPERSEDES AND EXCLUDES ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS, MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS.
- 5. LIMITATION OF LIABILITY.** Seller's liability to Buyer on any claim of any kind, including negligence, with respect to the goods or services delivered hereunder, shall in no case exceed the price of the ordered goods or services or part thereof which gives rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE GOODS, PERFORMANCE OF SERVICES OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S WRITTEN CONSENT, EVEN IF SELLER HAS BEEN NEGLIGENT, AND BUYER INDEMNIFIES AND HOLDS SELLER HARMLESS FROM ANY AND ALL SUCH CLAIMS OF DAMAGE BY BUYER OR OTHERS. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER UNDER THIS AGREEMENT OR OTHERWISE EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICES IN RESPECT TO WHICH DAMAGES ARE CLAIMED.
- 6. "SECONDS."** Seller shall not be responsible for any defect, loss, damage or injury caused by any product described as "seconds." Examples of terms denoting "seconds" shall include, without limitation, the following: "Shop, Mill Seconds (M.S.), Rejects, Blows, Pops, Mis-manufacture, Utility, Not-certified (N.C.), Ply-crate, Crating, Pot-liner, Blanks, Economy, Dunnage, Falldown, Damage, "AS IS", Without recourse, and Without any warranty, express or implied."
- 7. LIMITATION OF ACTIONS.** Any action for any loss or damage with respect to the goods or services delivered by Seller hereunder must be commenced by Buyer (via written notice to Seller, with confirmation of receipt by Buyer) within thirty days after Buyer's receipt of such goods or services, as the case may be.
- 8. INDEMNIFICATION AND WAIVER.** Buyer shall defend, indemnify and hold harmless Seller from all loss or damage sustained by Seller, and from and against all claims asserted against Seller with respect to the goods or services which are the subject of this contract arising in whole or in part out of Buyer's, its agents', employees', and/or customers' (a) failure to follow applicable specifications, instructions, warnings, or recommendations; (b) failure to comply with all applicable legal requirements, including but not limited to, the Occupational Safety and Health Act of 1970, as amended; (c) misusing or making misrepresentations as to the goods; (d) negligence; and/or (e) providing of designs, plans, specifications or other instructions which infringe or are alleged to infringe any patent, trademark, copyright, or other intellectual property right. Buyer hereby waives and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled. As used in this Section 8, the term "Seller" shall include Sellers, its officers, directors, agents, employees, subcontractors, parents, subsidiaries, divisions or affiliates.
- 9. NO CANCELLATION.** After confirmation by Seller, Buyer's purchase orders shall not be subject to cancellation by Buyer without Seller's express written consent, and upon terms that will compensate Seller for all direct, incidental and consequential losses incurred, or damages suffered, by Seller. Buyer shall also be obligated to pay all reasonable cancellation charges including, but not limited to (1) the price for goods and services completed prior to Seller's receipt of such notice, (2) all costs previously incurred in connection with uncompleted goods or services together with reasonable profit thereof and (3) the expenses incurred by Seller by reason of such cancellation.
- 10. TAXES.** All taxes and other charges imposed by federal, state, local, or foreign governments on the performance, manufacture, sale, shipment, import, export, or use of the goods or services, as the case may be (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify, and hold harmless Seller from and against all liabilities for such taxes or charges and attorney's fees or costs incurred by Seller in connection therewith.
- 11. ADVICE AND ASSISTANCE.** Upon request, Seller in its discretion may furnish as an accommodation to Buyer technical advice or assistance regarding the goods or services ordered by Buyer. Seller assumes no obligation or liability for the advice or assistance given or results obtained, which shall be at Buyer's sole risk.
- 12. BUYER'S MATERIALS.** All of Buyer's tooling, goods and other property in Seller's possession shall be fully insured by Buyer and Buyer releases Seller from all liability for loss of damage to such materials caused by Seller's negligence or otherwise. At any time after one year since completion of any order requiring the use of such materials, Seller may use or dispose of such materials without liability to Buyer.
- 13. INSURANCE.** Buyer shall provide and maintain the following minimum insurance coverages on an "occurrence" basis for goods delivered hereunder against loss or damages by fire, acts of terrorism, or other causes during the time between delivery and final payment: Commercial General Liability, including Products/Completed Operations in the amount of \$1,000,000. Buyer shall furnish to Seller certificates of insurance showing the above

referenced coverages and providing for at least thirty (30) days prior written notice of cancellation or modification and naming Seller as an additional insured.

**14. PROPRIETARY RIGHTS.** Buyer agrees it will not copy, nor permit anyone else to copy, any goods or parts thereof, or any pattern, plan, drawing, specification, instruction or depiction thereof, without written approval of Seller, and that it will not knowingly, directly or indirectly, violate or infringe upon or contest the validity of any patent, license or other right of Seller or third parties pertaining to any of said goods. Where any goods are manufactured from patterns, plans, drawings or specifications furnished by Buyer, Buyer shall indemnify Seller against and save Seller harmless from all loss, damage and expense arising out of any suit or claim against Seller for infringement of any patent, trademark, copyright or other right arising out of the manufacture of such goods or because of the use or sale of such goods by any person. The terms of any Seller Software License Agreement submitted to Buyer with the goods are incorporated herein by reference.

**15. SECURITY AGREEMENT; CREDIT AND COLLECTION.** To secure payment of all sums due hereunder or otherwise, Seller shall retain a security interest in the goods delivered hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest. Seller is relying upon Buyer's representation of solvency and if Seller at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, or if Buyer shall fail to make payment when due which payment is not cured within ten (10) days after receipt of notice of the same from Seller, Buyer shall be in material breach hereof and Seller may, without liability to Buyer, withhold performance hereunder, change the payment terms and/or repossess goods theretofore delivered. Title to the goods covered by this contract shall remain in Seller until payment in full is received. In extending any credit hereunder, Seller may charge Buyer finance, service or late charges in an amount not greater than allowed by law, and if Buyer fails to pay according to the terms of this contract, Seller may make such charges and may also collect the amount unpaid with Buyer being liable to Seller for all costs of collection including attorney's fees.

**16. CONFIDENTIALITY.** Buyer shall not use or disclose any of Seller's trade secrets or confidential information, whether or not designated as such, except as required in connection with the use or resale of the goods or services covered by this confirmation.

**17. RETURN POLICY.** No goods may be returned without Seller's consent. If Seller agrees to a return of goods, then Seller may charge a restocking fee of at least 15%. Eligible returns are subject to inspection by Seller, and must be in good and re-salable condition, including clean and free of damage.

**18. AGREEMENT.** Because Seller has invested significantly in the development of a network of manufacturers, suppliers and service providers and Buyer will be provided access to that network through its dealings with Seller, for a period of one year following the date of Seller's delivery of goods or performance of services subject to these Terms and Conditions, Buyer shall not, on its own behalf or on behalf of a third party, solicit for purchase or actually purchase such goods or services directly from the manufacturer, supplier or service provider that Seller sourced such goods or services. Notwithstanding the foregoing, if Buyer purchased such goods or services from such manufacturer, supplier, or service provider prior to its relationship with Seller, then Buyer shall not be subject to the restriction above.

**19. MISCELLANEOUS.** This confirmation and these Terms and Conditions constitute the entire agreement between Buyer and Seller relating to the ordered goods. No modifications shall be binding upon the Seller unless in a writing signed by Seller's duly authorized representative. No modification of this confirmation or these Terms and Conditions will be affected by the acknowledgment or acceptance of other shipping instruction forms or any other document containing terms and conditions at variance with or in addition to these Terms and Conditions, all such varying or additional terms being deemed invalid. No waiver by Seller or default by Buyer shall be deemed a waiver of any subsequent default. The invalidity, illegality, or unenforceability of any one or more provisions hereof shall in no way affect or impair the validity, legality, or enforceability of the remaining provisions hereof, which shall remain in full force and effect. This agreement shall be governed by the laws of the state of Georgia, without giving effect to its principles of conflicts of law.