

SOUTHWEST GLASS PRODUCTS INC



STANDARD TERMS AND CONDITIONS FOR SOUTHWEST GLASS PRODUCTS INC

Entire Agreement - The Terms of this document constitute a contract for sale between **SOUTHWEST GLASS PRODUCTS INC.** (hereinafter "Seller") and Buyer [**designated on the face hereof**]. This document constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior purchase orders, understandings, negotiations and discussions, whether oral or written, between the parties in connection herewith. This document shall not be expanded or supplemented by a course of dealing, usage of trade, or course of performance. The Terms shall prevail and take precedence over the provisions contained in any other prior correspondence, quotation, shipping document, purchase order or other instrument. No terms and conditions which are inconsistent with or in addition to these Terms (including any amendment to the Terms contemplated herein) shall be binding on Seller, unless they have been specifically reviewed and accepted in writing by Seller. Failure of Seller to object to any inconsistent or additional terms and conditions shall not be construed as a waiver, nor as an acceptance of any other terms and conditions.

Buyer shall be deemed to accept the Terms upon the earlier of: (a) Buyer's receipt of this document; and (b) Buyer's acceptance of all or any part of the goods delivered by, or on behalf of, the Seller pursuant to any purchase order or quotation (the "Goods").

1. Price - All prices, whether herein named or heretofore quoted or proposed, shall be valid for the period set out in the relevant quotation or customer price sheet, as applicable, and are based on quantities, sizes and descriptions set out. The Seller is not responsible for any interpretation of the description provided herein. All changes to purchase orders must be provided in writing, and may be subject to price revisions. All prices are calculated based on square footage to the next even inch - shapes, patterns and energy surcharges being additional costs and subject to review by the Seller each quarter. Charges for all products are based on the applicable square foot minimum order charge set out in the relevant quotation or customer price sheet, unless otherwise agreed upon. All taxes, duties and other governmental or administrative charges and levies of any kind whatsoever resulting from or otherwise arising out of this contract, including, but not limited to, property, sales, use, value-added, withholding or other taxes which may be payable or collectable at the date hereof or in the future by Seller as a result of this contract shall be the responsibility of Buyer and shall be in addition to the price.

2. Terms of Payment - Buyer shall pay Seller for the Goods in accordance with the Terms on the relevant purchase order or quotation within thirty (30) days of the invoice date. Buyer agrees to execute either prior or subsequent to delivery, upon Seller's request, a security agreement, financing statement, and any and all other documents or agreements necessary to give Seller a perfected security interest with respect to all goods and proceeds thereof, and to pay the cost of filing same. Interest on overdue accounts will be calculated at 2% per month. NSF cheques are subject to a \$25.00 fee.

3. Credit Approval - All quotations are subject to Buyer credit approval by Seller. Seller reserves the right to refuse shipment of any and all goods and/or services identified in any quotation, to modify the Payment Terms identified therein or to cancel without penalty or charge any contract formed and concerning the goods and/or services identified in its quotation if, in its sole discretion and for any reason whatsoever, Seller requests and is unable to secure acceptable payment assurances from Buyer for the goods and/or services identified in the quotation.

4. Delivery Time - All delivery times are approximate and are subject to variation without notice. No delivery shall occur until Seller has received all details from Buyer necessary to execute the order and Seller shall not be held liable for any such delay. Seller shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery dates. The delivery date will be agreed on mutually between the Buyer and Seller. Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates, or for any loss or damage to Buyer or others as a result of any delay or change in the delivery time regardless of the cause. Seller will endeavour to pick up any empty delivery racks at the earliest possible opportunity but will not be subject to any specific timelines for pick up of racks and the Seller will not under any circumstances pick up and remove glass. All delivery racks will remain the property of the Seller. Delay in delivery of one instalment shall not entitle Buyer to cancel other instalments.

Seller shall not be liable for any delay in performance due to acts of God, war, riot, embargoes, acts of civil war or military authorities, fires, floods, earthquakes, earth movements, accidents, strikes, labour unrest, delays in transportation, shortage or interruption in fuel, electricity, labour or materials, or any circumstance or cause beyond the control of Seller. In addition, Seller shall have the right, in the event of the happening of any of the above contingencies, to cancel this agreement or any part thereof without resulting liability.

5. Technical Aspects - Windload analysis and thermal stress analysis are strongly recommended to confirm glass heat treatment requirements. This analysis is performed only on specific request of the Buyer and at the expense of the Buyer. All orders must be identified as exposed or covered edges at the time of the quotation request. In the absence of this information, glass shall be considered as covered edges and as not being structurally installed. Structural glazing must be identified as either 2 sided or 4 sided.

All quality requirements exceeding the Seller's standards must be specifically approved in advance by Seller's Technical Department and shall bear an additional charge. The use of templates for production is subject to prior approval by the Seller. The standard unit's seal is polysulphide. All products must be used with compatible glazing material and prior verification with the Seller is recommended.

6. Delivery, Shipment, Risk of Loss - Shipments shall be made in accordance with Seller's shipping standards and shall be F.O.B. Seller's warehouse unless agreed otherwise. All transportation charges shall be paid by Buyer in addition to the price of the goods. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Seller reserves the right to make deliveries in instalments. Delivery of a quantity which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the goods delivered. Subject to Seller's right of stoppage in transit, delivery of the goods to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Buyer agrees to assume risk for loss of, or damage to, the goods from the time of delivery to a carrier at Seller's warehouse, or if the shipment is delayed or deferred by an act or omission of Buyer, then from the time the goods are completed and ready for shipment. At its own expense, Buyer shall procure and maintain adequate insurance on the Goods for the benefit of Buyer and Seller protecting against loss, damage, deterioration, or other casualty occurring during shipment. Upon request of Buyer, and upon the written consent of Seller, Seller may arrange for such insurance at the sole expense of Buyer. Seller shall not be responsible for any damage, including any concealed damage, of or to any Goods which occurred prior to or as a result of delivery of such Goods to Buyer, unless Buyer notifies Seller of any such damage within ten (10) days of receipt of the relevant Goods, at which time the Seller shall have the right to field inspect such Goods to verify such damage and its cause.

7. Warranty - Seller warrants to its original purchaser only that the Goods conform to the descriptions found herein.

a) Tempered and Heat Strengthened Glass - Seller warrants, for a period of one (1) year from the date of Seller's initial invoice for the relevant Goods, that its tempered and or heat strengthened glass will meet, at the time of sale, specifications as defined by CAN/CGSB-12.2-M91 and CAN/CGSB- 12.4-M91. This warranty shall be void under any of the following circumstances:

- a) the Goods are modified or receive or are subjected to any fabrication, including without limitation any grinding, drilling or sand blasting; or
- b) the Goods are exposed to temperatures in excess of 400°F for any sustained period of time.

CAUTION: any modification or other fabrication of the Goods, or exposure to excessive heat for a sustained period may seriously weaken the glass or impair its tempered or heat strengthened characteristics or result in glass breakage.

b) Spandrel Glass - Seller warrants, for a period of five (5) years from the date of Seller's initial invoice for the relevant Goods, its spandrel glass against chipping and fading. Seller does not guarantee that the replacement Goods will match the colour, shade, or appearance of the original Goods.

c) Insulated Glass Units (IGU) - Seller warrants, for a period of five (5) years from the date of Seller's initial invoice for the relevant Goods, its insulated glass units against material obstruction to vision due to defects in material or workmanship which results in film formation or dust collection on the internal glass surfaces caused exclusively from the failure of the hermetic seal, other than through glass breakage. This warranty shall be void under any of the following circumstances:

- a) the Goods are not continuously and adequately mechanically supported on all sides;
- b) the Goods seal is not fully protected by a minimum fifteen thirty-seconds (15/32) inch face covering or "bite";
- c) the perimeter glazing materials are not compatible with the organic hermetic seal;
- d) the glazing cavity is not effectively weeped to prevent water accumulation;
- e) the Goods are subjected to requirements outside normal architectural requirements or if provision has not been made for adequate expansion or contraction of framing members;
- f) the Goods are installed in high-moisture environments (including swimming pool enclosures or saunas, Jacuzzi, hot tub, skylight, sloped glazing, or vehicle); or
- g) the Goods have been retrofitted with a film adhered to any glass surface.

Each of Seller's warranties set out in these Terms shall be void under any of the following circumstances:

- a) the Goods have not been paid for *in full*, according to the terms of sale;
- b) the Goods are installed outside of the continental limits of the United States and Canada; or
- c) the Goods have been abused or have not been stored and/or installed in a good and workmanlike manner (and in the case of IGUs, in accordance with current IGMA Glazing Recommendations for Sealed Insulating Glass Units).

d) Gas Fill – Seller makes no warranty on the initial gas fill or on gas retention.

In the event that any Goods are found to be defective, Seller will replace the applicable unit(s) without charge, FOB Seller's plant or refund the purchase price of the unit(s), at its option. Defective Goods must be returned to the Seller's plant at the expense of the Buyer. Seller reserves the right to inspect in the field any unit which is alleged to be defective. The warranty period of the replacement Goods will be limited to the remainder of the warranty period of the applicable original unit(s).

Seller's maximum liability under this warranty shall be to deliver replacement Goods, or the refunded purchase price, to the shipping point nearest to the place of installation. Seller will not be liable for any damage, labour or any other expenses arising from usage of the Goods hereby covered. Seller assumes no responsibility for glass breakage, incompatibility with other products, faulty installation,

abnormal weather conditions or damage caused by external factors or components. Seller's sole liability shall be limited to the terms expressly stipulated herein. This warranty shall be void if Buyer is in breach of these terms and conditions of sale, including the terms of the warranty.

8. SELLER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE GOODS. SELLER DOES NOT WARRANT THAT THE GOODS WILL SATISFY BUYER'S REQUIREMENTS OR THAT THE GOODS ARE WITHOUT DEFECT OR ERROR.

9. Buyer's Remedies - If the Goods furnished to Buyer are defective, and Buyer has notified Seller within ten (10) days of receipt of Goods, Seller shall replace such nonconforming Goods at the original point of delivery and shall furnish instructions for its disposition.

Buyer's exclusive and sole remedy in respect of the Goods that are defective shall be to secure the replacement of said Goods only.

10. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL AUTHORITY, INCLUDING, BUT NOT LIMITED TO, LOSSES OR LIABILITIES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS, ARISING OUT OF THE USE OF OR INABILITY TO USE THE GOODS, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. SELLER'S ENTIRE LIABILITY AND BUYER'S SOLE REMEDY FOR ANY AND ALL DAMAGES WITH RESPECT TO ANY GOODS ACQUIRED BY BUYER FROM SELLER SHALL BE LIMITED TO DIRECT DAMAGES SUFFERED BY BUYER WHICH SHALL NOT, IN ANY EVENT, EXCEED THE TOTAL OF ALL AMOUNTS PAID BY BUYER FOR THE GOODS WHICH GIVE RISE TO THE CLAIM.

11. Return of Goods - Buyer agrees not to return goods for any reason, except upon the written consent of Seller obtained in advance of such return, which consent, if given, shall specify the terms and conditions upon which any such return may be made.

12. Seller's Right of Possession - Seller shall have the right in addition to all others it may possess, at any time, for credit reasons or because of Buyer's default or defaults, to withhold shipments, in whole or in part, and to recall Goods in transit, retake same, and repossess all Goods which may be stored with Seller for Buyer's account without the necessity of taking any other proceedings, and Buyer consents that all Goods so recalled, retaken, or repossessed shall become the absolute property of Seller. In the event that Buyer defaults in the due performance of or compliance with any of the terms or conditions hereof, or a proceeding in bankruptcy, assignment for benefit of creditors, insolvency, receivership or reorganization be instituted by or against Buyer or Buyer's property or business, or Buyer is anyway liquidated, Seller may, at its option, terminate this agreement upon written notice and shall be relieved of all obligations hereunder. If Buyer is in breach of the terms hereof, Seller shall have a right to receive as damages the price for the Goods as stated herein. Upon recovery of the price, the Goods shall become the property of Buyer. The foregoing shall not be construed as limiting, in any manner, any of the rights or remedies available to Seller because of any default of Buyer.

13. Nonwaiver by Seller - Waiver by Seller of any default or breach of any of the terms and conditions or performance of this contract shall not be construed as a waiver of any other default or breach.

14. Governing Law - The Purchase Order shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

15. Arbitration - In the event of any difference or dispute arising under this Agreement, the disputing party shall give written notice of such dispute (the "Dispute Notice") to the other party, setting out reasonable details of the dispute. Failing settlement of the dispute by Seller and Buyer within thirty (30) days after the giving of the Dispute Notice, the dispute shall be determined by a single arbitrator in accordance with the Arbitrations Act, (Ontario) as amended from time to time.

16. Cancellation - Buyer agrees that an order shall in no event be subject to cancellation except by prior written consent of Seller and then only when Seller is fully reimbursed for work performed and materials used.

17. Severability - The invalidity in whole or in part of any provision of these terms and conditions shall not affect the validity of any other provision.

18. Language - The parties hereby acknowledge to have specifically requested that this Agreement and all related documents and notices be drawn up in the English language. Les parties aux présentes déclarent qu'elles ont exigé que cette convention et tous les documents et avis qui s'y rattachent soient rédigés en langue anglaise.

19. Notices - Any notices required to be given shall be in writing and sent by registered mail, facsimile or by courier addressed to the each party at the address set out on the relevant purchase order or quotation.

20. Headings - The headings used herein are for reference purposes only and shall not affect the meaning or interpretation hereof.