

# SELECTECH, INC. CONDITIONS OF SALE

## 1. GENERAL

These terms and conditions (the "Terms and Conditions") supercede all prior representations or arrangements and contain the entire agreement between the parties in connection with flooring products manufactured by SelectTech, Inc. (the "Products"). Seller means SelectTech, Inc. and Buyer means SelectTech's customer and any user or owner as the case may be. Seller's acceptance of Buyer's order and sale of the Product to Buyer are expressly conditioned upon Buyer's assent to these Terms and Conditions and any and all other terms and conditions, express or implied, are excluded. SelectTech hereby expressly objects to and rejects any and all additional or different terms contained in Buyer's order or other documents. Any conduct by Buyer which recognizes the existence of a contract between Seller and Buyer, including without limitation, acceptance of delivery of or payment for the products shall be conclusive evidence of Buyer's assent to the Terms and Conditions. None of Seller's employees, agents, designers or distributors has any authority to modify or supplement the Terms and Conditions or to accept any order except on Seller's official sales forms and subject to these terms and conditions. No subsequent document, purchase order, or conduct including acts or verbal statements of any buyer shall purport to modify these Terms and Conditions of Sale.

## 2. DELIVERY

Shipping and delivery dates are approximate and are given by Seller in good faith, but are NOT guaranteed unless otherwise specifically agreed to in writing. Buyer shall be responsible for all storage and other costs relating to Buyer's failure to accept delivery pursuant hereto.

Unless otherwise expressly agreed to in writing delivery will be made F.O.B. point of shipping. All risk of loss shall pass to Buyer upon delivery of the Products by Seller to a carrier. Seller's receipt from the carrier shall be conclusive evidence of delivery.

The weight or quantity stated in Seller's carrier's receipt shall be conclusive evidence of the amount delivered except in cases of manifest error.

## 3. PRICE & PAYMENT

Except as set forth in a confirmed Purchase Order, all prices are subject to change and orders will be invoiced at Seller's prices prevailing at the time of shipment. All accounts are payable in U.S. funds, free of exchange, collection or other charges. In cases where price for Products include delivery costs, any increase in such delivery costs shall be for Buyer's account and Buyer agrees to pay Seller such increases.

All applicable sales and use taxes, excises or any other taxes or charges (except net income taxes) imposed now or in the future by any federal, state, foreign or local authority upon the production, sale or transportation of the Products shall be for the account of the Buyer. Buyer shall reimburse Seller for any such taxes, excises or charges which Seller may be required to pay in addition to the price payable by the Buyer for the Products. Buyer may, at its option and where legally permissible, elect to file a proper exemption certificate with Seller and Buyer shall be fully responsible for paying taxes directly to the taxing authority.

Time of payment is of the essence. Any amounts not paid in accordance with invoiced terms and amounts shall bear interest at a rate of one and one half percent (1 ½%) per month or such lesser rate permissible by applicable law.

## 4. SELLER'S WARRANTY

Seller warrants that the Products shall conform to Seller's published specifications covering such products in effect at time of manufacture. Other limited warranties as are in effect at the time of sale of the Product shall apply. Buyer acknowledges that it has received and is familiar with Seller's literature and warranties concerning the Product.

### Product Sustainability and Installation

Seller shall have no responsibility for determination of the suitability of the goods for the uses and applications contemplated by Buyer and/or others, and such determination shall be the sole responsibility of the Buyer and/or others. Suggestions or recommendations made by Seller or its dealers in product literature concerning uses or applications of the products are believed to be reliable, but Seller makes no warranty or guarantee of results to be obtained, since conditions of the use, application and installation by the Buyer and others are beyond Seller's control and will vary at each site location.

### LIMITATION OF LIABILITY UNDER CONTRACT, WARRANTY, TORT OR ANY OTHER CLAIM

SELLER'S WARRANTIES ARE EXCLUSIVE AND ARE GRANTED IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (WHETHER WRITTEN, ORAL, STATUTORY OR OTHERWISE), INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELECTECH'S SOLE OBLIGATION HEREUNDER, SHALL BE TO REPAIR, REPLACE, CREDIT OR REFUND AS SET FORTH IN THE APPLICABLE WARRANTY.

IN NO EVENT SHALL SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM YOUR USE OF ANY PRODUCTS INCLUDING ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF SELECTECH, OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, SELECTECH'S CUMULATIVE LIABILITY TO BUYER FOR ANY AND ALL CLAIMS RELATING TO THE USE OF ANY PRODUCT SHALL NOT EXCEED THE TOTAL AMOUNT OF THE PURCHASE PRICE PAID TO SELLER FOR SUCH PRODUCT.

IN NO EVENT SHALL SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE FOR ANY COSTS OR DAMAGES CAUSED BY REASON OF ANY OCCURRENCE OR CONTINGENCY BEYOND ITS REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO, ACTS OF GOD, EARTHQUAKE, LABOR DISPUTES AND STRIKES, RIOTS, WAR, NOVELTY OF PRODUCT MANUFACTURE AND GOVERNMENTAL REQUIREMENTS.

BUYER AND SELLER HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW IN CONNECTION WITH ALL CLAIMS ARISING OUT OF OR RELATED TO THIS WARRANTY, THE PRODUCTS COVERED HEREBY OR THE PERFORMANCE OF ANY PARTY HEREUNDER.

THIS WARRANTY SHALL BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE COMMONWEALTH OF MASSACHUSETTS OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE COMMONWEALTH OF MASSACHUSETTS. BUYER SPECIFICALLY AND IRREVOCABLY CONSENTS TO THE PERSONAL AND SUBJECT MATTER JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS AND SUCH COURTS SHALL HAVE EXCLUSIVE JURISDICTION WITH RESPECT TO ALL MATTERS CONCERNING THIS WARRANTY OR THE ENFORCEMENT OF ANY OF THE FOREGOING.

## 5. FORCE MAJEURE

Seller shall not be liable for any failure to ship and/or deliver Products or to otherwise comply with the contract related thereto as a result of any circumstances whatsoever (whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with such contract.

Without limiting the generality of the foregoing, Seller may without liability suspend or terminate (in whole or in part) its obligations under the Contract if Seller's ability to manufacture, supply or deliver or acquire materials for the production of the Products by Seller's normal means is materially impaired.

## 6. MISCELLANEOUS

Buyer may not assign its rights under this contract without the Seller's prior written consent.

All Notices hereunder shall be given in writing and shall be deemed to have been duly given (a) on the date of personal delivery, or (b) three (3) days after the date of deposit in the United States mail, postage pre-paid, by certified mail, return receipt requested, or (c) on the date of transmission, or (d) on the date of delivery to an internationally recognized courier service, in each case address to Buyer's or Seller's address.

Failure of Seller at any time to require strict performance of any provision hereof shall not be considered to be a waiver of Seller's right with respect to such breach or any succeeding breach of such provision or of any other provision of these Terms and Conditions.

If any provision of these Terms and Conditions or the application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of such Terms and Conditions or the application thereof to any person other than those to which it was held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.