

PACIFIC ARCHITECTURAL PRODUCTS

ADVANCED BUILDING ENVELOPES SINCE 1988

SALES TERMS AND CONDITIONS

1. Scope/Binding Effect. THESE TERMS AND CONDITIONS OF SALE APPLY TO ALL QUOTATIONS AND OFFERS MADE BY AND PURCHASE ORDERS ACCEPTED BY PACIFIC ARCHITECTURAL (“PAP”). TO THE EXTENT THAT THESE TERMS AND CONDITIONS CONFLICT WITH OR ARE DIFFERENT FROM THOSE CONTAINED IN ANY BUYER PURCHASE ORDER OR OTHER PROCUREMENT DOCUMENTS, THESE TERMS AND CONDITIONS WILL CONTROL AND ANY ADDITIONAL OR INCONSISTENT TERMS ARE REJECTED BY PAP. BUYER’S ACCEPTANCE OF OR PAYMENT FOR THE GOODS SHALL CONCLUSIVELY CONFIRM ASSENT TO THESE TERMS.

2. Prices/Payment. Prices are those in effect at the time of acceptance of an order. All prices are in U.S. dollars and, unless otherwise agreed, payment terms are net 45 days from the date of invoice. Amounts not paid when due will bear a late payment charge of 1.5 % per month or the maximum legal rate, whichever is less.

3. Taxes. All prices are exclusive of any sales, revenue, or excise tax, duties, or other similar charges, all of which will be paid by Buyer.

4. Delivery. Unless otherwise agreed to by the parties, delivery in the United States is FOB PAP’s place of business. PAP’s plant, unless otherwise agreed. PAP will follow Buyer’s shipping instructions; absent such instructions from Buyer, PAP will ship by the method it deems most advantageous. Delivery dates are estimates only. PAP will make commercially reasonable efforts to meet specified delivery dates, but will otherwise not be responsible for delayed deliveries.

5. Acceptance. Buyer will accept or reject products within ten (10) days of delivery. Failure to notify PAP in writing of nonconforming products within such period shall be deemed an unqualified acceptance. Any use of the products by Buyer that is not related to acceptance testing shall constitute acceptance.

6. Credit Sales. Prior credit approval and nondelinquent status are necessary before PAP will ship on an open account basis. PAP may at any time, at its sole discretion, require cash in advance, COD, letter of credit, joint check agreement or wire transfer prior to shipment. Shipment is subject to being withheld, or at the option of PAP, canceled, if any amounts are not paid when due or if the financial condition of Buyer is such as to give PAP, in its judgment, reasonable grounds for insecurity concerning the Buyer’s ability to perform its obligations.

7. Security Interest. With respect to any credit sale, Buyer grants to PAP a purchase money security interest in the products sold, and any proceeds thereof, as security for Buyer’s obligation to pay the purchase price and Buyer agrees to execute any financing statement or other instrument required to perfect such a security interest.

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8. Warranty. Products are warranted by the applicable manufacturer. Many of these warranties require that you take additional action as a condition for receiving warranty service. Please review the applicable manufacturer warranty for more details. ALL WARRANTY CLAIMS SHOULD BE SUBMITTED TO THE MANUFACTURER. PAP MAKES NO WARRANTY, SELLS ALL PRODUCTS “AS IS”, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

9. Limitation of Liability. IN NO EVENT WILL PAP BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED FROM ANY CAUSE OR ARISING OUT OF ANY LEGAL THEORY, WHETHER CONTRACT, NEGLIGENCE, STRICT TORT LIABILITY, OR OTHERWISE. IN NO EVENT SHALL PAP BE LIABLE TO BUYER IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE SUBJECT PRODUCT. THESE LIMITATIONS INCLUDE ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS. BUYER AGREES TO PROCURE SUCH INSURANCE, IF ANY, AS IT DEEMS APPROPRIATE TO COVER SUCH CLAIMS. ANY LAWSUIT BY BUYER AGAINST PAP SHALL BE FILED WITHIN ONE YEAR FROM DELIVERY OF THE SUBJECT PRODUCT BY PAP. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OR OF ANY LIMITED REMEDY PROVIDED HEREIN.

10. Force Majeure. PAP will not be responsible for delays caused by acts of God, fires, floods, strikes, accidents, delay by suppliers of material or shortages of material, inability to obtain necessary labor or manufacturing facilities, or other causes beyond its reasonable control.

11. Confidentiality. Proposals, drawings, specifications and technical data furnished to Buyer by PAP will: (i) be retained in confidence; (ii) remain the exclusive property of PAP; (iii) not be disclosed by Buyer to third parties or used in any manner not authorized by PAP; and (iv) be returned to PAP upon request.

12. Disputes. The rights and liabilities of the parties arising out of or relating to this agreement will be governed by the laws of the state of Oregon; venue in any lawsuit between the parties will lie exclusively in state or federal courts in Portland, Oregon, USA, excluding choice of law rules and excluding the U.N. Convention on International Sales of Goods; and the prevailing party in such litigation will be entitled to recover all reasonable attorneys’ fees and other expenses (in addition to statutory “costs” of litigation), including attorneys’ fees and expenses in connection with any trial, appeal, or petition for review.

13. ENTIRE AGREEMENT. THIS IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES. IT SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS, UNDERSTANDINGS, OR REPRESENTATIONS WITH RESPECT TO THE SUBJECT MATTER HEREOF. THIS AGREEMENT MAY NOT BE MODIFIED OR AMENDED EXCEPT IN WRITING SIGNED BY BOTH PARTIES.