

ACI PURCHASE ORDER CONTINUED

ACI JOB NUMBER: \_\_\_\_\_

**TERMS AND CONDITIONS OF SALE****All references on this form to "ACI" refer to ACI Building Systems, Inc.**

1. All provisions of this Building Purchase Order Contract by and between the Buyer signing on the first page hereof, and ACI are by this reference incorporated in this purchase order as fully as if they were stated herein, and said provisions will become and be a part of the contract of purchase and sale when this order is accepted by ACI. This agreement shall be construed in accordance with the laws of the State of Mississippi and is performable in Panola County, Mississippi. For any and all claims or disputes arising out of transaction between ACI and the Buyer, the parties agree that the venue shall be Batesville, Panola County, Mississippi.
2. The Common Industry Practices' as published in the Low Rise Building Systems Manual, current edition, published by the Metal Building Manufacturers Association (MBMA), as amended and modified from time to time, are hereby incorporated into the terms of this agreement by reference and the Buyer shall comply in all respects with such "Common Industry Practices" unless the terms thereof conflict with the express terms of this Purchase Order, in which event the terms expressly set forth herein shall prevail. This contracts sets forth the entire agreement of the parts hereto and no terms or conditions provided in Buyer's purchase orders or otherwise, unless specifically approved in writing by ACI BUILDING SYSTEMS, INC, shall be valid or binding.
3. Unless otherwise specified, taxes are not included in the sales price unless specifically shown therein. All prices are subject to increase, without notification, by the amount of any federal, state. or local taxes, use or excise tax assessed as a result of this transaction.
4. Terms of Payment to be as stipulated by ACI. Payment under this contract and any other monies due ACI from the Buyer shall be paid to ACI at its office in Batesville, Mississippi or when required to ACI's designated agent.
5. Past due Accounts will be subject to an interest charge of 1-1/2 % per month against the outstanding balance. To the extent that a state law regarding the interest rate is applicable, the maximum rate will be determined by those statutes. In addition, the Buyer agrees to pay reasonable cost of collection and attorney's fees in the event collection proceedings become necessary.
6. Prices in effect at time of shipment will apply.
7. WARRANTY:ACI warrants its products to Buyer only against failure due to defective material or workmanship for a period of one year from date of shipment from our plant, however, damage due to faulty or improper erection by others than ACI is NOT covered. WARRANTY CONDITIONS AND LIMITATIONS: The building must be erected promptly after shipment from our plant, without undue delay. Damages from outside carriers require the Buyer to file a claim against the carrier, without undue delay. Damages from outside sources, misuse and abuse, lack of proper maintenance, and normal wear and tear are not covered by this Warranty. The liability of ACI is limited to furnishing necessary replacement materials FOB plant, but does not include dismantling and installing such materials. The Warranty does not cover products, accessories, parts or attachments which are not manufactured by ACI except to the extent of any replacements or reimbursements which are obtained pursuant to any warranty given ACI by the original manufacture. This warranty is specifically non-assignable and non-transferable.
8. WARRANTY DISCLAIMER - THIS WARRANTY IS SUBJECT TO THE CONDITIONS AND LIMITATIONS SET FORTH HEREIN AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ALL OTHER LIABILITIES (CONTRACT, TORT OR OTHERWISE, INCLUDING NEGLIGENCE) AND ACI MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.
9. ACI SHALL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES TO BUYER. The liability limitation of ACI shall include but is not limited to, consequential, incidental and special damages or loss of profits arising from or caused by, directly or indirectly, fire, strike, act of God, war, insurrection, mob action, civil commotion, acts of government, loss, damage or delay of materials, flood, storms, inability to obtain materials, or other acts or circumstances outside the control of ACI, as well as breach of warranty, use of building by Buyer, breach of any obligation of ACI hereunder, negligence, or any other act or omission of ACI. Buyer acknowledges its responsibility to determine the intended use of the building covered, its appropriateness for all loads to be encountered, including but not limited to live load, wind load, snow/ice load, collateral and auxiliary loads, as well as its appropriateness for compliance with requirements of all governing code bodies, statutory and regulatory agencies.
10. Except for the obligations of ACI under "Warranty," all responsibility of ACI for the building(s) cease upon delivery of the building(s) by ACI to the carrier for shipment to Buyer. Unless otherwise specified herein, ACI shall select the carrier for shipment of the building(s) to Buyer. Shipment charges from the plant of manufacture to Buyer shall be the responsibility of Buyer. All claims against the carrier for damage is the responsibility of Buyer. All claims against the carrier for damage to or loss of any of the building(s) shall be made by the Buyer. The ACI delivery schedule is approximate and subject to delays due to causes beyond the control of ACI including, but not limited to, inability to obtain material, labor or manufacturing facilities, acts of God, acts of Government or public enemy, any preference, priority or allocation order issued by the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or delays by suppliers of ACI. In the event of any such delay, the delivery schedule shall be extended for period equal to the time lost by reason of such delay.
11. Buyer has and does by these presents grant ACI and ACI has and does hereby retain a security interest in the building(s) and all parts and accessories, thereto described in and being purchased by Buyer pursuant to this contract. The security interest herein granted by Buyer and retained by ACI is to secure payment of the full purchase price and all other charges due and owing ACI by Buyer under the terms of this contract. This security interest constitutes a "purchase money security interest" pursuant to the Uniform Commercial Code. This instrument is a contract, security agreement and financing statement between the parties hereto.
12. ACI shall not be responsible for loss or damage to materials after delivery to job site unless the building is being erected by ACI. ACI shall not be liable for any shortage of materials unless it is noted on the delivery receipt. Furthermore, ACI shall not be liable for any cost resulting from any shortage of material, damaged or defective material, correction of errors and repairs when the Buyer fails to carry out their obligation as described in ACI's Backcharge Policy.

**TERMS AND CONDITIONS OF SALE**

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**TERMS AND CONDITIONS OF SALE** continued from previous page.....

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13. If for any reason Buyer delays the fabrication of materials more than 30 days from schedule, ACI reserves the right to adjust its quoted price to reflect any increased cost to ACI. If, at Buyer's request, ACI delays either the shipment of materials after fabrication or the erection of building(s), then ACI shall invoice the Buyer for the full amount of the contract and the invoice will be paid by the Buyer in accordance with the terms of payment provided herein. Buyer shall reimburse ACI for the cost of storing such materials at prevailing rates and will assume responsibility for any damage to the materials caused by weathering and deterioration including, but not limited to, the cost of repainting, repackaging, unloading and reloading plus 10%.
  14. **Any purchase order issued by the Buyer and accepted by ACI on the basis of this contract proposal incorporates, by reference, all the provisions of contract and any conflicting provisions in the purchase order to the contrary shall be of no force or effect.** Buyer may cancel this contract by giving written notice to ACI. In the event of such cancellations, Buyer agrees to pay ACI for the actual cost and damages incurred by ACI in preparing to perform the terms of this contract and in purchase of materials, fabrication, and all subsequent cost incurred. These charges will be due and owed to ACI and will be deducted from any deposit paid to ACI by the Buyer.
  15. If any provision of this agreement is found to be invalid or unenforceable under existing law, such provision shall be fully severable. This agreement shall be construed and enforced as if such provision has never comprised a part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect.
  16. **ACI BUILDING SYSTEMS, INC. reserves the right to change or modify the design and fabrication or to substitute material equal to or superior to that ordered hereby.**
  17. ACI reserves the right to recover any material delivered in excess of those required by the "Building Purchase Order Contract" documents.
  18. ACI will not be responsible for any liquidated damages assessed by the Buyer without prior approval by ACI's President or Vice President.

**Backcharge Policy**

**SHORT MATERIAL:** Immediately upon delivery of material, actual quantities shipped are verified by the Buyer against quantities billed on the shipping documents. Neither ACI nor the Carrier is responsible for material shortages against quantities billed on the shipping documents if such shortages are not noted on the shipping documents upon delivery of material and acknowledged by the Carrier's agent. When the Carrier is ACI, the Buyer makes claim for shortage to ACI. If the Carrier is a Common Carrier, claim for the shortage is made by the Buyer directly to the Common Carrier. If the material quantities received are correct according to the quantities billed on the shipping documents, but are less than the quantities that are necessary to complete the Metal Building System according to the Building Purchase Order Contract, claim is to be made to ACI.

**DAMAGED OR DEFECTIVE MATERIAL:** Damaged material, regardless of the degree of damage, shall be noted on the shipping documents by the Buyer and acknowledged in writing by the Carrier's agent. ACI is not responsible for material damaged in unloading or for packaged or nested materials, included but not limited to, fasteners, sheet metal, trim, "C" and "Z" sections, and cladding that become wet and/or damaged by water while in the possession of others. Packaged or nested materials that become wet in transit shall be unpacked, unstacked, and dried by the Buyer. If the Carrier is ACI, claim for the damage shall be made by the Buyer to ACI. If the Carrier is a Common Carrier, claim for damage shall be made by the Buyer to the Common Carrier. ACI is not liable for any claim whatsoever including but not limited to, labor charges or consequential damages resulting from the Buyer's use of damaged or defective goods that can be detected by visual inspection.

**EXCESS MATERIAL:** ACI reserves the right to recover any material delivered in excess of those required by the Building Purchase Order Contract.

**WAITING TIME:** The cost of the Buyer's time and equipment spent waiting for a shipment that is unavoidably late is not claimable to ACI.

**LOST TIME:** ACI is not responsible for Buyer's Lost Time in completing a project due to ACI's errors in fabrication, shortage of materials, or delivery of defective product.

**CORRECTION OF ERRORS AND REPAIRS:** The correction of minor misfits by the use of drift pins to draw building components into alignment, moderate amounts of reaming, chipping, cutting, shimming, and the replacement of minor shortages of material are a normal part of erection and are not subject to claim. ACI will not pay claims for error corrections unless the following claim and authorization procedure is strictly complied with by the Buyer. If erection is not by the Buyer, the Erector must provide the Buyer with all necessary information for the Buyer to make a claim to ACI as outlined below. ACI is not liable for any claim resulting from the use of any drawings or literature not specifically identified as the current "released for construction" drawings or literature for the project. It is the Buyer's responsibility to insure that the Erector has the current drawings or literature as received from ACI. ACI is not responsible for any claim resulting from the Erector's use of any improper material or material containing defects which can be detected by visual inspection. Costs of disassembling improper materials, tools, supervision, overhead, and profit are not subject to claim.

**INITIAL CLAIM:** In the event of a claimable error, the Buyer shall promptly make a written or verbal "Initial Claim" to ACI for the correction of a design, drafting, sales, bill of materials, or fabrication error. The "Initial Claim" must include:

1. The description of the nature and extent of the errors including quantities.
2. The description of the nature and extent of proposed corrective work including estimated man-hours.
3. The material to be purchased from a third party other than ACI including estimated quantities and cost.
4. The maximum total cost of proposed corrective work and materials to be purchased from other than ACI.

**AUTHORIZATION FOR CORRECTIVE WORK:** If the error is the fault of ACI, an "Authorization for Corrective Work" shall be issued in writing by ACI to authorize the corrective work at a cost not to exceed the maximum total cost set forth. Alternative corrective work other than that proposed in the 'Initial Claim' may be directed by ACI in the 'Authorization for Corrective Work'. Only certain persons specifically designated by ACI may authorize corrective work. No claim will be paid without an "Authorization for Corrective Work."

**FINAL CLAIM:** The "Final Claim" shall be forwarded to ACI in writing from the Buyer within ten days after completion of corrective work authorized by ACI. The "Final Claim" shall include:

1. The actual number of man-hours by date of direct labor used on corrective work and actual hourly rates of pay.
2. The payroll taxes and insurance on total actual direct labor.
3. Any travel expenses incurred.
4. The cost of materials (not minor supplies) authorized by ACI to be purchased from other than ACI, including copies of paid invoices.
5. The total actual direct cost of corrective work (sum of 1, 2, 3, and 4). The "Final Claim" shall be signed and certified as true and correct by the Buyer. "Final Claims" are to be paid to the Buyer by ACI. The amount will not exceed the lesser of the maximum set forth in the written "Authorization for Corrective Work" or the total actual direct cost of the corrective work.