



## **TERMS AND CONDITIONS**

### **1. GENERAL**

These terms and conditions of sale (these “Terms”) are the only terms that govern the sale of goods (each a “Product” and collectively, the “Products”) and the services (the “Services”) performed by Whiting Door Manufacturing Corp. (“Seller”) and that certain party named in the Order Acknowledgment (the “Buyer”) and together with the Seller, each a “Party” and collectively, the “Parties”). Notwithstanding the foregoing, Buyer’s purchase order (if any) and any terms contained therein shall have no application whatsoever to any contract or agreement between the Parties, and the terms of sale shall be those set out herein unless expressly waived by Seller writing prior to shipment of Products.

### **2. ACCEPTANCE OF ORDERS**

All orders of Products by Buyer will be accepted by the Seller once it confirms in writing (an “Accepted Order”). Notwithstanding the foregoing, any sample of Products provided by Seller is not part of an Accepted Order.

### **3. TERMINATION AND CANCELLATION**

- (a) In addition to any remedies that may be provided under these Terms, Seller may terminate these Terms with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms and such failure continues for ten (10) days after Buyer’s receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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.
- (b) An Accepted Order cannot be cancelled or modified, in whole or in part, without the prior written consent of Seller, which such consent may be withheld or subject to additional conditions and reasonable charges (the “Cancellation Fee”). The Parties agree that Cancellation Fee: (i) constitute liquidated damages, not a penalty; (ii) such damages bear a reasonable and appropriate relationship to the range of harm arising from cancellation; (iii) such damages have been reasonably anticipated by the parties; and (iv) actual damages for such harm may be costly inconvenient or difficult to prove or foresee.
- (c) Any cancellation costs due and paid under these Terms, as well as any sums due to Seller for resuming its performance following a suspension, shall be paid in the currency(ies) quoted by the Seller for the portion of these Terms being suspended.

### **4. PRICES**

- (a) All shipments of Products shall be priced at Seller’s prices and transportation charges in effect at the time of shipment of the Products (the “Prices”) unless otherwise specifically agreed to in writing by the Parties. The Parties acknowledge and agree that all Prices are estimates and the possession of a price list by the Buyer must not be construed as an offer by Seller to provide the Products or Services at the prices shown in the respective price list.

- (b) Prices quoted by Seller shall be subject to an adjustment in the event of substantial rises in the price of materials due to any cause not within Seller's control or not avoidable by Seller's reasonable diligence (the "Price Adjustment"). Seller shall promptly notify Buyer of any Price Adjustment. Price Adjustments made by Seller, pursuant to this Section 4(b), shall become effective ten (10) days from the date that Seller provides written notice of such Price Adjustment to Buyer.
- (c) Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses, incurred by Seller in connection with the performance of the Services.

## **5. TAXES**

All prices are subject to all applicable sales and use taxes, excise taxes, customs, duties and tariffs and any other similar taxes, customs, duties and tariffs now or hereafter imposed and/or levied by any governmental authority with respect to the sale of the Products ("Applicable Taxes"). Such Applicable Taxes shall be paid by Buyer unless Seller expressly agrees to pay such Applicable Taxes in writing. Notwithstanding the foregoing, Seller's failure to charge or collect Applicable Taxes when due shall not relieve the Buyer of its obligation to pay the outstanding Applicable Taxes.

## **6. DELIVERY OF PRODUCTS, PERFORMANCE OF SERVICES AND RISK OF LOSS**

- (a) Delivery of Products shall be F.O.B. shipping point (the "Shipping Point"). The risk of loss and damage to the Products shall pass to Buyer upon delivery of the Products by Seller to the carrier at the Shipping Point. Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.
- (b) The Seller shall use reasonable efforts to meet any performance dates for the rendered Services and the delivery dates of the Products at the Shipping Point. Buyer and Seller acknowledge and agree that such dates are estimates only and Seller shall not be liable for any non-delivery of Products or performance of the Services due to any cause not within Seller's reasonable control or not avoidable by its reasonable diligence. Notwithstanding the foregoing, such delays shall not relieve Buyer of its obligation to: (i) accept the Services or Products, or (ii) provide payment of such Services or Products.
- (c) Buyer shall, at its own expense, purchase insurance for the Products against any loss and/or damage of the Products during its shipment to the Shipping Point. Further, Buyer agrees that it is its sole responsibility to ensure that the carrier delivering the Products to the Buyer has adequate insurance in full force and effect to cover any and all loss or damage to any Products which may result from delivery or transport of the Products.
- (d) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's Accepted Order.
- (e) If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to Seller's notice that the Products have been delivered at the Shipping Point, or if Seller is unable

to deliver the Products at the Shipping Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) the Products shall be deemed to have been delivered; and (ii) Seller, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses as described herein.

- (f) Claims for any Products lost or damaged during shipment shall be filed by Buyer directly with the carrier, and Buyer is advised to note loss or damage to the Products on the freight bill when signing for receipt.
- (g) With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of these Terms; (iii) provide such customer materials or information as Seller may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

## **7. PAYMENT AND CREDIT TERMS**

- (a) Terms of payment are determined by Seller, in its sole discretion, at the time the Seller approves the Accepted Order (the "Payment"), and such Payment shall be made by Buyer in U.S. Dollars to the address designated by Seller in writing. Seller reserves the right to change the terms of Payment at any time prior to shipment of Products, provided that, if Seller determines in its sole discretion that the financial position of Buyer has changed prior to delivery of such Products to render Seller insecure, Seller may refuse to make delivery of Products pending modification satisfactory to Seller of the Payment.
- (b) Seller may demand partial or full Payment of estimated invoice prior to shipment. Such payment shall not be construed as final payment.
- (c) Seller reserves the right, after providing Buyer with written notice and reasonable time to pay such late Payment in full, to suspend its performance until such sums are paid in full or terminate these Terms. In the event Seller terminates these Terms due to Buyer's late payment, then Buyer agrees to compensate Seller for any amount outstanding due under these Terms, including but not limited to, any cancellation costs and any sums due to Seller for resuming its performance following a suspension of these Terms.
- (d) Seller shall be entitled to charge interest on any past Payment at the rate of two percent (2%) per month or twenty four percent (24%) per annum up to and including the date of Payment. Any partial Payment received by the Seller on an overdue Payment will be applied first to interest and then to principal.
- (e) When Buyer inquires about Products or makes a Payment, Seller shall request Buyer provide credit card information (the "Credit Card"). Buyer will have the option to keep such Credit Card on file with Seller and Seller's third-party credit card processors by affirmatively authorizing Seller

to store such Credit Card. If Buyer later wishes to have Buyer's Credit Card deleted from Seller's records, Buyer can request such deletion by sending an email to [arpayment@whitingdoor.com](mailto:arpayment@whitingdoor.com). Seller will only keep Buyer's Credit Card on file for as long as necessary to fulfill the purposes for which Seller collected it, to comply with Seller's legal obligations, or to enforce Seller's legal rights (or as required so others may enforce their legal rights). At the end of the appropriate retention period, Seller will delete Buyer's Credit Card from Seller's records. The storage policies of third-party payment processors are independent of Seller, and Seller has no control over such policies. Seller shall have no liability for any damages resulting from any action or inaction of such third-party payment processors. Seller maintains commercially reasonable protections and policies as to its storage and processing of all payment information. Seller requests representations from its third-party payment processors that each payment processor comply with laws applicable to payment processing, storage, and deletion.

## **8. ACCEPTANCE OF PRODUCTS AND RETURNS**

- (a) The Buyer shall inspect the Products within thirty (30) days of receipt of delivery of the Products ("Inspection Period"), provided that, Buyer's acceptance of any Products shall not be unreasonably withheld or delayed. Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. For purposes of these Terms, "Nonconforming Products" means: (i) Products shipped are different than identified in the Accepted Order; or (ii) Products' label or packaging incorrectly identifies its contents.
- (b) Products may not be returned for credit without the Seller's prior written approval. Such approval can be withheld in its sole discretion or can impose terms and conditions for such approval, including but not limited to imposition of restocking charges.

## **9. WARRANTY AND CLAIMS**

- (a) Seller warrants that for a period of twelve (12) months from the date of shipment of the Products, the Products sold are in conformance with the standards set forth in our Warranty Statement which can be found at [www.whitingdoor.com](http://www.whitingdoor.com) ("Limited Warranty"). THIS LIMITED WARRANTY IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED. SELLER MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, OR OF CONFORMANCE OF ANY PRODUCTS WITH ANY SAMPLE. PRODUCTS SOLD BUT NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THOSE WARRANTIES PROVIDED BY THE MANUFACTURER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. The Limited Warranty shall not apply to: (i) conditions resulting from the equipment or product(s) being altered, abused, vandalized, misused, damaged by accident or negligence; adverse weather or environmental conditions; unusual physical, electrical, or mechanical stress; operation with any accessory, equipment or part not specifically approved by Seller; and/or lack of proper maintenance as recommended by Seller, (ii) conditions resulting from the improper use or installation by the Buyer or anyone else outside of Seller's control, (iii) damage caused by accident, misapplication, abuse, alteration, tampering or servicing by other than an authorized agency, and (iv) to conditions resulting from improper material modifications made to the equipment or product(s) by the Buyer or a third party.

- (b) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Products. Third Party Products are not covered by the warranty described in Section 9 (a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) 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.**

## **10. LIMITATION OF LIABILITY AND INDEMNIFICATION**

- (a) Seller accepts no responsibility, risk or liability to Buyer or others concerning, relating or arising out of: (i) the merchantability or otherwise of the Products sold hereunder, (ii) the fitness or otherwise for Buyer's purposes of the Products sold hereunder, or (iii) the performance, non-performance, failure, efficacy, length of life of or any defect in the whole or any part of parts of any product or products manufactured or fabricated from or incorporating or otherwise using the Products sold hereunder, in each case whether or not the Products sold hereunder were selected or used in accordance with any recommendations, assistance or instructions of Seller. Buyer assumes all such responsibility, risk, and liability and agrees to indemnify and save harmless Seller from and against any liability, loss, costs, damages, claims or expenses in respect thereof.
- (b) THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE AND, NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE TOTAL AGGREGATE LIABILITY OF SELLER WITH RESPECT TO ANY CLAIMS UNDER THESE TERMS OR REGARDING THE EQUIPMENT, SERVICES, WORK, SPARE OR REPLACEMENT PARTS AND/OR SERVICES AS FURNISHED HEREUNDER, WHETHER BASED IN CONTRACT, INDEMNITY, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID FOR THE UNIT OF EQUIPMENT, PARTS, OR SERVICES UPON WHICH ANY SUCH CLAIM IS BASED.
- (c) BUYER AND SELLER EACH (AS APPLICABLE, THE "INDEMNITOR") AGREE TO DEFEND, INDEMNIFY AND HOLD THE OTHER, THE OTHER'S AFFILIATES, AND THE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS OF ALL THE FOREGOING (THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS OR CAUSES OF ACTION ARISING OUT OF THESE TERMS, BUT ONLY TO THE EXTENT CAUSED BY THE INDEMNITOR'S NEGLIGENCE.

## **11. COMPLIANCE WITH LAW**

The Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these Terms. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under these Terms or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of the Products requiring any government import clearance.

Seller may terminate these Terms if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Products.

## **12. NO LIQUIDATED DAMAGES**

The Parties hereto agree that no liquidated damages or other damages (and no default interest on such liquidated or other damages) have accrued in connection with acceptance and delivery of this order except as noted in Section 3 above.

## **13. FORCE MAJEURE**

Without limiting any other provisions of these Terms contained herein, Seller shall not be liable for (i) acts of God; (ii) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics, pandemics, or explosions; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of these Terms; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (ix) other similar events beyond the reasonable control of the Seller.

## **14. ENTIRE AGREEMENT**

These Terms shall become effective upon the Seller's acceptance of an Accepted Order and shall be applicable to all existing, in-process and future transactions between Buyer and Seller. THESE TERMS AND CONDITIONS, TOGETHER WITH ANY APPLICABLE ORDER ACKNOWLEDGMENT, CONSTITUTE THE FINAL WRITTEN EXPRESSION OF THE PARTIES WITH RESPECT TO BUYER'S PURCHASE OF PRODUCTS FROM SELLER, and these Terms supersedes and replaces all prior agreements and understandings, written or oral.

## **15. ASSIGNMENT**

These Terms shall be binding upon and shall inure to the benefit of the Seller and Buyer and their respective successors, assigns and legal representatives. ANY AND ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS MADE OR GIVEN TO BUYER THAT DIFFER IN ANY WAY FROM THE TERMS CONTAINED HEREIN SHALL BE WITHOUT FORCE AND EFFECT.

## **16. NO RIGHT OF OFFSET**

Each order placed by the Buyer constitutes a separate and distinct contract of sale such that the Buyer may not, under any circumstances, withhold the Payment of an invoice in whole or in part to offset same against sums which it claims are due to it by the Seller in respect of another order or invoice.

## **17. WAIVER, ALTERATION AND MODIFICATION**

No waiver, alteration or modification of any specification, term, warranty or condition applicable to the Products and Services furnished hereunder or any of any other term or condition of these Terms shall be binding upon Seller unless made in writing and signed by an authorized representative of the

Seller. Waiver by Seller of any breach of these provisions shall not be construed as a waiver of any further or other breach. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from these Terms 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.

## **18. SEVERABILITY**

If any term or provision of these Terms are invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **19. NOTICES**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses designated by each Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email or facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (i) upon receipt of the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this Section 19.

## **20. GOVERNING LAW**

The laws of the State of New York shall govern these Terms and any agreement in all aspects, including execution, interpretation, performance and enforcement, without regard to principles of conflict of law. SELLER AND BUYER AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THESE TERMS OR ANY AGREEMENT, WHETHER BASED UPON CONTRACT OR OTHERWISE, SHALL BE TRIED AND LITIGATED ON IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK.