

GENERAL TERMS AND CONDITIONS OF ACCENT WINDOW SYSTEMS, INC.

1. OFFER, CONFIRMATION OR AGREEMENT

These general terms and conditions Accent Window Systems, Inc. (the "Terms and Conditions") apply to and form an integral part of all quotations and offers made by Accent Window Systems, Inc. (the "Company"), all acceptances, acknowledgements and confirmations by Company of any orders by Buyer and any agreements ("Agreements") regarding the sale by Company and purchase by Buyer of goods and services ("Products"), unless and to the extent Company explicitly agrees otherwise.

Any terms and conditions set forth on any document or documents issued by Buyer either before or after issuance of any document by Company setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Company, and any such terms shall be wholly inapplicable to any sale made by Company to Buyer and shall not be binding in any way on Company.

Company's offers are open for acceptance within the period stated by Company in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by Company at any time prior to the receipt by Company of Buyer's acceptance thereof.

All sales are final. Orders may only be changed by calling Company's Customer Service. A cancellation or restocking charge, of up to the total value of the order, may be applicable for orders cancelled or changed. No special order products may be cancelled or changed after the order has been submitted to the manufacturer or fabricator.

2. PRICING

Prices in any offer, confirmation or Agreement are in U.S. Dollars, and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. Company will add taxes, duties and similar levies to the sales price where Company is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price.

3. PAYMENT

(a) Invoices. Unless agreed otherwise between Company and Buyer in writing, Company may invoice Buyer for the price of the Products delivered upon delivery of the Products. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between Company and Buyer in writing. All payments shall be made to the designated Company address. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment unless agreed to in writing by Company. In addition to any other rights and remedies Company may have under applicable law, interest will accrue on all late payments at the rate of one and a half percent (1.5%) per month or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.

(b) Credit Approval. All deliveries of Products agreed to by Company shall at all times be subject to credit approval of Company. If, in Company's judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, Company may require full or partial payment in advance or other payment terms as a condition to delivery, and Company may suspend, delay or cancel any credit, delivery or any other performance by Company.

(c) Default by Buyer. In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, Company shall have the right to refuse performance and/or delivery of any Products until payments are brought current and Company may suspend, delay or cancel any credit, delivery or any other performance by Company. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

4. DELIVERY AND QUANTITIES

(a) Delivery. Products shall be delivered to Buyer's jobsite unless, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by Company are approximate only, and Company shall not be liable for, nor shall Company be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. Company agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

(b) Shipment Damage Claims. All Company products are carefully packaged and inspected prior to shipping. All damage claims should be noted with the delivering carrier. If concealed damage is found after delivery, Buyer shall make a claim with Company's customer service department within five (5) days of delivery. All packaging must be retained and available for inspection, and the merchandise available at original delivery point.

(c) Failure to Deliver. Buyer will give Company written notice of failure to deliver and thirty (30) days within which to cure. If Company does not deliver within such thirty (30) day period, Buyer's sole and exclusive remedy is to cancel its purchase of the damaged Product.

(d) Risk of Loss. Title in the Products shall pass to Buyer upon payment in full of the purchase price in respect thereof. Risk of loss in the Products shall pass to Buyer upon Company's delivery in accordance with these Terms and Conditions.

(e) Failure to Take Delivery. If Buyer fails to take delivery of Products ordered, then Company may deliver the Products in consignment at Buyer's cost, and Buyer shall be liable to Company for the full amount due under the invoice less any net amount received in consignment.

(f) Curtailed Production. In the event Company's production is curtailed for any reason, Company shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in the Agreement, as the case may be.

(g) Return Policy. Product returns are only authorized with an approved Return Merchandise Authorization (RMA) number provided by Company's customer service department. RMA numbers will be issued for standard product less than thirty (30) days old (with the exception of warranty claims, in which case a number can be issued through the life of warranty). Buyer shall call Company's customer service department and shall provide the sales order number, the invoice number, or the purchase order number. Returns (for reasons other than valid warranty claims) may be subject to shipping, handling, restocking, or restoration charges. Buyer shall have no right to return any custom orders with the exception of valid warranty claims.

5. FORCE MAJEURE

Company shall not be liable for any failure or delay in performance if:

- (i) such failure or delay results from interruptions in the Product manufacturing process; or
- (ii) such failure or delay is caused by Force Majeure as defined below or by law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without Company being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond Company's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which Company cannot reasonably be required to execute its obligations including force majeure and/or default by one of Company's suppliers. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Company to extend for a period of three (3) consecutive months), Company shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

7. LIMITED WARRANTY AND DISCLAIMER

(a) Limited Warranty. Company warrants that under normal use in accordance with the applicable user manual the Products shall, at the time of delivery to Buyer and for a period of twelve (12) months from the date of delivery (or such other period as may be agreed upon in writing by the parties), be free from defects in material or workmanship and shall substantially conform to Company's specifications for such Product, or such other specifications as Company has agreed to in writing, as applicable. Company's sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at Company's option, either to the replacement or repair of a defective or non-conforming Product or to an appropriate credit for the purchase price thereof. Company will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become Company's property as soon as they have been replaced or credited.

(b) Claim for Warranty. Buyer may ship Products returned under warranty to Company's designated facility only in conformance with Company's then-current return material authorization policy. Where a warranty claim is justified, Company will pay for freight expenses. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.

(c) Exclusion of Warranty. Notwithstanding the foregoing, Company shall have no obligations under warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, use other than as set forth in the user manual, neglect, improper installation or accident, or as a result of improper repair, alteration, modification, storage, transportation or improper handling.

(d) Privity. The express warranty granted above shall extend directly to Buyer and not to Buyer's customers, agents or representatives and is in lieu of all other warranties, whether express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, or non-infringement of intellectual property rights. All other warranties are hereby specifically disclaimed by Company.

(e) Entire Liability. Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing states the entire liability of Company in connection with defective or non-conforming Products supplied hereunder.

8. INSTALLATION

(a) Invoices. Upon Buyer's request, Company may install the product. Unless otherwise specified, Company's invoice amount does not include installation fees.

(b) Standard of Care. In performing installation of the product, Company will use that degree of care and skill ordinarily exercised under similar circumstances by members of the profession practicing at the same time in the same or similar locality.

9. LIMITATION OF LIABILITY

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(a) Limitation of Liability. COMPANY SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE AND/OR INSTALLATION OF ANY PRODUCTS OR SERVICES BY COMPANY OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF COMPANY HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

COMPANY'S AGGREGATE AND CUMULATIVE LIABILITY TOWARDS BUYER UNDER ANY AGREEMENT SHALL NOT EXCEED AN AMOUNT OF FIFTY PERCENT (50%) OF THE RELATED AGREEMENT.

(b) Claim for Damages. Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

(c) Applicable Law. The limitations and exclusions set forth above in this Section 9 shall apply only to the extent permitted by the law applicable to these Terms and Conditions.

10. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by Company and/or its affiliates is the confidential information of Company and/or its affiliates. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

11. EXPORT/IMPORT CONTROLS

If the delivery of Products under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Company may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Company may even terminate the Agreement, without incurring any liability towards Buyer.

Furthermore, if an end-user statement is required, Company shall inform Buyer immediately thereof and Buyer shall provide Company with such document upon Company's first written request; if an import license is required, Buyer shall inform Company immediately thereof and Buyer shall provide Company with such document as soon as it is available.

By accepting Company's offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

12. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of Company. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer may have with Company or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

13. GOVERNING LAW AND FORUM

All offers, confirmations and Agreements covered by these Terms and Conditions are governed by and construed in accordance with the laws of the State of California. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and Company to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the Superior Court for the County of Santa Clara, California. Nothing in this Section 13 shall be construed or interpreted as a limitation on either Company's or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

14. BREACH AND TERMINATION

Without prejudice to any rights or remedies Company may have under the Agreement or at law, Company may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

(a) Buyer violates or breaches any of the provisions of the Agreement;

(b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer.

Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.

In the event of cancellation, termination or expiration of an Agreement the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

15. MISCELLANEOUS

(a) Severability of Provisions. In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

(b) No Waiver. The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.

(c) Attorney's Fees. Should litigation or arbitration occur between the parties, all reasonable litigation or arbitration expenses, collection expenses, witness fees, court costs, and attorney's fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party. The determination whether a party is the prevailing party in any litigation or arbitration shall be made by the court of competent jurisdiction or the arbitrator.

(d) Corporate Protection. In no event shall the officers, directors, owners or employees of Company be personally liable for any obligation arising out of any transaction with Buyer, for any alleged breach of this agreement, for any direct, indirect, incidental, or consequential losses or damage of any kind or nature whatsoever. The parties agree that the sole and exclusive remedy by Buyer for any and all obligations and claims shall be against Company and not against any owner, shareholder, director, or employee. Buyer expressly waives any applicable statute, authority, or regulation to the contrary.

(e) No Third Party Beneficiary. Nothing contained in the Terms and Conditions or any agreement between Company and Buyer nor by the action of any person, shall create a contractual relationship with, any obligation toward or a cause of action in favor of a third party against Company.