

SAFeway SAFETY STEP, LLC (DBA CLEAN CUT) TERMS AND CONDITIONS OF RESIDENTIAL KIT SALE

1. SELLER hereby sells, and PURCHASER hereby purchases from SELLER, the products ordered by PURCHASER, whether pursuant to a written purchaser order or an order made verbally by telephone or otherwise (hereinafter "Purchase Order"), and these Terms and Conditions are hereby incorporated into each Purchase Order (the "Products"). The effectiveness of the Purchase Order is subject to SELLER's acceptance.
2. All payments for orders shall be due immediately upon placing an order via the web, phone, fax or mail. The purchase price is exclusive of all sales, use, excise or similar taxes which shall be paid by PURCHASER. PURCHASER shall also pay any and all other taxes or fees required by any governmental authority to be paid by PURCHASER directly. Unless specifically stated otherwise, freight charges will be added to the invoice and risk of loss shall pass to PURCHASER upon delivery to the transportation carrier by SELLER.
3. **SELLER shall not be liable for indirect, consequential, special, punitive or incidental damages of any nature whatsoever, including, but not limited to, lost profits or loss or injury or damage to persons or property arising out of or related to the Products. The total liability of SELLER, whether because of claimed negligence, breach of contract, warranty, strict tort or tort liability, infringement or otherwise, shall in all cases be limited to the amounts paid by PURCHASER to SELLER under the Purchase Order.** No action other than for breach of the warranty set forth herein may be brought by PURCHASER more than one year after delivery of the Products.
4. SELLER warrants the Products manufactured and sold by it to be free from material defects in materials and workmanship arising under due care for a period beginning on the date the Products are shipped to the original purchaser of the Products, and continuing for twelve months (the "Warranty Period"). For the avoidance of doubt, only the Limited Warranty (attached hereto) shall apply and, in all cases, only applies to the original purchaser who purchases the Products for personal, family or household purposes and shall not be assigned nor apply to subsequent owners, transferees or users. SELLER's obligation, at its sole discretion, and PURCHASER's sole remedy, in the event of a breach of this warranty is limited to replacement of the product or refund of SELLER's original costs relative to its replacement, if such claim is made within the Warranty Period and the product is found to be defective in material or workmanship. **NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIMITED WARRANTY SHALL NOT APPLY IF THE PRODUCTS ARE NOT INSTALLED BY A LICENSED CONTRACTOR OR OTHER TRAINED TRADE PROFESSIONAL.** Other than the express warranty provided in this section, SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE MERCHANTABILITY, NON-INFRINGEMENT, QUALITY, CHARACTER, SUITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
5. PURCHASER acknowledges that there may be included as part of the Products sold hereunder products manufactured by a third party other than SELLER. Such third party products ARE PROVIDED "AS IS," AND SELLER MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE MERCHANTABILITY, NON-INFRINGEMENT, QUALITY, CHARACTER, SUITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SUCH THIRD PARTY PRODUCTS.
6. PURCHASER has no right to use or license others to use SELLER's trademarks alone or in combination with other words, letters, numbers, logos or symbols, as part of its company name, company trademark, domain name, internet website or internet address or that of any subsidiary or branch. PURCHASER shall not attempt to appropriate or adopt any of SELLER's trademarks or trade names as its own or act in any other way that might result in public deception or confusion as to the fact that SELLER is the source of the Products and that SELLER and PURCHASER are separate entities. The preceding shall not prevent authorized installers to market the installation of the Products, including use of SELLER's brochures and logo for such purpose but only where authorized by SELLER.
7. All sales are final. PURCHASER may return product to Seller to receive a refund on product purchased (excluding shipping charges) within 30 days from the date of purchase. Returned Products must be undamaged and in original condition to receive refund. Purchaser is responsible for all return shipping charges.
8. Failure by either party to insist upon strict performance or to exercise any right or privilege contained in the Purchase Order or these Terms and Conditions, or the waiver of any breach of the provisions of the Purchase Order or these Terms and Conditions shall not be construed as thereafter, as waiving any such terms, conditions, provisions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.
9. The Purchase Order and these Terms and Conditions shall be construed and interpreted according to Ohio law. Any action arising out of or related thereto shall be litigated solely and exclusively in the courts of Hamilton County, Ohio, and PURCHASER expressly consents to the jurisdiction of said courts for all such matters and waives objection to venue of such courts.
10. PURCHASER shall defend, indemnify and hold harmless SELLER for any and all damages, expenses, liabilities, and claims arising or resulting from any error or defect in, failure to comply with SELLER's instructions or guidelines regarding, or otherwise relating to the installation of the Products by PURCHASER or any installer, PURCHASER's use of the Products, or the alteration, removal, or other modification of warning labels provided by SELLER in connection with the Products.
11. SELLER hereby retains a purchase money security interest in all Products purchased by PURCHASER and the proceeds from any disposition thereof until SELLER has received payment in full of the purchase price. PURCHASER hereby appoints SELLER as its agent to execute and file any UCC financing or other documents necessary to confirm and perfect SELLER's interest in the Products. Title to all Products shall remain with SELLER until PURCHASER has made full payment to SELLER for all Products sold hereunder. In the event PURCHASER fails to timely pay for the Products in full, or Purchaser's payment is dishonored for any reason, SELLER may enforce its security interest, repossess the Products, and seek any other remedy as provided by law. In the event SELLER brings suit against PURCHASER to collect any sum due (including any action to enforce SELLER's security interest in the Products), SELLER shall be entitled to recover reasonable attorneys' fees, court costs and interest at the rate of 18% on all sums due. If the maximum legal interest rate is less than 18%, then SELLER shall only be entitled to the maximum interest rate allowable under law.
12. The Purchase Order, along with these Terms and Conditions, contains the entire agreement of the parties, and no other understandings, agreements, or representations, verbal or otherwise, exist or have been made by and between the parties with respect to the purchase and sale of the Products. The Purchase Order and these Terms and Conditions may not be modified except in writing, signed by both parties. To the extent any other contract documents exist, such as PURCHASER's specifications, such documents shall not be a part of the Purchase Order or these Terms and Conditions and shall not bind SELLER in any regard unless such documents are expressly incorporated by reference in the Purchase Order.
13. PURCHASER does not acquire hereby any intellectual property or other proprietary rights, including patents, designs, trademarks, copyright or rights in any confidential information or trade secrets, in or relating to the Products or any part thereof.
14. PURCHASER may not assign or delegate any of its rights or obligations under this Purchase Order without the prior written consent of SELLER. SELLER may assign or delegate any of its rights or obligations under the Purchase Order without notice to PURCHASER. **Except where specifically authorized in writing by SELLER, PURCHASER may not resell the Products to any third party.**
15. The provisions of the Purchase Order are for the benefit of SELLER and PURCHASER and not for any other person or entity.