

## E.J. Prescott, Inc. Terms and Conditions of Sale

- **Prices:** All prices are subject to change without notice, except where firm quotations have been provided in writing by authorized management personnel of EJP.
- **Taxes:** Prices do not include any present or future federal, state, or local taxes (including, without limitation, sales tax, use tax, excise tax, or otherwise) unless specifically stated. It is the responsibility of the Buyer to pay all such taxes. Taxes where applicable may be added to the price of the products and shall be paid by the Buyer, unless the Buyer furnishes to EJP a tax exemption certificate in a form agreeable to the applicable taxing authorities. If EJP is required to prepay any such tax, Buyer will reimburse EJP in full upon demand.
- **Payment Terms:** EJP Open Credit accounts are established for commercial, non-consumer use only. Unless an approved commercial Open Credit account is established, payment in good funds or approved check must be made before or at time of delivery. Commercial Credit terms are Net 30 days, no cash discounts allowed. Service Charges commence after 30 days and are calculated on the last day of the month in which the 30th day falls. SERVICE CHARGE IS 1½ % PER MONTH (18% A.P.R.) ON THE BALANCE OVER 30 DAYS OF AGE. THE BUYER AGREES TO PAY ALL COSTS AND EXPENSES OF COLLECTION, INCLUDING REASONABLE ATTORNEY'S FEES, and EJP claims a mechanic's lien under applicable state law.
- **Acceptance by EJP:** All orders from the Buyer are subject to acceptance by authorized personnel of EJP, and, in the case of Open Account Sales, approval of the EJP Credit Department.
- **Cancellations:** SPECIAL OR NON-STOCK ITEMS MAY NOT BE CANCELLED OR RETURNED AFTER THE PRODUCT(S) IS PLACED INTO PRODUCTION. All charges and costs incurred by EJP as a result of cancellations or order changes will be billed to the Buyer.
- **Delivery:** EJP will make a good faith effort to complete delivery of the products; provided, however, that EJP assumes no responsibility or liability for loss or damage due to delay or inability to deliver, if such non-performance was the result of any events or circumstances beyond the control of EJP, including, but not limited to, acts of God, war, labor difficulties, fire, accidents, inability to obtain materials, and delays of carriers, contractors, suppliers, or manufacturers. Under no circumstances shall EJP be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.
- **Shipment:** Shipment of all products is to one given destination for all items including pipe, unless otherwise indicated in writing. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if EJP ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as EJP's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier. Delivery will be made on hard surfaces only. Any damage or towing charges resulting from "non hard surface deliveries" shall be the responsibility of the Buyer.
- **Inspection and Acceptance:** Claims for damage, shortage or errors in shipping must be reported within 10 days following delivery to Buyer. Buyer shall have 10 days from the date Buyer receives any products to inspect such products and services for defects and nonconformance and notify EJP, in writing, of any defects, nonconformance or rejection of such products. After such 10 day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such 10 day period is a reasonable amount of time for such inspection and revocation.
- **Returns:** Materials cannot be returned without EJP'S written consent. NO RETURNS ARE ALLOWED AND NO REFUNDS WILL BE MADE ON (i) PIPE OR (ii) SPECIALLY FABRICATED OR ORDERED ITEMS. THE SOLE AND EXCLUSIVE REMEDY FOR SUCH ITEMS ALLEGED TO BE DEFECTIVE IN WORKMANSHIP OR MATERIAL WILL BE THE REPLACEMENT OF THE ITEMS SUBJECT TO THE MANUFACTURER'S INSPECTION AND WARRANTY. All other returned material is subject to a MINIMUM 25% RE-HANDLING CHARGE, plus transportation charges. Unless otherwise agreed by the Buyer and EJP, all credit for returned material will be applied to future orders, subject to approval by the EJP Credit Department.
- **Warranty:** THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. EJP MAKES NO EXPRESS OR IMPLIED WARRANTIES. EJP HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL EJP BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OR REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, OR REPAIR OF THE PRODUCTS SOLD BY EJP. BUYER ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL EJP'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S).
- **Entire Agreement:** This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by authorized management personnel of EJP. All transactions shall be governed solely by the terms and conditions contained herein. All purchase orders issued pursuant to an EJP quotation shall be deemed issued subject to all EJP terms and conditions herein contained. These terms and conditions shall supersede those of the Buyer.
- **Governing Law:** This transaction shall be governed in all respects by the laws of the State of Maine (excluding choice of law provisions). All actions, regardless of form, arising out of or in connection with this transaction, the products sold by EJP, or the relationship between the Buyer and EJP shall be brought in the courts of the State of Maine within the applicable statutory period.
- **Communications:** Payments only should be directed to: E.J. Prescott, Inc., P.O. Box 350002, Boston, MA 02241-0502. All other correspondence and inquiries should be directed to your local EJP Division. The Home Office address is 32 Prescott Street, P.O. Box 600, Gardiner, Maine 04345. Telephone (207) 582-1851. Fax (207) 582-5637. E-mail [ejp@ejpprescott.com](mailto:ejp@ejpprescott.com).