

Masco Builder Cabinet Group-Product and Installation Sales Terms and Conditions

1. ACCEPTANCE. This agreement is expressly limited to and made conditional upon your acceptance of its terms and conditions. Any of your terms and conditions which are in addition to or different from those contained herein which are not separately agreed to in writing (except additional provisions specifying quantity) are deemed material and are hereby objected to and rejected. You waive your objection to any terms and conditions contained herein if MBCG does not receive written notice of your objection within ten business days of the date of this agreement. You will in any event be deemed to have assented to all terms and conditions contained herein if any part of the products or Work described herein are provided or performed. Please note particularly the Limited Warranty, Limitation of Remedies and Limitations on Actions and Liability provisions set forth below. You acknowledge that the prices stated are based on the enforceability of these terms and conditions, and on the Limited Warranty, Limitation of Remedies and Limitation of Actions and Liability provisions below, that the price would be substantially higher if MBCG could not limit its liability as herein provided, and that you accept these provisions in exchange for such lower prices.
 2. LIMITED WARRANTY. All products manufactured by MBCG are warranted as set forth in the applicable product warranty which may be found at www.merillatbusiness.com. Any products incorporated into the Work not manufactured by MBCG or installation labor performed by MBCG are warranted to be free from defects in material and workmanship for one year from the date of completion of the installation subject to the terms below. **THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** This limited warranty does not cover damages relating to (a) accident, misuse, abuse, neglect, or normal wear and tear; (b) failure to use or maintain the product in accordance with manufacturer's instructions; and (c) alteration, repair or attempted repair by anyone other than MBCG or its authorized representative. You shall be solely responsible for the correctness of the plans and specifications and shall release and hold harmless MBCG from any damages resulting from improper, inadequate or vague information supplied by you. MBCG does not take on any obligation to inspect or evaluate the work of other parties in any manner or aspect. This warranty is not transferable.
 3. INSURANCE. MBCG shall maintain workers' compensation (employer liability), as required by law, and \$1,000,000 in general liability insurance while performing the Work. MBCG reserves the right to be self insured to the extent allowed by applicable law. MBCG does not agree to name any other persons or entities as additional insureds. Any different insurance requirements may result in additional charges.
 4. LIMITATION OF REMEDIES. Your sole and exclusive remedy against MBCG for any and all claims for damages arising out of or alleged to have arisen out of the Work provided by MBCG and will be limited to the repair or replacement by MBCG, at MBCG's option, of any nonconforming Work or to the issuance of a credit for such nonconforming Work in accordance with these terms and conditions provided MBCG is given a reasonable opportunity to inspect the Work and confirms such nonconformity. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as MBCG is willing and able to repair or replace the nonconforming Work and, in any event, MBCG's maximum liability for any damages shall be limited to the total amount paid to MBCG for the Work under this agreement. This Limitation of Remedies clause shall apply to the parties to this agreement as well as to the current owner(s) of the project and its/ their respective successors and assigns. If you receive a claim for damages by any owner arising out of or alleged to have arisen out of the Work, you agree to give written notice to MBCG of the claim and provide MBCG an opportunity to inspect the alleged damages within 30 days after MBCG's receipt of the notice. If you fail to give the required notice and/or fail to allow MBCG an opportunity to inspect the alleged damages within 30 days, you hereby waive any and all rights for damages and/or correction of Work against MBCG. This Limitations of Remedies may be plead as a complete bar to any action in violation of this clause.
 5. LIMITATIONS ON ACTIONS AND LIABILITY. All claims and/or lawsuits including but not limited to claims or lawsuits for indemnity and/or contribution against MBCG arising under this agreement must be made within 13 months from the date of completion of the installation. **MBCG WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM ANY FAILURE TO PERFORM THAT IS DUE TO CIRCUMSTANCES BEYOND ITS CONTROL. THE MAXIMUM LIABILITY, IF ANY, OF MBCG FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM MBCG'S BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT WITH RESPECT TO THE PRODUCTS, OR ANY SERVICES IN CONNECTION WITH THE PRODUCTS, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE CONTRACT PRICE. IN NO EVENT SHALL MBCG BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES AND PROFITS, ATTORNEYS FEES AND/OR COSTS EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS YOUR EXCLUSIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.**
 6. PAYMENT, PRICES, TERMS AND SCHEDULE. All invoices are net 30, no cash discount is allowed unless otherwise specified by MBCG. No cash discounts, back charges, setoffs or counterclaims are allowed unless specified by MBCG. No retention is permitted unless MBCG agrees otherwise in writing. Any past due payment will be, at MBCG's option, subject to interest at 1.5% per month (18% per annum) or to the extent permitted by law. You agree to receive (or permit MBCG to receive) near the work site, any materials needed to complete the Work. The promised delivery date is the best estimate possible of when the products will be shipped. Products may not be returned. All pricing includes freight FOB destination. Pricing includes all state and local taxes. Any change in the tax rate during the life of this contract will be reflected in an adjustment of the agreement.
- You agree to protect such materials from damage or loss and provide MBCG, free of charge, with reasonable use of light, heat, water, power, storage space and use of available elevators and hoists as needed. MBCG may charge you a fee and its actual expenses if the job site is not ready for Work on the date you specify.
7. FORCE MAJEURE. MBCG shall not be liable for any delay, failures, or default in performance of this agreement or otherwise, in whole or in part, caused by the occurrence of any contingency beyond the control either of MBCG or of suppliers to MBCG. Such contingencies include but are not limited to failure or delay in transportation, acts of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, acts of nature, severe weather, product allocation or shortages, labor shortages, fuel shortages, raw material shortages, machinery or technical failure, or Work that cannot be completed because of another contractor covering the pertinent portion of the building. If any contingency occurs, MBCG may allocate production, deliveries, and performance of Work among its customers, or substitute substantially similar materials, in its sole discretion, without liability for doing so.
 8. CONFIDENTIALITY. If you visit MBCG's premises or you otherwise receive any proprietary or confidential information from MBCG, you shall retain such information as confidential and not use or disclose it to any third party without MBCG's written consent.
 9. CREDIT APPROVAL. Shipment and delivery of goods and performance of Work shall at all times be subject to the approval of MBCG and MBCG may at any time decline to make any shipment or delivery or perform any Work except upon receipt of payment or upon terms and conditions or security satisfactory to MBCG. By accepting this agreement, you authorize MBCG to check your credit and references.
 10. CANCELLATION. This agreement, or any part of it, may only be cancelled with MBCG's written approval. In the event of cancellation of this agreement, or any part hereof, you shall pay: (a) the contract price of all completed items; (b) that portion of the contract price that is equal to the degree of completion of products or Work in process, effective on the date MBCG receives notice of cancellation; (c) the cost of any materials and supplies which MBCG shall have purchased to perform and which cannot be readily resold or used for other or similar purposes; (d) a restocking fee; and (e) any expenses incurred by MBCG (including legal fees and judgments) as a result of the cancellation of subcontracts or purchases related to this agreement.
 11. DEFAULT. You may terminate this agreement for MBCG's default, wholly or in part, by giving MBCG written notice of termination as follows. You may give a written notice of termination only if MBCG has received a written notice from you specifying such default, the default is not excusable under any provision hereof, and the default has not been remedied within thirty (30) days (or such longer period as may be reasonable under the circumstances) after MBCG's receipt of the notice of default. Delivery of nonconforming products or Work by MBCG shall give you the rights set forth in paragraph 4 hereof but shall not be deemed a default for purposes of termination. In the event of termination for default, you shall be relieved of the obligation to pay for Work not performed by MBCG prior to the effective date of such termination.
 12. ASSIGNMENT. You may not assign this agreement or any claim against MBCG relating to this agreement.
 13. GOVERNING LAW. This agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Michigan.
 14. DISPUTES AND MANDATORY MEDIATION. In the event that a dispute arises over the reasonableness of or entitlement to fees charged by MBCG, the prevailing party will be entitled to reasonable attorneys' fees and costs. In all other disputes of any nature, each party shall pay its own fees and costs. Except as required to protect confidential information and to obtain preliminary injunctive relief to prevent irreparable harm, you and the MBCG agree that prior to the initiation of any legal action the parties will engage in facilitative mediation of any and all disputes in any way related to this agreement. If the parties cannot agree upon a facilitative mediator within 30 days of when the dispute arose, one will be selected pursuant to the Commercial Mediation Rules of the American Arbitration Association. Each party will share equally the fees of the facilitative mediator and costs of the mediation.
 15. SEVERABILITY. If any provision on this agreement is not enforceable, that provision shall be effective only to the extent permitted by law and all other provisions of this agreement shall remain.
 16. ENTIRE AGREEMENT. This instrument contains the entire agreement of the parties relating to the subject matter hereof and may only be waived, changed, modified, extended or discharged by a writing signed by the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought and which specifically references this agreement. The terms and conditions of this agreement supersede any agreement to which it is attached.
 17. INDEMNITY. Each of the parties to this agreement agrees to defend and indemnify one another from any and all claims, actions and/or lawsuits caused by the party's negligent acts or omissions. This indemnity clause and the obligations created herein shall control and take priority over any contrary indemnity agreement entered into prior to this agreement.
 18. PATENTS, INVESTMENTS, TECHNICAL DATA. Customer does not and shall not acquire ownership or any rights in MBCG's patents, inventions and/or technical data under any order, regardless of when such patents, inventions, and/or technical data may be or have been issued, conceived, generated or produced. All MBCG patents, information and/or technical data are reserved by MBCG and same shall not be reproduced or used by Customer for any purpose whatsoever without MBCG's written permission.