

1. GENERAL

- a. These General Sales Terms and Conditions (Terms and Conditions) shall be the sole terms and conditions governing all offers and sales of goods (Products) manufactured, provided, or otherwise supplied by Alflex, LLC (Seller) to the purchaser (Customer). All offers and sales of products are expressly conditioned on Customer's acceptance of these Terms and Conditions. Customer agrees that any of the following definitively constitute Customer's acceptance of these Terms and Conditions: (i) Customer issues a written Purchase Order or other similar instructions to Seller for the delivery of any Products covered by any sales document to which these Terms and Conditions are either attached, included, or incorporated by reference, and made available to Customer by any communications medium including, but not limited to, quotations, price lists, proposals, email, faxes, references to website, brochures, color charts, samples, or (ii) Customer either accepts delivery of any such Products, installs any such Products, or pays for any such Products.
- b. The identity of Customer, the identity of the Products being purchased, the quantity of Products being purchased, the destination for delivery of the Products, and other material information concerning Customer's order shall be set forth in Customer's Purchase Order (Purchase Order) and provided in writing to Seller. These Terms and Conditions are hereby incorporated into and made a part of each such Purchase Order. These Terms and Conditions may not be amended or rescinded except with the written agreement by both parties, referring expressly to these Terms and Conditions and in accordance with all provisions set forth herein.
- c. Nothing stated on Customer's Purchase Order or other Customer documentation conflicting with or deviating from Seller's Terms and Conditions shall be binding on Seller unless expressly agreed in writing by Seller. Any pre-printed or form language appearing in Customer's Purchase Order or other communication from Customer that contains terms or conditions in addition to or inconsistent with these Terms and Conditions, shall not apply to the purchase of any Products by Customer or be used to waive, modify, vary, explain or supplement all or any part of these Terms and Conditions and are hereby objected to and rejected by Seller, unless expressly agreed upon in writing by Seller.
- d. Seller's employees are not authorized to make additional or different oral agreements or provide oral promises that extend beyond the Terms and Conditions stated herein.

2. ACCEPTANCE OF ORDERS

- a. All orders are subject to approval and acceptance by a duly authorized representative of Seller. Upon the earlier of Seller's written acceptance of the Purchase Order or acceptance by Customer of Products furnished by Seller in response to such Purchase Order, the Purchase Order, the written acceptance, if any, and these Terms and Conditions and Seller's Confirmation of Order Form (Customer Acknowledgment), as applicable, shall be the complete and final agreement (Agreement) between Seller and Customer with respect to the purchase and sale of Products identified in the Purchase Order.
- b. Seller's acceptance of Customer's Purchase Order is strictly made upon Customer's acceptance to Seller's terms and conditions. It is the responsibility of the Customer to review these Terms and Conditions incorporated herein prior to placing any order and to either sign the sales agreement, send an electronic signature accepting the Agreement, or email a confirmation of acceptance of the Agreement. Placing an order for Seller's Products constitutes acceptance of these Terms and Conditions.
- c. The acceptance of orders constitutes a complete and binding contract which cannot be modified or canceled without written consent of Seller, except that all orders are accepted subject to delays or cancellations due to shortage of materials, delays in carriers, embargos, strikes, fires, floods, riots, wars, acts of God, or any other causes beyond the control of Seller. All orders are accepted subject to governmental regulations on material usage, whenever applicable.

3. PRODUCT

- a. Customer agrees and understands that that Product(s) will be produced within tolerances to meet published specifications for a specific project and that subsequent orders will be subject to normal variations between paint production batches, production lots, widths, and product configurations.
- b. Customer agrees to follow purchasing and installation guidelines to minimize the potential for optical differences as mentioned above.
- c. Customer agrees and understands that Product surface appearance may change during fabrication and installation typical of each product. Anodized metal may craze before, during, or after installation. This natural occurrence does not diminish the performance or value of the Products.
- d. Customer is solely responsible for proper selection and installation of Seller's Products. It remains the responsibility of the Customer to confirm the compliance of the product with applicable local, state and national codes and other laws or regulations. Seller shall not be liable for any results obtained or damages incurred from the use of any technical advice or recommendations given by Seller or its employees or agents to the Customer.

4. PRICING

- a. All pricing and proposals are valid for a period within 30 days of the date of transmission to Customer ONLY, unless a specific expiration date is given, and is subject to change after 30 days without notice until a signed Purchase Order is received and acknowledged. Any delays in award due to changes or other causes beyond the control of Seller may require updated pricing.
- b. The prices contained in any quotation or price list by Seller are based on the conditions contained herein. In the event of a conflict between these Terms and Conditions and the contract documents, the terms herein shall govern. Any conflicts between the contract documents and these Terms and Conditions should be reviewed by Customer and brought to the attention of the Seller for evaluation of potential cost impact before acceptance.
- c. Seller and Customer agree that prices are based on market conditions on the date of any tendered proposal and are subject to change by Alflex, without prior notice to the Customer.
- d. The purchase price may not include such taxes, fees, and charges, and Seller reserves the right to separately invoice Customer for all applicable taxes, fees, and charges. Customer agrees that these amounts shall be immediately due and payable. Customer will not have the right of offset against the purchase price of any Products nor the right to back charge any agreement or sales document unless Seller has given its prior written consent.

5. DELIVERY

- a. Seller will use reasonable efforts to meet communicated delivery dates as deemed approximate.
- b. Seller will endeavor to produce Product(s) in quantities as close as possible to those stipulated in Customer's Purchase Order yet reserves the right to ship and bill an allowed percentage +/- on production based on the material and ordered quantity
- c. All orders will ship closed freight trailer unless otherwise directed by Customer.
- d. The standard freight terms for material shipments from Seller to Customer are F.O.B Origin (Freight on Board, location of shipment, freight prepaid and add). Title to the Products sold and assumption of all risk of loss from theft, casualty, or other causes transfers to Customer once Products have shipped from Seller.
- e. Orders should include complete shipping instructions. Seller reserves the right, for Customer's sole account, to ship as it deems advisable unless specific instructions are given.
- f. For Customer arranged pickups of Products, Customer is responsible for arranging for freight and insurance from Seller's location to Customer's destination.
- g. If freight shipments to the delivery location are included in this Proposal, then any shipments above the quantity stated shall be additionally paid by the Customer.
- h. Some Products may be shipped and delivered DDP (Delivered Duty Paid) to Customer's facility at which time all risk of loss for Products passes to Customer upon delivery. All Products held by Seller as a result of Customer's inability or refusal to accept delivery will be held at Customer's risk, cost, and expense. Customer assumes all obligations and risks of an absolute owner and agrees to indemnify and hold harmless Seller from any loss or damage or claim for loss or damage to persons or properties caused by reasons of the use or possession of the Products. Title to the Products will pass to Customer upon Seller's receipt of payment of invoices for the Products.
- i. Customer hereby grants a priority lien on the Products and the proceeds until all obligations of Customer to Seller are paid in full. Upon the failure of Customer to pay the purchase price for any Products when due, or to perform any of Customer's obligations under these Terms and Conditions, Seller will have all rights and remedies under the Uniform Commercial Code of the State of Georgia and any other applicable law.

6. INSPECTION AND CLAIMS

- a. Customer is responsible for inspecting Products immediately upon delivery and notifying Seller in writing of any damaged or defective Products within five (5) days after receipt of the shipment. Otherwise, it will be conclusively presumed that the Products are free from any and all defects.
- b. The Customer is responsible to file and process all freight claims for materials damaged during shipment from Seller to the delivery location. It is recommended that all deliveries should be inspected and documented with photographs by the Customer for damaged materials before accepting shipment.
- c. Claims for damages resulting from delays or use of defective materials will not be honored.

7. PAYMENT

- a. Seller stated payment terms are Net 30 days, unless customer has approved terms in advance. Early payment discounts are available. Customer's credit status shall be cause for delay or cessation of deliveries. Credit status is solely determined by Seller.
- b. If Customer fails to make any payment when due, then (i) interest accrues at the lower of 1.5% per month and the maximum amount allowed by applicable law from the date the payment was due until Seller receives payment in full, and (ii) Seller may, in its sole discretion, take any of the following actions: suspend performance with respect to Customer or any Customer-affiliate; terminate for default any outstanding sales or accepted proposals; require Customer to pay the full price on any outstanding payment; and take any other actions or pursue any other remedies under applicable law. Seller's failing to charge interest on late payments or to exercise Seller's right to suspend performance is not a waiver of any legal or equitable remedies.
- c. Customer agrees that Seller will not accept deductions against payment of invoices for any reason unless specifically agreed to by Seller in writing and authorized by issuance of a credit to the Customer's accounts payable by Seller.
- d. Customer agrees to make final payment before Seller will release warranties and unconditional lien waivers.
- e. Customer accepts that Seller will not accept Retention.
- f. If Customer fails to pay any amount due to Seller when due, fails to observe or perform any of its other obligations under these Terms and Conditions, takes any action that in Seller's opinion adversely affects the name, reputation, or goodwill of Seller or its Products, or becomes insolvent, is adjudicated as bankrupt, voluntarily files or permits the filing of a petition in bankruptcy, makes an assignment for the benefit of creditors, seeks any similar relief under any bankruptcy laws or related statutes, or a receiver is appointed for its assets, then, at Seller's sole option, all sums due or to become due from Customer to Seller will become immediately due and payable, and concurrently, Seller may terminate any existing order between the Parties in whole or in part, defer shipment or delivery of any Products, sell any part of any undelivered Products, and exercise any other remedies available to Seller under applicable-law.

8. WARRANTIES

- a. **LIMITED WARRANTY:** Seller warrants that its Products shall be free from material defect in materials and workmanship, under normal use and service and if properly installed, for a period of two (2) years either from the date of substantial completion of the project or the date of shipment from the Seller to Customer, whichever occurs first. This limited warranty shall only be in effect if Customer provides Seller with a written notice of any possible defect within thirty (30) days of the discovery thereof under reasonable inspection and diligence, and does not apply if, in the sole judgment of Seller, any of the following has occurred: alterations, improper storage, neglect, or damage caused by others, or any abnormal use or abuse, whether intentional or accidental. With respect to limited warranty claims, at the sole discretion of the Seller, the portion of the Product not conforming to this warranty shall be refunded at the purchase price, repaired, or replaced at no cost to the Customer.
- b. Seller is not liable for any third-party design, engineering, or installation services or products, including, without limitation, any building wall system into which the Products are incorporated.

- c. **PRODUCT WARRANTIES:** Notwithstanding anything to the contrary contained herein, any standalone written warranty or warranty addendum separately issued by Seller specifically for the Products delivered shall be incorporated herein as if a part of the terms hereof. No standalone written warranties or addendums shall be issued, or have force or effect, until Seller receives payment in full for the delivered Products.
 - d. **SELLER SHALL HAVE NO LIABILITY TO CUSTOMER (OR ANY PERSON OR ENTITY CLAIMING THROUGH CUSTOMER) FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LIQUIDATED DAMAGES, WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE. CLAIMS FOR LOST PROFITS, FOR LOSS OF REVENUE, OR FOR INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARE HEREBY WAIVED BY CUSTOMER.**
 - e. **MAXIMUM LIABILITY OF SELLER SHALL NOT EXCEED THE VALUE OF PHYSICAL PRODUCT MATERIALS EXCEPT AS OUTLINED IN STANDALONE PRODUCT SPECIFIC PRODUCT WARRANTY, OR STANDALONE WARRANTY ADDENDUM ISSUED BY SELLER TO CUSTOMER. IN NO EVENT WILL SELLER BE LIABLE TO CUSTOMER, CUSTOMER'S CONTRACTORS, CUSTOMERS OR ANY OTHER PERSON OR ENTITY FOR THE COST OF SUBSTITUTE GOODS OR SERVICES.**
9. **INDEMNITY:** Except if a claim arises only as to injury, death or property damage proximately and solely caused by the negligence or willful act or omission of Seller, Customer shall indemnify, defend and hold harmless Seller, its owners, officers, directors, employees and agents from any and all claims, actions, suits, damages, liabilities, costs, obligations, and expenses (including, for example, attorneys' fees, consultants' fees, and expert witnesses' fees) (collectively "claims") arising from or relating to any act or omission of Customer or Customer's agents, employees, assignees, sublees, or invitees, or arising from or relating to Customer's failure to perform its obligations hereunder. This includes but is not limited to (i) selection, application, use, or incorporation of Seller's Products, (ii) processing or modifying Seller's Products (iii) violation, misappropriation, or infringement of any patent, trademark, copyright or other intellectual property rights of any person or entity related to compliance with Customer's design, specifications or instructions, (iv) Product use or misuse by Customer and exceeding Seller's specifications or any applicable law and/or regulation(s), (v) any breach of warranty or misrepresentation (express or implied) made by Customer, its employees or agents, and (vi) any violation of law or regulation by, intentional or negligent act of, or unauthorized representation by Customer, its employees or agents, in their marketing activities, sales, distribution or handling of Products. **FORCE MAJEURE:** Seller will not be liable for any delay or failure in performance of any order, in the delivery or shipment of any Products or for any damages or losses suffered by Customer or any third party which are caused by, or in any manner arises from, directly or indirectly, in whole or in part, including, but not limited to, an act of God, a governmental act, order or regulation, a domestic or international problem such as a riot, war, act of terrorism or insurrection, strike, fire, flood, earthquake, explosion, lockout or embargo, or any criminal activities of third parties, delays or interruptions in transportation, or any other causes beyond Seller's control. Upon any such delay or failure Seller may, in its sole discretion and without any liability to Customer, delay the performance of, partially perform, or cancel any affected order in whole or in part.
10. **FORCE MAJEURE:** Seller will not be liable for any delay or failure in performance of any order, in the delivery or shipment of any Products or for any damages or losses suffered by Customer or any third party which are caused by, or in any manner arises from, directly or indirectly, in whole or in part, to any cause not in Seller's reasonable control. Force Majeure shall include but is not limited to an act of God, a governmental act, order or regulation, a domestic or international problem such as a riot, war, act of terrorism or insurrection, strike, fire, flood, earthquake, explosion, lockout or embargo, delay of carriers, inability to obtain or unusual delay in obtaining fuel, power, labor, shipping containers, transportation, or other materials necessary to operate Seller's facility and to produce Products. Upon any such delay or failure Seller may, in its sole discretion and without any liability to Customer, delay the performance of, partially perform, or cancel any affected order in whole or in part.
11. **GOVERNING LAW AND DISPUTE RESOLUTION**
 - a. This agreement shall be construed under and any claims brought thereto shall be decided under the laws of the State of Georgia excluding its laws related to the choice or conflicts of law.
 - b. At Seller's sole election, any claim or dispute arising out of or in connection with the Products shall be subject first to mediation and then, at Seller's sole election either to 1) arbitration under the Construction Industry Rules of the American Arbitration Association or 2) litigation as provided below. In the instance of such election, Customer agrees that its arbitration may be consolidated with any other arbitration in which Seller is or could be involved arising from the Products or sale thereof, at Seller's sole election. Unless decided otherwise by both parties, the venue for any arbitration shall be in the Atlanta, Georgia offices of the American Arbitration Association and Customer consents to venue in that forum.
 - c. In the event Seller does not elect to arbitrate, Customer agrees to submit irrevocably and unconditionally to the exclusive jurisdiction of the state and federal courts located in the state of Georgia to resolve any disputes relating to this Agreement.
 - d. The prevailing party in either dispute resolution forum shall be entitled to recovery from the other of its reasonable attorneys' fees and costs (including all costs of the arbitration, if arbitrated).
 - e. If Seller becomes involved in dispute resolution processes with other parties related to the sale of the Products that involve Customer's work or knowledge, Customer agrees, at no charge other than reasonable copying costs and travel costs, to provide all documentation and truthful testimony requested by Seller to be provided.
12. **SUCCESSORS AND ASSIGNS; SEVERABILITY:** These Terms and Conditions will be binding upon the Seller and Customer and their respective successors and assigns; provided, however, that Customer may not assign or otherwise transfer (whether by operation of law or otherwise) any of Customer's rights or obligations hereunder without Seller's prior written consent, which consent may be withheld in Seller's sole discretion. If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of these Terms and Conditions will remain in full force and effect.

13. ORDER CANCELLATION, CHANGE ORDERS, PRODUCT RETURNS

- a. Either Seller or Customer may terminate this Agreement upon seven (7) days written notice to the other party.
- b. In such event of full or partial order cancellation, Customer agrees to pay for all ordered materials and other costs incurred in fulfilling that portion of the order changed or cancelled up to the time Seller receives notice of the change or cancellation.
- c. All sales of Seller's Product are final. All Product return requests from Customer will be evaluated on a case by case basis and must be authorized in advance by a company officer of Seller in writing. Product return requests must be transmitted by Customer to Seller within ninety (90) days of receipt of Product. Authorized returns must be completed within thirty (30) days of receipt of written authorization from Seller. Product return requests will not be considered for discontinued or non-standard configurations including but not limited to non-standard colors, widths, lengths, core thicknesses, or metal substrates.
- d. Authorized return requests will be assigned a return authorization number by Seller and must be clearly marked on all pallets, packaging, and documentation by Customer. It is the responsibility of the Customer to properly package Product to prevent damage during transportation, make all transportation arrangements, and pay for related freight charges.
- e. All returned Product will be inspected upon arrival for damage and remain subject to subsequent inspections. Standard Product returns will be levied restocking fees as a percentage of the original Product purchase amount, Ex-Works Seller, in the amount of 15% for unopened pallets, or 25% for opened or repackaged pallets. The total monetary value, net stocking fees, for authorized Product returns must be agreed upon in writing prior to Product return transportation to Seller. The original purchase price value of Product damaged during return transportation, or deemed unviable for commercial resale, will be deducted from the final amount to be credited to Customer by Seller. The net value of authorized Product returns will be issued to Customer by Seller in the form of a credit to their accounts payable.