Demand Superior Walls

Plant Fax (585) 624-9572 585Rev:1.41

SUPERIOR WALLS OF UPSTATE NEW YORK, INC.

7574 EAST MAIN ROAD
LIMA, NY 14485
PH (585) 624-9390
FAX (866) 607-4460

SALES QUOTE ONLY

Job # JS

☒ Builder ☐ Excavator ☐ General Contractor

Site Info
☒ Stick ☐ Modular ☐ Log/P&B
☐ Other (specify) _____

Name _____
Address _____
City _____ State NY Zip _____
Phone _____ Fax _____

Owner DOE Challenge
Site Address _____
City _____ State _____ Zip _____
County Onondaga Date 2/18/2014

Superior Walls of Upstate New York, Inc. (hereinafter "Superior") and Builder, General Contractor and/or Excavator (hereinafter "Builder"), intending to be legally bound, mutually agree to the purchase and sale of the product(s) set forth below, for the consideration and upon the terms and conditions set forth in this Contract. **This is a quotation only and not an offer to sell. No contract will be formed until a contract has been executed in writing by a builder and accepted by an authorized Rep of Superior Walls at the home office. This quotation is valid for 30 days.**

Description of Products

	L.F. of 8'2" **R-21.3 X-I** Panel @	$69	= $	$0.00
136	L.F. of 9'0" **R-21.3 X-I** Panel @	$74	= $	$10,064.00
	L.F. of 10'0" **R-12.5 X-I** Panel @	$74	= $	$0.00
	L.F. of 4'0" R-10 Full Back Fill @	$37	= $	$0.00
	L.F. of 4'16"w/16"Notch R10 Full Filll	$39	= $	$0.00
	L.F. of 4'8" w/8"Notch R10 Full Fill	$38	= $	$0.00
	L.F. of 8'2" w/8"Notch R10 Full Fill	$62	= $	$0.00
	Standard Window Opening	$60	= $	$0.00
	32"x20" Cast In Hopper Window STY3	$190	= $	$0.00
	Style 6 Pace Egress w/well Assor	$900	= $	$0.00
	Standard Door Opening Style 2	$90	= $	$0.00
	Special Size Openings	$120	= $	$0.00
	Garage Door (10' 12' 14' 16' Widths)	$250	= $	$0.00
4	Corners @	$40	= $	$160.00
	Elevation Changes @	$55	= $	$0.00
4	2' x 2' x 4.5" Pre-cast Column Pad	$70	= $	$280.00
	BILCO "C" Step and Wall Opening	$1180	= $	$0.00
4	Beam Pockets	$75	= $	$300.00
2	Sill Plate Bolt Packs	$40	= $	$80.00
	Sill Plate Lag Bolt Packs	$40	= $	$0.00
	Garage Sill Stud Bolt Packs	$40	= $	$0.00
	Knee Walls	$55	= $	$0.00
	Extra Wall Studs	$25	= $	$0.00
	Man Door Garage Cut Out	$30	= $	$0.00
	Garage Door Cut Out	$50	= $	$0.00
	Cast In Support Ledge	$25	= $	$0.00
	Modular Sill Plate Straps w/ Nails	$1.80	= $	$0.00
	Slab to Wall Connectors	$4.00	= $	$0.00
1	Engineer Stamped Prints	$350	= $	$350.00
1	Energy Sur-Charge	$500	= $	$500.00
136	TRUSS LEDGE	$12	= $	$1,632.00
		SUB-TOTAL	= $	$13,366.00

SUB-TOTAL	$	$13,366.00
ADJUSTMENTS	$	($7,000.00)
WALL TOTAL	$	$6,366.00
SETUP	$	$350.00
CRANE	$	$950.00
FREIGHT	$	$1,000.00
TOTAL	$	***$8,666.00***
LESS DEPOSIT	$	$1,000.00
BALANCE DUE	$	$7,666.00

NOTICE

BUILDER SHOULD READ AND BE FAMILIAR WITH ALL TERMS AND CONDITIONS ON THE REVERSE SIDE BEFORE EXECUTING THIS CONTRACT.

DELAYS caused by improper site preparation will be charged to BUILDER at $200 per hour.

BUILDER is responsible for checking the wall system for problems and must notify Superior of any problems prior to beginning construction. Builder must NOT build on the wall system until any such problems have been corrected.

Builder acknowledges receiving Superior's manual entitled "Builder Guideline Booklet".

INITIAL:_____

Payment Terms: 25% DOWN BALANCE DUE AT SITE

1. 25% deposit required with order.
2. Balance due. $7666
3. All amounts that have not been paid according to the terms set forth in this Contract shall accrue interest at the rate of 1-1/2% per month (18% per year) on the unpaid balance until paid in full

INITIAL:_____

Builder Agrees: **to provide clean level site, excavation and backfilling;**
to provide minimum of 8" of 1/2" clean, crushed stone for footers, level within 1", base of footer below local frost line;
to locate and pin all corners of foundation;
to provide bracing as required in the Builder Guideline Booklet;
to meet all other responsibilities outlined in the Builder Guideline Booklet;
to pay all expenses for towing Superior's equipment in and out of job site;
to provide adequate access to site for Superior's vehicles and equipment.

INITIAL _____

NOTICE: Builder further agrees that the following Judgment Note is recordable and further that the provisions on the reverse side of this Contract are incorporated herein by reference and are made a part hereof.

INITIAL _____

For value received, upon completion of this Contract by Superior, the principal sum of the above balance, less any amounts credited there against, shall be due and payable to the order of Superior, without setoff, and with interest as provided above.

IN WITNESS WHEREOF, the Builder has executed this Contract on the date first above written, and Superior has caused this instrument to be executed by its duly authorized officer.

BUILDER:

Signature:_____
Name / Title
Print: _____

Date:_____

SUPERIOR WALLS OF UPSTATE NEW YORK, INC.

By:_____
Name / Title
Date:_____

TERMS AND CONDITION **INITIAL: _____** **Job #_____**

1. Contract Terms

1.1 Acceptance By Superior. This Contract is not binding upon SUPERIOR WALLS OF UPSTATE NEW YORK, INC. (hereinafter "Superior") until it has been accepted and signed by an authorized representative of Superior.

1.2 Entire Agreement. This Contract (including any plans, specifications and other documents expressly incorporated herein by reference) constitutes the entire agreement between Superior and Builder with respect to the subject matter of this Contract, and supersedes all prior discussions, negotiations or agreements between Superior and Builder. No verbal representations, advertisements, brochures, estimates, letters or other documents (other than documents expressly incorporated herein by reference) constitute a part of this Contract. Any provisions proposed by Builder in a proposal, purchase order, acceptance, acknowledgement, transmittal, or otherwise which are different from, conflict with, or add to, the provisions of this Contract, are hereby objected to and rejected by Superior.

1.3 Amendment. This Contract (including, but not limited to, the specified delivery date) may not be amended or modified except by a writing signed by Builder and an authorized representative of Superior.

2. Purchase and Sale of Wall System. Subject to all the terms and conditions of this Contract, the Builder agrees to buy, and Superior agrees to sell, a Superior Wall System® (hereinafter called the "Walls") as designated on the reverse side of the Contract and the plans, if any, attached hereto. Unless otherwise specified in this Contract, Superior shall also install the Walls at the construction site prepared by the Builder.

3. Purchase Price; Taxes. Builder agrees that the purchase price for the Walls includes: (1) the amount(s) set forth on the reverse side of this Contract; plus (2) any applicable charges for additional materials ordered by Builder; plus (3) any charges due under the terms of this Contract. Builder also agrees to pay any applicable sales, use and/or excise taxes which may be due with respect to the sale of the Walls.

4. Payment. Builder shall make a down payment on the Walls upon the execution of this Contract, as specified on the reverse side of this Contract. Unless otherwise specified by Superior in writing, Builder shall pay Superior the full amount of the purchase price and any applicable taxes no later than the date of delivery of the Walls. Payment shall be made by certified check or in such other manner as is acceptable to Superior.

5. Sale of Walls Only; Ownership of Manual. Builder acknowledges that Builder is purchasing only the Walls and associated materials under this Contract. Builder acknowledges and agrees that the following shall remain the property of Superior: (1) all materials shipped by mistake or in excess of the Contract amounts; (2) all road carriers; and (3) all plans, specifications, and manuals (including Superior's "Builder Guideline Booklet" (hereinafter called "Manual")), or other documents created by Superior. All such items shall be returned to Superior by Builder upon Superior's request. Builder agrees that it shall not reproduce or allow the Manual to be reproduced. The Manual is hereby incorporated by reference in this contract.

6 Delivery.

6.1 Delivery Date. Superior shall deliver and (if applicable) install the Walls on the delivery date specified by Superior in writing: *Provided, however,* that Superior shall not be responsible for delays caused by interruptions in transportation facilities, fire, floods, acts of God, explosions, riots, war, material shortages, strikes or other occurrences beyond Superior's control.

6.2 Delay by Builder. When the Walls have been loaded and held ready for delivery at the factory, and the delivery date is moved back by Builder, $300.00 per load will be charged to Builder for loading and unloading of the Walls. In the event that the Builder cancels or delays delivery of the Walls and the Walls have already been scheduled for installation, the Builder will be responsible for any and all charges incurred by Superior from the haulers, erection crew, and/or crane company.

7. Matters Relating to Acceptance.

7.1 Inspection By Builder. Builder shall inspect the Walls both upon delivery and, if Superior provides installation, upon installation. Builder shall promptly notify Superior of any defect or non-conformity in the Walls and/or their installation prior to building on the Walls, and Builder shall not build upon the Walls until any such defects or non-conformities are repaired. If Builder builds upon the Walls and the Walls or their installation contain a defect or non-conformity which would have been revealed upon a reasonable inspection by Builder, Superior shall not be responsible for any costs of repair or replacement of the defect or non-conformity which are in excess of those costs which would have been incurred by Superior had the Builder complied with the requirements of this Section 7.1. Builder shall be solely responsible for any and all claims, losses, damages and costs of defense (including, but not limited to, reasonable attorney's fees) arising out of, or relating to, Builder's failure to comply with the requirements of this Section 7.1. Builder shall indemnify, defend and hold harmless Superior, its officers, employees, shareholders, directors, owners, agents and representatives (collectively, hereinafter the "Superior Indemnitees") from and against any and all such claims, losses, damages and costs of defense.

7.2 Acceptance; Title; Risk of Loss. Unless Builder shall have given Superior a written notice of rejection of the Walls prior to the building upon walls and within five business days after the latter of delivery or installation (if installed by Superior), the Walls (including their installation, if applicable) shall be deemed to have been accepted by Builder as provided in this Section 7.2. Acceptance of the Walls and transfer of risk of loss to Builder shall be deemed to occur when installation of the Walls is substantially completed. Where installation is not provided by Superior, acceptance of the Walls and transfer of risk of loss to Builder shall be deemed to occur upon delivery. Title to the Walls shall pass to Builder upon acceptance.

7.3 Security Interest. Builder hereby grants to Superior a security interest in the Walls under the Uniform Commercial Code, until all monies due Superior have been paid in full. Until the Walls have been fully paid for, it is agreed that they shall at all times remain personal property and not become real estate. Builder further agrees that the Walls shall not be built upon or occupied as part of a structure unless and until Superior has been paid all monies due to Superior under this Contract.

8. Specifications and Materials. The specifications for the Walls consist of the specifications listed on this Contract and those contained in the Manual as of the date of this Contract, which specifications are hereby incorporated by reference. Superior reserves the right to substitute materials of an equal or superior quality or value, without notice.

9. Warranties.

9.1 Limited Warranty. Superior warrants that the Walls and any associated materials being sold therewith shall be free from defects in materials and workmanship and will prevent sidewall groundwater penetration for a period of fifteen (15) years from the date of delivery. Warranty does not apply to rainwater or normal hairline cracks from shrinkage. Failure of Builder to follow the procedures set forth in this Contract and the Manual will void the warranty.

9.2 No Other Warranties. Superior makes no representations or warranties other than the limited warranty set forth in Section 9.1, above. Superior makes no warranty with regard to any component product included in the sale of the Walls which carries its own manufacturer's warranty, it being the agreement and understanding of the Builder and Superior that Builder shall look solely to such manufacturer(s) in the event of a defect in such component product(s). **THE WARRANTY SET FORTH IN SECTION 9.1, ABOVE, IS THE SOLE WARRANTY GIVEN BY SUPERIOR, AND IS IN LIEU OF ANY OTHER WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH WARRANTIES ARE SPECIFICALLY DISCLAIMED**.

9.3 Limitation of Remedies for Breach of Warranty. Builder agrees that, in the event of a breach of the warranty set forth in Section 9.1, above, Superior's sole responsibility shall be to repair the defects in question or to replace the defective components in question, at Superior's option. Such remedy shall be Builder's sole and exclusive remedy in the event of a breach of warranty by Superior.

10. Limitations of Damages.

10.1 Exclusion of Certain Damages. In no event shall Superior be liable for any claims for loss of use, property damage, or any consequential, incidental or punitive damages with respect to any matter arising out of or related to this Contract, or the breach thereof by Superior, regardless of whether such claim for damages arises in contract, tort, strict liability, statutory liability or otherwise. For purposes of this Section 10.1, consequential damages include, but are not limited to: (1) Builder's lost profits; (2) loss of use of capital by Builder; and (3) all claims of any nature by Builder's customers against Builder and/or Superior.

10.2 Limitation on Amount of Damages. Notwithstanding any other provision of this Contract, the total liability, in the aggregate, of Superior and Superior's officers, directors, shareholders, employees, representatives and agents to Builder or anyone claiming by, through, or under Builder for any and all claims, losses, costs, or damages whatsoever arising out of or related to this Contract, or the breach thereof by Superior, shall not exceed the total consideration received by Superior from Builder under this Contract. The foregoing limitation shall apply regardless of whether the claim in question arises in contract, tort, strict liability, statutory liability or otherwise.

11. Termination for Default.

11.1 Insolvency; Failure to Pay. Superior may terminate this contract if Builder: (1) becomes insolvent; (2) is unable to meet its obligations as they mature or admits such inability in writing; (3) enters bankruptcy or has a receiver or trustee appointed for it; or (4) fails to timely make payments due under this Contract. In the event of such termination, Superior shall have all such rights and remedies as may be available at law or in equity.

11.2 Delay in Delivery in Excess of Ten Days. Where the Builder delays delivery for greater than ten (10) days, Superior may, in its discretion, declare Builder to be in default and terminate this Contract. In such case, Superior may retain the down payment on account of damages, notify the Builder of the breach of Contract and the amount of losses incurred by Superior as a result of the breach. Such losses shall include (but are not limited to) demurrage charges from the end of the ten day period until the Walls are resold, the difference in the resale price received and the original price and the costs of sale including commissions and other costs and expenses incurred in the resale, all of which Builder agrees to pay to Superior as damages.

12. Matters Relating to Installation.

12.1 Obligations of Superior. Superior's sole responsibility to Builder is: (1) to construct the Walls; (2) to deliver the Walls as described in this Contract to Builder's site; (3) to lift the Walls from the road carrier; and (4) if applicable, to set up, assemble or complete the installation of the Walls at Builder's site. Superior has no responsibility to perform any excavation or to install footers, support materials, drainage or utilities of any kind.

12.2 Obligations of Builder.

12.2.1 Site Preparation. Builder agrees to prepare the site in accordance with the Manual. Builder will make such preparations and take such precautions as are necessary to prepare the site for the safe delivery of the Walls. Builder further acknowledges and agrees that: (1) Builder shall follow the Manual in all respects; (2) Builder has the responsibility for any and all excavation and material placement necessary to allow for the erection of the Walls; (3) Builder has the responsibility for installing the stone footer below the local frost line and keeping the footer system from freezing; (4) Superior is not responsible for disturbed soil beneath the stone foundation, and any excessive excavation or voids created by the removal of rocks, stumps, or similar items must be filled by Builder with stone; (5) necessary backfilling must be performed in accordance with the Manual, and in no case shall backfilling be accomplished with soil; (6) Builder shall provide adequate access to the site for Superior's vehicles and equipment and shall pay all expenses for towing Superior's equipment in and out of job site and (7) during erection of the Walls, Builder shall clear the area of persons and property so that no one is under a wall held by a crane or in danger areas in the event that a crane or wall tips over.

12.2.2 Soil Conditions. Builder agrees to assume full responsibility for soil conditions, excavation, material placement and site preparation as more particularly described in the Disclosure of Soil Conditions signed concurrently herewith, which disclosure is hereby incorporated by reference. Builder represents to Superior that the soil conditions at the site described on this Contract meet or exceed the requirements stated in the Manual. Builder understands that if the soil conditions do not meet the minimum conditions described in the Manual, the installation may fail causing damage to persons or property.

12.2.3 Construction. For any attachment or product to be completed or installed by Builder, whether supplied by Superior or another, Builder agrees to construct or install the same in a safe and workmanlike manner. For weight bearing purposes, Builder agrees that a 10" plate shall be placed along the top of the Walls.

12.2.4 Indemnification. Builder agrees to indemnify, defend, and hold harmless the Superior Indemnitees from and against any and all claims, losses, damages and costs of defense (including, but not limited to, reasonable attorney's fees) which arise out of, or relate to, in whole or in part, Builder's failure to comply with the Manual and/or the breach of Builder's obligations under Sections 12.2.1, 12.2.2., and 12.2.3, above.

12.2.5 Reimbursement for Installation Crew Expenses. In the event that Superior is unable to install the Walls on the delivery date due to Builder's failure to prepare the site properly as required by the Manual and this Section 12.2, Builder will reimburse Superior for any and all expenses incurred for the installation crew, delivery trucks and cranes. Such obligation is in addition to, and not in lieu of, the remedy specified in Section 12.2.4, above, or any other remedy which Superior may have at law or in equity.

13. Other Provisions.

13.1 Arbitration. All claims and disputes related to this Contract shall be settled by arbitration in accordance with the rules of the American Arbitration Association for construction disputes. Claims must be filed within one year after the claim has accrued, or shall otherwise be barred. The arbitration hearing shall be held in Rochester, NY. The determination of the arbitrator shall be final and binding upon the parties. Judgment on the award of the arbitrator may be entered in any court of competent jurisdiction.

13.2 Governing Law. This Contract shall be construed in accordance with the laws of the State of New York, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction.

13.3 No Waiver. The waiver of any right or default in any one instance shall not be deemed to be a waiver of any future right to enforce this Contract.

13.4 No Third Party Beneficiary; No Assignment. The covenants, obligations, agreements, warranties and representations of Superior under this contract have been made and/or undertaken by Superior solely for the benefit of Builder, and for no other entity or person (including, but not limited to, customers of Builder), whether known or unknown. This Contract may not be assigned by Builder without the written consent of Superior.

13.5 Severability. If any provision of this contract is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect as if this Contract had been executed without the invalid provision. The affected provision shall be deemed modified so that it may be given effect to the fullest extent permitted by law.

13.6 Engineer's Stamp. If local building codes or officials require that Superior's plans are sealed by a registered state engineer, Builder will be charged for same at the rate of $500.00 per print.