



T.M.COBB
DOORS • WINDOWS • MILLWORK

SALES AGREEMENT AND LIMITED WARRANTY

1. **SOLE & EXCLUSIVE SALES AGREEMENT**. All sales by T. M. Cobb Company, a California Corporation, T. M. Cobb Company dba T. M. Cobb, and T. M. Cobb Company dba Haley Brothers, Inc. (collectively "**Cobb**") to any buyer ("**Buyer**") shall be governed exclusively by this Sales Agreement and Limited Warranty ("**This Agreement**"). The provisions of all purchase orders from Buyer, except for the specified quantity of goods and the specific description of the goods, shall be inapplicable to all such sales and shall be deemed null and void as to such sales. All sales are final. No agreement or sales transaction between Cobb and Buyer shall create a third-party beneficiary agreement. No general contractor, project owner, or other third party may rely upon performance of This Agreement by Cobb or by Buyer.

2. **PAYMENT, SERVICE CHARGES, AND DEFAULT**. Payment terms will be established by Cobb upon approval of Buyer's credit and the terms will be printed on all invoices from Cobb to Buyer. Invoices shall not be considered past due if they are paid within 30 days of the due date, but Cobb may suspend any further credit sales or may reduce the amount of credit allowed if any invoice is not paid on or before the due date. If Cobb inadvertently fails to put terms on an invoice, payment shall be due in accordance with established terms between Cobb and Buyer. If no special terms are established, payment is due within 30 days of the date of the invoice. Buyer shall pay a time-price differential (also called a service charge, finance charge, or interest) on any invoice not paid when due. The time price differential rate shall be 1.5% per month on the total amount of the invoice, including tax and shipping charges. If Buyer fails to pay any invoice within 25 days after the due date, the payment shall be due and payable at 3156 Abington Dr., Beverly Hills, CA, 90210. Any of the following shall be deemed a default: Buyer's failure to pay any invoice within 30 days after the due date; the material inaccuracy of any representation or warranty in Buyer's Credit Application to Cobb; the loss, theft, damage, or destruction of a material portion of Buyer's assets; any circumstance that, pursuant to the California Commercial Code, would entitle Cobb to require adequate

assurance of payment; the dissolution or insolvency of Buyer; the cessation of Buyer's business; the demise of any Guarantor; the appointment of a Receiver; the suspension of Buyer's contractor's license; an assignment for benefit of creditors; or, the bankruptcy of Buyer. Cobb may, at its option, treat all indebtedness of Buyer to Cobb to be immediately due and payable in the event of a default. Cobb may change the credit terms, including the amount of credit, if any, as often as it chooses.

3. **DELAYS**. All delivery dates given by Cobb are estimates only. Buyer is cautioned to make allowance for delays and Buyer is warned and agrees that Cobb shall not be liable to Buyer, nor to anyone else, for delays regardless of the cause of the delays, including, but not limited to, mistake, inadvertence, acts of God, terrorism, intentional diversion of manufacturing or material resources, or negligence.

4. **QUOTATIONS**. No verbal quotations shall be binding, until or unless confirmed by Cobb in a written quotation, confirmation, or invoice and then **the provisions of This Agreement shall constitute the sole, exclusive, and entire agreement**. All price quotations expire 30 days from the date of the quotation, or, if the quotation is not dated, 30 days from delivery of the quotation to Buyer, unless otherwise provided in the written quotation. If Cobb's order-confirmation description of goods is different from the description in the quotation or in the purchase order, the order-confirmation description shall be controlling unless Buyer objects in writing within 24 hours of receipt of the Order Confirmation. If Buyer does not take delivery of specially manufactured goods when they are ready for delivery, the prices may be increased by Cobb, unless otherwise provided in the written quotation. Buyer shall pay reasonable storage fees if Buyer fails to take possession of specially manufactured goods within 10 days of their availability to Buyer.

5. **JOB SITE DELIVERY**. If Buyer requests delivery of goods to a job site and no employee or representative of Buyer is on the job site and willing to sign for delivery, Cobb may unload the materials on the job site. In such event, Buyer shall be obligated to pay for the goods and waives all claims based upon damage, shortage, or failure to deliver the goods. If Cobb does not unload the materials on the job site because there is no representative of Buyer on the job site willing to sign for the delivery, Cobb may impose an additional reasonable charge for the attempted delivery.

6. **RETURNS.** All sales are final. Goods may not be returned to Cobb for credit without Cobb's prior written consent. After return and Cobb's inspection of the goods, the amount of credit, if any, will be based upon the condition of the goods and a restocking charge. **Buyer must examine the goods prior to installing, altering, or otherwise using the goods.** If any claimed defect, non-conformity, or damage could have been discovered by a diligent and careful investigation or examination before installing the goods, Buyer may not return the used goods for credit and shall not be entitled to claim damages in excess the price of the defective, non-conforming, or damaged goods.

7. **CLAIMS PROCEDURE.** Buyer must make any claim for shortage, defect, nonconformity, incorrect price, damage, non-delivery, or for any other reason to Cobb, in writing, by certified return receipt requested mail, within ten days of the date Buyer discovered or could have reasonably discovered the problem giving rise to the claim, but in no event later than 30 days from the date the goods were delivered (or, in the case of non-delivery, within 30 days of the date Cobb sends Buyer an invoice). Buyer must prove that it gave timely notice by producing a post office proof of delivery to Cobb at the address given for Cobb on Cobb's invoices. Claims for breakage or shortages must be noted on the delivery ticket at the time of receipt by Buyer. **Buyer's failure to strictly comply with the claims procedure set forth in this section shall be a complete waiver and bar to any claim or to any set-off against Cobb. Buyer's failure to prove that Buyer gave timely notice in the manner set forth in this Section 6, shall be a complete waiver and bar to any claim or to any set-off against Cobb,** unless Cobb acknowledges, in writing, the timely receipt of the claim. Any suit against Cobb must be filed within one year after the invoice date. **Buyer's Failure to file suit within one year shall be a complete waiver and bar to any set-off or to any suit against Cobb.**

8. **LIMITED WARRANTY.** **THE GOODS ARE SOLD AS IS EXCEPT FOR COBB'S OR OTHER MANUFACTURERS' EXPRESS WARRANTIES. COBB'S SOLE OBLIGATION TO BUYER WITH RESPECT TO OTHER MANUFACTURERS' WARRANTIES IS TO ASSIST BUYER IN PRESENTING ITS WARRANTY CLAIMS TO THE MANUFACTURER. COBB'S SOLE LIABILITY, IF ANY, WITH RESPECT TO THE CONDITION OF THE GOODS SOLD TO BUYER IS LIMITED TO THE ADJUSTMENT, IF ANY, PROVIDED BY THE MANUFACTURER OF THE DEFECTIVE OR NONCONFORMING GOODS. EXCEPT AS TO TITLE, THERE ARE NO OTHER WARRANTIES, WRITTEN, ORAL, OR IMPLIED, WITH RESPECT TO THE GOODS. BUYER WAIVES ALL CLAIMS BASED UPON IMPLIED**

OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ACKNOWLEDGES THAT COBB STRICTLY FORBIDS ITS EMPLOYEES TO WARRANT THE MERCHANTABILITY OR FITNESS OF GOODS FOR A PARTICULAR PURPOSE. FAILURE TO PROPERLY SEAL ALL SIX SIDES OF A DOOR VOIDS ALL WARRANTIES.

9. **LIMITATIONS OF LIABILITY**. Cobb's liability to Buyer, whether arising out of or related in any way to any contract, negligence, strict tort, warranty, statute, or any other legal basis for liability, shall be limited to Cobb's choice of any one of the following: (a) the repair of goods by Cobb; (b) the replacement of the defective goods exclusive of the cost of removal and installation; (c) the cancellation of the contract, Buyer's return of the goods in question to Cobb, and Cobb's refund of the purchase price to Buyer; or, (d) a credit to Buyer's account equal to the price of each defective item. For example, if Buyer purchased 80 doors at a price of \$100 per door, and 3 of the doors are determined to be defective, Cobb's liability would be limited to \$300 if Cobb chooses the subsection (d) remedy. **These remedies are exclusive, and Buyer waives all other remedies and claims.** Buyer's failure or refusal to give Cobb a reasonable opportunity to inspect and/or repair defective goods shall be a complete bar to any claim against Cobb. In addition, **Cobb shall not, under any circumstances, be responsible for special, economic, consequential or incidental damages** such as, but not limited to, loss of profits, revenue, good will, business opportunity, or reputation; damage to other goods; labor expenses; or, damages caused by delays, back-charges, loss of use; or the assessment of liquidated damages. The goods are sold as is. Risk of loss shall transfer to Buyer upon delivery of goods to a common carrier, to Buyer's place of business, to Buyer's employees or agents, to a job site, or to any other location specified by Buyer.

10. **DESIGN SPECIFICATIONS OF GOODS**. Cobb's sole obligation with respect to the design specifications of the goods is to manufacture them in accordance with the specifications described in the order confirmation. An order confirmation shall supersede all descriptions and specifications contained in the purchase order. If the order confirmation does not include all needed manufacturing specifications ("**Missing Specs**"), Cobb shall manufacture the goods using its choice of any Missing Specs and shall not be liable for any damages if its choice falls within the range of specifications allowed by applicable building codes, statutes, or industry standards. Cobb shall not be liable for any damages if the specifications in the purchase order or the order confirmation do not conform to, or comply with, the

owner's/architect's specifications, building codes, and any applicable statutes, including but not limited to the ADA. Any changes to the order confirmation must be signed by both Buyer and Cobb, and must specify no change in price, or the amount of the increase in price, or the amount of decrease in price.

11. **ATTORNEYS FEES**. In any action by Cobb to recover payment for goods sold by Cobb to Buyer, the prevailing party shall be entitled to attorneys' fees in the following amount: (i) 40% (but not less than \$1,500.00) of the claim, if the claim is \$10,000.00 or less; or (ii) 33.3% of the claim, if the claim is over \$10,000.00. However, if the Buyer files an Answer to the complaint (even if the Answer is allowed to be filed by the Court after a default has been entered and/or even if the Answer is ultimately stricken), the prevailing party shall be entitled to reasonable attorneys' fees to be determined by the court. In addition, the successful party shall be entitled to request and receive post judgment collection costs and attorneys' fees, whether the judgment awarding attorneys' fees was based on the percentage formula or based on the reasonable attorneys' fee provision.

12. **PERSONAL GUARANTY**. If a personal guaranty has been executed as part of Cobb's Credit Agreement, the Personal Guaranty makes the provisions of this Section 12 a part of the Personal Guaranty. Guarantor jointly and severally personally guarantees payment of all present and future indebtedness of Buyer to Cobb including all renewals, modifications, and extensions of such indebtedness. **Guarantors waive the benefit of any limitations affecting their liability hereunder or the enforcement thereof to the extent permitted by law.** Without limiting the generality of the foregoing, Guarantor waives all notices from Cobb and waives the right to require Cobb to proceed against Buyer. Guarantor agrees that Guarantor's personal guaranty shall not be deemed to be suspended, stayed, released, terminated, or discharged by any of the following: (a) any modification, substitution, settlement, supplement, extension of time, or compromise granted to Buyer; (b) any change in the relationship between Guarantor and Buyer, including the sale of any or all of Guarantor's ownership interest in Buyer; (c) the execution of new or additional guarantees by Guarantor or by others; (d) any change whatsoever in the business relationship between Cobb and Buyer, including but not limited to any change in credit terms, amount of credit, or amount of interest or service charges; any transfer of new or additional security by anyone for payment of Buyer's indebtedness to Cobb; (e) the bankruptcy of Buyer; (f) the release or discharge of Buyer's debt to Cobb, for any reason other than

payment in full; (g) an automatic stay of proceedings against Buyer; (h) Cobb's failure to exercise diligence against Buyer or against any Guarantor, including Guarantor; (i) a failure or refusal by Buyer or Guarantor to execute a new or updated Credit Agreement and/or a new or updated personal guaranty; (j) the execution of a new Credit Agreement by Buyer with the guaranty section crossed out; or, (k) Cobb's knowledge that Guarantor is no longer, or never was, an officer, director, shareholder, or owner of Buyer.

This is an absolute and continuing Guaranty. Guarantor specifically authorizes Cobb to obtain consumer credit reports on Guarantor for any purpose. It shall be conclusively presumed that all sales by Cobb to Buyer are made in reliance upon Guarantor's personal guaranty. The term "Buyer" shall include "Affiliated Buyer" as that term is defined in the next section.

Guarantor may, at any time, terminate this personal guaranty but must do so exclusively by sending two written notices mailed by return receipt requested mail. One of the notices must be sent to Cobb, Attention Credit Manager and the other must be sent to George Sykulski, PLC at 3156 Abington Dr., Beverly Hills, CA 90210. The Notice to Cobb shall be sent to Haley Brothers, Inc., Attention Robert Edwards, Credit Manager, 6291 Orangethorpe Ave, Buena Park, CA 90620-1377. The notices shall be effective five business days after receipt. Guarantor shall remain responsible and liable for all indebtedness incurred by Buyer to Cobb up to, and including, the 5th day after receipt of both notices, and the personal guaranty shall remain in full force until all such indebtedness to Cobb has been paid in full. Such notice shall be the exclusive method of modifying or terminating this Guaranty. In the event of a dispute regarding receipt of the two notices, Guarantor must prove delivery of the notices by producing signed green card receipts, the post office records of delivery, or a written acknowledgment of receipt of the notices from the Credit Manager and George Sykulski, PLC.

13. **USE OF BUYER'S ACCOUNT BY OTHERS.** Buyer and Guarantor agree that they shall be jointly and severally liable to Cobb for any purchases by any company or individual, regardless of the use of a name other than Buyer's on purchase orders, order confirmations, invoices, statements, payment checks, correspondence, emails, or in conversation, if, (a) Buyer or Guarantor knew or had reason to believe that the company or individual was using Buyer's account and failed to object, in a writing, mailed to the same parties, and in the same manner as required in Section 12 of This Agreement to terminate a personal guaranty; or, (b) Buyer is presently a sole proprietorship or a partnership, and the sole proprietor or any partner forms, or has an interest in, any corporation, LLC, or LLP which purchases materials from Cobb using Buyers account. The company or individual described in the preceding sentence is an "Affiliated Buyer". Affiliated Buyer

hereby agrees that by purchasing goods from Cobb, it is an "Affiliated Buyer" as that term was just defined and that all provisions of This Agreement apply to any purchases by such Affiliated Buyer.

14. **SEVERABILITY**. If any part of This Agreement is held invalid or unconscionable, that part shall be fully severable, and the remaining provisions shall remain in full force and effect.

15. **WAIVERS**. Cobb may indefinitely delay exercising any right or remedy afforded to it by This Agreement, or by law, without waiving that or any other past, present, or future right or remedy. Cobb's consistent waiver of any right or remedy shall not modify the terms of This Agreement, nor establish a "course of dealing" which could be construed as a waiver of any right or remedy including those provided in This Agreement.

16. **COLLATERAL RECOVERY**. If Cobb seeks to recover payment from a collateral source (for example, against the owner of real property on a Mechanic's Lien claim), Cobb shall only be required to credit, against Buyer's account, the net amount recovered after deducting costs and actual attorneys' fees incurred. Furthermore, in the event that Cobb is unsuccessful in its attempt to recover from a collateral source, Cobb's reasonable costs and reasonable attorneys' fees may, in Cobb's sole discretion be added to Buyer's indebtedness to Cobb if the reason the attempt was unsuccessful was due, entirely or partially, to Buyer's, mistake, negligence, malfeasance, or intentional act, including but not limited to: (a) the failure to provide Cobb with the correct name and addresses of all parties entitled to serve a California Civil Code Section 8034 Preliminary Notice; (b) the failure to install some or all Cobb's goods on the job identified on the purchase order, order confirmation, or invoice; (c) the failure to provide Cobb with honest and accurate written Declarations regarding installation of Cobb's materials on the job site; (d) the removal of any of Cobb's goods from the job site; or, (e) the failure or refusal to timely perform any act reasonably requested by Cobb to help Cobb collect payment from the collateral source.

17. **INDEMNIFICATION**. Buyer shall defend, indemnify, and hold Cobb harmless from and against any and all claims by third parties for delays or other damages that are or would be excluded by This Agreement.

18. **VENUE AND APPLICABLE LAW.** Any suit, whether arising from contract, statute, tort, or otherwise, must be brought in the Los Angeles Superior Court or in the Federal District Court in Los Angeles. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

19. **ENTIRE AGREEMENT.** This Agreement, any Credit Agreement signed by Buyer, and all guaranties constitute the entire and exclusive understanding among Buyer, Cobb, and all Guarantors, and supersedes all prior written or oral representations, warranties, statements, promises and understandings, and may not be modified or terminated, except by a document, in writing, signed by the party against whom enforcement is sought. Cobb has not made any promises or representations to induce Buyer or Guarantors to purchase goods from Cobb pursuant to This Agreement, or any other agreement, and Buyer and Guarantors are not relying upon any promise or representation not contained in This Agreement or any other agreement signed by Cobb and Buyer or Guarantors, except that the goods conform to the quantity and kind stated on Cobb's order confirmation or invoices to Buyer. If any provision in This Agreement is inconsistent, or in conflict, with the provisions in any agreement signed by Buyer and Cobb, the conflicting or inconsistent provision in the most recent document shall be controlling. If Cobb changes any provisions of This Agreement and sends the new version to Buyer, by email, fax or US mail with a subject line entitled "IMPORTANT CHANGES TO YOUR AGREEMENT", the new version shall replace This Agreement, shall be deemed incorporated into Buyer's Credit Agreement and shall govern all purchases made after the transmission of the revised Agreement to Buyer. Similarly, if there are changes to Section 12 of This Agreement (the Personal Guaranty Section) and Cobb sends the new version of This Agreement to Guarantor by email, fax or US mail with a subject line entitled "IMPORTANT CHANGES TO YOUR AGREEMENT", the new version shall replace This Agreement, shall be deemed incorporated into the Guaranty, and shall govern all liability of Guarantor to Cobb.

Revised: 9-6-17

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