

## AVALON GLASS & MIRROR CO. STANDARD TERMS AND CONDITIONS

**1. Terms and Conditions Govern.** All sales by Avalon Glass & Mirror Co. a California corporation, and/or its divisions or subsidiaries (hereinafter alternatively referred to collectively as "Avalon" or "Seller" to any buyer ("Buyer")) shall be governed exclusively by these Avalon Glass & Mirror Co. Standard Terms and Conditions ("This Agreement"). The provisions of all purchase orders from Buyer, except for the quantity and description of the goods, shall be deemed null and void. All sales are final. No agreement between Avalon and Buyer shall create a third party beneficiary agreement. No general contractor or other third party may rely upon performance of This Agreement by Avalon.

**2. Price.** No verbal quotations shall be binding, until or unless confirmed by Avalon in a written quotation, confirmation, or invoice and then the provisions of This Agreement shall constitute the sole, exclusive, and entire agreement. Unless otherwise specified in writing and signed by an officer of Seller, a written price quote ("Quote") is valid for a period of 90 days subject to Seller's right to withdraw the Quote if the price is affected by circumstances beyond Seller's control. The reference number on the Quote must appear on Buyer's Purchase Order to receive the quoted price. Seller will not assume the costs for items or methods not specifically indicated on the Quote. Price is subject to final review and specifications at the time of order. Yields may affect pricing at the time Buyer's order is placed and/or released for production. Energy surcharge is a variable factor adjusted quarterly and will be charged at the rate in force at the time this Purchase Order is received.

**3. Taxes.** Prices on the products specified herein are exclusive of all taxes and other levies of taxing authorities, including, but without limitation, taxes on manufacture, sales, receipts, occupation or use. Wherever applicable as determined by Seller, such tax or taxes will be added to the purchase price as a charge to be paid by Buyer. Buyer is responsible to pay any taxes and any customs duties, fees, and tariffs. In the event Seller is required to pay any such taxes, Buyer shall immediately reimburse Seller.

**4. Delivery.** Delivery or shipping dates, if any, set forth in the Purchase Order are approximate only, non-binding and merely represent Seller's best estimate of the time required to make delivery or shipment. Yields and availability of some products may affect delivery dates at the time Buyer's order is placed and/or released for production. Seller's obligations hereunder may also be dependent upon Seller's ability to obtain the necessary raw materials, parts and other components. Seller will not be liable for any loss or expense (consequential, liquidated or otherwise) incurred by Buyer or Buyer's end customers as a result of any delay in delivery for any reason other than arbitrary refusal by Seller to perform. Delivery is subject to compliance with all U.S. export rules and regulations and Buyer shall comply with the foregoing, including providing all necessary information, documents and certifications required by law. **Buyer is cautioned to make allowance for delays. SELLER shall not be liable to Buyer, nor to anyone else, for delays regardless of the cause of the delays.**

**5. Inspection and Acceptance.** Buyer shall inspect each order of products upon receipt thereof. If Buyer determines that a product is nonconforming or defective (a "Rejected Product") (provided that such non-conformity or defect did not result from damage caused after shipment by Seller), then Buyer shall deliver written notice to Seller by the 2<sup>nd</sup> day following receipt of the product setting forth the alleged reason for the Rejected Product, date of purchase, date of receipt, and invoice number. Buyer shall return the Rejected Product at its cost to Seller. Unless Buyer provides Seller with such written notice by such 2<sup>nd</sup> day, then such products shall be deemed finally inspected and accepted by Buyer. If Seller examines such Rejected Product to its satisfaction and determines that such damage or defect exists, and was not caused by the negligence, misuse, improper storage, or other accident of Buyer or any third party, then Seller shall replace such Rejected Product or issue a credit for the sales price of such Rejected Product. Any claim of Buyer related to damage during shipping or delivery should be made directly to the carrier (unless delivery was made by Seller). Seller's invoice or shipping list delivered with the products, when signed by any employee of Buyer, shall be deemed accurate and binding on Buyer, and an acceptance of the products.

**6. Payment.** Unless otherwise agreed in writing by Seller, Buyer shall submit, with each Purchase Order, payment in full of the

invoice price for the Purchase Order plus anticipated shipping, sales, use, excise or similar taxes and anticipated customs duties, imposts, tariffs or other charges for such Purchase Order. All payments shall be made in U.S. Dollars. If Seller expressly agrees in writing to "net 30 day payment," payment for goods purchased hereunder shall be net 30 days from the date of the applicable invoice. All orders are subject to approval of Seller's credit department. Seller may, at any time, require payment in advance or satisfactory security for payment of an invoice when due. Buyer will not withhold payment or the purchase price of products or any other amount payable to Avalon in connection with this document in the event of a dispute between Buyer and Seller.

**7. Freight.** Buyer shall specify the mode of delivery in Buyer's Purchase Order. Avalon will replace any product(s) damaged during the delivery of product(s) using Avalon' vehicles. Avalon shall not be responsible for loss, damage, or delay caused by Buyer's use of contract or common carriers. Buyer will be responsible for filing and recovering on any and all freight damage claims. Buyer is responsible for discovering concealed freight damages. Avalon will not be responsible for such damage. Risk of loss shall transfer to Buyer upon delivery of goods to a common carrier, to Buyer's place of business, to Buyer's employees or agents, to a job site, or to any other location specified by Buyer.

**8. Product Suitability.** Buyer is solely responsible for determining whether a product purchased from AVALON is suitable for Buyer's needs or application. Avalon makes no warranties regarding suitability of product(s) for Buyer's needs. Avalon will not, by responding to requests for or otherwise providing information or opinions, assume any responsibility for the design or suitability of the Buyer's product(s) in the proposed application. Buyer will at all times be responsible for determining the suitability of Avalons' or Avalons' affiliates' information, opinions, processes, products and services for use in Buyer's own applications and for identifying and performing to the Buyer's satisfaction all quality control tests and analyses necessary to assure that the Buyer's products and services will be safe, acceptable and suitable for use under end-use conditions.

**9. Default by Buyer.** If Buyer fails to pay the purchase price or any other sums in full when due, or if Buyer fails to observe, keep or perform any other provision of these Terms and Conditions, Seller shall have the right to exercise any one or more of the following remedies: (a) withhold further deliveries; (b) terminate any and all contracts with Buyer upon oral or written notice; (c) recover all sums then accrued or thereafter accruing, under the Purchase Order; (d) take possession of any or all products without demand or notice, wherever same may be located, without court order or process of law, and Buyer hereby waives any or all damage occasioned by such taking of possession; and/or (e) pursue any other remedy at law or in equity (without bonding therefor), including, but not limited to, recovering loss of profit damages and all damages resulting from the condition of the products and Buyer's breach. Buyer authorizes Seller to offset against any amount which Seller owes to Buyer, any amount which Buyer owes to Seller. All amounts that are not paid when due bear interest at the rate of 1.5% per month. Buyer shall be liable for all collection costs, including reasonable attorneys' fees and costs, and costs of any collection service. All such remedies are cumulative, and may be exercised separately or concurrently.

**10. Warranty. THERE ARE NO EXPRESS WARRANTIES EXCEPT AS SET FORTH IN THESE TERMS AND CONDITIONS AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WITH REGARD TO PRODUCTS SOLD BY AVALON, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Unless otherwise limited or extended by Avalon in writing, products sold by Avalon are warranted to be free from manufacturing defects for one (1) year from date of shipment to Buyer. The sole obligation of Avalon under this warranty is to repair, or at its option, replace defectively manufactured product(s) without charge to Buyer within the warranty period. No other remedies are available. **NO WARRANTY IS MADE BY AVALON WITH RESPECT TO:** (a) Defectively manufactured product(s), notice of which is not provided within the applicable warranty period; (b) Failure of the product(s) due to misapplication, lack of proper maintenance, improper installation, failure to follow technical literature or instructions, abnormal conditions of temperature,

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moisture or dirt, rough handling, job site/ mirror or glass cleaning scratching or other abuse, mirror breakage, tampering, neglect or any reason not related to defects in material or workmanship of the relevant product(s); (c) Failure due to improper design by the engineer or architect; (d) Failure due to product(s) subjected to additional fabrication (e.g. grinding, drilling, sandblasting, etc.); (e) Glass/Mirror breakage of any kind. Avalon shall not be liable for any expenses of the Buyer incurred in an attempt to correct any allegedly defective product without first obtaining written permission from an authorized Avalon representative authorizing the correction(s) within cost parameters agreed between the parties. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL AVALON BE LIABLE TO BUYER IN ANY MANNER OR TO ANY EXTENT, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OR WHETHER BASED ON CONTRACT, TORT, STRICT OR PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, EXCEPT AS PRECLUDED BY LAW. SUCH EXCLUDED INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES INCLUDE LOSS OF PROFITS, EXPENSES, LOSS OF PRODUCTION, LOSS OF USE, DAMAGE TO PROPERTY, AND ANY OTHER INDIRECT DAMAGE OR LOSS OF ANY KIND OR CHARACTER BY OR TO BUYER OR BUYER'S CUSTOMERS.**

**11. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of California. Any suit, whether arising from contract, tort, or otherwise, must be brought in the Los Angeles Superior Court, Central District, or in the Federal District Court in Los Angeles.

**12. Indemnity.** Buyer shall indemnify, defend and hold Seller and its affiliates, directors, officers, agents, servants, employees, successors and assigns against, and hold them harmless from any and all claims, actions, suits, procedures, costs, expenses, damages, losses and liabilities, including actual attorney's fees and costs arising out of, connected with, or resulting from any of Seller's products following their shipment (including, without limitation, the delivery, possession, use, storage, and sale of the products) or breach of these Terms and Conditions or any Purchase Order by Buyer.

**13. Waiver.** Waiver by Seller of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right.

**14. Force Majeure.** Seller shall not be liable for any failure to perform its obligations hereunder if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, delay or interruption in shipment, compliance with import and exports regulations, or other cause beyond its reasonable control.

**15. COLLATERAL RECOVERY.** If Seller seeks to recover payment from a collateral source, pursuant to Division 4, Part 6 (*Work of Improvement*) of the California Civil Code (for example, against the owner of real property on a Mechanic's Lien claim), Seller shall only be required to credit against Buyer's account the net amount recovered after deducting costs and actual attorneys' fees incurred. Furthermore, in the event that Seller is unsuccessful in its attempt to recover from a collateral source, Seller's reasonable costs and reasonable attorneys' fees incurred in the unsuccessful attempt shall be added to Buyer's account. For purposes of proceeding against a collateral source, all unpaid invoices for that Work of Improvement shall be deemed immediately due and payable.

**16. PERSONAL GUARANTY.** If a personal guaranty has been executed as part of a Credit Application, the following constitute the terms of the Guaranty: Guarantor jointly and severally personally guarantees payment of all present and future indebtedness of Buyer to Seller including all renewals and extensions of such indebtedness. Guarantor waives all notices from seller and waives the right to require Seller to proceed against Buyer. Guarantors waive the benefit of any limitations affecting their liability hereunder or the enforcement thereof to the extent permitted by law. Guarantor agrees that Guarantor's personal guaranty shall not be deemed to

be suspended, stayed, released, terminated or discharged by any of the following: any modification, substitution, settlement, supplement, extension of time, or compromise granted to Buyer; any change in the relationship between Guarantor and Buyer, including the sale of any or all of Guarantor's ownership interest in Buyer; the execution of new or additional guarantees by Guarantor or by others; any change whatsoever in the business relationship between Seller and Buyer, including but not limited to any change in credit terms, amount of credit, or amount of interest or service charges; any transfer of new or additional security by anyone for payment of Buyer's indebtedness to Seller; the bankruptcy of Buyer; the release or discharge of Buyer's debt to Seller; an automatic stay of proceedings against Buyer; Seller failure to exercise diligence against Buyer or against any guarantor, including Guarantor; a failure or refusal by Buyer to execute a new or updated Credit Agreement and/or personal guaranty; or Seller knowledge that Guarantor is not an officer or owner of Buyer. This is an absolute and continuing Guaranty. It shall be conclusively presumed that all sales by Seller to Buyer are made in reliance upon Guarantor's personal guaranty. Guarantors waive the benefit of any limitations affecting their liability hereunder or the enforcement thereof to the extent permitted by law. **This is an absolute and continuing guaranty.**

**17. Entire Agreement.** These Terms and Conditions, together with any Application for Credit furnished by Seller and executed by Buyer, any Purchase Order issued by Seller, any Quotation issued by Seller, and any guaranty of Buyer's obligations to Seller constitute the entire agreement between the Seller and Buyer. These Terms and Conditions and the obligations of Buyer hereunder shall not be assigned, delegated or transferred, by operation of law or otherwise, without the prior written consent of an officer of Seller. Seller has not made any promises or representations to induce Buyer to purchase goods from Seller pursuant to This Agreement, or any other agreement, and Buyer is not relying upon any promise or representation not contained in This Agreement or any other agreement signed by Buyer, except that the goods conform to the description of quantity and kind stated on Seller's invoices to Buyer. Neither seller's employees nor independent sales representatives have any authority to make any representations or warranties not contained in This Agreement. If Avalon changes any provisions of This Agreement and sends the new version to Buyer and any Guarantor, by email, fax or US mail, with a subject line entitled "IMPORTANT CHANGES TO YOUR AGREEMENT", the new version shall replace This Agreement, shall be deemed incorporated into Buyer's Credit Application, and shall govern all purchases made after the transmission of the revised Agreement to Buyer and any Guarantor.