

BAMBOO LIVING PREFABRICATED BAMBOO SHED

TERMS & CONDITIONS

These Terms and Conditions shall apply to and are incorporated into that certain order ("Order") placed by you ("Purchaser") for the purchase of a Prefabricated Bamboo Shed (the "Shed") from Bamboo Living, Inc. ("Seller"). Any additional or different terms in Purchaser's documents shall be deemed to be material alterations, and notice of objection to and rejection of them is hereby given. Purchaser certifies that they have reviewed and accepted the specifications for the Shed. This includes a clear understanding of the materials, labor, and equipment needed for the arrival and construction of the Shed, as well as a comprehensive understanding of what components are included.

- 1. PURCHASE AND SALE.** The Purchaser agrees to buy, and the Seller agrees to sell, the Shed at the specified price and on the terms contained in the Order. All payments must be made via personal check, cashier's check, or electronic wire transfer. The purchase price for the Shed must be paid in full before shipment of the Shed to Purchaser. Upon payment, the Order becomes non-cancellable and non-terminable by the Purchaser. Except where Seller has received written notice of any major defects or damages to the Shed or nonconforming components in accordance with Section 7, the Shed may not be returned by Purchaser for any reason.
- 2. FINANCE CHARGES.** All payments not received by Seller within thirty (30) days after the date due and payable under the terms stipulated in the Order will be subject to interest at ten percent (10%) per annum until paid.
- 3. SHIPMENT COSTS.** Purchaser shall pay for the cost of ocean freight shipping, handling, customs clearance, and coordination services fees for shipment of the Shed to the port specified in the Order (the "Port of Destination"). All shipment costs must be paid in full before the Shed will be shipped to Purchaser.
- 4. DATE OF SHIPMENT.** Upon receipt of full payment of the purchase price for the Shed and all shipment costs, Seller shall advise Purchaser of the estimated shipping date. Seller shall supply Purchaser with timely written notification of the actual shipment of the Shed and the estimated date of arrival at the Port of Destination. Delays in delivery encountered after the Shed has been shipped shall be considered beyond the control of Seller and may not be construed as a default in performance.
- 5. TITLE AND RISK OF LOSS.** Title and risk of loss to the Shed shall pass to Purchaser upon delivery of the Shed to the Port of Destination.
- 6. DELIVERY AND UNLOADING.** Purchaser will be informed of the Shed's arrival at the destination port and will handle any related fees incurred at the Port of Destination, such as but not limited to, demurrage, storage, detention, customs, and USDA inspection. Unless pre-agreed by the Seller, Purchaser will collect the Shed from the port and manage its delivery, unloading, storage at the project site, and container return. Purchaser provides any necessary unloading equipment and assumes responsibility for the Shed's protection against all hazards.
- 7. INSPECTION AND ACCEPTANCE.** Within ten (10) days after arrival of the Shed to the

Port of Destination, Purchaser or their duly authorized agent must inventory the Shed and notify Seller in writing of any shortages, defects, or materials that appear not to conform to the specifications of the Order. Failure to notify Seller of any deficiency or defect within such time period shall be deemed a full and complete acceptance of the Shed as ordered. Seller will replace any defective or non-conforming materials as quickly as possible at their expense, in accordance with this Paragraph, upon receipt of notification.

8. FORCE MAJEURE. Neither party shall be liable to the other party for any nonperformance, in whole or in part, of its obligations under the Order (other than an obligation to pay any amounts owed to the other party) caused by the occurrence of any contingencies beyond the reasonable control of such party, including, but not limited to, war, sabotage, insurrection, riot, other acts of civil disobedience, acts of a public enemy, epidemics, pandemics, governmental mandates, strikes, labor disputes, acts of third parties not within the control of the party whose performance is affected, shortages of fuel or materials, failures of power, accidents, fires, explosions, floods, severe weather conditions or other acts of God.

9. LIMITED WARRANTY.

a. *Warranty of Materials:* Seller warrants that all materials incorporated into the Shed shall be in accordance with the Order specifications, complete, free of defects, and of a new and superior quality determined and agreed upon following review of photographs and information provided by the Seller and listed on the Seller's website. Recognizing that the bamboo used is a naturally occurring material and that the Shed materials are of a handcrafted nature, variations in color, diameter, and appearance shall not be deemed as defects, except where non-conformity to Order specifications exists. The Seller utilizes insured carriers for transportation up to the Port of Destination, beyond which the Seller disclaims liability for loss or damage to the Shed.

b. *Five Year Limited Warranty:* Seller warrants to the original Purchaser the structural integrity of its walls and roof systems of the Shed for a period of five (5) years from the date of delivery to the Port of Destination. In case of structural failure, Seller will provide a replacement of a wall or roof system and deliver the same to the location of the Shed (or such other delivery location as may be agreed upon by Seller and Purchaser).

c. *One Year Limited Warranty:* Seller further warrants that all materials comprising the Shed are warranted against defects for one (1) year from the date of delivery to the Port of Destination except where longer warranties from its suppliers prevail. In these cases, the supplier's warranty will be given to the Purchaser. If any materials warranted by Seller are defective within one (1) year from the date of delivery to the Port of Destination, Seller will replace the defective material and deliver the same to the location of the Shed (or such other delivery location as may be agreed upon by Seller and Purchaser).

d. *Cure:* In the event Purchaser makes a warranty claim under this Paragraph, Seller will have a one-time right to cure the defect. From receipt of written notice to Seller of the claim, Seller will have thirty (30) days to inspect the Shed and, if appropriate, remedy the same at the cost and expense of Seller. In the event a remedy will take more than thirty (30) days, Seller will be entitled to remedy the claim as long as a good faith effort is being made to remediate and provided the remediation takes no more than ninety (90) days. The warranty periods for any work performed pursuant to this warranty shall recommence upon completion of the work. Until the expiration of the periods in this Paragraph, Purchaser will not be entitled to hire its own contractors/remediation teams

to evaluate and perform remediation.

- e. **DISCLAIMER OF WARRANTIES. EXCEPT FOR SELLER'S LIMITED WARRANTY AS PROVIDED HEREIN, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION AND FITNESS FOR A PARTICULAR PURPOSE.**
- f. *Exceptions To Warranty/Voiding Of Warranty:*
- i. This Shed constitutes a DIY (Do-It-Yourself) build, engineered for assembly by individuals possessing construction experience and suitable tools. Between five to six (5-6) strong and able-bodied helpers are required to unload and assemble the structure effectively. Failure to assemble the Shed correctly and according to the provided construction plans and instructions will void all warranties.
 - ii. Any modification to a panel or the panel layouts or use of non-approved fasteners or connectors will void all applicable warranties for the entire structure.
 - iii. After delivery and unloading of the Shed, wall and ceiling panels, whether covered with woven bamboo or painted, must be kept dry during assembly until the roof is on the structure(s). Seller is not responsible for damage that occurs after delivery to the Port of Destination.
 - iv. Failure to properly construct the foundation and building platform will void the warranty.
 - v. Assembly of the Shed must be completed within six (six) weeks of delivery to the Port of Destination, including installation of a waterproof roof system over the entire structure(s). Any assembly beyond six (six) weeks must be agreed by Seller in writing, and the building panels must be properly stored in a dry, watertight container or storage building with no contact with the ground or moisture. Any violation of this Paragraph will void the warranty.
 - vi. All weatherproofing details must be completed in a timely manner in order for warranty to be valid. This includes all caulking and proper bolt cover installation. Because of potential damage from weather exposure, bamboo railings, skirting, and fencing are not covered by the warranty. Such items require, and should be given additional care and maintenance by the Purchaser. See additional details in the "Care and Maintenance After Assembly" section below.
 - vii. Poles and weavings are treated with a non-toxic antimicrobial surface application. This will deter, but not prevent, mold growth on all concealed and exposed surfaces. Adverse environmental and local conditions may result in surface mold that must be cleaned and maintained as in any other area of your building. Seller is not responsible for any surface mold growth or for any maintenance to prevent mold growth.
 - viii. Any painting of the product or use of an unapproved finish will void all warranties.

g. LIMITATION OF SCOPE OF WARRANTIES:

- i. These Warranties shall inure to the benefit of the original Purchaser but do not apply to defects arising from a faulty foundation, non-compliance with applicable building codes, disregard of published or provided erection specifications of Seller, or any other act or omission outside of the control of Seller. Seller does not warrant the quality of the construction of the structure(s) by any contractor hired, retained, or recommended by Seller, Purchaser, or any other person. Replacement of components or materials made under sections 9(b) and (c) above shall include the cost of removal of defective systems or materials or the cost of installation of replacement materials under this warranty.
- ii. *Damage While in Possession of Purchaser and Unreasonable Use:* Seller shall not be required to provide any replacement material under any express or implied warranty if the defect, malfunction, or failure of any Seller supplied material was caused by damage (not resulting from defect or malfunction) while in the possession of Purchaser, or by unreasonable use, including a failure to provide shelter and perform reasonable and necessary maintenance.
- iii. *Exclusion of Incidental and Consequential Damages:* In no event shall Seller be liable for any indirect, incidental, special, consequential, or punitive damages of any kind, including any loss of revenues, profits, or goodwill, whether based on contract, warranty, negligence, strict liability or otherwise, even if Seller has been advised of the possibility of such damages.
- iv. Seller's sole liability and Purchaser's exclusive remedy for any cause of action arising out of the Order, whether based on contract, warranty, negligence, strict liability, or otherwise, is expressly limited, at Seller's option, to the repair or replacement of the Shed, or any portion thereof, or the refund of the amounts actually paid by Purchaser to Seller under the Order. Notwithstanding anything herein to the contrary, the maximum aggregate amount of money damages for which Seller shall be liable to pay, resulting from any cause whatsoever, shall be limited to the purchase price for the Shed.
- v. *Manner of Making Warranty Claims:* To obtain warranty service under this Limited Warranty, Purchaser shall submit warranty claims in writing to the Seller mailing address listed in the Order.
- vi. This Limited Warranty gives Purchaser specific legal rights and remedies and contains certain limitations, which may not be applicable in all states. Purchaser may also have other rights and remedies, which vary from state to state.

10. PURCHASER RESPONSIBILITIES.

- a. Purchaser is responsible for supplying all items not specifically included in the Order. Seller is not responsible for supplying items that Purchaser's contractor failed to quote or provide due to failure to review or properly interpret the Order, its attachments, and any documents mentioned or referenced herein.
- b. Purchaser is responsible for obtaining approval of all plans by the appropriate zoning,

planning, or building authorities and shall be responsible for complying with all building codes and for obtaining all necessary building and construction permits or any other permits or licenses required by applicable federal, state, or local statutes and ordinances. Requirements vary from jurisdiction to jurisdiction, and Seller makes no representations as to whether any permits or licenses are necessary for assembly of the Shed.

- c. Purchaser must secure the services of an assembler, preferably with expertise in constructing structures supplied by the Seller when not performing the Shed assembly themselves. Responsibilities include, but are not limited to, estimating costs, coordinating shipping container or delivery truck arrival to the jobsite, and organizing an assembly crew. To allow sufficient preparation, these arrangements should commence at least thirty (30) days prior to the Shed's arrival.
- d. Purchaser or qualified third party of their choice can carry out assembly of the Shed. However, appropriately trained and licensed professionals must conduct any specialized work related to the Shed's construction – such as electrical, plumbing, and septic system installation. Failure to adhere to this requirement will void all warranties.
- e. Purchaser and/or Purchaser's contractor is responsible for obtaining all necessary insurance including, but not limited to workers' compensation for all labor on the jobsite.
- f. Purchaser is responsible for providing dry storage area for the Shed components or necessary waterproof tarps or plastic sheeting specified on Owner Preparation Checklist.
- g. Purchaser is responsible for all Architectural and Engineering fees associated with their project.
- h. Purchaser is responsible for all construction related to the structure(s). This includes, but is not limited to the following:
 - i. Preparing a site plan showing the metes and bounds of the property, proper setbacks, and the location of the structure(s).
 - ii. Determining the plumbing and electrical layout with Purchaser's licensed contractor and/or subcontractors.
 - iii. Platform and hurricane tie-down framing for anchors supplied with Shed package.
 - iv. Ordering and delivery of all doors, windows, moisture barrier, roofing felt, bolts, caulk, and other necessary items.
 - v. Purchasing and installing all hardware and installing all doors and windows.
 - vi. Roofing installation.
- i. Care and Maintenance After Assembly.
 - i. The Shed is shipped with three coats of PPG/Sikkens Cetol 23 RE (Color - 078 Natural) exterior finish. At least one final coat of Cetol must be applied within thirty (30) days of Shed assembly completion. This includes any additional exterior materials provided. Use of unapproved paint or finish will void all warranties. It is recommended that Purchaser reapply Seller-approved exterior finish every three (3) to five (5) years as needed to maintain the factory finish. Once desired exterior color has been achieved, PPG/Sikkens Cetol

Maintenance RE should be used to keep the exterior color from darkening.

- ii. Railings and porch panels are more vulnerable to weathering than other parts of the Shed(s). Driving rain may adversely affect siding and railings on highly weather-exposed sides of Shed(s). A three-foot (3') porch overhang is provided on Shed(s) to prevent direct weathering damage by sun and rain, and requires cleaning and re-finishing of Cetol to maintain its weatherproof protection.
- iii. Purchaser should inspect porch panels and door jambs after Shed arrival. Panel joints can open in shipment. Caulk any joints in panels and fill any cracks with exterior door and window caulk with 50-year guarantee.
- iv. All weatherproofing details must be completed in a timely manner, including installation of waterproof membrane on roof, flashing around windows and doors, and bolt cover installation sealed with colored caulk.
- v. Purchaser should inspect the Shed annually for damage caused by weather. Fill any cracks found with tinted exterior caulk. Reapply exterior finish as needed and keep surfaces clean to prevent mold growth and extend the Shed lifespan.

- 11. INDEMNITY:** Purchaser agrees to indemnify, defend, and hold harmless Seller from and against any and all claims, liabilities, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or in connection with Purchaser's construction and use of the Shed, except to the extent such claims, liabilities, damages, losses, costs, and expenses are caused by Seller's negligence or willful misconduct.
- 12. ARCHITECTURAL, ENGINEERING, AND SHOP DRAWINGS.** Ownership of any plans for the Shed provided by Seller is the sole property of Seller.
- 13. WAIVER.** The failure of any party to insist upon strict performance of any provision of the Order shall not be deemed a waiver of the rights and remedies of such party or a waiver by such Party of any subsequent default by the other party in performance of or in compliance with any terms of the Order.
- 14. COMPLETE CONTRACT.** The Order, including these Terms and Conditions, represents the complete agreement of the parties regarding the purchase and sale of the Shed and incorporates all representations given or implied from the written and oral negotiations that preceded the Order. The parties shall not be bound by any agent's or employee's representations, warranties, promises, or inducements not set forth in the Order, and all prior representations, warranties, promises, and inducements are merged into the Order. No representations, understandings, or agreements have been made or relied upon in making the Order other than those specifically set forth herein. The Order, or modifications thereto, if any, shall not be binding upon Purchaser or Seller until signed by the parties hereto.
- 15. BINDING EFFECT.** The Order shall be binding upon Seller and Purchaser, their heirs, administrators, successors, and assigns, and may not be assigned in whole or in part by either party without the express written consent of the other party.
- 16. INVALID PROVISIONS.** The invalidity or unenforceability of any particular provision of the Order shall not affect the other provisions hereof, and the Order shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

- 17. NOTICES.** All notices herein must be in writing and shall not be deemed given until delivered to the party to whom the writing is directed receives it. Notices may be made via Certified Mail, Return Receipt Requested, Federal Express, UPS, or other reputable couriers, email where acknowledgment of receipt is provided, or facsimile where proof of delivery can be made. Notices will be made to each party at the address first appearing in the Order unless either party provides written notice of change of address.
- 18. CHOICE OF LAW.** It is agreed that the laws of the State of Hawaii shall control.
- 19. MEDIATION/ARBITRATION.**
- a. All disputes, claims, or controversies arising out of the Order shall be subject to mediation prior to instituting legal proceedings unless the parties mutually agree otherwise. No later than one hundred eighty (180) days after the dispute has arisen, the parties will mediate the dispute with a mediator from Dispute Prevention and Resolution, Inc. ("DPR"), unless the parties mutually agree otherwise. The parties agree to mediate in good faith. The mediation will be allowed to continue for sixteen (16) hours total, and if no resolution is reached in that time, the parties will either mutually agree to continue mediation for a specified period of time or declare an impasse and proceed to arbitration in accordance with the following Paragraph.
 - b. A notice of the demand for arbitration shall be filed in writing with the other party and with DPR within ninety (90) days of the end of mediation. The arbitration will take place before a single arbitrator in the County of Hawaii, State of Hawaii, in accordance with the then-in-place rules of DPR, unless the parties mutually agree otherwise. The decision awarded by the arbitrator shall be binding on both parties and may be enforced in any court of competent jurisdiction. Seller, however, shall not be barred by this provision from filing a construction lien and if needed, to enforce the arbitration decision by foreclosing on such lien. All fees and expenses of the arbitrator shall be shared equally by the parties. Each party shall be responsible for their own attorneys' fees and costs.
- 20. CONFIDENTIALITY:** Both parties agree to keep confidential all non-public information obtained from the other party in connection with this contract and to use such information only for the purposes of this contract.
- 21. CANCELLATION AND REFUND:** Upon receipt of these Terms and Conditions, the Purchaser has a period of twenty-one (21) days to review and cancel the Order for a full refund of their deposit if they do not agree with these terms. By proceeding with the Order, making a payment, or failing to cancel within this period, the Purchaser acknowledges and agrees to these Terms and Conditions. The act of making a payment towards the Order or continuing with the Order process during this period, shall be deemed acceptance of these Terms and Conditions in their entirety.