SALES POLICY

LIMITED WARRANTY: Notwithstanding anything herein or otherwise to the contrary, neither Rmax Operating, LLC, nor any of its employees, representatives, agents or other affiliates (collectively, “Rmax”) may make any representations with respect to or warranties concerning the Product, except that the Product was manufactured in accordance with specifications set forth in ASTM C1289, at the time of purchase the Product is free from any lien or encumbrance, and, for a period of one (1) year from the date of delivery to the Product, the Product is free from defects in materials and workmanship. BUYER (AS DEFINED BELOW) ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED ABOVE, THE PRODUCT IS BEING DELIVERED IN AN “AS IS, WHERE IS” CONDITION, AND WITH ALL FAULTS. Rmax, HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ANY AND ALL ORNMENTS, CLAIMS, AND REMEDIES OF ANY KIND OR NATURE OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND WHETHER ARISING BY LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE, ANY WARRANTY WITH REGARD TO ANY CLAIM OF INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2312(3) OF THE U.S. COMMERCE ACT OR ANY SIMILAR OR CONCERNATIONAL LAW OR ANY OTHER LAW, EITHER EXPRESS OR IMPLIED, AND WHETHER ARISING FROM OR IN CONNECTION TO OR STRICT LIABILITY, WHETHER OR NOT ARISING FROM NEGLIGENCE, ACTUAL OR IMPUTED. THE WARRANTIES EXPRESS ED HEREIN OR AS MAY BE SPECIFIED OR SET FORTH IN ANY OTHER LIMITED WARRANTY PROVIDED BY Rmax SHALL BE THE EXCLUSIVE REMEDY FOR A DEFECT IN/ OR DAMAGES RELATED TO THE PRODUCT.

IN THE EVENT OF A DEFECT IN THE PRODUCT COVERED BY THE LIMITED WARRANTY SET FORTH ABOVE, Rmax SHALL, AT Rmax’S SOLE OPTION, REPAIR OR REPLACE THE DEFECTIVE PRODUCT OR REFUND THE PURCHASE PRICE OF THE DEFECTIVE PRODUCT INlieuofrepairorreplacement. TO THE EXTENT THE BUYER IS NOT THE END USER, ITS REPAIR OR REPLACEMENT OR REFUND OF THE PURCHASE PRICE OF THE DEFECTIVE PRODUCT WILL BE LIMITED TO THE COST OF REPAIR OR REPLACEMENT OR REFUND TO THE EXTENT THE BUYER IS THE END USER. THE CUSTOMER MAY NOT REQUIRE REPAIR, REPLACEMENT OR REFUND OF THE PURCHASE PRICE OF THE DEFECTIVE PRODUCT. Rmax IS NOT RESPONSIBLE FOR DAMAGES FOR ANY CLAIM OR KIND WHATSOEVER RELATED TO THIS LIMITED WARRANTY, REGARDLESS OF THE LEGAL THEORY AND WHETHER ARISING IN TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORIES, INCLUDING WITHOUT LIMITATION, THE ACTUAL OR ACTUAL LOSS OF THE PRODUCT WITH RESPECT TO WHICH SUCH CLAIM IS MADE. NOTWITHSTANDING ANYTHING HEREIN OR OTHERWISE TO THE CONTRARY, Rmax SHALL NOT BE LIABLE FOR BUYER’S LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OR ANTICIPATED PROFITS OR LOSS BUSINESS), AND BUYER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO SUCH DAMAGES.

This LIMITED WARRANTY shall not be applicable to defects or damages which, upon inspection by Rmax, are determined by Rmax to be caused by any of the following:

a) Normal wear and tear;

b) Intentional vandalism or abuse, or negligent use, misuse or abuse (including any usage not in accordance with the product instructions);

c) Use of parts not manufactured or sold by Rmax;

d) Accident or natural disasters, including, but not limited to, fire, flood, lightning, earthquake, tornados, hail, hurricanes, wind storms, acts of war, acts of terrorism or acts of God; or

improper installation, operation, handling, storage, application or design, modification, alteration, structural movement or maintenance.

Claims against Rmax under the provisions of the LIMITED WARRANTY set forth herein must be made by Buyer in accordance with Rmax’s claims procedures within thirty (30) days after the alleged defect to which the claim relates is discovered or should have been discovered, by written notice to Rmax at the following address: 13524 Welch Road, Dallas, Texas 75244. Attention: Technical Services. The written notice must be accompanied by the dated invoice or receipt received by the Buyer at the time of purchase. Rmax shall have sixty (60) days from receipt of such notice to inspect and analyze the alleged defective material. Under no circumstances shall the material be disposed of or to be returned to Buyer or be deemed to be in warranty. The Buyer shall be responsible for all written instructions to do so. Buyer shall have up to thirty (30) days from the date written instructions to do so to return the material to Rmax. Buyer may be charged a restocking charge of 20% of the material has already been produced.

RETURN OF ORDERS: Requests to return material to Rmax’s plant must be cleared in advance by Rmax’s Plant Manager. Credit for approved requests to return material, when such requests are for reasons other than material of workmanship, will be issued on the basis of the price at which the goods were originally invoiced, less the actual price of re-conditioning and restocking as determined by Rmax. Such restocking charges will be no less than 20% of the invoice price of the goods. All return freight is the Buyer’s responsibility.

TITLE-SHIPPING-RISK OF LOSS: Title to all goods furnished under this contract of sale pass to the Buyer upon delivery to Rmax by the Carrier at Rmax’s shipping point. All deliveries of goods are F.O.B. Rmax’s shipping point, unless otherwise noted in the face of Rmax’s quotation. Routing of shipments shall be at the sole discretion of Rmax, unless directed otherwise by the Buyer at the time of placing an order. Rmax makes every effort to deliver orders at the requested delivery time; however, Rmax does not guarantee the delivery time. Delay in delivery or shipment will not be accepted as a basis for charge-back or claim for damage. Claims for charges or re-consignment, diversions, derailed, unloading, detention, and/or demurrage are the responsibility of the carrier in accordance with provisions of the carrier’s tariffs, will be the Buyer’s responsibility. All risks of loss or damage during transit pass to the buyer with the transfer of title as noted above. All claims for loss or damage in transit must be filed with the Carrier by the Buyer. Material is loaded in accordance with the carrier’s loading instructions to insure delivery without damage. Rmax will give all reasonable assistance to the Buyer in collecting loss or damage claims from the Carrier by furnishing duplicate invoices, affidavits showing count when loaded, method of loading, etc. Buyer should in all cases immediately report loss and/or damage to Carrier and request inspection in case of damage.

FORCE MAJEURE: Rmax will not be liable for damages resulting from an interruption, delay, or failure to ship any order in accordance with the terms of the order where such failure is caused by any requirements of a government agency or authority, shortage of raw materials, strikes or other labor trouble, transportation delay, breakdowns, accidents, fires, riots, wars, acts of terrorism, Acts of God, or other causes beyond the control of Rmax.

TERMS OF PAYMENT: Payment due per terms as listed on the invoice and contingent upon the Buyer having made prior satisfactory credit arrangements. Interest at the maximum rate permitted by law will be added to all invoices not paid within the specified time period.

PRICE POLICY: All products will be invoiced at the price in effect on the date of shipment. In the event of a price increase, all unshipped orders accepted by Rmax prior to the effective date of the price increase shall be invoiced at the increased prices in effect at the time of shipment.

TAXES: All applicable taxes on the production, transportation, or sale of Rmax’s products shall be for the Buyer’s account.

SHIPPING POINTS AND MANUFACTURING PLANTS:

(1) Rmax Operating, LLC, 1649 S. Batesville Road; Greer, South Carolina 29650.
(2) Rmax Operating, LLC, 13524 Welch Road, Dallas, Texas 75244. 

SHIPPING METHODS: Rmax reserves the right to choose the Carrier and routing, unless otherwise directed by the Buyer at the time of placing an order. Additional costs associated with Buyer specified Carriers and/or routes shall be the Buyer’s responsibility. The standard method of shipment shall be via forty-five (45) foot, forty-eight (48) foot, or tandem flatbed trailers, where authority allows, at Rmax’s option. Stoppages or pooled trailers are permitted, but limited to one stop and a final destination. The stopover location must be in line with the final destination and not in excess of 150 miles between stops. Applicable stopover charges shall be applied to the face of the invoice.

TRUCKLOAD QUANTITIES:

1. 4’ X 8’ panels—twenty-four (24) units per forty-eight (48) foot flatbed trailer.
2. 4’ X 4’ panels—forty-eight (48) units per forty-eight (48) foot flatbed trailer.
3. Custom length Orders—For lengths other than those noted above usually cannot be accommodated on standard flatbed trailers to permit loading of the full truckload quantity required. Buyers ordering other than standard flatbed lengths of eight feet or greater are required to order a variable item of standard length and size to fill out the load, or pay any increase in freight due to any inability to load full truckload quantity.

SHIPPING CONDITIONS: Unless otherwise specified on the invoice, if applicable, all orders are shipped F.O.B. Rmax’s shipping point.

SPECIAL ORDERS: No order will be accepted or produced until the manufacturing plant has accumulated orders of at least 15,000 board feet of any one product in any one thickness. Orders of less than 15,000 board feet can only be accepted if the manufacturing plant can coordinate the order with another order of like thickness.

LEAD TIMES: Lead time for the standard insulation products shall be five (5) to ten (10) working days from the receipt of the order at Rmax’s manufacturing plant. Lead time for nonstandard length insulation products shall be ten (10) to twenty (20) working days from the receipt of the order at Rmax’s manufacturing plant. This is based upon minimum orders of 30,000 board feet. Lead time for stopover or pooled freight loads shall be as noted above except that the time shall apply only from the time that Rmax can arrange the required pool truck.

LTL SHIPMENTS: LTL shipments are permitted subject to the following conditions:

1. Minimum order is approximately 15,000 board feet.
2. All LTL shipments shall be invoiced at the applicable list plus a standard charge.
3. Shipments will be freight collect with all freight charges for the Buyer’s account.

CUSTOMER PICKUP: Customer pickup of ordered goods shall be permitted provided that the Buyer makes prior arrangement with Rmax’s Plant Order Department. The Buyer shall be required to pick up goods ordered for Customer Pickup prior to the date of notice of availability. The minimum pickup shall be ten (10) board feet.

GENERAL PROVISIONS: This Agreement is subject to all laws, rules, and regulations between Rmax Operating, LLC, and the Buyer and is intended as a final, complete, and exclusive expression of the agreement. This agreement supersedes all prior representations, understandings, and agreements. Any failure on the part of Rmax Operating, LLC, to insist upon the performance of any term herein shall not be construed as a waiver or relinquishment of Rmax Operating, LLC’s rights, but shall be effective in full force and effect.

WARNING: Polystyrene is an organic material which will burn when exposed to an Ignition source of sufficient heat and intensity, and may contribute to flames spreading.

OTHER: The laws of the State of Texas will govern and be construed in accordance with the laws of the State of Texas. Without regard to its conflicts of law or choice of law principles, ANY DISPUTE ARISING OUT OF OR RELATING TO THIS TRANSACTION SHALL ONLY BE LITIGATED IN AN APPROPRIATE FEDERAL OR STATE COURT LOCATED IN DALLAS COUNTY, TEXAS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS TRANSACTION.