



## AGAMA GLASS TECHNOLOGIES LLC TERMS AND CONDITIONS

1. **Time of Delivery.** Seller shall not be responsible or liable for any delay, directly or indirectly resulting from or contributed to by (i) any foreign or domestic embargo, seizure, act of God, insurrection, war and/or continuance of war; or (ii) the adoption or enactment of any law, ordinance, regulation, ruling or order, directly or indirectly interfering with or rendering more burdensome production or delivery hereunder; or (iii) the unavailability of the usual means of transportation; or (iv) fire, flood, explosion, strike or other accident or contingency beyond Seller's control; or (v) any of the foregoing conditions or events affecting Seller's suppliers or sources of transportation. In the event that one or more deliveries is suspended or delayed by reason of any one or more of the above occurrences or events, any and all deliveries suspended or delayed shall be made after such occurrences or events have ceased to exist. Nothing contained herein shall be construed as decreasing the quantity of the merchandise purchased by Buyer, but shall only serve to delay delivery and payment in any of the above-mentioned occurrences or events.

2. **Delivery in Separate Installments.** Unless otherwise agreed to by Seller and Buyer in writing, Seller shall have the right to deliver all of the goods purchased by Buyer at one time in one delivery, or alternatively, in separate installments from time to time. Any installment of goods delivered is considered a separate sale, and Buyer shall be liable to pay the agreed price for such installment, regardless of Seller's failure to deliver any prior or subsequent installment or installments. Seller's breach or default in the delivery of any one installment shall not give Buyer the right to reject any other installment. Due to unforeseeable production/yield issues, deliveries may vary in quantity by +/-10%

3. **Tools and moulds:** Tools and moulds, including accessories, shall remain the property of Seller, even if Buyer has contributed to the cost of their production. Seller shall be responsible for the cost of storage and maintenance of the tools and moulds for the purposes of further orders for a period of two (2) years following the last delivery. Buyer may request that Seller store and maintain the tools and moulds for a maximum of an additional two (2) years at Buyer's expense. Tools and moulds not used during the two (2) year period or optional four (4) year period, if so extended, shall not be retained by Seller after the end of either such period.

4. **Place of Delivery.** The goods shall be delivered at the address as designated by Seller.

5. **Method of Transfer.** Goods sold hereunder shall be made available to Buyer for acceptance at Seller's plant, unless such goods are sold F.O.B. destination. In either circumstance, Seller shall furnish the facilities and the manpower to load the goods.

6. **Title and Risk of Loss.** Title and risk of loss with respect to the goods sold hereunder shall transfer to Buyer (i) at Seller's plant if such goods are sold F.O.B. place of manufacture, or (ii) at Buyer's place of business if such goods are sold F.O.B. destination.

7. **Security Interest.** Buyer grants to Seller a security interest in the goods sold until such time as Buyer pays to Seller the full purchase price therefor.

8. **Disclaimer of Express Warranties and Remedy.** Seller warrants that the goods are in accordance with the Buyer's specification, drawing or blueprint. No other express warranty is made with respect to the goods, except that Seller warrants, that for a period of six (6) months from delivery of the goods or provision of services, that the goods or services will be free from defects arising as the result of faulty materials or manufacture. In the event of the breach of such warranty, Seller shall undertake repair or replacement of the defective goods or services, or, at Seller's option, Seller may credit the cost of the defective goods or services against the purchase price or labor cost, Buyer shall have no other remedy, and any replaced parts shall become the property of Seller.

In no event shall Buyer be entitled to assert a claim for breach of the aforesaid warranty unless Buyer has fulfilled all of its contractual obligations, or if Buyer, or a third party acting on its behalf, modifies or alters the goods in any manner, or Buyer fails to minimize the effect of the breach of warranty or to allow Seller the timely opportunity to remedy any such breach.

9. **Disclaimer of Implied Warranties.** The goods sold under this agreement are purchased by Buyer "As Is" and, unless otherwise agreed in writing, Seller DOES NOT WARRANT THAT THE GOODS ARE OF MERCHANTABILITY QUALITY OR THAT THEY CAN BE USED FOR ANY PARTICULAR PURPOSE.

10. **Storage.** Buyer acknowledges that it has received a copy of the "Guidelines of Storage Conditions"

11. **Price.** Unless otherwise agreed to by Seller and Buyer in writing, the price to be paid by Buyer shall be the price as set forth on Seller's price and delivery quotation.

12. **Time of Payment.** Unless otherwise agreed, Buyer shall pay for the goods as follows: Net 30 days from date of invoice. Open accounts may be established only after satisfactory completion of a credit inquiry and approval by Seller.

13. **Right of Inspection.** Buyer shall have the right to inspect the goods at the time and place of delivery before accepting them. If Buyer receives the goods or takes possession of them without inspection, this shall constitute a waiver of the right to inspect. If Buyer finds any discrepancies with the goods, Buyer must notify Seller within ten (10) days from the date of receiving for resolution and disposition. Failure to do so shall be deemed to be acceptance of the goods and services.

14. **Indemnification of Seller by Buyer Regarding Intellectual Property Rights.** Insofar as Seller shall supply goods and services in accordance with Buyer's designs, drawings, models or samples or in accordance with other details passed to Seller by Buyer, Buyer shall undertake to guarantee that the intellectual property rights of third parties shall not be violated as a result of the manufacture and supply of the goods or the performance of the services, and Buyer shall indemnify Seller against all damages arising from the claim of any such violation of a third party's intellectual property rights.

15. **Method of Payment.** Unless otherwise agreed to in writing, payment shall be made by check, ACH, or federal wire funds transfer..

16. **Remedies.** Seller shall have all remedies afforded by the Uniform Commercial Code as enacted in the State of West Virginia (the "UCC"). Buyer's exclusive remedy shall be the repair or replacement of non-conforming goods or parts, or the credit for the cost thereof, as set forth in Section 8 above. Any consequential damages incurred by Buyer are excluded.

17. **Interpretation - Parol Evidence.** This writing is intended by the parties to be the final expression, and the complete and exclusive statement, of the terms and conditions of their agreement. Whenever a term defined by the UCC is used in this agreement, the definition contained in the UCC shall control.

18. **Authority of Seller's Agents.** No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation, promise or warranty concerning the goods sold under this agreement. Unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included within the terms and conditions of this agreement, such affirmation, representation or warranty has not formed a part of the basis of this bargain and shall not be enforceable by Buyer.

19. **No Oral Modification.** This agreement can be modified or rescinded only by a writing signed by duly authorized representatives of Seller and Buyer.

20. **Waiver.** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

21. **Assignment - Delegation.** No delegation of any obligation owed, or of the performance of any obligation by either Buyer or Seller, shall be made without the written permission of the other party.

22. **Time for Bringing Action.** Any action for breach of this agreement must be commenced within two (2) years after the cause of action has accrued.

23. **Applicable Law.** This agreement shall be governed by the UCC and by the laws of the State of West Virginia. The UCC shall be construed as meaning the Uniform Commercial Code as adopted in the State of West Virginia as effective and in force on the date of the acceptance of the offer of which these "Terms and Conditions" are a part.

24. **Venue.** Venue of any legal action involving the transaction or transactions governed hereby shall be exclusively in the Circuit Court of Harrison County, West Virginia.

25. **Firm Offer.** The offer of which these "Terms and Conditions" are a part is a FIRM OFFER under the UCC and shall remain open for a period of ninety (90) days following the date hereof. This offer may be accepted either by Seller shipping the goods referenced in paragraph 1 within ninety (90) days of the date hereof, or by Seller signing one copy of this offer and faxing or mailing it to Buyer within said ninety (90) days.