

Element Architectural Products, LLC

Sales Terms and Conditions

- 1. Scope/Binding Effect.** THESE TERMS AND CONDITIONS OF SALE APPLY TO ALL QUOTATIONS AND OFFERS MADE, AND PURCHASE ORDERS ACCEPTED, BY ELEMENT ARCHITECTURAL PRODUCTS, LLC ("EAP"). 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 EAP. 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 thirty (30) days from the date of invoice. Amounts not paid when due will bear a late payment charge of one and one-half percent (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, and are the responsibility of, the Buyer.
- 4. Delivery.** Unless otherwise agreed to by the parties, delivery in the United States is FOB EAP's place of business in Addison, Dallas County, Texas, or if agreed to between the parties, at the applicable manufacturer's plant. EAP will follow Buyer's shipping instructions; absent such instructions from Buyer, EAP will ship by the method it deems most advantageous. Delivery dates are estimates only. EAP will make commercially-reasonable efforts to meet specified delivery dates, but will otherwise not be responsible for delayed deliveries. Buyer acknowledges that Distributor may not keep Products in stock, and that a manufacturer's production process lasts approximately eleven (11) weeks. Accordingly, Buyer shall submit orders at least ninety (90) days in advance of the needed use, and Buyer shall not expect any delivery before the 90-day period expires.
- 5. Acceptance.** Buyer will accept or reject Products within ten (10) days of delivery. Failure to notify EAP in writing of non-conforming 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 non-delinquent status are necessary before EAP will ship on an open account basis. EAP may at any time, and 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 EAP, canceled, if any amounts are not paid when due, or if the financial condition of Buyer is such as to give EAP, 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 EAP 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.

8. Limitation of Liability. IN NO EVENT WILL EAP 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, STATUTORY CLAIM OR OTHERWISE. IN NO EVENT SHALL EAP 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 EAP SHALL BE FILED WITHIN ONE (1) YEAR FROM DELIVERY OF THE SUBJECT PRODUCT BY EAP. THESE LIMITATIONS SHALL APPLY, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE, OR OF ANY LIMITED REMEDY PROVISION PROVIDED HEREIN.

FURTHERMORE, IN NO EVENT SHALL EAP BE LIABLE TO CUSTOMER, OR TO ANY THIRD-PARTY, FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL EAP'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO EAP PURSUANT TO THIS AGREEMENT INCLUDING PURSUANT TO THE APPLICABLE ORDER CONFIRMATION.

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

10. Disclaimer of Warranties. EAP MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS BEING PURCHASED, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; AND/OR, (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. 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. EAP MAKES NO EXPRESS WARRANTY OF ANY KIND, SELLS ALL PRODUCTS "AS IS", AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

11. **Termination.** In addition to any remedies that may be provided for under this Agreement, EAP may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer:

fails to pay any amount when due under this Agreement as and when such payment becomes due;

has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; and/or,

becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

12. **Insurance.** During the term of this Agreement, Buyer shall have sufficient insurance for liability purposes.

13. **Waiver.** No waiver by EAP of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by EAP. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. **Force Majeure.** EAP shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of EAP including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that if the event in question continues for a continuous period in excess of ninety (90) days, Buyer shall be entitled to give notice in writing to EAP to terminate this Agreement.

15. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of EAP. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. EAP may subcontract or assign its obligations to one or more alternate suppliers, if necessary to insure delivery of the ordered Product, who must comply with the obligations of EAP under the terms of this Agreement. EAP may, with the permission of a manufacturer, assign a manufacturer's warranty for the Product to Buyer, which in all events will be the only Product Warranty upon which Buyer shall have any right to rely.

16. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship

between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

17. **No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

18. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule, whether of the State of Texas or any other jurisdiction that would cause the application of the laws of any jurisdiction other than those of the State of Texas not to apply.

19. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in a United States federal court, a Texas state court, a Dallas county court, and/or the City of Addison municipal court, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. **Notices.** All notices, requests, consents, claims, demands, waivers and/or other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth in the Order Confirmation or this Agreement on the signature pages, and to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally-recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), and/or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

21. **Binding Effect.** Except as otherwise provided herein, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors, and permitted assigns.

22. **Survival.** Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement, including, but not limited to, the following provisions: Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.

23. **Amendment and Modification.** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement, and is signed by an authorized representative of each party.

24. **Representations of Persons Signing this Agreement.** Each of the persons signing this Agreement on behalf of each of the parties hereto hereby represents and warrants that he or she has the authority from the respective party to execute this Agreement on behalf of said party, and has full right, power and authority under the internal regulations of that party to execute this Agreement on behalf of that party as the act and deed of said party.

25. **Prior Agreements Superseded.** This Agreement constitutes the sole and only agreement of the Parties, and supersedes any prior understandings or written or oral agreements between the Parties, respective of the subject matter of this Agreement.

26. **Severability.** If any paragraph, sentence, term, provision, or clause of this Agreement or the application thereof with reference to either party hereto or under any circumstances shall be held invalid or unenforceable, the remainder of the Agreement or the application of such paragraph, sentence, term, provision, or clause to the other party or under circumstances, other than those as to which it is held invalid, shall not be effected thereby. The parties hereto do hereby further expressly agree that any such determination of invalidity shall operate only prospectively, and not retroactively, and shall not affect any of the rights which became vested by performance hereunder prior to such determination.