

TERMS AND CONDITIONS OF SALE

TERMS - The terms and conditions set forth herein contain the entire agreement between Marth Wood Shavings Supply, Inc. ("Marth") and Purchaser with respect to the subject matter hereof, and supersede all prior contemporaneous or collateral representations, purchase orders from Purchaser, agreements, understandings, inducements or conditions, express or implied, oral or written, relating hereto, except as contained in this Agreement. The terms and conditions set forth herein cannot be modified, amended, added to, or otherwise changed unless such modification, amendment, addition or change is reflected in writing signed by both Marth and the Purchaser. No course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in this Agreement.

TERMS OF PAYMENT - Except as provided on the reverse side hereof, payment of no less than 100% of the purchase price is due within 10 days of the date of the invoice. Interest will be added to all overdue or otherwise delinquent accounts at the rate of 1.5% per month or the maximum legal interest allowable if less. In addition, Purchaser agrees to pay Marth's reasonable attorneys and/or collection fees and expenses if legal or collection action is necessary to collect payments for the same.

TAXES - The prices quoted do not include any state or local taxes. If any tax, public charge, tariff, duty, or increase therein, is now or hereafter assessed, levied, or imposed upon this transaction, on the product to be sold, or upon any sale, delivery, or other action taken hereunder, the burden of such charge or change shall be borne by Purchaser.

FREIGHT ALLOWANCE - Whether products are delivered by trucks owned by Marth Transportation or by carrier, purchase price shall increase by an amount equal to the freight allowance. Such increases shall be included in the purchase price. Purchaser will pay any reasonable additional costs arising out of delivery.

FREIGHT DAMAGE - Damages or shortages occurring on Marth Transportation carriers will be expediently corrected by Marth provided written notice of the damages given within seven (7) days of the time the product is delivered to the destination. Purchaser accepts risk of loss when materials are shipped by common carrier and Purchaser's sole remedy is to file with a common carrier involved for all freight damages or shortages occurring for such shippage. Marth assumes no responsibility to property damaged while in possession of common carriers.

DELIVERY DATES - Delivery dates acknowledged by Marth are estimates of the date on which the delivery will occur and are not binding on Marth. Failure to perform pursuant to said delivery dates for any reason whatsoever, whether in Marth's control or not, shall not be cause for cancellation by the Purchaser or for the assertion of damages of any kind whatsoever including, but not limited to, consequential damages, against Marth. Marth shall exercise its best efforts to notify the Purchaser of any material delay in delivery.

WARRANTY - Except that all material is guaranteed to be as specified, no other warranty (whether express, implied, or statutory) is made by Marth. **THE EXPRESS WARRANTY STATED ABOVE IS IN PLACE OF ALL OTHER WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER SUCH WARRANTIES OR GUARANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY Marth.**

LIMITATIONS AND REMEDIES - THE SOLE AND EXCLUSIVE REMEDY OF THE PURCHASER UNDER THIS CONTRACT IS MARTH'S REPAIR OR REPLACEMENT OF ANY DEFECTS CAUSED BY MARTH AT MARTH'S SOLE DISCRETION, AT NO COST TO PURCHASER, FOR THE PERIOD OF NINETY DAYS FROM THE DATE OF THE INVOICE TO PURCHASER, PROVIDED PURCHASER SHALL NOTIFY MARTH IN WRITING OF SUCH DEFECT WITHIN SEVEN (7) DAYS OF DISCOVERY OF SUCH DEFECT. SUCH WRITING SHALL BE MAILED TO MARTH AT: 6752 STATE HWY. 107 N., MARATHON, WISCONSIN, 54448. IN THE ABSENCE OF SUCH TIMELY NOTICE, PURCHASER SHALL BE BARRED FROM THE REMEDIES AS ALLOWED HEREIN. THE REMEDIES HEREIN PROVIDED PURCHASER AS TO REPLACEMENTS SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS CONTRACT AND IS EXPRESSLY MADE IN SUBSTITUTION OF ANY AND ALL REMEDIES PROVIDED UNDER THE UNIFORM COMMERCIAL CODE AS ENACTED IN WISCONSIN OR ELSEWHERE. UNDER NO CIRCUMSTANCES SHALL MARTH BE LIABLE FOR LIQUIDATED, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER. NO ACTION FOR THE ENFORCEMENT OF THE REMEDIES SET FORTH HEREIN SHALL BE COMMENCED MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUED FOR THE ENFORCEMENT OF SUCH REMEDIES.

CHOICE OF LAW FORUM - Any action arising out of or related to the transactions identified by the invoice shall be governed and construed in accordance with the laws of the State of Wisconsin, without regard to conflict of laws provisions wherever contained. THE PARTIES AGREE THAT ANY LITIGATION SHALL BE CONDUCTED EXCLUSIVELY IN THE MARATHON COUNTY CIRCUIT COURT LOCATED IN WAUSAU, WISCONSIN, WITHOUT A JURY, AND THE PARTIES HEREBY CONSENT TO SUCH JURISDICTION AND WAIVE ANY PERSONAL JURISDICTION OR VENUE OBJECTIONS (INCLUDING FORUM NON CONVENIENS) TO SUCH FORUM. PURCHASER HEREBY WAIVES THE RIGHT TO REMOVAL AS PROVIDED IN 28 U.S.C. §§1441, 1446.

SEVERABILITY - If any section (or part of a section) hereof is found to be unenforceable in each additional proceeding, then the remainder shall continue in full force and effect as if the unenforceable section (or part thereof) did not exist.

FORCE MAJEURE - Marth shall not be liable for any failure to discharge its obligations hereunder due to any act or neglect of the Purchaser or agents employed by Purchaser, or due to strikes, accidents, fires, shutdowns of its facilities or facilities supplying it, orders or requirements of the United States Government, embargoes, inability to secure transportation facilities, or any other contingencies beyond the control of Marth, including, but not limited to, those arising out of or due to National Defense activities, or emergency conditions.