

Commercial Terms

Westman continues to refine and improve based on changes to the industry. Westman and its affiliated companies and suppliers, reserves the right to change details, specifications, designs or products at any time. Please contact Westman or local representative for the latest information available.



DEFINITIONS

BETWEEN Behlen LP / Westman Steel Industries (“BEHLEN / WESTMAN”) and The Purchaser or The Dealer, Builder or Buyer Specified on the Front Hereof (the “PURCHASER”)

ACCEPTANCE

This Agreement and any subsequent documents that form part of this Agreement shall be subject to the terms and conditions set forth herein and no other understandings or agreements either oral or in writing by Behlen / Westman, and no additions, deletions or modifications of these terms proposed by the Purchaser shall bind Behlen / Westman unless accepted in writing by Behlen / Westman, regardless of whether or not such terms would materially alter the terms herein. Receipt by Behlen / Westman of this Agreement shall be binding acceptance by the Purchaser, provided, however, that Behlen / Westman may at its option reject or modify all or part of the terms on the face within 10 days after receipt of this Agreement.

MATERIAL AND PRODUCT SUBJECT TO THIS AGREEMENT

This Agreement only covers material and product (the “Goods”) specifically set out herein. In the event that there is a conflict or discrepancy between any drawings and this Agreement, only those Goods listed herein will be provided. All Goods furnished are to be governed by Behlen / Westman specification for same; any alteration or variance must be specifically set out herein. Purchaser shall be solely responsible for any requirements necessary, including any cost associated therewith, to make the specifications reflected herein (including any alterations or variations hereto) conform to the actual materials and product required by the Purchaser or the end-user who is a customer of the Purchaser.

CANADIAN SHEET STEEL BUILDING INSTITUTE (CSSBI) STANDARDS

With the exception of grain bin components, components not used in buildings, and farm building components not requiring compliance with a Building Code, unless stated to the contrary herein, any Goods provided hereunder shall be steel building system components. CSSBI Publication 30M, “Standard for Steel Building Systems” and CSSBI publication B8 “Buildings Incorporating Steel Building Systems: Responsibilities of the Parties Involved”, are incorporated into this Agreement. By execution of this Agreement, the Purchaser acknowledges having obtained a copy of the aforementioned publications, (which are available from the CSSBI through its website www.cssbi.ca) and acknowledges his, her or its familiarity therewith.

PRICES

Unless specifically mentioned on the face of this Agreement, prices quoted do not include any applicable sales, use, transfer, excise or other similar taxes and the Purchaser shall be charged for any such taxes. Behlen / Westman shall also be entitled to charge the Purchaser for storage and other expenses incurred (at prevailing rates for same) in addition to the quoted price. Prices quoted herein are based solely upon specifications included in this Agreement which are general specifications only and which may be altered from time to time by Behlen / Westman, which may result in a corresponding alteration in price at the option of Behlen / Westman. If the Purchaser delays approval of drawings by more than thirty (30) days or requests a delay in fabrication by more than thirty (30) days after approval of drawings,



Behlen / Westman may invoice the Purchaser for any services performed and Behlen / Westman may in its sole discretion alter the quoted price. In addition, if the Purchaser places an order but does not authorize Behlen / Westman to schedule the order for production (order for drawings only), Behlen / Westman may invoice the Purchaser for any services performed and Behlen / Westman may in its sole discretion alter the quoted price. Should an order not ship within the later of twelve (12) weeks after acknowledgement by Behlen / Westman, or eight (8) weeks after, on request of the Purchaser, issuance of approval drawings by Behlen / Westman, Behlen / Westman may, at its sole discretion, alter the quoted price. Should, for any reason, unless agreed upon by Behlen / Westman in writing at the time of quotation, an order not ship within sixteen (16) weeks after acknowledgement by Behlen / Westman, Behlen / Westman may, at its sole discretion, alter the quoted price.

TERMS OF PAYMENT

The standard terms of payment are as determined by the Behlen / Westman credit department and as set out on the order acknowledgment. Interest shall be chargeable at the rate of 1.5% per month (19.6% per annum) on past due invoices, or if provincial law prohibits this rate, interest shall be chargeable at the maximum rate allowed by such provincial law. There shall be no deduction, defalcation, set off or holdback allowed by the Purchaser. If the Purchaser defaults in any payment when due or refuses to accept delivery, then Behlen / Westman at its option, without prejudice to other lawful remedies, may defer further deliveries or cancel the remainder of the order. Goods held for Purchaser shall be at the risk of the Purchaser and payment shall become due from the date on which Behlen / Westman is prepared to make shipment.

WHERE PURCHASE PRICE NOT PAID IN FULL

- (a) In all jurisdictions except the Province of Quebec: BEHLEN / WESTMAN shall retain a purchase money security interest in the products sold to the applicant until the full purchase price shall have been paid. The Purchaser agrees that BEHLEN / WESTMAN will have the right to file financing statements pursuant to the applicable law to evidence BEHLEN / WESTMAN's security interest. The Purchaser will join BEHLEN / WESTMAN in executing such financing statements or other instruments as BEHLEN / WESTMAN may reasonably request to perfect such interest and hereby authorizes BEHLEN / WESTMAN to execute and file or record such financing statements and instruments on the Purchaser's behalf and in the Purchaser's name.
- (b) Province of Quebec only: BEHLEN / WESTMAN shall have a movable hypothec in the amount of the purchase price together with interest at the rate stipulated in the deed of sale to the Purchaser until the full purchase price shall have been paid. The Purchaser agrees that BEHLEN / WESTMAN will have the right to register a movable hypothec to evidence its security interest. The Purchaser will join BEHLEN / WESTMAN in executing any other instruments as BEHLEN / WESTMAN may reasonably request to perfect such hypothec and hereby authorizes BEHLEN / WESTMAN to execute and file or record such hypothecs and instruments on the Purchaser's behalf and in the Purchaser's name.
- (c) If the Purchaser is a corporation, the Purchaser agrees that The Limitation of Civil Rights Act (Saskatchewan) shall have no application to BEHLEN / WESTMAN's rights, powers or remedies under this Agreement or any other agreement related or collateral hereto.

(d) The Purchaser acknowledges receipt of an executed copy of this Agreement, and where permitted by law, the Purchaser waives its rights to receive a copy of any financing statement, financing change statement, verification statement or other similar instruments filed or issued at any time in respect of this Agreement or any amendment hereto.

DELIVERY

- (a) Unless otherwise specified, terms shall be FCA Behlen / Westman point of manufacture. If transportation charges are incorporated in the price quoted on the front hereof such charges are freight prepaid unless otherwise specified. On export orders, export documents are to be provided by the Purchaser unless otherwise agreed upon by Behlen / Westman and the Purchaser at the time of quotation.
- (b) Delivery shall be deemed to occur when the Goods are shipped from the point of manufacture.
- (c) Behlen / Westman is authorized to ship in installments.
- (d) Delivery dates if stated on this Agreement are approximate only and any estimated delivery time, if stated, is determined from the date Behlen / Westman receives complete information necessary to manufacture the Goods. Behlen / Westman shall not, however, be liable for any delay in delivery caused by conditions beyond Behlen / Westman's reasonable control including, without limitation, fire, accidents, war, riots, strikes, lockouts, labour difficulties, slowdowns, equipment breakdown, incompleteness or inaccuracy of information supplied to Behlen / Westman, acts of God, acts of civil or military authority, inability to obtain necessary labour and materials or any other cause or causes, whether or not similar to any of the foregoing. In addition, there may be delays in delivery of Goods not normally carried by Behlen / Westman. Any such causes of delay even though existing on the date of order or on the date of starting of manufacture shall extend the time of Behlen / Westman performance by the length of delays occasioned thereby, including delays reasonably incident to the resumption of normal procedures. Under no circumstances shall Behlen / Westman be liable for any consequential damages whatsoever.
- (e) In the event that any services to be performed by Behlen / Westman shall be delayed by more than thirty (30) days on account of factors beyond Behlen / Westman's control, then upon notice from Behlen / Westman, Purchaser shall pay Behlen / Westman the cost of all work, services and materials to date, plus Behlen / Westman's overhead costs plus ten (10%) percent of the price hereof.
- (f) The Purchaser shall be responsible to inspect all Goods received pursuant hereto. If the Purchaser is of the view that part of the Goods are damaged preventing use of same, such Goods shall be noted on one copy of the packing list as damaged and Behlen / Westman shall be notified immediately to determine what rectification in Behlen / Westman's sole absolute discretion (acting reasonably) is necessary. Behlen / Westman shall not accept claims for damage after loading at the Behlen / Westman plant or caused during transit, unloading or handling at the jobsite. Further, Behlen / Westman shall not accept claims for visible shortages unless Behlen / Westman is notified within 48 hours of taking delivery and one copy of the packing list, with shortages properly noted, is returned to Behlen / Westman within the said 48 hours. Behlen / Westman shall not accept claims for shortages that are not visible unless Behlen / Westman is notified within fifteen (15) days of taking delivery and one copy of the packing list, with



shortages properly noted, is returned to Behlen / Westman within the said fifteen (15) days. Behlen / Westman shall not be responsible for any cost, expense or damage of any kind arising from the use of damaged or otherwise defective goods.

BUILDERS' LIEN ACT AND INSURANCE

This Agreement is subject to the trust fund provisions contained in The Builders' Lien Act (Manitoba) and other similar legislation in other Canadian provinces. Until all payments required under this Agreement have been made to Behlen / Westman, the Purchaser shall maintain at its own cost such insurance and in such amounts as is normally required in the industry including, without limitation, comprehensive general liability insurance (against risk of loss or damage including property damage and theft) and builders' risk insurance (covering Behlen / Westman's material, equipment and labour for all risk loss.) All such insurance shall, at Behlen / Westman's option, name Behlen / Westman as an additional named insured and first loss payee and shall in any event contain a waiver of subrogation clause. The Purchaser agrees to defend, hold harmless and indemnify Behlen / Westman, its servants and agents and each of them against any and all liability, claims, suits, costs, damages, losses, expenses or otherwise arising out of or in any way connected with any injury (including death or total destruction) to any person or property which arises out of or results from work performed or Goods supplied hereunder. The Purchaser hereby irrevocably appoints Behlen / Westman its attorney in the settlement of any claim with respect to such insurance. Notwithstanding that Behlen / Westman retains a purchase money security interest in the Goods, the risk of loss with respect to each unit or part of the Goods, all additions and accessories thereto passes to the Purchaser at the F.O.B. Behlen / Westman point of manufacture.

BUILDING CODE COMPLIANCE

It is the responsibility of the Purchaser to retain either directly or through independent contractors, qualified design, engineering and drafting personnel to prepare plans, which may be required to obtain permits and other applicable approvals. The Purchaser shall be responsible to ensure that correct and complete design loads are specified for the job and to ensure that all local building codes, laws, regulations, ordinances and other requirements mandated by law or contracted for by the end customers are met and complied with respecting the design, purchase and installation of the building. In addition, the Purchaser is responsible for communicating to Behlen / Westman the correct and complete design loads, safety and occupancy requirements, and any other controlling factors that are appropriate for the geographic location. Behlen / Westman represents only that the Goods will meet the specific loadings outlined in the order. However, Behlen / Westman reserves the right to change the design or make structural substitutions which do not materially alter the strength of the Goods. Behlen / Westman shall not be responsible for ensuring that the specific loadings are appropriate for the job. Nothing herein should be interpreted as approval of design by Behlen / Westman. Behlen / Westman assumes no responsibility with respect to the Purchaser's compliance with or fulfillment of obligations under all local building codes, laws, regulations, ordinances and other requirements mandated by law or contracted for by customers.

WARRANTY AND LIMITATION OF LIABILITY

- (a) Behlen / Westman warrants that its Goods when installed in a normal and proper manner, shall be free from any defect due to materials or workmanship for a period of one (1) year from the date of delivery. Behlen / Westman's sole obligation under this warranty is to repair or replace such part or parts that are shown to the satisfaction of Behlen / Westman to be defective within the warranty period to an amount not in excess of the amount under this Agreement. The Purchaser shall notify Behlen / Westman in writing immediately upon discovery of any defect and Behlen / Westman shall have no liability hereunder for any claims, including shortages and field re-work.
- (b) Behlen / Westman shall not be liable for any incidental loss or damage, however caused, including, without limitation, normal wear and tear. In addition, the warranty expressed hereunder shall be void in the event that an alteration or repair is made to the Goods by any person other than as authorized by Behlen / Westman. This warranty does not include expendable components, if any, and any components not manufactured by Behlen / Westman.
- (c) Behlen / Westman makes no express or implied warranties of any nature whatsoever except for such express warranties as set out herein. The warranty provided herein is in lieu of and excludes all other warranties, guarantees or conditions pertaining to the Goods, written or oral, statutory, express or implied, (except the warranty as to title) including any warranty as to the merchantability or fitness for any particular purpose. Behlen / Westman expressly disclaims all other representations, conditions or warranties, express or implied, statutory or otherwise and any representations, warranties or conditions that may arise from a course of dealing or usage of trade. The warranty provided herein shall constitute Behlen / Westman's sole obligation and liability and the Purchaser's sole remedy for breach of warranty. No other warranty has been made by any employee, agent, or representative of Behlen / Westman and any statements contained in any other printed material of Behlen / Westman is expressly excluded herefrom. Behlen / Westman shall not be responsible for any warranty offered by the Purchaser to any of its customers with respect to the Goods and the Purchaser shall indemnify Behlen / Westman with respect to same if any of those customers make a claim against Behlen / Westman relating to any such warranty. The warranty of Behlen / Westman is not assignable by the Purchaser.
- (d) Subject to the terms of this Agreement, None of Behlen / Westman, its officers, directors, servants or agents shall be liable or responsible for any loss or damage (including strict liability and liability for loss or damage due to items which the manufacturing processes are designed to identify) whether such loss or damage is caused by negligence in any manner whatsoever (including gross negligence) error, misrepresentation, misstatement, imprudence, lack of skill or lack of judgment.
- (e) Behlen / Westman may at its sole discretion provide an extended warranty on the Goods, including but not limited to Galvalume® or prepainted panels against perforation or paint failure. Such warranty shall be in writing and shall be signed on behalf of Behlen / Westman.
- (f) In no event will the total liability of BEHLEN / WESTMAN for any damages incurred by the Purchaser ever exceed the fees actually paid by the Purchaser to BEHLEN / WESTMAN under this Agreement, regardless of the form of action, whether based in contract, tort, warranty, negligence, strict liability, products liability or otherwise.

DRAWINGS

All drawings supplied by Behlen / Westman shall remain Behlen / Westman property and are for the confidential use of the Purchaser. The Purchaser cannot show or convey any information about such drawings to any person, individual, partnership, corporation or any other entity except upon prior written consent from Behlen / Westman (which consent can be arbitrarily withheld) and except as required for the construction of the Goods. The Purchaser cannot copy the drawings, copy the design details of the drawings or fabricate any part of same, without the prior written consent of Behlen / Westman, which consent can be arbitrarily withheld.

CANCELLATION

This Agreement is not subject to cancellation in whole or in part except with Behlen / Westman express written consent and upon payment to Behlen / Westman of cancellation charges as follows:

- (a) Purchaser shall forfeit the deposit provided herein, if any; and
- (b) Behlen / Westman shall have its remedy at law including a claim for costs for resale of the Goods or the manufacturing costs of the Goods less any scrap values; and
- (c) Behlen / Westman shall have a claim for all solicitor costs reasonably incurred by it plus ten (10%) per cent of the selling price for administrative costs on cancellation.

In the event that Behlen / Westman has in its sole discretion, any doubts or concerns with respect to the Purchaser's financial responsibility, Behlen / Westman shall be entitled, without any liability for same, to stop operations, stop shipment, withhold delivery, or exercise any other rights or remedies to which it is entitled at law or equity until the Purchaser has paid for all materials and other costs and expenses hereunder or until the Purchaser has satisfied Behlen / Westman of its financial responsibility.

In addition, Behlen / Westman may cancel this Agreement by giving written notice to that effect to the Purchaser (which notice shall take immediate effect), and shall not be obliged to deliver any further Goods to the Purchaser where:

- (i) the Purchaser defaults in the payment for any Goods shipped by Behlen / Westman to the Purchaser hereunder or under any other quotation or order;
- (ii) any formal or informal proceeding for the dissolution of, liquidation of, or winding up of the affairs of the Purchaser is instituted by or against the Purchaser or where a resolution is passed or any other act undertaken for the winding up of the Purchaser;
- (iii) the Purchaser ceases or threatens to cease to carry on its business;

- (iv) a receiver, manager, curator, trustee or similar officer is appointed in respect of the Purchaser or any part of its assets, by a regulatory authority, a court of competent jurisdiction, or under an agreement;
- (v) the Purchaser is adjudged bankrupt or becomes insolvent, or a petition in bankruptcy is filed against the Purchaser, or where the Purchaser makes an assignment for the general benefit of creditors, or where proceedings of any type are instituted in any jurisdiction in respect of the alleged insolvency or bankruptcy of the Purchaser. The termination of this Agreement shall not release, discharge or otherwise affect, the obligation of the Purchaser to pay for any Goods delivered to the Purchaser prior to the time when the termination took effect.

GENERAL

- (a) This Agreement shall be governed in all respects by the laws of the Province of Manitoba.
- (b) If any dispute or difference shall arise between the parties hereto, the same shall be referred to arbitration pursuant to the terms of The Arbitration Act (Manitoba).
- (c) The Purchaser shall not be entitled to assign any of its rights under this Agreement, and no person may assume the obligations of the Purchaser hereunder, without the prior written consent of Behlen / Westman. Behlen / Westman shall be entitled to assign any or all of its rights under this Agreement without the prior consent, written or otherwise, of the Purchaser.
- (d) No changes or modifications to this Agreement shall be valid or binding upon any party hereto, unless such change or modification shall be in writing and signed by all of the parties.
- (e) No waiver by any party of any breach of any of the covenants, provisions, conditions or stipulations herein contained, whether expressed or implied, or negative or positive in form, by any other party shall have any effect or be binding upon such party unless the same is in writing under the authority of the said party, and any waiver whatsoever shall extend only to the particular breach so waived and shall not limit or affect the rights of any party to any future breach.
- (f) In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Furthermore, in lieu of each such invalid, illegal or unenforceable provisions, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and be valid, legal and enforceable.
- (g) This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. There are no other agreements between the parties in connection with the subject matter hereof except as specifically set forth or referred to herein. Except as expressly provided in this Agreement, no termination of this Agreement shall be binding unless executed in writing by all parties to be bound thereby.