

Sanford and Hawley, Inc.

1790 Farmington Avenue
Unionville, CT 06085-0545
860-673-3213

Online Commerce User Application and Agreement

Your Name: _____ (“User”)

S&H Customer: _____ (“Customer”)

Address: _____

Phone: _____ Fax: _____ Cell: _____

Email Address (1) _____ (2) _____

Current S&H Main Customer Account: _____

Your S&H branch: Unionville Avon Manchester Norwich W Springfield

S&H Field Sales Rep (if applicable): _____

Do you wish to use Purchase Order #'s for online transactions? Yes No

WARNING: Read all of the following carefully before signing. Complete one application and agreement for each user.

User, Customer and Sanford and Hawley, Incorporated (hereinafter “S&H”) agree as follows:

- 1. Parties.** S&H is Sanford and Hawley, Incorporated a corporation organized and existing under the laws of the State of Connecticut with its principal place of business at 1790 Farmington Avenue, Unionville, CT 06085. Customer is the person(s) or entity that has an account with S&H. User is the person authorized by the Customer to obtain a logon ID and password to the Customer’s account(s) with S&H, to access the account(s) and obtain any and all information available online, and to fully use the account(s) including, but not limited to, placing orders and obtaining price estimates.
- 2. Primary Supplier.** Online commerce is a service provided by S&H to its loyal customers. To be eligible for online commerce, S&H must be Customer’s primary supplier for lumber, millwork and related building materials of the type that S&H sells and Customer purchases. If S&H determines at any time, at its sole discretion, that it is not the Customer’s primary supplier, online commerce access may be terminated without notice.

- 3. Good Standing.** Online commerce is a service provided only to customers that are in good credit standing and not past due. S&H, at any time, at its sole discretion and without notice may terminate or restrict online access to User if Customer's account becomes past due or over its credit flag. S&H may also terminate or restrict User's online access if it believes or suspects that User is inappropriately using online information or access.
- 4. User Access Fee and Access.** There is no user access fee, however, access is intended only for customers with annual purchases from S&H that are in excess of \$10,000. User and Customer acknowledge that S&H, at its sole discretion and without notice, may discontinue or not establish user access for Customer or limit the number of users Customer may have if Customer's sales volume is not consistent with \$10,000.00 per user per year.
- 5. Passwords and Security.** User and Customer acknowledge that S&H will issue each user a logon ID and a private, confidential password. User and Customer agree to keep each logon ID and password confidential and not share any logon ID or password with anyone else. Customer agrees to request a logon ID and password for each user it desires to have access to its account with S&H. User and Customer understand that they are collectively, solely responsible for maintaining logon ID and password security and agree to use the highest reasonable standards of security for the protection of logon IDs and passwords. User and Customer agree to immediately notify S&H upon becoming aware of any loss, compromise or theft of, or any unauthorized use of, logon IDs, passwords or online commerce. Any such notice shall be provided to S&H's MIS Administrator or to any S&H officer at 800-433-7941 and then be promptly confirmed in writing to President, Sanford and Hawley, Inc. 1790 Farmington Avenue, P.O. Box 545, Unionville, CT 06085-0545. User and Customer acknowledge that the security of data, information, logon IDs and passwords cannot be guaranteed by S&H and EXPRESSLY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS S&H AND ITS EMPLOYEES, OFFICERS AND DIRECTORS FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, LOST PROFITS, SUITS, FEES, FINES, PENALTIES, SETTLEMENTS, JUDGMENTS, COSTS, EXPENSES OR OTHER LOSSES, DIRECT OR INDIRECT, INCLUDING REASONABLE ATTORNEYS' FEES FOR ANY SECURITY BREACHES OF ONLINE COMMERCE, FOR ANY IMPROPER OR UNAUTHROIZED USE OF ONLINE COMMERCE AND FOR ANY ELECTRONIC, HARDWARE OR SOFTWARE FAILURES, DATA CORRUPTION, LACK OF ACCESS, OR VIRUSES. S&H AND ITS EMPLOYEES, OFFICERS AND DIRECTORS SHALL NOT BE LIABLE TO USER, CUSTOMER OR ANY OTHERS FOR ANY LOSS, LIABILITY OR DAMAGES ARISING AS A RESULT OF OR IN ANY WAY ASSOCIATED WITH ONLINE COMMERCE WHETHER DIRECT OR INDIRECT.
- 6. Confidentiality.** User and Customer acknowledge that they will have access to confidential pricing and other information which are unique to and the property of S&H and that the disclosure of this to others would greatly harm S&H. User and Customer further acknowledge and agree that any disclosure or use of the aforesaid prices and other information by the User or Customer, other than in connection with the ordinary course of their business, will be or may become highly detrimental to the business of S&H and that serious loss of business and pecuniary damage to S&H will or may result therefrom. User and Customer explicitly covenant not to share online access or prices or other information obtained online with others including, but not limited to, other customers of S&H, the general public, suppliers of S&H and competitors of S&H. The User and Customer further explicitly covenant and agree to hold all such pricing and other information in the strictest confidence and to safeguard and not disclose, divulge or reveal said prices or other information to any person(s), entity (ies) or any other(s) without written authorization from an officer of S&H.

- 7. Authorization.** User or such other person signing this agreement on behalf of the Customer certifies that he/she is authorized on behalf of the Customer to enter into this agreement and to bind the Customer to all of the terms of this agreement. Customer authorizes S&H to provide online access to User and to act on the instructions of anyone logging on to online commerce with User's logon ID and password. USER AND CUSTOMER AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS S&H AND ITS EMPLOYEES, OFFICERS AND DIRECTORS FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, LOST PROFITS, SUITS, FEES, FINES, PENALTIES, SETTLEMENTS, JUDGMENTS, COSTS, EXPENSES OR OTHER LOSSES, DIRECT OR INDIRECT, INCLUDING REASONABLE ATTORNEYS' FEES WHICH MAY ARISE OR BE CREATED BY S&H'S ACCEPTANCE OF SAID INSTRUCTIONS.
- 8. Credit Agreement.** Customer's credit application and agreement with S&H are hereby incorporated by reference and made a part of this agreement.
- 9. Terms and Conditions of Sale.** User and Customer hereby agree that S&H's Standard Terms and Condition of Sale are hereby incorporated by reference and made a part of this agreement. User and Customer also agree that any purchase made online is subject to S&H's Standard Terms and Conditions of Sale in effect at the time of order placement. Further that any estimate made online is subject to S&H's Standard Terms and Conditions of Sale in effect at the time of order placement.
- 10. Late Charges.** User and Customer hereby acknowledge and agree that any online reference to "Finance Charge" is not a finance charge but is the "Late Charge" referenced in S&H's Credit Application and Agreement and in S&H's Standard Terms and Conditions of Sale.
- 11. Access.** Online access is provided on an "as is, as available" basis which will often be 24 hours a day, seven days a week. Online access will not be available during daily back ups, maintenance times, period closeouts and when networks or other factors prevent access. S&H makes no assurance as to the availability of online access. User and Customer agree that no portion of the User Access fee will be refundable for temporary periods of inaccessibility and that S&H shall have no liability in the event that online access is not available other than the refund of the User Access Fee should periods of inaccessibility be consistent and prolonged. User and Customer are responsible for and must provide and maintain at their sole cost and expense all hardware, networks, software, internet connections and the like required to access S&H's online commerce website.
- 12. Dispatch Delivery Information.** User may have access to dispatch delivery information through online commerce and User and Customer hereby acknowledge that any and all such information are merely estimates or approximations based on S&H's judgment at some point in time and are not guaranteed. User and Customer expressly agree not to rely on such information and AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS S&H AND ITS EMPLOYEES, OFFICERS AND DIRECTORS FROM ANY AND ALL LIABILITY FOR USE OF SUCH INFORMATION. S&H SHALL NOT BE LIABLE TO USER, CUSTOMER OR OTHERS FOR DAMAGES, LIABILITES, LOST PROFITS, SUITS, FEES, FINES, PENALTIES, SETTLEMENTS, JUDGEMENTS, COSTS, EXPSEENSES OR OTHER LOSSES, DIRECT OR INDIRECT, INCLUDING REASONABLE ATTORNEYS' FEES, FOR ANY DELAY IN SHIPMENT OR DELIVERY, WHETHER SUCH DELAY IS MINOR OR SUBSTANTIAL.

- 13. Prices and Material Availability.** User and Customer acknowledge that all prices including those on estimates, quotes, orders, and online shopping carts are subject to change without notice. Prices are subject to fuel and other surcharges. User and Customer also agree that any order, online shopping cart, estimate or quote is subject to availability of material. User and Customer acknowledge that an online order shall not be accepted by S&H until such time as it has retrieved the order, reviewed it, revised it (including prices) as appropriate at S&H's sole discretion, obtained any missing or necessary additional information, and chosen to process the order. User and Customer further agree that all references to quote mean estimate as referenced in S&H's Credit Application and Agreement and in S&H's Terms and Conditions of Sale.
- 14. Third Party Agreement.** S&H's online commerce is provided pursuant to a Computer Systems Agreement with Enterprise Computer Systems, Inc. which agreement is hereby incorporated by reference and made a part hereof. S&H will provide User and Customer with access to a copy of said agreement at its Unionville office during normal business hours (contact S&H's controller). In addition, S&H will provide a copy of said agreement to User or Customer upon written request. User and Customer shall comply with all of the provisions of said agreement.
- 15. Limitation of Liability and Indemnification.** S&H warrants that any goods sold online will be, at the time of shipment, free and clear of all liens or encumbrances and that such goods should generally conform to the description and specifications set forth on S&H's order/invoice/online shopping cart. Products purchased by S&H and incorporated, without modification, in such goods may be subject to a warranty of the manufacturer of such products and the responsibility of the S&H shall be limited to the assignment of any warranty of such manufacturer upon Customer's request without the S&H incurring liability thereunder. **THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. S&H SHALL NOT BE LIABLE FOR EXTRA COSTS AND DAMAGES INCLUDING, BUT NOT LIMITED TO, INDIRECT DAMAGES, INCIDENTAL DAMAGES, SPECIAL DAMAGES, PUNITIVE DAMAGES, LIQUIDATED DAMAGES, LOST PROFITS, CONSEQUENTIAL DAMAGES OR ANY OTHER LOSS, COST, EXPENSE, FEE, FINE, PENALTY AND/OR DAMAGE ARISING FROM THE SALE, HANDLING, STORAGE OR USE OF THE GOODS OR FROM ANY OTHER CAUSE RELATING THERETO INCLUDING THE USE OF ONLINE COMMERCE.**

Customer's sole and exclusive remedy and S&H's only obligation shall be the replacement or repair, at S&H's sole option, by S&H of any non-conforming goods, F.O.B. S&H's facility, or the refund of the price paid for such non-conforming goods at S&H's sole discretion. Authority of return must first be obtained from S&H. Customer must afford S&H a reasonable opportunity to inspect any goods alleged by the Customer or any third party to be non-conforming or defective in their unaltered condition and to evaluate any claim(s) in accordance with procedures customary to the industry.

Every claim from any cause shall be deemed waived by the User and Customer unless made in writing within thirty (30) days of the delivery to Customer of the goods to which such claim relates or from User's applicable logon to online commerce should any claim relate to anything other than the sale of goods. Any such written notice must be mailed to President, Sanford and Hawley, Inc., P.O. Box 545, Unionville, CT 06085-0545. No legal proceeding shall be brought

for any breach of this contract more than one year after the accrual of the cause of action therefore.

In the event that the User or Customer makes any claim against the S&H including, but not limited to, commencing civil litigation against the S&H and the transaction is a Commercial Transaction as defined by Connecticut General Statutes Sec. 52-278a (ie other than a Consumer Contract as defined by Connecticut General Statutes Sec. 42-151) and the User or Customer does not substantially prevail in its claim, then the Customer shall be liable to S&H for its costs including, but not limited to, attorneys' fees whether such claim arises under this paragraph or otherwise.

- 16. Waiver of Notice, Hearing and Bond.** IN THE EVENT THAT S&H INITIATES LITIGATION AGAINST USER AND/OR CUSTOMER IN CONNECTICUT AND THE TRANSACTION IS A COMMERCIAL TRANSACTION AS DEFINED BY CONNECTICUT GENERAL STATUTES SEC. 52-278a, THEN THE CUSTOMER HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS HE/SHE/IT MAY HAVE TO NOTICE AND HEARING UNDER CONNECTICUT GENERAL STATUTES SECTIONS 52-277a ET. SEQ., AND ACKNOWLEDGES THAT S&H MAY SECURE A PREJUDGMENT REMEDY AGAINST THE USER AND/OR CUSTOMER WITHOUT A COURT ORDER. THE USER AND/OR CUSTOMER FURTHER WAIVES ANY RIGHT HE/SHE/IT MAY HAVE TO REQUEST OR REQUIRE S&H TO POST A BOND IN CONNECTION WITH THE ISSUANCE OR GRANTING OF ANY PREJUDGMENT REMEDY.
- 17. Enforcement of Agreement.** In the event that S&H is required to enforce any of its rights under this agreement through legal proceedings or otherwise, User and Customer jointly and severally, unconditionally guarantee and promise to pay any and all amounts due including, but not limited to, all costs including reasonably attorney's fees.
- 18. Injunctive Relief.** User and Customer agree that any breach of this agreement may cause S&H great and irreparable harm. Consequently, in the event of any such breach, User and Customer consents to the entry of an appropriate permanent injunction in a Court of appropriate jurisdiction as hereinafter named. Such injunction shall be in addition to and not in lieu of any other relief to which S&H may be entitled under law.
- 19. Applicable Law.** All questions arising in connection with this Online Commerce User Application and Agreement shall be resolved in accordance with the laws of the State of Connecticut and User and Customer hereby consent to jurisdiction of the courts of the State of Connecticut. Unless contrary provisions are contained herein, in Customer's Credit Application and Agreement with S&H or in S&H's Standard Terms and Conditions of Sale, the Uniform Commercial Code in effect in the State of Connecticut shall apply. In the event that S&H makes or arranges delivery out of the State of Connecticut, the User and Customer hereby consent to jurisdiction, at the sole option of S&H, of the courts in either the state where delivery was made or the State of Connecticut. In the event that the User or Customer resides or has a place of business out of the State of Connecticut, the User and Customer hereby consents to jurisdiction, at the sole option of S&H, of the courts in either the state of such residence or place of business or the Courts of the State of Connecticut.
- 20. Item Descriptions.** Item descriptions used by S&H for products, materials, services and/or merchandise may include generic terms and/or nominal sizes.

21. Entire Agreement. This agreement contains the final and entire agreement between User, Customer and S&H regarding use of online commerce and supersedes all previous and contemporaneous verbal or written negotiations, understandings, or agreements regarding use of online commerce. As noted above, Customer's Credit Application and Agreement with S&H and S&H's Standard Terms and Conditions of sales are incorporated by reference and made a part of this agreement.

22. Severability. If any one or more of the provisions of this agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the remaining provisions of this agreement, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been part hereof.

23. Titles. Paragraph titles used in these Terms and Conditions of Sale are for convenience only and shall be given no import in the construction of the terms of this agreement.

24. Notice. Any notice to S&H must be in writing to President, Sanford and Hawley, Inc., 1790 Farmington Avenue, Unionville, CT 06085-0545. Any notice to User or Customer may be in writing, by facsimile or by electronic means to the addresses provided above or to any subsequent or changed address that is provided to and acknowledged by S&H.

I certify that I have thoroughly read the above, understand all of the above and agree with all of the above.

USER

Sign: _____

Date: _____

Print Name _____

CUSTOMER

Sign: _____

Date: _____

Print Name _____

S&H

Sanford and Hawley, Incorporated

By: _____

Date: _____

Print Name _____