

TERMS AND CONDITIONS OF SALE

1. Acceptance and Application of Terms and Conditions. The parties agree that they shall be governed by the terms and conditions set forth below (the "Terms and Conditions") and the terms set forth on the attached invoice, purchase order or quotation (collectively the "Invoice"). COMPANY'S PERFORMANCE UNDER THE INVOICE IS EXPRESSLY MADE CONDITIONAL ON CUSTOMER'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS. Any conflicts that exist between the Terms and Conditions and the Invoice shall be resolved in favor of the Invoice. If acceptance of the Invoice contains additional or different terms, the acceptance of the additional or different terms is expressly made conditional on the assent of Finishing Systems, Inc. (the "COMPANY") to the additional or different terms.

2. Disclaimer of Warranties. COMPANY agrees that any work performed or materials delivered hereunder that are found to be defective in material or workmanship within the period of six months from the delivery of the same will be repaired or replaced at COMPANY'S option without additional charge for the work or the materials. In the event COMPANY, at its option, elects not to repair or replace, CUSTOMER shall be entitled to a refund in an amount commensurate with the reasonable cost of such repair or replacement as the COMPANY may determine. THE FOREGOING WARRANTY IS COMPANY'S SOLE WARRANTY. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. COMPANY must be informed immediately of any claims arising under the provisions of this warranty or this warranty shall be deemed void.

3. Limitation of Remedy. COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES OTHER THAN THE REPLACEMENT OR REPAIR OF SUCH DEFECTIVE WORK OR MATERIALS AND UNDER NO CIRCUMSTANCES SHALL COMPANY'S LIABILITY EXCEED THE ACTUAL COSTS PAID BY CUSTOMER TO THE COMPANY FOR THE WORK OR MATERIALS WHICH WERE SOLD BY COMPANY HEREUNDER. COMPANY SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES UNDER ANY CIRCUMSTANCES.

4. Prices and Freight. All quoted prices, extras (including applicable surcharges), and all freight or transportation rates, are subject to change, without notice. All changes in COMPANY'S prices and extras, and applicable freight or transportation rates, including fuel surcharges, in effect as of the date of shipment shall be paid by CUSTOMER. Unless otherwise agreed, freight will be charged from the point of original production or processing.

5. Payment and Collection Terms. Payment for items purchased or work performed hereunder shall be made pursuant to the payment terms set forth on the Invoice. The unpaid portion of any amounts due to COMPANY shall bear interest at the rate of 1.5% per month, or the maximum legal rate if less. If the Invoice is referred to an attorney or other agency for collection, CUSTOMER shall pay COMPANY'S attorneys' fees, court costs and expenses incurred in collecting and enforcing the Invoice, whether or not official legal action is instituted.

6. Force Majeure. Any delay or failure of COMPANY to perform its obligations will be excused to the extent that the delay or failure was caused directly by an event beyond COMPANY'S control (which events may include, without limitation, natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities). COMPANY will not be responsible for delays in performance of its obligations caused by COMPANY'S suppliers, vendors, carriers, or subcontractors or due to any other circumstances beyond its control. In the event of any such delay, COMPANY may, at its option, extend the delivery time or cancel the Invoice, in whole or in part. In the event COMPANY is unable to supply the total requirements of its customers, COMPANY may allocate its available supply among customers in a manner determined by COMPANY to be fair and equitable

7. Delivery and Title to Goods Sold Hereunder. If the materials sold hereunder are to be delivered by the COMPANY to the CUSTOMER, title and risk of loss to the materials and goods hereunder shall pass from the COMPANY to CUSTOMER upon delivery thereof to CUSTOMER or its designated agent. Any claims by CUSTOMER for shortages, breakage or for any nonconformance with the terms and conditions of the Invoice shall be noted on the COMPANY'S delivery receipt by the CUSTOMER at the time of delivery or the same shall be deemed waived by CUSTOMER. If delivery is by common carrier, all goods shall be delivered FOB COMPANY'S plant and title and risk of loss to the materials and goods hereunder shall pass from COMPANY to CUSTOMER when they are placed with the common carrier. If delivery is to be made to a job site specified by the CUSTOMER and upon delivery at the job site, there is not present at the job site an employee of the CUSTOMER authorized to accept delivery and sign a delivery document evidencing delivery of material as listed on the Invoice, then the COMPANY reserves the right to deposit the material at the job site previously designated by the CUSTOMER without obtaining a signed receipt therefore, and the CUSTOMER agrees to liability for payment of the Invoice as if it were signed by an authorized employee of the CUSTOMER.

8. Security Interest. CUSTOMER hereby grants to COMPANY a security interest (which shall be deemed a purchase money security interest) in all materials provided to CUSTOMER by COMPANY, to secure payment by CUSTOMER for such materials. In the event of nonpayment by CUSTOMER of any debt, obligation or liability now or hereafter incurred or owing by CUSTOMER to COMPANY, COMPANY shall have all rights of, and all of the remedies available to, an unpaid secured creditor under the Uniform Commercial Code as enacted by the Commonwealth of Pennsylvania, and all other rights and remedies available at law or in equity. CUSTOMER agrees, and, to the extent permitted by law, COMPANY is authorized to, execute and file whatever documents are necessary, including security agreements or financing statements, to evidence and perfect the security interest granted by this paragraph.

9. Cancellation; Change Orders. An Invoice cannot be modified or cancelled by CUSTOMER without the written consent of COMPANY. In the event of a permitted termination, CUSTOMER shall pay to COMPANY a cancellation fee in an amount equal to COMPANY'S actual out-of-pocket costs incurred plus [10%?]. In the event that CUSTOMER has made any payment prior to a permitted cancellation, COMPANY may retain such funds as necessary to apply toward the aforementioned cancellation fee. COMPANY expressly reserves the right to cancel the Invoice based upon any of the following occurrences: (a) the insolvency or financial condition of CUSTOMER; (b) the appointment of or taking possession of any CUSTOMER'S assets by a trustee, receiver, creditor or any third party; (c) CUSTOMER'S transfer of substantially all of its assets; or (d) any other default under the Invoice or these Terms and Conditions.

10. Taxes. Any excise, levies or taxes which COMPANY is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the products covered hereby, shall be for the account of the CUSTOMER, and CUSTOMER agrees to pay the amount thereof to COMPANY upon request.

11. Default. In the event of default or breach by CUSTOMER, COMPANY may cancel any outstanding order(s) and declare all obligations immediately due and payable, and shall in addition have all remedies afforded by the Uniform Commercial Code as enacted by the Commonwealth of Pennsylvania, and any other applicable law. In addition, COMPANY shall be entitled to reimbursement of all expenses incurred in exercising any remedies available to it, including reasonable attorneys' fees and legal expenses.

12. Governing Law, Jurisdiction and Venue. The parties agree that all matters arising out of or related to the Invoice and these Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflict of law's provisions thereof, and should any dispute arise, the parties agree that the Court of Common Pleas of York County, Pennsylvania or the Middle District of Pennsylvania shall have sole and exclusive jurisdiction over any claims filed in connection with this matter and CUSTOMER hereby irrevocably consents to the jurisdiction of the aforementioned courts. In the event that the COMPANY must retain counsel to collect any outstanding amounts due, the CUSTOMER shall pay COMPANY'S attorneys' fees and costs.

13. Entire Agreement; Modification. These Terms and Conditions and Invoice constitute the entire agreement between COMPANY and CUSTOMER. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby. A waiver of any of the terms of the Invoice or these Terms or Conditions shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed. If any portion of these Terms and Conditions is declared to be unenforceable by a court of competent jurisdiction, all other portions shall be considered to be valid and enforceable to the extent that they are reasonably severable.