



Terms & Conditions of Sale

BENT GLASS DESIGN, INC.

ProCurve Glass Design, Inc. and/or Bent Glass Design, Inc. dba ProCurve Glass Technology, LLC ("SELLER"). SELLER agrees to manufacture, and/or sell; and the customer ("Buyer") agrees to buy the Products (as defined below) consistent with these terms and conditions which constitutes a binding sales agreement between SELLER and Buyer (this "Agreement"). SELLER and Buyer are referred to herein as each a "Party," and collectively, the "Parties." This Agreement shall further include and incorporate any Sales Acknowledgment Order issued by SELLER to Buyer regarding the sale of the Products. Seller assumes NO LIABILITY for the use of its products in excess of the paid invoice amount for the identified item. The Buyer is entirely responsible for determining whether the glass specification is suitable to fully conform with ALL HEALTH AND SAFETY CODES AND CONCERNS applicable to its use. Further, ALL DESIGN & PERFORMANCE REQUIREMENTS remain the Buyer's entire responsibility even when SELLER provides any information or design assistance. ANNEALED, HEAT-STRENGTHENED, CHEMICALLY STRENGTHENED glasses are NOT SAFETY GLAZING PRODUCTS, and must NEVER be used in those instances where an appropriately certified TEMPERED or LAMINATED glass is required by law, thermal or mechanical load conditions, classification society requirement or applicable codes. SPECIFIC DETAILS ABOUT YOUR PRODUCT, WARRANTY STATEMENTS AND OTHER QUESTIONS ARE ANSWERED BY WRITTEN REQUEST, PLEASE INCLUDE REFERENCE DETAILS SUCH AS SALES ACKNOWLEDGMENT NUMBER.

1. **Agreement.** These Terms and Conditions are not an invitation to negotiate. Rather, Buyer agrees that the SELLER's Terms and Conditions shall apply without reservation to (i) all quotations and offers to sell by SELLER and/or (ii) any acceptance by SELLER of any proposal to purchase or purchase order of Buyer (a "Purchase Order") for the goods and services sold hereunder (the "Products"), including any and all change orders or modifications. When the Buyer approves the commencement of work through its action including payment in full or part for such goods or services, then preparation for performance of work by Seller under the Sales Acknowledgment shall also constitute acceptance of these Terms and Conditions by the Buyer.

2. **Buyer Acceptance.** Buyer accepts this Agreement by (whichever comes first): (a) communicating to SELLER its decision to purchase the Products; (b) delivering a Purchase Order for the Products with quantities and delivery dates acceptable to SELLER; (c) accepting delivery of the Products; or (d) making a deposit or paying any portion of the price for the Products as set forth in the quote and/or subsequent Invoice (as defined below). Buyer agrees that any Purchase Order by or from Buyer is for Buyer's administrative purposes only and

that Buyer disclaims any terms and conditions related to that Purchase Order that Buyer agree shall be null and void in their entirety. No course of prior dealings between the Parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions. If this Agreement is responsive to a prior offer to purchase in any format from Buyer, and the sale of the Products is accepted by Buyer in any manner set forth above, then Buyer agrees that this Agreement shall be deemed an acceptance of such offer limited exclusively to the material terms and conditions stated in this Agreement, and any additional or supplemental terms or any material variance from the terms and conditions of this Agreement are expressly objected to and rejected. Any non-material variance from the terms of this Agreement proposed by Buyer shall not operate as a rejection of this Agreement, and shall be deemed a part of this Agreement. Buyer remains obligated to pay for products in production and not shipped or complete if Buyer for whatever reason cancels, suspends, or in any way notifies SELLER that a change shall occur relative to the delivery of products ordered. Buyer understands and agrees that all monies paid shall be for work and/or services already performed.

3. **Specifications.** SELLER shall manufacture the Products in accordance with mutually agreed upon written specifications of Buyer (the "Specifications"), pursuant to acceptable orders placed by Buyer under this Agreement and as set forth in and attached to SELLER's Sales Acknowledgement Order. Buyer grants SELLER the right to use the Specifications for such purpose. The Specifications shall not be changed or altered without written notification to and approval by SELLER. SELLER makes no warranty or representation or guaranty of the Specifications as a result of the delivery of any sample, prototype, product information sheet, sale or marketing material, custom, trade practice, or statement by a representative of either Party. Buyer warrants, that the use of the Specifications will not violate or infringe upon the rights of any third party, including, without limitation,, any patent, copyright, trade secret, trademark, contractual, employment, proprietary or confidential information or nondisclosure, or other proprietary rights of any third party. Buyer agrees to indemnify, defend and hold harmless SELLER and its affiliates from and against any and all losses, without limitation based upon, relating to or arising out of a claim that the manufacture of the Products using the Specifications infringes any United States or foreign patent, copyright, trade secret or other intellectual property right of any third party. All estimates of expected operational lifetime referenced in any of the Specifications is provided for informational purposes only and SELLER provides no warranty or guaranty that any goods so provided will conform to such statistical, reliability or operational data.

4. **Product Pricing.** Prices for the Products are described on SELLER's price quote, and are effective for the period set forth in the price quote. Thereafter, prices are subject to change with notice to Buyer. All prices set forth on the price quote exclude all federal, state or local taxes, export duty fees, shipment expense, insurance against loss during transit, broker or agent fee and therefore prices are subject to increase in the amount of any such tax or fee that SELLER may be required to collect or pay upon the sale or delivery of the Products.

5. **Responsibility of Buyer.** It is the responsibility the Buyer or their designated representative, in consultation with an independent installation professional of their choosing, to determine and approve glass of a specification(s) suitable to meet all factors relevant to their particular use or application. Glass specification(s) include, but are not limited to, product kind, appropriate certifications, glass thickness, caulk, glue, installation techniques, color, coating & surface or primary manufacturer brand (and condition, type, class, style, form, quality, finish, and pattern as applicable), fabrication such as shape cuts, sandblasting, etching, ceramic frit or other spray applied coatings, holes, notches, cutouts, and edge finish, size and shape dimensions; in the case of laminated product; the overall thickness and assembly of component glass products with the interlayer type color and thickness; in the case of insulating product, the overall thickness and assembly of component glass products with spacer and sealant type color thickness and profile and sealed space gas. Factors requiring careful consideration include the local state and national laws, mechanical and thermal loading, classification society design requirements, applicable codes, aesthetics and functionality, framing or mounting systems, compatible glazing materials, glue, caulking installation techniques, tolerances and expansion, breakage or failure scenarios, appropriate safety & health practices, conformance requirements, as well as the reflectance, absorption, and transmission of energy including sound, visible light, heat, and ultraviolet rays.

6. **Supply of Materials.** It is understood that SELLER is supplying the materials only to manufacture the Products and as such SELLER has not engineered, designed or replaced Buyer's responsibility to provide for the Specifications. Regardless of whether SELLER provides technical or general technical or mechanical properties for the Products, the responsibility for ordering and specifying the Specifications of the Products rests entirely on and at all times with Buyer. At no time shall SELLER be obligated, either by way of verbal and/or written communications in any manner, whether by fax, email, all offers, quotations, order confirmations or correspondence such as quality assurance documents, international product standards, manufacturer component documents, engineered performance values, 3d and 2d drawing documents, window schedules, construction drawings, engineering drawing, and designer/architectural

details with either a direct reference or indirect reference to Buyer's intended or apparent needs from SELLER, to any additional terms, conditions, product performance and design, unique features and/or behavior that is beyond the Specifications.

7. **Buyer Supplied Material or Equipment, templates, glass and any other materials or service.** While care is exercised to preserve and protect Buyer's supplied material, equipment or service; SELLER will accept NO RESPONSIBILITY FOR THE LOSS OR DAMAGE OF PATTERNS, TEMPLATES, MOLDS, GLASS, FILMS, INTERLAYER, VEHICLE OR OTHER MATERIAL OR SERVICE sent to our facility by, or on behalf of, a Buyer. All such material sent to us for whatever reason will be discarded after one year at our option if Buyer fails to seek return of any of these items. Buyer must provide its own insurance for loss or damage to its material, equipment, vehicle or service. Buyer, even if vehicle keys are left with SELLER, will insure against all risks with waiver of subrogation rights against SELLER.

8. **Appearance-Color and Coating.** Glass of the same generic color and coating will vary in appearance and performance between brands from each primary glass manufacturer. In cases where continuity is desirable, all glass should be coordinated to be made from the same primary glass brand. In addition, small perceptible differences can exist between different runs of the same brand and thickness when compared in close proximity with parallel reflections. Flat and curved surfaces in reflection can show differences. Flat and curved surfaces in transmission may also show differences. It remains the responsibility of the Buyer to create and compare full-size glass mock-ups in all cases where continuity is critical. Additional information on appearance and performance may be obtained upon written request.

9. **Contingencies.** Performance of ALL AGREEMENTS By SELLER are contingent upon strikes, accidents, equipment, raw materials, supply chain delays or any other causes beyond SELLER's control.

10. **Handling and Glass Storage.** It is the responsibility of the customer to AVOID IMPROPER STORAGE, HANDLING, OR INSTALLATION METHODS that may irreversibly damage glass. Do not allow the glass to be disfigured by exposure to moisture, standing water, incompatible glazing materials or cleaning fluids, temperatures above 80⁰F where there is high humidity and little or no air movement. Building runoff, insulation, paints, adhesives, acids, alkaline, chemicals, solvents or their fumes will permanently damage glass. In the case of laminated glass, delamination occurs when the interlayer is exposed to

moisture and incompatible materials. Ensure that any storage of glass is always in a DRY temperature controlled environment preferably indoors for best results. Abrasive or sharp objects, windborne debris, grinding or welding sparks will permanently damage the glass surface. ADDITIONAL INFORMATION is available through glass industry professional associations. NGA/GANA (www.glasswebsite.com)

11. **Installation Service.** Consult a professional engineer before ordering any of SELLER's Products to address installation methods, glass design, specifications, compatible materials, and framing systems. Be advised that laminated and insulated products that are used with other products can result in product failure that is not recoverable under any applicable warranties offered by SELLER. Be further advised that altering or attempting to repair the original Product supplied will void any applicable warranty and any claims made under UCC or other state codes. Buyer assumes all responsibility for testing compatibility between various materials supplied.

12. **Installation-Framing and Mounting Systems.** It is the responsibility of the customer to ensure all framing or mounting systems firmly support each glass piece, adequately drain water and repel moisture, contact only via a cushioned surface, and prevent binding caused by expansion, contraction, flexure, or movement. If holes or notches are in the glass, protect by using bushings, sleeves that have a low durometer Shore A hardness under 60. In systems where glass is used as a structural material, it is the responsibility of the Buyer to ensure adequate contingency planning exists to preserve safety and structural integrity in the event of glass breakage or failure. When installing the glass, a minimum temperature of 60°F is needed. If the install is done indoors, the shipyard is responsible to maintain these temperatures during this period. ProCurve also recommends maintaining a minimum temperature of 60°F for two days after installation to allow adhesive to cure.

13. **Energy Surcharge.** SELLER reserves the right to add an Energy Surcharge ("ESC") based on current published charges that pass through from material suppliers during the manufacture of the Products. The ESC is published information and a copy is available upon request.

14. **Payment Terms.** Payment terms for the sale of the Products are 50% deposit prior to start of production with Balance paid prior to shipment. Additional terms may be available upon request. Buyer shall make payment on the Invoice regardless of whether Buyer has inspected the Products. Buyer agrees to pay the amount on the Invoice for the Products pursuant to these Terms and Conditions. Interest at the maximum rate permitted by Pennsylvania law shall apply on any amounts past due. SELLER may cancel or reschedule deliveries of to-be-shipped Products if Buyer fails to make any payment when due. Unless otherwise agreed, SELLER's prices are quoted, and the Invoice shall be paid by Buyer in, U.S. currency.

Buyer shall have no right of set-off or deduction for allegedly non-conforming, defective or damaged Products without the prior written approval of SELLER. Buyer shall be liable for all expenses attendant to collection of past due amounts, including all court costs and reasonable attorneys' fees. In the event the Buyer cancels, suspends, or puts its order on hold for any reason, Buyer agrees that it will pay when invoiced under the terms of its Agreement of Sale for partially produced product and understands and agrees that shipped or fulfillment of specifications for this order is not required when Buyer notified SELLER that such change shall occur to impact the delivery requirements of the original agreement.

15. **Return/Refund Policy.** SELLER will not return or refund any deposits or payments once received. Payments once received result in SELLER'S reliance to expend labor services and material allocated which for convenience of the parties equals the funds received.

16. **Taxes.** Any tax or related charge that SELLER shall be required to pay to or collect for any government in connection with the sale of the Products, including, without limitation VAT, sales tax or use tax will be billed to Buyer by an Invoice and paid by Buyer. Buyer shall pay all applicable taxes, as set forth herein, and remains liable for the payment whether collected or not by SELLER. Any manufacturer's tax, retailer's occupation tax, sales tax, excise tax, duty, custom inspection or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any federal, state, or local governmental authority or agency, on or measured by any transaction between SELLER and Buyer, will be paid by Buyer in addition to the prices quoted and/or invoiced by SELLER. In the event SELLER is required to pay any such tax, fee or charge, together with any additional costs (fines, penalties, all costs of representation and preparation for presentation and defense of these claims), SELLER will invoice Buyer and Buyer agrees to reimburse SELLER, including any reasonable attorneys' fees and court costs. In lieu of such payment, Buyer will provide SELLER within fifteen (15) days of demand, an exemption certification or other document that SELLER deems, in its reasonable discretion, is acceptable to the governmental authority or agency imposing any such tax that SELLER is relieved of that obligation.

17. **Termination/Change/Cancellation.** SELLER may terminate this Agreement or orders placed hereunder with notice to Buyer if: (a) Buyer fails to pay any sums payable hereunder when due and such failure continues for 10 days after the due date without any notice being necessary from SELLER; (b) Buyer materially breaches its obligations hereunder, other than the payment of money, and such breach continues for a period of 20 days after receipt by Buyer of written notice from SELLER specifying such breach; or (c) any development work required hereunder is determined by SELLER to be financially or technically inadvisable to proceed with, as determined by SELLER in its sole discretion. Buyer may not terminate, suspend performance, reschedule or cancel delivery or issue a "hold" order under this Agreement in whole or in part, without SELLER's prior written consent and upon terms that will compensate SELLER for any loss or

damage resulting from such action, as determined by SELLER in its reasonable discretion. If (i) SELLER terminates this Agreement in accordance with this Section, (ii) Buyer cancels all or any part of any order for Products prior to the shipment of such Products, or (iii) Buyer fails to comply with any material obligation hereunder, including failure or refusal to make timely payments, causing SELLER to cancel any order or portion thereof for Products, then Buyer shall pay SELLER (i) all amounts due for the Products ordered and manufactured prior to the effective date of termination or cancellation, as determined by SELLER in its reasonable discretion, and (ii) the price of services already performed and materials already purchased, and for work in process, incurred costs and a reasonable allocation of general and administrative expenses, plus SELLER's loss of profits, as determined by SELLER in its reasonable discretion (the "Cancellation Charge"). Recognizing that SELLER's damages arising from any cancellation of any order or termination hereunder will be difficult to estimate, the Parties agree that the Cancellation Charge is reasonable and is not a penalty. SELLER shall deliver all such inventory, work in process, raw materials and components regarding the to-be-manufactured Products to Buyer upon request, after receipt of payment as set forth in this Section and all costs of transportation and delivery for such items.

18. **Shipment.** Buyer agrees that SELLER has no control over the Products after leaving SELLER's facility. All shipments of the Products shall be FOB, Hatboro, PA. The Parties agree that the risk of loss for the Products passes to Buyer upon pickup and shipment of the Products with any common carrier whether freight collect, prepaid or other method. SELLER will not be responsible for loss, damage or delay caused by the carrier. The risk of losses or damages to the Products shall pass to Buyer in accordance with the agreed delivery term (pursuant to and in accordance with the Incoterms rules). Unless otherwise instructed, selection of carrier and routing of all shipments of the Products shall be at SELLER's discretion. Shipment dates for any export sales are approximate and are subject to receipt of all necessary Buyer information, and all necessary export-related licenses, permits and other documents. SELLER will attempt to meet the requirements of Buyer's delivery schedule, but Buyer agrees that SELLER shall not be in default of performance due to a delay of reasonable duration resulting from any cause. If Buyer desires freight prepaid and billed, SELLER shall add, and Buyer shall pay SELLER's Shipping and handling charges, including but not limited to custom's charge, duties, taxes, VAT, penalties, freight, insurance and other shipping expenses.

19. **Inspection of Products Prior To Shipment.** Buyer has the right to inspect the Products for quality and product conformance to the Specifications prior to scheduled shipment date from SELLER. Buyer's right to inspect must be exercised in writing within seven (7) days of the scheduled ship date of the Products. If Buyer notifies SELLER in less than this requisite time period, SELLER will make all reasonable efforts in its sole discretion to accommodate Buyer's right to inspect prior to shipment (but this is not guaranteed). In the

event of inspection by Buyer at SELLER's facility, SELLER reserves the right to designate the place within the facility where inspection may be performed and to restrict access to any other areas. The failure to identify any product issues prior to shipment shall presume the Buyer's confirmation of product conformance. Buyer may further inspect upon receipt at its designated location. To the extent that the Products are deemed damaged during shipment or by Buyer after receipt there is no right to a claim against SELLER; *however*, provided the (i) Buyer reports in writing a claim for concealed damage to SELLER within 10 days of receipt of the Products, and (ii) Buyer shall still have as its exclusive remedy hereunder the Limited Warranty for any Products that are deemed to be non-conforming or defective as to the warranty specifications. Buyer's requested rescheduling of shipment of the Products (*i.e.*, push-outs) cannot be greater than 30 days beyond the original requested ship date for the Products, unless mutually agreed in writing.

20. **Receiving Shipment Responsibilities.** The receiver is responsible for safely and correctly receiving shipments. Shipments are carefully packed and secure for normal common carrier transit. If the receiver signs the receiving paperwork (carrier's delivery receipt) to accept a shipment without correctly inspecting for loss or damage prior to receipt, Buyer may not be able to later on recover for concealed damage or loss. When SELLER ships f.o.b. destination, you must immediately contact SELLER prior to signing carrier's delivery receipt if loss or damage is suspect. While SELLER will ship goods under insurance, an insurance claim for damage or shortage filed against a carrier on an incorrectly received shipment is rarely successful. UNDER NO CIRCUMSTANCES WILL SELLER accept responsibility for any shortage or damage on incorrectly received shipments. Unless otherwise noted, delivery is for a single release shipment, standard ground service level, with a single delivery attempt to a shipping dock at a non-residential business address, and receiver will complete all unloading within carrier mandated time limits. SELLER will not accept responsibilities for any charges associated with DELIVERIES MADE OUTSIDE OF SCHEDULE.

21. **Limitation of Liability.** SELLER shall not be liable for any loss or damage caused by delay in furnishing the Products. **IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY OTHER PARTY, UNDER ANY CIRCUMSTANCES, FOR ANY INDIRECT, COLLATERAL, SPECIAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE, TREBLE, EXEMPLARY OR INCIDENTAL DAMAGES SUCH AS LOSS OF CAPITAL, LOSS OF USE, SUBSTITUTE PERFORMANCE, LOSS OF PRODUCTION, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY, REMOVAL AND INSTALLATION COSTS OR ANY OTHER CLAIMS FOR DAMAGES, EVEN IF SUCH LOSSES OR DAMAGES ARE REASONABLY FORESEEABLE, AND EVEN IF THE REMEDIES PROVIDED FAIL OF THEIR ESSENTIAL PURPOSES, AND REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED IN CONTRACT, NEGLIGENCE, TORT, WARRANTY OR ANY OTHER**



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BASIS UNDER OR AS A RESULT OF THIS AGREEMENT OR THE SALE OF THE PRODUCTS, REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY UNDER OR AS A RESULT OF THIS AGREEMENT AND LIMITED WARRANTY EXCEED THE ACTUAL FUNDS PAID FOR THE INDIVIDUAL ITEM OR ITEMS AND NOT THE TOTAL AMOUNTS ACTUALLY PAID BY BUYER FOR ALL PRODUCTS PURSUANT TO THIS AGREEMENT. The Parties agree that the limitations on liability set forth in this Section are independent of any exclusive or limited remedies, and shall survive and apply even if such remedies are found to have failed their essential purpose.

22. Limited Warranty And Exclusive Remedy. SELLER provides Buyer a limited warranty that the Products referenced in this Agreement and delivered to Buyer will at the time of delivery conform to the Specifications and be free from defects in materials and workmanship upon delivery. This Limited Warranty shall only apply to defects that appear or manifest within one (1) year from date of the Invoice. An additional period beyond one (1) year warranty is available if documented in writing on the sales acknowledgment. The value for this Limited Warranty and Seller's liability hereunder is limited to the actual funds paid by Buyer for the individual item or items on the order and is not cumulative. Any modification or repair or attempt to repair the Products by anyone other than an authorized representative of SELLER automatically voids this Limited Warranty. The Buyer understands and agrees that there is no warranty under this agreement, or any UCC claim for those Products sold but not paid for in full. This Limited Warranty will be the exclusive remedy available to Buyer from SELLER for any failure of the Products to conform to the Specifications or for any defect in the Products sold by SELLER or for any defect or nonconformance resulting from any cause whatsoever, including without limitation, SELLER's negligence. This Limited Warranty applies only to Buyer and may not be assigned or extended by Buyer to anyone or in any manner. This Limited Warranty does not extend to any system or module or device into which the Products may be incorporated or installed, and SELLER provides no representation or warranty that its Products will operate as anticipated within any system or module or device or application. The Products are sold AS-IS WHERE IS with all faults, except as otherwise provided by this Limited Warranty and herein. **THIS LIMITED WARRANTY CONSTITUTES BUYER'S SOLE AND EXCLUSIVE REMEDY. SELLER'S sole liability for any breach of the foregoing Limited Warranty shall be for SELLER, at SELLER's sole option, to repair, replace or modify the non-conforming or defective Product, or refund to Buyer the purchase price paid by Buyer for the non-conforming or defective Product. This exclusive remedy will not be deemed to have failed of its essential purpose as long as SELLER is (i) willing and able to replace such defective Product in the prescribed manner or (ii) willing to accept return of such non-conforming or defective Product in exchange for the stated cash consideration. SELLER shall be allowed a reasonable period to investigate any claim relating to non-conforming or defective Products and shall be given access to Buyer's relevant records and data for this purpose. The warranty**

service shall be performed at SELLER's factory (if it occurs at a different non-SELLER location, Buyer shall reimburse SELLER for its reasonable out-of-pocket travel expenses and costs). Whether SELLER is ultimately determined to be at fault for damages under the terms of this Agreement, Buyer specifically accepts and agrees that this Limited Warranty shall be Buyer's exclusive remedy. In order to receive the warranty service provided by this Limited Warranty, Buyer must notify Seller in writing about any claimed non-conforming or defective Product within 10 days of discovery of the suspected defect(s) provided written notice is within the warranty period, and Buyer must return the defective Product to Seller within 30 days of written notification to SELLER by Buyer. If SELLER determines that the alleged non-conforming or defective Products were in fact conforming and/or not defective, Buyer shall reimburse SELLER all costs of handling, transportation and repairs at SELLER's prevailing rates. All non-conforming and/or defective Products returned under the Limited Warranty which are replaced or for which a cash refund is given to Buyer shall become SELLER's property. Buyer's exclusive remedy for any claim under this Limited Warranty shall be further limited by the maximum value of the Products as paid by Buyer. **THERE ARE NO OTHER WARRANTIES OR TERMS. SELLER EXPRESSLY DISCLAIMS ALL AND ANY EXPRESS, IMPLIED, STATUTORY OR OTHER WARRANTIES. THE PRECEDING EXPRESS LIMITED WARRANTY IS THE EXCLUSIVE WARRANTY MADE BY SELLER AND SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS SOLD WHETHER AS TO MERCHANTABILITY, INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SEAWORTHINESS, AIRWORTHINESS OR OTHER MATTER, INCLUDING THAT MIGHT OTHERWISE BE AVAILABLE UNDER APPLICABLE LAW. SELLER WILL NOT, IN ANY EVENT, BE LIABLE TO CUSTOMER FOR COMPENSATORY, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, WHETHER FOR NON-CONFORMING OR DEFECTIVE PRODUCTS, BREACH OR REPUDIATION OF ANY OF THE TERMS OR CONDITIONS, NEGLIGENCE OR ANY OTHER REASON. THIS LIMITED WARRANTY DOES NOT EXTEND TO DEFECTS ATTRIBUTABLE TO: (i) failure or damage arising from ordinary wear and tear, fire, owner or operator abuse, neglect or misuse, owner or operator negligence, accident or mishap, or adverse weather or sea conditions in excess of those for which the product is designed; (ii) failure or damage arising from repairs or alterations performed by any person or entity other than by SELLER; (iii) substandard or incomplete repairs made at the Customer's request and authorized by Customer; (iv) improper installation and/or (v) equipment, parts and components not manufactured by SELLER. These terms and conditions and Limited Warranty sets forth all representations, agreements, understandings, warranties, guarantees, terms and conditions in any way pertaining to the subject matter hereof, whether oral, or written, express or implied, contractual,**



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statutory, arising by operation of law or otherwise, being made by SELLER, all others being expressly waived or excluded.

23. Indemnification. BUYER, BUYER'S HEIRS, SUCCESSORS, AND ASSIGNS AGREE TO RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS, INCLUDING INDEMNIFICATION FOR COSTS AND ATTORNEY'S FEES, SELLER AND SELLER'S OFFICERS, AGENTS AND EMPLOYEES, SELLER'S AFFILIATED ENTITIES, CONSULTANTS, SUPPLIERS, AND THEIR AGENTS AGAINST AND FROM ANY PRESENT OR FUTURE CLAIM OR CAUSE OF ACTION BY CUSTOMER AND/OR THIRD PARTIES FOR INJURY, DEATH, PROPERTY DAMAGE, OR OTHER DAMAGE, ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICE AND MATERIALS PROVIDED BY SELLER EXCEPT WHERE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER. Regarding any claims against SELLER beyond any applicable warranty period, Buyer agrees to defend, indemnify and hold harmless SELLER and any of its affiliated entities including its subcontractors and suppliers, and their agents, consultants and employees from or arising out of all losses, claims, damages, expenses or liabilities of any kind (including attorneys' fees and court costs) regarding, but not limited to, non-conforming or defective products or failure to meet design expectations whether defined or anticipated including, that may arise as a consequence of any claim whether for non-conformance, negligence, or acts or omissions by SELLER, and SELLER's suppliers or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

24. Maritime Lien. BUYER acknowledges that a possessory mechanic's lien exists to secure payment for all invoices for such necessities as defined by Federal Law (46 U.S.C. § 31301), and that Federal Law (46 U.S.C. § 31342) creates a Maritime Lien which may be enforced by a civil action in rem against the vessel receiving the SELLER's Product(s) and/or services. In addition, SELLER may exercise any other means of collection pursuant to 28 U.S.C. § 1333.

25. Security Agreement. This Agreement shall be considered a security agreement by which Buyer grants to SELLER a purchase money security interest in the Products pending payment of all amounts owed by Buyer to SELLER for the manufacture and delivery of the Products to Buyer. Title to the Products shall remain in the sole possession, custody and control of SELLER until SELLER receives payment in full for such Products as set forth on the Invoice. Buyer hereby grants to SELLER a limited power of attorney solely for the purpose of executing a financing statement or other certificate or instrument and filing the same with the appropriate local or state official to perfect SELLER's security interest in the Products pending full and complete payment for such Products. SELLER is authorized to file one (1) or more financing statements relating to all or any part of the Products *without* the signature of Buyer where permitted by law. A photocopy or other reproduction of this Agreement or any

financing statement covering the Products or any part thereof shall be sufficient as a financing statement where permitted by law.

26. SELLER's Intellectual Property. Buyer hereby recognizes that SELLER retains all right, title and interest in: (a) all intellectual property rights in and to the Products; (b) all processes, methods, formula, ingredients, designs, procedures and other practices used by SELLER or relating to the manufacture and sale of the Products, including all intellectual property rights therein and including the use of the Specifications in the manufacture of the Products and any derivative use of the Specifications at any later time for any reason for anyone; and (c) all of SELLER's equipment and tooling used in the manufacture and sale of the Products, including all intellectual property rights therein. Buyer hereby assigns to SELLER all right (including intellectual property rights), title and interest it may now or hereafter possess in and to the SELLER and in any derivative works of and improvements to such SELLER and agrees to execute all documents, and take all actions, that may be necessary to effect such assignment, arising from Seller's products. SELLER is under no obligation to disclose any of the SELLER's technologies to Buyer for any reason.

27. Confidential Information. Buyer agrees that the SELLER Technology and all information furnished hereunder to Buyer regarding or relating to this Agreement by SELLER is proprietary to SELLER and such information shall be held in confidence and shall not be used or disclosed by Buyer without SELLER's prior written consent, except for the fulfillment of this Agreement. Buyer shall enforce against its employees and agents these obligations of confidentiality. Buyer shall return all such information and any copies thereof, or affirm as to the destruction of such information, to SELLER upon termination or cancellation of this Agreement.

28. Complete Agreement. Buyer agrees that this Agreement represents the final complete, integrated, exclusive and entire agreement between Buyer and SELLER and supersedes prior negotiations, representations or agreements, either written or oral. This Agreement represents a complete allocation of risks between Buyer and SELLER. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms of this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by SELLER's acknowledgment or acceptance of any Purchase Order or shipping instruction forms containing terms or conditions at variance with or in addition to these Terms and Conditions set forth herein. This Agreement further supersedes all other proposed terms and conditions submitted by Buyer before, or after, Buyer's acceptance of this Agreement. Furthermore, this Agreement cannot be modified by any future proposed terms and conditions, actions by either Party or authorized and unauthorized representatives of SELLER unless SELLER

agrees, in writing, to be bound by any such proposed terms and conditions.

29. **Choice of Law; Jurisdiction; Suit Limitation.** The validity, interpretation and performance of this Agreement shall be governed by the general maritime law of the United States with respect to the existence and/or enforcement of a maritime lien; and the laws of the Commonwealth of Pennsylvania for all other matters, without giving effect to the conflicts of laws' provisions thereof. Exclusive venue for the resolution of any dispute between SELLER and Buyer shall be in the Montgomery County, Pennsylvania court system with the exception of enforcement of Maritime Liens Courts. Buyer consents to the jurisdiction of the state courts located therein submit to the jurisdiction thereof and waive the right to change or challenge this appointed venue. Buyer further consents to the exercise of personal jurisdiction by any such court with respect to any such proceeding. The Parties waive any right to bring any action in any other forum, whether originally or by transfer, removal, or change of venue. Buyer waives any right to assert any action, regardless of form, arising out of the transactions regarding or related to this Agreement more than one (1) year after the events which gave rise to the cause of action occurred, and, under no circumstances, more than two (2) years after the date of the Invoice. The rights and remedies provided SELLER under this Agreement are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available to SELLER at law or in equity. Buyer shall be liable for all expenses attendant to collection of past due amounts, including all costs and reasonable attorneys' fees. In the event of any dispute regarding the Specifications, the published standards of SELLER as acknowledged in the Sales Order Acknowledgement will control. If any part of these Specifications at issue is not addressed, then the only applicable standard to address and define the applicable standards is ASTM.

No lawsuit may be brought until the parties first submit any and all disputes to non-binding mediation under the auspices of a single Arbitrator from the American Arbitration Association. Jurisdiction shall continue to be limited to Montgomery County, PA. The Buyer's only option is to arbitrate, mediate or prosecute an action in the local Court System.

30. **Export Regulations; Permits.** Buyer will comply with the provisions of the United States Government's Export Administration regulations and related documentation requirements and internal control procedures. As noted herein, Buyer shall be responsible for obtaining any necessary export or import licenses and permits. The Parties expressly waive the application of the United Nations Convention on Agreements for the International Sale of Goods to this Agreement.

31. **Force Majeure.** SELLER shall not be liable for delays in the delivery of the Products, due in whole or in part, directly or

indirectly, to fire, accident, act of God, riot, war, strike, terrorist attack, epidemic, pandemic, civil commotion, shortage of raw materials, , supplies or components, retooling, upgrading of technology, delays of carriers, embargo, government order or directive, or any other circumstance beyond SELLER's reasonable control.

32. **Miscellaneous.** Buyer may not assign this Agreement under any circumstances without the express written consent of SELLER. No breach of any provision hereof can be waived unless in writing signed by the waiving Party. The waiver of a breach of any provision hereof shall not be deemed to be a waiver of any other breach of any provision hereof. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The headings preceding the text of the sections of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. SELLER's failure to deliver, or non-conformity of, any installment of the delivery of the Products pursuant to this Agreement shall not be a breach of this entire Agreement. Buyer will not include or use the SELLER's name in any client list, advertisement, press release or other forms of publicity without the prior written approval and review of SELLER. SELLER may subcontract any of its obligations hereunder at its sole discretion. If any provision of this Agreement is found to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this Agreement shall not be affected. This Agreement may be executed in counterparts and facsimile or Adobe PDF signatures shall be effective as if original.

33. **Routine Maintenance and Inspection.** It is the Buyer's responsibility to arrange for a REGULAR INSPECTION ROUTINE for damage, disfigurement, defects, and/or prohibited alternations to the glass throughout its lifetime. Glass presenting a hazard must be safely discarded. It is the responsibility of the Buyer to insure that REGULAR CLEANING for the glass throughout its lifetime. Acids, alkaline, chemicals, solvents or their fumes, abrasive or sharp objects, or particulate soiled cloths must never be used to clean glass. It is the responsibility of the Buyer to arrange for a REGULAR MAINTENANCE ROUTINE for laminated and/or insulating glass throughout its lifetime. SELLER recommends framing or mounting systems be regularly serviced. Weeps for draining water must be clean and open. Glazing materials must continue to repel moisture and adhere to the glass edge without showing any signs of adhesive failure, cracking, or spongy change in condition. SELLER recommends that Buyer arrange for laminated glass that has open or exposed edges be treated with an approved edge sealant every two (2) years. The attachment of applied films or shades to block heat may trap heat and/or cause glass temperature increases which result in thermal stresses, glass cracking, or delamination and voids liability under the terms of our warrant statement for laminated glass products.