

TERMS & CONDITIONS

Terms and Conditions of Sale

1. **Parties.** C&D Signs, Incorporated dba Metro Sign & Awning shall be referred to as "Seller" and the person or company purchasing as indicated on the quote, acknowledgement or invoice will be referred to as "Buyer".
2. **Standard Lead Time.** Standard lead time is 20 to 30 business days from the date when the following have all been satisfied: the conceptual drawing is approved, the quote is signed, the 50% deposit is received, and the permit is granted.
3. **ESD, Permits, Permit Acquisition, Police Detail / Mall Security.** Engineered Stamped Drawings, Permits, Permit Acquisition, Police Details, and Mall Security costs are the Buyer's responsibility. If desired, Seller will secure and bill back. Labor (acquisition) fees will be billed at \$85/hour to \$125.00/hour. ESD's, Permits and Details will be billed at cost to cost plus 20%. This clause includes all permits and associated fees, including, but not limited to: a building/sign permit for the product itself, a permit for the install equipment, a permit for the use of the sidewalk.
4. **Electrical.** This quotation does not include the cost of providing electrical service to the sign. Electrical service and all attendant controls shall be provided by the Buyer. Final primary electrical connection to the product is the customer's responsibility.
5. **Seller's Specifications, Technical Data, Et cetera.** Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of Seller furnished to Buyer shall be deemed to be incorporated herein by reference the same as if fully set forth. Seller shall at all times retain title to all such documents and Buyer shall not disclose such to any party other than Seller or any party duly authorized by Seller. Upon Seller's request or upon completion and delivery of the products or services, whichever first occurs, Buyer shall promptly return to Seller all such documents and copies thereof.
6. **Contingencies.** Seller shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay in transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material or equipment used in the manufacture of the products covered hereby; the failure of any party to perform any contract with Seller relative to the production of such products; or from any cause whatsoever beyond the Seller's control, whether or not such cause be similar or dissimilar to those enumerated. Seller shall promptly notify Buyer of the happening of any such contingency and of the contemplated effect thereof on the manufacture and delivery of the products.
7. **Soil Conditions & Toxic Cleanup.** The parties hereby agree that the contract price agreed upon is based on the presence of normal soil conditions at the sign installation. Buyer hereby warrants that he knows of no unusual soil conditions or underground obstruction at said site, and agrees that in the event that such conditions are encountered, the contract price will be adjusted based on the additional labor or materials required to complete construction.
8. **Ledge/Frost Clause.** If difficult digging conditions, including ledge, water, heavy frost, unmarked water or gas lines, or similar are encountered in ground installations, this contract is binding, however, an additional cost based on additional labor plus 20% on subcontract labor, equipment, and materials will be added to the quoted price.
9. **Removal.** Removal, disposal, and / or storage of existing signs, awnings, window graphics, or other fixtures is NOT part of this contract unless specifically stated.
10. **Standard Wall Conditions.** Standard wall conditions are one or two materials that add up to no more than 12" thick (for example, EIFS and concrete block). Additional charges may apply if non-standard conditions are encountered when Seller is required to mount product on the wall.
11. **Unforeseen Obstruction/Reinforcement.** Buyer shall be responsible and pay for all necessary reinforcement to building or any other structures on which display is installed, for relocating power lines or other obstacles and for any additional installation cost incurred by Seller due to unforeseen obstructions. Seller is not responsible for damage to underground utilities or other unforeseen objects. Every possible effort will be made to determine wall thickness and drilling requirements prior to installation cost estimation. However, Seller will not be held responsible for unknown wall obstructions such as beams, re-bar, extreme wall thickness and/or density. The additional labor and materials required to complete installations due to these obstructions will be added to the installation price at final invoicing.
12. **Property, Site Damage.** Seller DOES NOT ASSUME any liability for any damage to Buyers or end users property, including but not limited to, walls, roofs from water penetration, landscaping, and glass. It is understood that heavy equipment is often used with sign installations and that tire ruts, outrigger indentations, and other incidental damage may occur. Landscaping repairs including cutting of underground sprinkler systems are not included unless specifically stated.
13. **Change orders.** Any deviation from specifications involving EXTRA COSTS will become an extra charge over and above this contract.
14. **Prices.** Prices quoted are for shipment or install on the estimated delivery dates. Seller reserves the right to recalculate the sale price if the order is not completed within ninety days of order execution date. Deliveries delayed by the Buyer will be invoiced at the time the product is ready for shipment.
15. **Normal Business Hours.** Normal business hours are Monday through Friday 8:00 AM to 5:00 PM. Work required outside normal business hours may be billed at a higher rate.
16. **Payment.** Unless otherwise specified by Seller, all prices are FCA origin from which shipment is made, and payment will be net/cash 30 days from date of invoice. Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of eighteen (18%) percent per annum or the maximum allowable interest rate under applicable law and Buyer shall be responsible and liable for all expenses incurred by Seller in collection including reasonable attorney's fees.
17. **Default of payment.** Buyer agrees to pay all costs of collection in the event of default of payment by the Buyer, including a reasonable attorney's fee. Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of eighteen (18%) percent per annum or the maximum allowable interest rate under applicable law, and Buyer shall be responsible and liable for all expenses incurred by Seller in collection including reasonable attorney's fees.
18. **Title.** Ownership of Product shall at all times remain with Seller and the Buyer hereby grants Seller a security interest in the Product until all of the payments are made and all of the conditions herein contained are fully satisfied, at which time Buyer shall be vested with full title to the Product. Buyer shall bear all risk of loss of the Product after delivery or installation has been completed (where installation is part of the Agreement). At the request of Seller, Buyer will execute and deliver to Seller for filing where ever it may be required a financing statement evidencing Seller's security interest in the Product.

It is agreed that the entire ownership of the Product shall remain with Seller until wholly paid for and cannot be removed by Buyer until paid in full, without written permission of Seller, and in case of default in payment, the whole sum may be deemed by Seller to be due and payable at once, and Seller may without notice or demand at any time take possession of said property wherever found and remove the same to Seller's own premises without being deemed guilty of trespassing; or may sell the same with or without notice and apply the proceeds of said sale upon balance due, less the expense of taking possession of said property, and, in such case, the Buyer agrees to immediately pay any balance then remaining unpaid after the application of proceeds of said sale.

In the event of such removal, Buyer shall be liable to seller for all labor costs and expenses for the removal of the Product. Removal of the Product shall not constitute a waiver of any rights and remedies existing at law for the breach of this agreement, and Seller expressly reserves all such rights. Upon breach of the agreement, Buyer agrees to pay all costs of collection including reasonable attorney's fees.
19. **Warranty and Limitations of Liability.** Seller warrants its products to be free from defects in material and workmanship, under normal and proper use in accordance with instructions of Seller, for a period of one year from the date of delivery to Buyer. Seller's liability under such warranty or in connection with any other claim relating to the products shall be limited to the repair, or at Seller's option, the replacement or refund of the purchase price, or of any products or parts or components thereof which are returned to Seller freight prepaid and which are defective in material or workmanship. Products or parts are components thereof which are repaired or replaced by Seller will be returned to Buyer freight collect. EXCEPT AS EXPRESSLY STATED ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR OTHERWISE ON THE PRODUCTS OR ON ANY PARTS OR LABOR FURNISHED DURING THE SALE, DELIVERY OR SERVICING OF THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR TO ANY PERSON PURCHASING OR ACQUIRING ANY PRODUCTS FROM BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S WRITTEN CONSENT, EVEN THOUGH SELLER MAY HAVE BEEN NEGLIGENT.
20. **Claims; Commencement of Actions.** No claims for shortages will be allowed unless such shortages are reported to Seller within 10 days after delivery. No other claims against Seller will be allowed unless asserted in writing within 30 days after delivery or, in the case of an alleged breach of warranty, within 30 days after the date within the warranty period on which the defect is or should have been discovered by the Buyer. Any lawsuit or other action based upon breach of this contract or upon any other claim arising out of this sale (other than an action by Seller for the purchase price) must be commenced within one year from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the warranty period on which the defect is or should have been discovered by Buyer.
21. **Buyer's Obligations; Rights of Seller.** If Seller shall at any time doubt Buyer's financial responsibility, Seller may decline to make shipments hereunder or to hold products in inventory for Buyer except upon receipt of cash payment in advance or security or other proof of responsibility satisfactory to Seller. If Buyer fails in any way to fulfill the terms and conditions of this agreement, Seller may defer further shipments until such default is corrected. Remedies provided herein shall be in addition to, and not in lieu of, other remedies.
22. **Cancellations.** After acceptance by Seller, orders shall not be subject to cancellation except with Seller's written consent and upon terms that will indemnify Seller against all direct, incidental and consequential loss or damage.
23. **Limitation on Assignment.** Neither party may assign any of its rights hereunder without prior written consent of the other except that Seller shall have the right to assign any corporation into which it shall be merged, with which it shall be consolidated, or by which it, or all or substantially all of its assets, shall be acquired.
24. **Severability.** In the event that any provisions hereof shall violate any applicable statute, ordinance, or rule of law, such provisions shall be ineffective to the extent of such violation without invalidating any other provision hereof.
25. **Governing Law.** This document and the sale of any products hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Whenever there is a conflict of laws, the laws of the Commonwealth of Massachusetts shall prevail.
26. **Quotations.** Any drawings, specifications, or other data attached to any Quotation furnished by Seller shall be deemed to be a part thereof. Quotations furnished by Seller are not intended as and shall not be construed as constituting an offer to Buyer. Any quotation of Seller is subject to, and shall not become binding upon Seller until (i) actual receipt by Seller of Buyer's written order based on all the terms and conditions stated herein, without qualification, within 30 days after the date hereof, and (ii) Seller's written acceptance of such order at its office in Tewksbury, Massachusetts.