



# **BORAL NORTH AMERICA**

## **Boral Industries Inc. Purchase Order Terms and Conditions**



## **BORAL INDUSTRIES INC**

### **PURCHASE ORDER TERMS AND CONDITIONS**

---

THE PURCHASE ORDER ATTACHED IS SUBJECT TO THE TERMS AND CONDITIONS BELOW WHICH CONTAIN THE ENTIRE AGREEMENT BETWEEN THE BUYER AND SELLER:

1. Buyer will not accept any terms or conditions other than those set forth in this Agreement. In the event Seller's quotation, acknowledgment, confirmation, invoice, or any other form states terms additional to or different from those set forth in this Agreement, this Purchase Order Agreement shall be deemed a notification to Seller of objection to such additional or different terms and a rejection of any offer to sell any goods or services described herein. It may be accepted only in accordance with these terms and without modification, addition, deletion, or alteration. In the absence of written acceptance or other written confirmation by Seller, the commencement of any work by Seller, pursuant to this Purchase Order Agreement or the making of any deliveries by Seller of the goods described, shall be deemed an acceptance by Seller and a contract shall be formed upon the terms and conditions set forth herein, only.
2. Seller shall route shipments in accordance with Buyer's instructions, if any, and shall promptly reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking, or routing. Shipments in excess of those authorized may be returned to Seller and Seller shall pay Buyer for all packing, handling, sorting and transportation expenses incurred in connection with such shipments.
3. Cash Discount period begins when invoice is or goods are received, whichever is later; provided, period will be extended during any delay caused by errors in invoices necessitating correction. The prices specified in the purchase order shall prevail subject to those provisions. Buyer shall receive the benefit of any general reduction in Seller's prices prior to delivery and in no event shall Buyer be charged higher prices than Seller's other similar customers. Where price escalation is expressly agreed to be applicable, Buyer shall not be subject to price increases effective after the specified delivery or completion date. If price is omitted on an order, it is agreed that the price will be the last quoted in Seller's most recent price list furnished to Buyer, or the lowest prevailing market price on the date accepted, if lower. Unless otherwise provided in this Purchase Order, no charge shall be made by Seller for any containers, crating, bundling, dunnage, demurrage, drayage or storage.
4. Time is of the essence in this Agreement, and if delivery of goods or rendering of services is not completed by the time promised, Buyer, in addition to its other rights and remedies, reserves the right, without liability, to cancel this Agreement by notice (effective when received by Seller) as to stated goods not yet shipped or services not yet rendered, and to purchase substitute goods or services elsewhere and charge the Seller with any loss or additional costs incurred. Any provisions for delivery of goods or the rendering of services by installments shall not be construed as making the obligations of Seller severable.



5. If a price stipulated on a purchase order is F.O.B. destination or F.A.S. port of exit, then any increase in any freight rate or charge between the point of shipment and destination which may subsequently occur shall be borne by Seller and Seller shall be responsible for any such extra charges. All goods shipped under this Agreement shall be F.O.B. Buyer's place of business unless otherwise indicated in writing on the purchase order. Seller shall bear risk of loss until goods are received by Buyer at its place of business or other destination specified by Buyer. (Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk). Drafts will not be honored.
6. Notwithstanding any prior payment therefor, all goods are subject to inspection and testing by Buyer after arrival at the ultimate destination. If upon inspection or testing such goods or any portion thereof are found to be non-conforming, unsatisfactory, defective, or inferior quality or workmanship, or fail to meet any guarantees or operating or other specifications contained herein or any other requirements of this Purchase Order Agreement, then without prejudice to any other rights or remedies, Buyer may return the goods or any part thereof to Seller, and all amounts theretofore paid by Buyer to Seller on account of the purchase price of such returned goods, together with any costs incurred by Buyer in connection with the original delivery or return of such goods, shall be repaid to Buyer by Seller. Neither the inspection nor failure to make inspection nor acceptance of goods shall release Seller from any of the warranties or other provisions of this Agreement nor impair Buyer's right to reject non-conforming goods. Buyer reserves the right, even after it has paid for and accepted said goods, to make a claim against Seller on account of any goods which do not prove to be satisfactory or are defective.
7. In the event that Buyer sets forth specifications which operate as a description of goods to be purchased by Buyer with regard to quality or quantity, or should Buyer use any other term or terms which are accepted in the industry as designating a quality or a quantity of a particular good, it is Buyer's intention that goods be supplied pursuant to these specifications or terms. Failure of Seller to supply goods which meet these specifications will justify Buyer's rightful rejection or revocation of acceptance. Should Seller wish to inspect, test, or sample the goods rejected by Buyer, Seller may do so upon reasonable notification to Buyer, but any such inspection, test, or sampling will be done at Seller's own expense.
8. Buyer specifically purchases the goods pursuant to the specifications with regard to quality and quantity as set forth on the purchase order and Buyer will not accept goods which are tendered to it on an "as is" basis. Any terms of subsequent agreements supplied to Buyer from Seller which in any way limit the liability of Seller or which in any way limit the Seller's warranties both express and implied, are hereby specifically rejected by Buyer and shall have no force or effect with regard to any purchases made by Buyer from Seller unless Buyer approves such waivers or limitations of liability in writing prior to delivery by Seller of goods.
9. (a) SELLER REPRESENTS AND WARRANTS that the goods purchased: (i) will be merchantable, of good design, material, and workmanship, and free from all defects; (ii) unless otherwise specifically agreed in writing, will be delivered in strict conformity with



the specifications, drawings, samples, or other descriptions (if any) furnished to or specified by Buyer, and will be fit for use for the particular purpose for which they are purchased by Buyer, which purposes are made known to Seller; and (iii) will be delivered free and clear of any liens, security interests, or encumbrances whatsoever, and title to the goods purchased shall be good and marketable, and title is rightfully transferred.

(b) SELLER FURTHER REPRESENTS AND WARRANTS: (i) that all amounts charged by Seller and payable hereunder are lawfully chargeable under and will not violate, directly or indirectly, the provisions of any present or future laws, decrees, regulations, rules, or orders of any governmental authority which in any manner fix, limit, regulate, or otherwise affect prices at which the goods may be sold; (ii) that the goods purchased hereunder, and their sale or use, do not infringe, directly or indirectly, any United States or foreign patents, trademarks or copyrights, and Seller agrees, at Seller's cost and expense, to defend, indemnify and hold Buyer and its affiliates and subcontractors harmless from and against any claims, demands, actions and litigation based upon alleged or actual infringement thereof, and to reimburse Buyer for any costs or expenses, including, without limitation, attorney's fees, which Buyer incurs in connection therewith; and (iii) any delivery pursuant to this order shall constitute a warranty by Seller that it has complied with all applicable laws and all rules and regulations of governmental authorities, and that the goods may lawfully be bought, sold, used and transported in interstate or intrastate commerce. These WARRANTIES are in addition to, and shall not be construed as restricting or limiting any warranties of the Seller, express or implied, or which are provided by law or exist by operation of law.

10. (a) Neither Buyer nor Seller shall be liable for a failure to perform hereunder arising from acts of God or of a public enemy, acts or regulations of the Government of the United States or any states or political subdivision or any department or regulatory agency thereof or entity created thereby, acts of any person engaged in subversive activity or sabotage, fires, floods, explosions or other catastrophes, epidemics or quarantine restrictions, strikes, slowdowns, lockouts or labor stoppages or disputes of any kind, freight embargoes, unusually severe weather, unavailability of essential supplies or equipment, contingencies of transportation, delays of a supplier due to any of the above causes or events, or causes or events beyond the control and without the fault or negligence of Buyer or Seller in failing to perform hereunder.
- (b) In the event of a failure by Seller to perform hereunder arising from any of the causes or events set forth in subparagraph (a) above, Buyer shall be entitled to obtain goods or services covered by this Purchase Order elsewhere for the duration of such failure and to reduce, pro tanto, and without any obligation to Seller, the quantity or amount of goods or services ordered from Seller under this Purchase Order. This right of Buyer shall continue until Buyer receives written notice from Seller that Seller is no longer relying on the provisions of this paragraph to excuse performance of this Purchase Order, provided, however, that receipt of such written notice shall not require Buyer to breach any contract or agreement made during the period in which Seller used the provisions of this paragraph to excuse performance. Should the goods herein described be destroyed by some cause not within the control of Seller, then Buyer and Seller shall agree to a new delivery date for goods to replace those destroyed. The provisions of this paragraph are in lieu of any other rights of Seller, implied or expressed.



11. The individual remedies covered by Buyer in this Purchase Order shall be cumulative and in addition to any other remedies provided in law or equity or in this Purchase Order. No waiver of any breach of any provision of this Purchase Order shall constitute a waiver of another breach, or of such provision. Seller agrees not to bring a suit nor to assert, institute or commence an action in any court on a cause of action arising hereunder if more than two years and one day have elapsed from the time that said cause of action arose hereunder. Absence from the state shall not suspend the running of such period.
12. This Contract shall be governed by and construed in accordance with the laws of the State of \*\*. In the event judicial action is necessary for the interpretation or enforcement of any of the provisions contained herein, said judicial action shall be maintained in the courts of \*\*, the same being the stipulated place of performance hereunder. The prevailing party in litigation shall be entitled to reasonable attorneys' fees from the losing party. Buyer and Seller waive the right to a jury trial.  
\*\* (Insert state of purchasing office)