

CONDITIONS OF SALE

The terms contained herein are irrevocably binding upon the parties. Each party is presumed to be a sophisticated party with full understanding of the terms contained herein. Please carefully review the terms by which the parties agree to be irrevocably bound.

1. **Acceptance.** ESCO INDUSTRIES, INC., a Georgia corporation (“ESCO”) is only willing to enter into this contemplated transaction based upon the irrevocable acceptance by the buyer (the “Buyer,” and together with ESCO, the “Parties”) of the products manufactured and sold by ESCO (the “Products”) of the terms contained herein. **By accepting the Products and entering into this transaction, Buyer agrees to be bound by the terms contained in this agreement** (this “Agreement”). The term “Buyer” when used herein shall refer collectively to Buyer, its owners, agents, subsidiaries, affiliates (including without limitation ESCO Laminating-Texas, Inc., a Texas corporation, and Panel Craft, Inc., an Alabama corporation), transferees, and successors-in-interest (whether through sale, merger, liquidation, or otherwise) and shall be binding upon the same.
2. **Complete Agreement and Waiver of Warranty.** NEITHER ESCO, NOR ANY OF ITS SUBSIDIARIES OR AFFILIATES OR AGENTS, MAKES REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, OF ANY NATURE OR ANY KIND (INCLUDING WITHOUT LIMITATION MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. THIS WRITTEN AGREEMENT CONSTITUTES THE FULL UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES, AND PREEMPTS ANY PRIOR UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS BY OR AMONG THE PARTIES, WRITTEN OR ORAL, WHICH MAY HAVE RELATED TO THE SUBJECT MATTER HEREOF IN ANY WAY. ANY VARIATION FROM THE TERMS OF THIS AGREEMENT MUST BE AGREED IN WRITING AND SIGNED BY BOTH PARTIES.
3. **Product Suitability.** Buyer represents that Buyer has conducted Buyer’s own independent due diligence as to the suitability of the Products for Buyer’s intended purposes and applications, including without limitation any subsequent sale or transfer to third parties. Buyer has not relied upon any representations or warranties by ESCO or any of its employees, agents, owners, officers, subsidiaries, contractors, or affiliates, in making such determination. Buyer solely assumes (without any expectation of indemnification or guaranty) the risks and liabilities for results obtained by the use of the Products, whether used singly or in combination with any other material (except those relating *solely* to the use of the Products not confirming to expressly contracted specifications, which nonconformity is not known, either actually or constructively, to Buyer). Any suggestions or recommendations made by ESCO concerning uses or applications of the Products are suggested in good faith but are made without investigation, without representation or warranty, and are relied upon by Buyer at Buyer’s sole risk.
4. **Product Characteristics.** Buyer is presumed to be a sophisticated party with independent knowledge as to the suitability of products (including without limitation the Products) and materials for Buyer’s intended purposes and applications and those of Buyer’s intended customers. Buyer represents that it has and will continue to familiarize itself with the characteristics of the Products (including without limitation through all appropriate testing), and shall comply with all laws, regulations and standards applicable to the possession, handling, storage, transportation, processing, disposal, modification, or use of the Products by Buyer, including, but not limited to, the Occupational Safety and Health Act of 1970, and the Regulations and Standards issued pursuant thereto. Without limiting the generality of the foregoing, ESCO disclaims any liability of any nature and any kind which may result from, arise out of, or be connected with the manner by which Buyer or its customers store and/or transport the Products and any damage or structural deficiencies resulting to the Products due to the same.
5. **Indemnity.** To the fullest extent permitted by law, Buyer shall immediately defend, indemnify and hold ESCO (and ESCO’s owners, agents, employees, contractors, subsidiaries, and other affiliates) harmless from and against all claims, penalties, causes of action, damages, liabilities (whether strict or otherwise), costs and expenses, including without implied limitation, reasonable attorney and paralegal fees and court costs (at the trial and appellate levels) arising from or connected with the possession, modification, disposal, transfer, handling, processing, or use of the Products by Buyer or others (except as resulting *solely* from the Products not conforming to the contracted specifications, if any, which nonconformity was not known, either actually or

constructively, to Buyer and which was not discoverable by Buyer, by testing or otherwise, prior to the use thereof by Buyer or others). ESCO may participate in the defense of any such claim for the further protection of its own interest. Without limiting the generality and breadth of the foregoing, and for purposes of clarity, such indemnity obligations shall include (without limitation) such causes of action arising from or connected with the use (negligent or otherwise), misuse, modification, possession, disposal, transfer, or other acts or omissions by third parties, and whether such causes of action are based in tort, contract, equity, ordinance, regulation, statute, or otherwise. Buyer's indemnity obligations are a material inducement for ESCO to enter into this transaction.

6. **Interpretation**. ESCO and Buyer are both presumed to be sophisticated parties with the opportunity to consult independent counsel prior to entering into this transaction and being bound by the Agreement. The Parties have entered into this Agreement with full understanding of the terms contained herein and desire to be bound by the same. Accordingly, the Parties hereby waive any interpretive doctrines based upon the identity of the drafter of the Agreement.
7. **Severability**. The Parties intend that each provision of this Agreement be enforceable to the furthest extent permitted by law. However, in the event that a court of competent jurisdiction determines that a provision of this Agreement is not enforceable, the court may modify this Agreement to the minimal extent legally required in order to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
8. **Time is of the Essence**. In the performance of the terms, obligations, and covenants of this Agreement, including without limitation Buyer's indemnity obligations pursuant to Section 5, **TIME IS OF THE ESSENCE**.
9. **Attorneys' Fees**. In the event that a party initiates litigation in order to vindicate its rights under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party the prevailing party's legal expenses including, without limitation, reasonable attorneys' fees and court costs.
10. **Third-Party Beneficiaries**. The Parties do not intend to confer any rights or remedies upon any person or entity other than the Parties to this Agreement, their respective successors and permitted assigns, and any other parties expressly provided-for herein.
11. **Claims**. Any and all claims of any nature and any kind related to or arising out of a nonconforming product shall be made in writing within ten (10) days after discovery (or when discovery could reasonably have been made) thereof. All other claims, except error or shortage, shall be made within thirty (30) days after receipt of product to which the claim relates, or if for nondelivery, after the scheduled delivery date thereof. Buyer's failure to give ESCO written notice of any claim within the applicable time period shall constitute an absolute and unconditional waiver of such claim. **TIME IS OF THE ESSENCE**. In no event shall Buyer commence any action later than one (1) year after the occurrence of the event giving rise to such claim.

After providing timely written notice of a claim, Buyer shall afford ESCO a reasonable opportunity to inspect the merchandise and otherwise conduct an investigation into the validity of the claim. Buyer shall promptly and reasonably cooperate with ESCO's inspection and investigation. Shipments shall be held intact and a written specification of objections, accompanied by detailed tally of objectionable goods, shall be submitted in writing to ESCO. If full credit is allowed by ESCO (in its discretion) for nonconforming goods, the goods must be retained intact at the delivery point, and ESCO shall have sixty (60) days from the date of such allowance to dispose of such goods (without incurring any liability or cost to Buyer for the time required to do so). Under no circumstances are goods to be returned to ESCO unless Buyer has prior written permission of ESCO to do so. A claim that goods are nonconforming shall not entitle Buyer to deduct any sum from any invoice without the prior written consent of ESCO. No credit, claim or adjustment will be allowed by ESCO for material which has been cut or processed in any manner. ESCO will pay reasonable, actually-incurred transportation charges to the destination it designates on all nonconforming material/merchandise approved by ESCO for return.

12. **Liability Limitation**. FOR A CLAIM OF ANY KIND, WHETHER AS TO PRODUCTS DELIVERED OR FOR NONDELIVERY OF PRODUCT AND WHETHER BASED ON CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR

OTHERWISE, BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO THE PURCHASE PRICE, REPAIR OR FULL REPLACEMENT AT ESCO'S OPTION AND IN ESCO'S DISCRETION. IN NO EVENT SHALL ESCO BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (including, but not limited to, lost profits), or special damages in tort, whether Buyer's claim is based on contract, breach of warranty, negligence, or any other claim whatsoever.

13. **Delivery.** ESCO's delivery to a carrier in good order constitutes delivery. Any claim for damage, breakage, or loss in transit must be made against the carrier. ESCO expressly disclaims any and all liability arising from carrier's acts or omissions.
14. **Force Majeure.** ESCO shall not be liable for failing to perform its obligations under agreements or proposals due to or arising out of events beyond its control including without limitation riots, rebellions, acts of terrorism, civil disobedience, electrical failures, pandemics, epidemics, states of emergency, severe or inclement weather, embargo, acts of government authority, inability to secure cars or transportation, labor troubles, supply chain interruptions, vandalism, Acts of God, and other events customarily constitute an event of force majeure.
15. **Payments and Taxes.** All payments owed to ESCO shall be made promptly and without need for demand in the manner reasonably specified by ESCO. ESCO reserves the right to assess unpaid balances considered past due. Unpaid balances shall bear an interest charge of 1 ½% per month commencing 30 days from date of invoice, and if placed with an attorney for collection, Buyer agrees to pay the reasonable costs of collection (including without limitation reasonable attorneys' fees). Payments shall be applied first to accrued interest charges and second to payment of principal. The Parties acknowledge and agree that such charges are intended to compensate ESCO for costs incurred resulting from unpaid balances considered past due (such costs being difficult to ascertain) and do not constitute a penalty. Any applicable taxes imposed by any government or taxing authority (including without limitation at the federal, state, or local level)) on the sale of the Products shall, to the maximum extent permitted by law, be paid by the Buyer.
16. **Governing Law.** This Agreement, and all matters arising out of or in connection with this Agreement, whether arising in contract, tort, or otherwise, shall be governed by and construed in accordance with the laws of the State of Georgia, and without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Georgia. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Parties irrevocably consent to the jurisdiction of the courts of Coffee County, Georgia and the US District Court for the Southern District of Georgia, and all claims and matters arising out of or in connection with this Agreement shall be brought in aforesaid courts. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES WAIVE THEIR RIGHT TO A TRIAL BY JURY FOR ANY MATTER OR CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
17. **Notices.** Any notices required to be provided to ESCO shall be delivered via national delivery service (e.g., FedEx or UPS) or certified mail, postage prepaid, return receipt requested, to ESCO at: P.O. Box 1026, Douglas, Georgia 31534.
18. **Miscellaneous.**
 - a. Clerical, grammatical and stenographical errors are subject to correction. The captions in this Agreement are included for convenience of reference only and in no way define or delimit any of the provisions hereof or otherwise affect their construction or effect.
 - b. Seller certifies that this material has been produced in compliance with the "Fair Labor Standards Act of 1938 as amended."
 - c. The failure of ESCO to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of ESCO's rights or deprive ESCO of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
 - d. This Agreement does not create a joint venture or partnership of any kind between the Parties. Buyer represents and warrants that the person entering into this Agreement on behalf of Buyer has the authority, without further approval or consent required, to bind Buyer to the terms of this Agreement. Buyer represents

and warrants that Buyer entering into this Agreement does not conflict with any other agreement, indenture, law, or other restriction to which Buyer may be subject or bound. Buyer further represents and warrants that Buyer is authorized to transact business in the State of Georgia.

- e. This Agreement is binding upon the successors of the Parties and inures to the benefit of the each party's successors and permitted assigns.