

**DAVINCI ROOFSCAPES, LLC**  
**SALES ORDER – TERMS AND CONDITIONS**

1. **Applicability.** The following Terms and Conditions shall apply to the sale of all roofing products, articles, materials, work or services ("Products") by DaVinci Roofscapes LLC ("Seller") to Buyer identified on the first page of the attached Sales Order Acknowledgement ("Order").
2. **Sales Confirmation.** The Order, along with these Terms and Conditions (collectively, "Agreement"), becomes the exclusive agreement between the parties subject to the terms and conditions herein. Seller accepts Buyer's order expressly conditioned on Buyer's consent to the Agreement. Any different or additional terms proposed by Buyer or included in Buyer's order form are hereby rejected and void.
3. **Shipments.** Unless otherwise indicated herein, all Products shall be delivered to the location in the United States designated by Buyer. If the Products are to be delivered outside the United States then Seller's obligation shall only be to deliver the Products to a United States port designated by Seller. Seller reserves the right to ship all or part of the Products ordered and to ship the Products in advance of the established delivery dates. Quoted delivery times are estimates and are conditioned upon Buyer's fulfillment of its obligation hereunder.

Seller may choose to accommodate Buyer pick up of Products at the Seller's facility or Buyer arranging a third party freight company to pick up Products. In these cases Seller will provide the date that the Buyer order will be available for pickup ("Ready Date"). Buyer shall have until 3 PM Central time on the fifth working day after Ready Date to pick up the order or have it picked up. On the 6<sup>th</sup> working day after the Ready Date, Seller will make arrangements to ship the products and will invoice the Buyer. If Seller has to arrange the shipment, Buyer shall pay to Seller all shipping and handling charges.
4. **Prices.** Prices stated are in U.S. Dollars, FOB Seller's plant. Buyer is responsible for payment of any sales, use, value added or similar taxes that are applicable or may become applicable to the sale of the Products unless Seller is provided with a valid tax exemption certificate at the time the order is placed.
5. **Shipping and Handling.** Shipping and handling includes estimated freight costs. Except for Products sold under the Company's fixed freight rate program, actual freight charges, including fuel surcharges, will be billed to and payable by the Buyer.
6. **Payment Terms.** All payments under this Agreement must be in U.S. Dollars. Unless stated otherwise on the first page hereof, payment shall be made to Seller net thirty (30) days from the date of invoice at the address referenced in this Agreement or as directed by Seller. No receiving agency or depository has the authority to settle claims for Seller or to accept payment tendered as payment in full. Buyer agrees that notwithstanding any endorsements or other legend appearing on Buyer's checks, draft or other orders for payment in full or settlement of the account. Invoices shall be issued when the Products are shipped. Buyer is obligated to comply with the payment terms notwithstanding that transportation, delivery, or acceptance of the Products is delayed, restricted, interfered with or prevented due to any reason, foreseeable or unforeseeable, beyond Seller's control. Seller's right to payment upon tender of conforming Products shall be absolute and Buyer shall not set off against such payment any amounts Buyer might claim it is owed by Seller. Buyer shall pay a late payment charge of one and a half percent (1½%) per calendar month or portion thereof on amounts due to Seller from the date on which such payment was due until the date such payment is received, together with all costs of collection including reasonable attorneys' fees and collection agency fees. Seller reserves the right, among other remedies, either to terminate this Agreement, or to suspend further delivery under it in the event Buyer fails to pay for any one shipment when same becomes due. If Buyer's financial condition is, or becomes unsatisfactory to Seller, advance cash payments or security satisfactory to Seller may be required by Seller for future deliveries.
7. **Acceptance of Products Returns.** Buyer shall promptly inspect the Products when received and shall notify Seller in writing of any deficiencies within seven (7) business days. In the absence of such notice, the Products shall be deemed to have been accepted. Acceptance shall also be deemed to have been made when Buyer uses the Products for their intended uses or resale. Acceptance shall be final and irrevocable.

No Products shall be returned without the prior written approval of Seller and the issuance by Seller of an authorization number. Granting of return authorization is at the sole discretion of the Seller. The authorization number shall be prominently shown on the external packaging of the Products returned. Buyer must pay 20% of the purchase price as an inspection and restocking charge on returns. Freight charges on returned Products must be prepaid by Buyer. This restocking policy may be modified at the Seller's discretion and does not apply to custom blends or colors which are not returnable.
8. **Excuse of Performance.**
  - (a) Deliveries may be suspended by Seller in the event of an Act of God; war; riot; fire; explosion; accident; flood; sabotage; lack of adequate fuel, power, raw materials, labor, containers or transportation facilities; compliance with governmental requests, laws, regulations, order or actions; breakage or failure of machinery or apparatus; national defense requirements or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of Seller.
  - (b) Deliveries suspended or not made by reason of this Section may be canceled by Seller without liability of Seller to Buyer.
9. **Technical Data.** All rights and title in specifications and technical data used in connection with the production of Products hereunder shall remain exclusively with Seller. Neither Buyer nor any other party shall have any right in technical data of Seller except pursuant to a specific written agreement by Seller. Buyer shall not use Seller's specifications or technical data for production or procurement of products nor permit any third parties to do so without obtaining the written consent of Seller.
10. **Confidential Information.** Buyer agrees and warrants that it will not disclose nor make available to any third party any specifications, data, information or other details pertaining to this Agreement without first obtaining the written consent of Seller.
11. **Liability for Storage of Buyer Furnished Property.** Any property of Buyer in Seller's possession shall be held at Buyer's risk of loss or damage. Buyer agrees to pay reasonable storage charges for all Buyer owned property or residential inventory remaining at Seller's facility.
12. **Specifications.** All Products furnished hereunder shall be generally in accordance with Seller's then current specifications applicable to such Products unless specifications have been furnished to Seller with Buyer's order and have been specifically agreed to and accepted by Seller in writing.
13. **Changes.** Buyer by written order and contingent upon the written consent of Seller may make changes in the delivery schedule or packing of Products. Buyer agrees to pay Seller for any increase in the costs and amounts due under this Agreement and agrees to adjust the delivery schedule as required by such changes. Seller shall be entitled to submit a claim for adjustment hereunder any time up until one (1) year after final delivery of the Products.
14. **Limited Material Warranty; Limitation on Claims and Actions; Limitation of Liability.** The terms and conditions of Seller's Limited Material Warranty including limitations on claims and actions, and limitation of liability set forth in the DaVinci Roofscapes, LLC 50 Year Limited Material Warranty apply to the Products sold via this Agreement.
15. **Cancellations.** Seller reserved the right to cancel this Agreement in the event of a breach of any of the terms hereof by Buyer. Orders may be canceled by Buyer only upon written consent of Seller and Buyer's payment of a cancellation fee of 20% of the total amount of the order for the Products. In the case of customized Products such as those which are other than standard color blends, Buyer shall assume immediate and full liability for all costs incurred by Seller including, but not limited to, material, labor, non-recurring costs, overhead, and profit and anticipatory profit. All cancellation charges are to be determined by Seller at the time of cancellation.
16. **Patents.** Unless otherwise expressly provided herein, Seller warrants that the Products sold pursuant to this Agreement, except for those made for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which infringement is alleged. If Seller is affected, Buyer shall permit Seller to completely control the defense or compromise of any such allegations of infringement. Seller does not warrant that the use of the Products, whether the Products are used alone or in combination with any other material, will not infringe a patent. Seller reserves the right to terminate Seller's warranty under this Section 16 at any time with respect to any undelivered Products.
17. **Governing Law.** The validity, interpretation and performance of this Agreement and any dispute connected herewith shall be governed by and construed in accordance with the laws of the state of Kansas, excluding its conflicts of laws rules; provided, however, Seller may, in its sole and absolute discretion, assert a construction, mechanic's, or materialman's lien claim in any other jurisdiction, as well as in Kansas, and if the Seller chooses to do so, then the applicable lien laws of such other jurisdiction shall apply, but such laws shall not otherwise affect the provisions in this Section 17.
18. **Arbitration.** Any and all disputes arising between Buyer and Seller in connection with the sale, which is the subject of this Agreement, including the negotiation, interpretation, performance, breach or termination thereof, shall be resolved exclusively by binding arbitration pursuant to the rules of the American Arbitration Association ("AAA"), subject to Seller's reservation of rights stated in this Section 18, below. The arbitration shall be conducted in the English language by a single arbitrator chosen by both Buyer and Seller or, if they are unable to agree, by the AAA, and shall be held in Johnson County, Kansas. The parties shall have three (3) days to object in writing to the appointment of the arbitrator, the sole basis for such objection being an actual conflict of interest. The AAA, in its sole discretion, shall determine within three (3) days the validity of any objection. Buyer and Seller agree to exclude any right of application or appeal to any court in connection with any question of law arising in the course of the arbitration except for purposes of enforcing this Agreement or the award and relief or other interim measures in support of arbitration. The arbitrator shall assess the costs of arbitration, including the legal fees and other costs incurred by either party, against the losing party. In addition, if Buyer is the losing party, the arbitrator shall assess in favor of Seller and against Buyer Seller's costs, expenses and legal fees relating to Seller's enforcement of any mechanic's or materialmen's lien against the property of the owner thereof on which the Products were placed. The award of the arbitrator shall be final and binding and not subject to judicial review, except as provided by law in a proceeding to enforce the award. Notwithstanding the foregoing in this Section 18, where Seller chooses to enforce or act upon its lien rights in a given jurisdiction, Seller, in its sole and absolute discretion, may choose to arbitrate the dispute pursuant to this Section 18, or it may file suit or participate in a related suit to enforce such lien rights in the appropriate court pursuant to the law of the state in which the property(ies) is/are located. If Seller chooses to participate or bring an action in court, Buyer acknowledges that Seller does not waive its right to arbitration nor does Seller remain bound to arbitrate any related dispute after such suit. The provisions of this Section 18 shall survive the termination of the sale which is the subject of this Agreement.
19. **Jurisdiction and Venue.** Where federal jurisdiction exists over any action, suit, or proceeding arising out of or in any way connected with this Agreement, the parties designate the United States District Court for the District of Kansas, for the exclusive resolution of the dispute and submit to the jurisdiction of that Court. Where federal jurisdiction does not exist over that action, suit, or proceeding, the parties designate the District Court of Johnson County, Kansas, for the exclusive resolution of the dispute and submit to the jurisdiction of that Court. Nothing in this Section is intended to limit in any way a party's right to appeal all or any part of a decision or ruling or judgment of any court. Notwithstanding the foregoing in this Section 19, where Seller chooses to enforce or act upon its construction, mechanic, or materialmen's lien rights in a given jurisdiction, Seller may bring suit in any jurisdiction and venue permitted by the lien laws of the applicable state in which the property is located.
20. **Remedies.** The rights and remedies of Seller provided herein shall be cumulative and in addition to any other rights and remedies provided by law or equity, including, without limitation, if Buyer fails to make payment in accordance with these Terms and Conditions. If Buyer fails to make payment in accordance with these Terms and Conditions, Seller may enforce any remedy available by law including, without limitation, enforcement of applicable construction, mechanic, or materialmen's lien rights. Such remedy(ies) may be enforced against those allowed by law, including but not limited to, Buyer, those in the chain of contract between Seller and owner (and/or its agent), including such owner of the property for which the Products were manufactured or at which the Products are located, delivered, and/or incorporated. Buyer acknowledges that Seller's furnishing of Products may entitle Seller to one or more construction, mechanic, or materialmen's lien(s). Buyer represents that it will assist, and in no way interfere with, Seller's exercise of those lien rights.
21. **Waiver.** The failure of Seller in any one or more instances to insist on performance of any provision of this Agreement shall not be construed to be a waiver of such provision in any subsequent instance.
22. **Assignment.** Except for any Seller authorized resale, Buyer will not assign any benefit under this Agreement without the consent in writing of Seller, which may, if given, be on such terms as to guarantee or indemnify or otherwise as Seller deems appropriate.
23. **Notices.** Any notice or communication provided for hereunder will be in writing and will be deemed given and received (a) upon delivery; if personally delivered, or by acknowledged email transmission or by facsimile transmission with receipt acknowledged; (b) one business day after having been deposited for overnight delivery with Federal Express or a comparable overnight courier; or (c) three business days after deposit in U.S. mail when sent by registered or certified mail, postage prepaid, with proof of delivery to the address of the party shown on the face hereof or such other address as a party may specify in a written notice to the other. Notwithstanding the foregoing provisions of this Section 23, any notices or communication given and/or required, pursuant to any applicable construction, mechanic, or materialmen's lien law, shall be served in a manner consistent with such law.
24. **Miscellaneous.** This Agreement constitutes the full understanding of the parties. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless hereafter made in writing and signed by the parties.
25. **Severability.** If any provision of this Agreement is determined to be ineffective or invalid, all other provisions of this Agreement shall remain effective and valid provided the purpose of the remaining valid and effective provisions is not frustrated.