

**BOGE AMERICA, INC. ("Seller")**  
**TERMS AND CONDITIONS OF SALE AGREEMENT**

**1. ACCEPTANCE OF ORDER.** All orders are subject to acceptance by Seller at its home office in Powder Springs, Georgia by an authorized Seller representative. Acceptance may be made by delivery of the ordered goods/services or by written confirmation. Acceptance is, in all cases, conditional upon Buyer's agreement to the terms and conditions set forth in this Agreement. After Seller's acceptance, Buyer may not cancel its purchase order without the written consent of Seller. Seller may cancel the order and is not obligated to complete its obligations under Buyer's purchase order if, at any time, in Seller's opinion, all terms and conditions of this Agreement are not complied with by Buyer, a force majeure event has occurred, or Seller has reasonable grounds for insecurity with respect to performance by Buyer. Following such cancellation, Seller shall refund to Buyer any portion of the purchase price Buyer had paid for unshipped goods, and Buyer shall have no other rights against Seller with respect to such cancellation including, but not limited to, damages as a result of such cancellation.

**2. PAYMENT FOR GOODS.** Payment shall be made as set forth on the front of this Agreement. If payment terms are not set forth there, payment shall be by certified funds, bank wire or bank draft due within 30 days of the date of Seller's invoice. No cash payments will be accepted. If all of the goods/services are not delivered at one time, Buyer shall pay the unit price applicable to the goods/services delivered. Each shipment shall be considered a separate and independent transaction. All shipments, deliveries and performance of work shall be subject to credit approval by Seller. Seller may, at any time, decline to make any shipments or deliveries, or perform any work, or extend additional credit, except upon receipt of payment. Notwithstanding any other term hereof, if, in Seller's opinion, Buyer's financial condition or payment history makes Seller insecure as to payment for the goods. Seller may require full or partial payment in advance of delivery. Any payment or charge not received when due will bear interest at the rate of 1.5% per month (18% per year) from the date due. All payments shall be made in United States dollars to Seller's Powder Springs, Georgia address. The full purchase price set forth for the goods/services shall not be subject to any set-off, deduction or counterclaim of any kind. Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness or obligation owed by Buyer without prejudice to or discharge or accord and satisfaction of the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend, notation, document or writing appearing on referring to or accompanying such check or remittance. Any bank charges for drafts, wire transfers, and bad checks shall be paid by the Buyer. Buyer shall pay for all of Seller's costs of enforcing the Agreement (including reasonable attorneys' fees) including collection of amounts due for goods/services or otherwise under this Agreement. Without prejudice to any other remedies, Seller shall be entitled to immediate repossession of any goods delivered by Seller if Buyer fails to timely pay for such goods, and Buyer hereby permits Seller entry to Buyer's premises for such purpose and waives any and all rights to notice or hearing prior to seizure of the goods following default in payment.

**3. TAXES.** All personal property, sales, use, excise, import, duty, value added, and similar taxes applicable to the goods/services, not measured by the income of Seller, shall be paid by Buyer, or Buyer shall provide Seller with a valid tax exemption number or certificate acceptable to the applicable taxing authorities.

**4. DELIVERY, RISK OR LOSS; RETENTION OF TITLE.** Unless otherwise stated on the front of this Agreement, prices and shipments are F.O.B, Seller's Powder Springs, Georgia facility and do not include taxes, crating, freight, delivery, insurance, dismantling, loading, unloading or installation. Such additional charges shall be paid by Buyer. Shipment of the goods will be as stated on the front of this Agreement, or if none is specified, then Seller will use its discretion in selecting the transportation method. Any designated date of shipment is not a guaranteed date of shipment. Seller shall not be liable for any damages or loss, or failure of or delay in performance, for any reason, including but not limited to, acts of nature, disaster, fire, flood, explosion, war, strike, riot, sabotage, embargo, law, regulation, ruling, order or requirement of any government or government agency or court or tribunal, military authority, shortage or failure of appropriate materials, equipment, or labor, or any other cause beyond Seller's control, including delays due to Buyer's acts, omissions or rush circumstances. Seller reserves the right to make deliveries in installments. The delivery of part of any order shall not obligate Seller to make further deliveries. Seller reserves the right to allocate inventories and production when, in its opinion, such allocation is necessary. Risk of loss and damage to the goods shall pass to Buyer at Seller's Powder Springs, Georgia facility. Claims for goods lost or damaged in transit are Buyer's responsibility, Seller retains title to the goods until the entire purchase price has been paid in full.

**5. INSPECTION AND ACCEPTANCE OF GOODS.** Buyer shall inspect the goods upon receipt. Failure of Buyer to inspect the goods and/or failure to notify Seller in writing of any noncompliance, shortage or other reason for Buyer's rejection of any such goods within such two-day period and the specific grounds for rejection shall constitute irrevocable acceptance of the goods.

**6. INSTALLATION.** Seller is not responsible for unloading or installation unless Buyer and Seller enter into a separate agreement for such services.

**7. SAFETY COMPLIANCE.** Buyer shall use, and shall require its employees and agents to use safety devices, guards, and proper safe operating procedures as set forth in the applicable manuals, instructions, and labels. Buyer shall not remove or modify any safety device, guard, label, or warning. Buyer shall comply with these requirements and all applicable safe-

ty and health laws, standards and regulations. Seller shall have no liability for, and Buyer shall indemnify and hold Seller harmless from, any damages, obligation, loss, and expense related to Buyer's use. Buyer is solely responsible for damage to the goods from use of qualities, grades and quantities of materials which adversely affect the operation of the goods. Buyer has the sole duty to warn and protect users and other persons with respect to the dangers of the goods. It is Buyer's responsibility to ensure electrical and other code compliance of the goods.

**8. WARRANTY.** EXCEPT AS EXPRESSLY SET FORTH IN THE WRITTEN WARRANTY CERTIFICATE DELIVERED WITH THE GOODS, SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**9. RETURN OF GOODS NOT UNDER WARRANTY.** Buyer may only return goods to Seller in accordance with Seller's return policies as in effect from time to time. Returns must receive written authorization from Seller or Seller's Material Return Authorization form. Seller has no obligation to accept returned goods. Seller, in its sole discretion, may charge a restocking fee of 25% of the purchase price on any returned goods accepted by Seller. No used, damaged, obsolete, or customized goods are returnable. Shipping must be prepaid by the customer.

**10. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE OBLIGATED OR LIABLE TO BUYER OR ANY OTHER PERSON, IN TORT OR CONTRACT OR OTHERWISE, BASED UPON NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR OTHERWISE, FOR ANY DAMAGES OR LOSSES OF ANY KIND, WHETHER GENERAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL, INDIRECT, OR CONTRIBUTORY, INCLUDING BUT NOT LIMITED TO THOSE BASED UPON ANY LOSS OR DAMAGE RESULTING FROM GENERAL OR PARTICULAR REQUIREMENTS AND NEEDS OF BUYER OF WHICH SELLER MAY HAVE HAD REASON TO KNOW, LOST PROFITS OR REVENUE, ANTICIPATED SAVINGS, GOODWILL, FACILITY OR PRODUCTION DOWNTIME, LOSS OR DAMAGE OF MATERIALS, INJURY TO PERSON OR PROPERTY OR DEATH, OR OTHERWISE. Without limiting the foregoing, Seller shall have no liability or responsibility for damage or loss of use of goods from transit, accident, disaster, force majeure, misapplication, abuse, misuse, improper unloading or handling, negligence, vandalism, failure to properly maintain or operate, modification, installation or repair attempts by unauthorized persons, external sources, or normal wear and tear. Under no circumstances will the aggregate liability of Seller for any cause or action related to this Agreement or the goods/services covered hereby exceed the net amount received by Seller for the goods/services sold hereunder. Any action or suit by Buyer against Seller relating to this Agreement or the goods/services covered hereby must be brought within one (1) year of the date of invoice for such goods.

**11. SECURITY INTEREST.** To secure the payment of purchase price and any other amounts due Seller from Buyer, Buyer hereby grants to Seller a continuing and first priority security interest in the goods covered by this Agreement and any and all proceeds thereof. Seller shall have all of the rights and remedies available to a secured party, which shall be cumulative with all other rights and remedies afforded a seller of goods by law. Buyer hereby designates Seller as its attorney in fact to sign any financing statements required by Seller to perfect this security interest. The goods shall be and remain personal property and not fixtures whether or not attached to real property.

**12. ENTIRE AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement and final, complete, and exclusive written expression by Seller and Buyer of all of the terms and conditions of sale with respect to the purchase and sale of goods/services covered by this Agreement and may not be changed, amended, supplemented, or waived (by course of dealing, usage of trade or course of performance, or otherwise) except by written agreement signed by Buyer and an authorized representative of Seller specifically referring to being an amendment or waiver to this Agreement. Any representation, warranty, quote, confirmation, statement, price, drawing, description, data, specification, agreement, or undertaking (oral or written) not expressly set forth in this Agreement shall be superseded by this Agreement and shall not be effective or enforceable or relied upon. The terms of this Agreement are independent and severable so that if one provision is not enforceable, that does not affect the remainder of the provisions. No additional or different terms or conditions (including but not limited to Buyer's purchase order form) shall become part of this Agreement, any new or different terms being hereby expressly rejected. Buyer's retention of any goods or payment of any portion of the purchase price constitutes the Buyer's acceptance of the terms of this Agreement. The failure or delay in enforcing any provision of this Agreement shall not be deemed a waiver of such provision or right. No waiver of any term of this Agreement shall be effective unless made in writing and signed by the party against whom the waiver is asserted. No such waiver shall be a continuing waiver or waiver of any other term or breach or default. The rights and obligations of Seller and Buyer under this Agreement are binding upon and inure to the benefit of each of their respective successors, permitted assigns, trustees, and legal representatives. Buyer may not assign its rights under this Agreement without the prior written consent of Seller.

**13. GOVERNING LAW; JURISDICTION.** The laws of the State of Georgia, USA shall govern this Agreement and any related dispute between Buyer and Seller. The federal and state courts serving the state of Georgia shall have sole and exclusive jurisdiction with respect to any matter related to this Agreement or the goods covered hereby.