

TESORO WOODS

Tesoro Woods Terms and Conditions

1. **MERGER & MODIFICATION:** Buyer acknowledges that Buyer has read this agreement, understands it and agrees to be bound by its terms and conditions. This agreement constitutes the entire, complete and exclusive statement of the Agreement between Buyer and Seller with respect to the products furnished hereunder and supersedes all proposals, prior agreements and understandings, oral or written, and all communications between Buyer and Seller relating to the subject matter of this Agreement. NO REPRESENTATION, PROMISES OR CONDITIONS NOT SET FORTH HEREIN HAVE BEEN RELIED UPON BY BUYER OR SHALL BE BINDING ON EITHER PARTY HERETO. It is further agreed and understood that no waiver, alteration, modification of deviation form, or addition to any of the provisions here of shall be binding unless in writing and signed by an authorized representative of Seller.
2. **MODIFY THE TERMS AND CONDITIONS-** Buyer shall be bound by all of the terms and conditions stated in this document. Seller may modify the terms and conditions of this Application from time to time upon mailing notice of such change to the buyer at the address shown on the Seller's records. Such change shall be effective for all transactions which take place between Seller and Buyer after the date of any such notice.
3. **ACCEPTANCE OF ORDERS:** No order or purchase agreement shall be deemed, accepted or entered into until signed by Buyer and signed by Seller's authorized representative. In the event this Agreement is never signed by Buyer, the filing of Buyer's order and furnishing the products requested and the acceptance of delivery of the products shall constitute acceptance by Buyer and the terms and conditions of this Agreement are those under which Seller tendered delivery, notwithstanding any other communication between the Parties. All proposals are subject to change or withdrawal at any time prior to acceptance by Seller.
4. **SALES & OTHER TAXES:** Prices quoted herein include packing only and do not include sales, use, excise or similar taxes and custom duties. Consequently, the amount of any present or future sales, use, excise or other similar taxes or custom duties applicable to the sale of the product(s) hereunder shall be paid or reimbursed to Seller by Buyer, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities
5. **RISK OF LOSS AND TRANSPORTATION CLAIMS:** Products that are sold by Seller FCA warehouse, upon loading by the carrier, Buyer shall bear all risk of loss, damage or delay. The method and route of shipment are at Seller's discretion, unless Buyer supplies Seller with explicit instructions in writing.

Seller shall not be liable and will make no adjustment for damage or loss occurring during transportation. Seller will use its best efforts to assist Buyer in securing an adjustment of a claim by Buyer for any such damage or loss, provided that Buyer gives notice of such damage or loss to Seller within five (5) days after receipt by Buyer of applicable invoices to enable claims against the carrier to be made. Breach of this Agreement by Seller shall have no effect upon the provisions controlling the risk of loss. Parcel post and express shipments will be insured at Buyer's expense. Other shipments will not be insured unless so specified herein.

6. **JOB SITE DELIVERY**- If upon delivery to any job site designated by Buyer, there is not present an employee of Buyer authorized to accept delivery and sign a delivery document evidencing delivery of the merchandise related to any particular order, Buyer authorizes Seller to deposit any such shipment at the delivery area previously designated by Buyer without obtaining a signed receipt for same and Buyer agrees to make payment in full for all goods so delivered as if it were signed by an authorized employee or representative of Buyer, unless Buyer has previously instructed seller not to deposit delivered merchandise without obtaining a signed delivery receipt from an authorized employee or representative of Buyer. In any instance where Seller is required to refrain from depositing a merchandise shipment at a job site, Buyer shall pay Seller for all applicable redelivery, storage, and other charges incurred or imposed by Seller in relation to any such transaction.
7. **RETURNS**-Any return of merchandise by Buyer to Seller must be preapproved in writing by Seller and must be accompanied by Buyer's original sales ticket pertaining thereto. Restocking fee may be assessed by the Seller on any and all returns approved by Seller and may be required as a condition precedent to the issuance of any such approval.
8. **DELIVERY**: Shipping dates are approximate and are based upon prompt receipt from Buyer of all necessary information and upon Seller's factory and warehouse conditions at the time of quotation. If shipment or any other act or condition affecting payment for the products, or any part thereof or accessory thereto, shall be delayed on account of the Buyer, payment therefore shall become due as if shipment has been made. In case of delay in shipment at the instance of the Buyer, a reasonable storage charge shall be made, and such storage will be at the risk of the Buyer.
9. **FORCE MAJEURE**: Performance hereunder is subject to acts of God, acts of Buyer, acts of civil or military authority, priorities, government requirements or regulations, accident, explosion, fire, windstorm, flood or other casualty, strike, lockout or other labor difficulty, riot, war, insurrection, epidemics, quarantine restrictions, shortage of or inability to obtain labor, materials or production of transportation facilities, delays, interruptions in transportation, extraordinary inflation in cost of Seller's performance and all other disabling causes without regard to the foregoing enumeration beyond the Parties reasonable control. Except as otherwise provided in Paragraph 5,

the terms of this Agreement, including the date for delivery, shall be deemed suspended so long as any such cause prevents or delays performance.

10. **CHANGES & CANCELLATIONS:** All orders placed hereunder and accepted by Seller shall be firm. If Buyer requests changes in design or specification of products on order, or for any reason stops work in progress, Seller's costs of complying with Buyer's request shall be borne by Buyer. Further, Seller will, on request of Buyer, agree to the cancellation in whole or in part of such orders provided Buyer shall compensate Seller for the latter's actual costs, commitments to other and normal overhead, up to and including the date such request is received by Seller, plus a reasonable profit on all terms for which cancellation is requested.
11. **LIMITED WARRANTY:** Except as otherwise provided hereinafter below, and subject to the Section herein entitled "Risk of Loss & Transportation Claims" Seller warrants to Buyer that the goods to be sold and delivered hereunder will be the kind and quality described herein and will be free of defects in material and workmanship for a period of three hundred sixty-five (365) days from and including the date of delivery provided Seller receives written notice from Buyer of any alleged defect or nonconformity within the warranty period. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF, AND SELLER EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything to the contrary herein.
 - A. The Warranty shall become void and ineffective if, at any time, Buyer has failed to comply with the payment schedule herein, and such failure will also render null and void any and all outstanding warranty claims made prior thereto.
 - B. The Warranty shall become void and ineffective if the goods have not been installed, repaired or maintained properly, or used in accordance with Seller's specifications or have been subject to neglect, accident, misuse or alteration (except acts by or authorized in writing by Seller).
 - C. The Warranty shall extend only to the first Buyer except in case of sale to an original equipment manufacturer, and in such case, this Warranty shall upon resale, extend only to the first user of the products.
12. **LIMITED REMEDY:** Buyer's sole remedy with respect to any products furnished hereunder shall be as follows:
 - A. The repair or replacement, at Seller's option, of nonconforming or defective products, parts or accessories during the Warranty period, FOB Seller's warehouse or, at Seller's option at wherever said goods may be located. Transportation charges and all other charges incidental to the return of the products, parts or accessories to Seller shall be prepaid by Buyer, or
 - B. If Seller is unable or chooses not to repair or replace, Seller may, at its option, rescind any sale made hereunder by refunding the purchase price that has been paid, with transportation and all other charges being prepaid

by Buyer and cancel any obligation to pay unpaid portions of the purchase price of nonconforming or defective goods, provided that Buyer first surrenders and returns in good condition to Seller all goods furnished hereunder by Seller.

13. **LIMITATION OF LIABILITY:** In no event shall Seller be liable for any loss of profits, incidental or consequential damage, or punitive or exemplary damages, whether based on negligence strict liability tort contract, warranty, statute, ordinance regulation or other legal theory of liability.
14. **CONTINUITY OF DISCLAIMERS AND OF LIMITATION OF LIABILITES:** In any contract by Buyer for resale or use of the products in question. Buyer shall effectively disclaim, as against Seller, any implied warranty of merchantability and all liability for property damage or personal injury resulting from the design, manufacture, handling, possession, use or performance of the products, and shall exclude, as against Seller, any and all liability for incidental or consequential damages.
15. **STATE OF NEW JERSEY-**This document is to be interpreted and enforced pursuant to the laws of the State of New Jersey. At Seller's sole option, any action to interpret or enforce all or any part of this Application shall be conducted in Camden County, New Jersey and Buyer submits to such jurisdiction and waives all of Buyer's obligations to such venue. Seller shall be entitled to recover from Buyer all cost and attorney's fees incurred by Seller in relation to the interpretation or enforcement of this Application or any or all Buyer's obligations to Seller, whether or not suit is filed.
16. **INFORMATION-**Buyer warrants and represents that: a) all information provided by Buyer is true and correct and acknowledges that Seller is relying on the correctness of such information in extending credit to Buyer, and b) Buyer will notify Seller immediately upon any material adverse change in Buyer's financial material adverse change.
17. **WAIVER:** Waiver of any breach or failure to enforce any term or conditions of this Agreement or other right hereunder on any particular occasions shall not be construed as a waiver of any other breach of the same or any other provision hereof or right hereunder on any other or subsequent occasion.
18. **ASSIGNMENT:** Neither party may assign this Agreement without first obtaining the other party's written consent.
19. **SECURITY INTEREST:** Seller shall have a security interest in the products furnished hereunder and in any and all additions and accessories hereto, replacements therefore, and proceeds thereof as security for the Buyer's obligation to pay the purchase price (which shall include and applicable finance charge) of the products. Buyer agrees to sign and deliver to Seller financing statements in the number and form reasonably required by Seller for filing under the Uniform Commercial Code as Seller may from time to time reasonably request. Seller may, at its sole expense, file any such financing statement or continuation statement. The Buyer agrees to pay any legal expenses (including reasonable attorney's fees) incurred by Seller in enforcing its rights under this Agreement against the Buyer or with respect to the collateral following a default by the Buyer, and also agrees that its obligation to pay such expenses shall be included in the obligations secured by the collateral

