

  
P R O D U C T S • I N C  
**TERMS AND CONDITIONS OF SALE**

All sales are subject to the following terms and conditions:

- 1. CONTRACT.** The quotation, terms and conditions and subsequent purchase order constitute the entire agreement of the parties (“Contract”) and may not be modified unless specifically agreed to by Peerless in writing. An independent sales representative is not employed by Peerless and does not have authority to bind Peerless. Representations, statements or discussions between Buyer, Peerless and independent sales representatives are not part of the Contract.
- 2. PRICES.** Quotes are valid for 60 days from the date quoted. If a valid purchase order is received before the quote expires, the quote price is valid if the order is fully defined within 90 days of purchase order receipt date. All prices are subject to change at any time if quantities, product or other terms and conditions that are not part of the original quotation change or if the buyer requests extended delivery dates.
- 3. TAXES.** Taxes are not included in quoted prices. Unless Peerless has an exemption certificate on file any and all taxes required will be charged in states where Peerless is required to collect tax. Buyer shall pay or reimburse Peerless for all sales, use, occupational and other taxes or impositions levied, assessed, or imposed with respect to the work of the Contract. For lien or bond claim purposes, although separately referred to on Peerless’ invoices, such taxes shall be considered as part of the purchase price of the materials involved.
- 4. EXCLUDED ITEMS.** Unless specifically listed in quotations, prices exclude shop drawings, engineering calculations, the cost to attend buyer field tests, fasteners, fees, permits, sealants, and special freight considerations.
- 5. FIELD TESTING.** Field Testing if required will be strictly per AAMA 502-08. Water penetration resistance tests shall occur as defined in Section 4.3.2 and in no case will the specified test pressure exceed 2/3 of the design. Air leakage resistance tests shall occur as defined in Section 4.2.3 and 4.2.4. Both tests to be based on the applicable product designation in AAMA/WDMA/CSA 101/I.S.2/A440. Square foot of test specimens must be a minimum of 2/3 of full size requirement.
- 6. SCHEDULING ORDERS.** Orders are scheduled for production when the order is fully defined and accepted by Peerless’ engineering department. Lead-times vary significantly with market conditions and time of year.
- 7. MODIFICATION, CANCELLATION, AND DELAY.** If Buyer modifies, cancels or delays its order Buyer will be liable for Peerless’ costs, overhead and profit related to the modification, cancellation or delay.
- 8. PAYMENT TERMS.** Extensions of credit are subject to credit investigation and approval by Peerless. If credit is approved, payment terms are 2% ten days, net thirty days from the date of invoice, in U.S. currency. Peerless may in its sole judgment decline to extend credit or require such other payment terms, as Peerless deems appropriate. If delivery is in multiple shipments, separate invoices will be sent for each shipment promptly after each such shipment leaves Peerless factory.
- 9. SPECIFICATIONS.** It is the buyer’s responsibility to verify that all products meet the needs and specifications of their project. Unless Peerless agrees otherwise in writing, no warranty is given that the Products meet any specifications, plans, building codes or requirements. All Products are subject to industry standard quality tolerances and Buyer agrees to abide by these tolerances.
- 10. DELIVERY.** Unless specific instructions to the contrary are supplied by the Buyer, methods and routes of shipment will be selected by Peerless, but Peerless does not assume any liability in connection with shipment or designate any carrier as Peerless’ agent. Buyer is responsible for unloading the product upon delivery and is responsible for all carrier delay charges. Buyer waives all claims against Peerless to the extent a loss to the Product is covered by property insurance. Peerless shall have no liability for any charges, damages, claims or penalties resulting from any delays in delivery and Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligation as a result of the delay.
- 11. COMPLIANCE WITH LAWS.** Peerless will have no responsibility to ascertain that any drawings and specifications provided by or on behalf of Buyer comply with applicable laws, statutes, ordinances, or building codes.
- 12. BREACH.** If Buyer fails to make any payment to Peerless when due, Peerless shall be entitled to: (a) suspend shipment of any or all Products to Buyer until Buyer has paid all overdue amounts, plus accrued interest; (b) cancel any outstanding contracts for the sale of goods to Buyer; (c) recover from Buyer all expenses of Peerless in the collection of said payment, including reasonable attorneys fees and costs; and/or (d) exercise any other rights available under applicable law.
- 13. SECURITY FOR PAYMENT.** Until full payment by Buyer of all amounts to be paid by it hereunder, Peerless shall retain title to the materials furnished hereunder, whether they are installed in any building or other structure.
- 14. FINANCIAL INFORMATION.** Upon written request of Peerless, Buyer shall furnish to Peerless reasonable evidence that Buyer has made financial arrangements to enable Buyer to fulfill payment obligations under this Contract.

- 15. PAST DUE ACCOUNTS.** Buyer agrees to pay the lesser of 1.5% per month (18% APR), or the highest rate permitted by law on past due invoices from the date of the invoice. An invoice is past due if the net amount is not paid within 30 days from the invoice date. Interest will be assessed starting 30 days after the Invoice Date.
- 16. CLAIMS.** Buyer must present any and all claims of any nature to Peerless in writing and with particulars within twenty (20) days after the claim becomes reasonably ascertainable; otherwise, Peerless shall have no responsibility or liability and Buyer shall be deemed to have waived such claim.
- 17. LIMITATION OF LIABILITY.** PURCHASER AGREES THAT THE LIABILITY OF PEERLESS AND ITS AGENTS, SERVANTS, EMPLOYEES, SUBCONTRACTORS, AND SUPPLIERS FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, GROSS NEGLIGENCE, AND FAULT, SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY BUYER UNDER THE CONTRACT, OR THE AMOUNT OF THE AVAILABLE LIABILITY INSURANCE COVERAGE OF PEERLESS, IF ANY, WHICHEVER IS GREATER.
- 18. FORCE MAJEURE.** Peerless will not be liable for any damages, whether direct, incidental or consequential, with respect to any delay or failure in performance caused by labor disputes, terrorism, riots, fires, casualties, accidents, acts of God, unusual delays in delivery, acts or omissions of Buyer or its design professional, or other causes beyond the direct control of Peerless.
- 19. WARRANTIES, DISCLAIMER AND EXCLUSIVE REMEDIES.** Peerless' warranty is limited to the terms of our standard limited warranty which can be obtained from your sales representative, project manager or off of the Peerless web site at <http://www.peerlessproducts.com/Website/Portals/0/PeerlessAssets/Forms/WarrantySample.pdf>. (A) Disclaimer of Other Warranties. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN PEERLESS' STANDARD LIMITED WARRANTY ARE THE EXCLUSIVE WARRANTIES PROVIDED TO PURCHASE AND ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. (B) Consequential Damages. In no event will Peerless be responsible for any incidental or consequential damages.
- 20. DEFAULT BY PURCHASER.** Default by Buyer shall consist of one or more of the following: (a) failure by Buyer to make any payment when due hereunder, no demand being necessary; (b) any act or omission on the part of Buyer or its agents, contractors, and design professionals, whereby Peerless is prevented from completing its work in a timely and uninterrupted manner; (c) failure by Buyer to comply with any term, condition or provision of this Contract; (d) evidence that financial arrangements have not been made to fulfill Buyer's obligations under the Contract, or the failure to provide that evidence upon written request by Peerless; or, (e) the making of an assignment by Buyer for the benefit of creditors.
- 21. REMEDIES OF PEERLESS.** In case of any default by Buyer, Peerless may: (a) declare the full Contract price or work fully or partially complete to be immediately due and payable; (b) enter the premises and remove the material and properties furnished under the Contract, whether or not attached to any building or other structure, and at Peerless' option, sell the same at public or private sale and apply the proceeds (less expenses of such retaking and sale) toward the balance due; and (c) invoke and pursue such other or additional remedies as may be provided by law or in equity. Buyer shall indemnify Peerless for any and all expenses, including but not limited to reasonable attorneys' fees and costs incurred in pursuing any of the foregoing remedies.
- 22. INDEMNIFICATION.** To the fullest extent permitted by law, Buyer agrees to fully indemnify, defend, and hold harmless Peerless from and against any and all claims, damages, losses, and liability of any nature whatsoever, including but not limited to reasonable attorneys' fees and expenses, arising out of or resulting from Buyer's negligence, fault, or breach of this Contract.
- 23. SEVERABILITY.** In the event that any one or more of the provisions in this Contract are, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract.
- 24. ASSIGNMENT.** Buyer shall not assign any of its interests under this quotation unless Peerless consents in writing.
- 25. WAIVER.** Peerless' waiver of any breach by Buyer of any of the provisions of this quotation shall not constitute a waiver of any other provision.
- 26. GOVERNING LAW.** This Contract (and any resulting purchase order) is governed by the substantive laws of the State of Kansas (except for its choice of law rules).
- 27. DISPUTE RESOLUTION.** Any claim arising out of or related to the Contract, in tort or in contract, shall be subject to binding arbitration preceded by nonbinding mediation. Any mediation and arbitration shall be in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association. The demand for mediation and/or arbitration shall be served on the other party to the Contract and filed with the American Arbitration Association. The demand for arbitration must be made within the applicable statute(s) of limitations and may be served and filed simultaneously with the demand for mediation.