



# CUSTOM GLASS SOLUTIONS

## Terms and Conditions

**All sales of goods by Custom Glass Solutions, LLC or any of its subsidiaries (which are referred to together as "CGS") to the customer identified in this application/agreement ("Customer") are subject to the terms and conditions set forth in this application/agreement. An authorized representative of Customer must sign and date this application/agreement to confirm Customer's agreement to these terms and conditions.**

1. Terms. Customer may submit orders to CGS orally, electronically or in writing at prices quoted by CGS. Any Customer order is deemed by CGS to be an offer to purchase, which CGS may accept or reject in its sole discretion. A binding contract will arise only when CGS confirms Customer's order or begins execution of Customer's order, as price quotations, firm pricing letters or other communications from CGS do not constitute offers. All sales by CGS to Customer are subject to the terms and conditions set forth in this application/agreement (the "Terms"). These Terms, CGS's written order confirmation (or, if there is no written order confirmation, CGS's invoice) and the firm pricing letter or other written agreement applicable to the goods signed by Customer and CGS, if applicable, constitute the entire agreement between CGS and Customer (the "Agreement"). CGS's entire warranty and Customer's sole and exclusive remedy related to the goods are set forth in Section 6 below. No CGS employee has the authority to change or amend the terms of the Agreement or to provide special discounts or rebates without specific written authorization signed by a corporate officer of CGS. CGS expressly objects to, and does not accept, any conflicting, modified or additional terms or conditions Customer provides, including any standard terms contained in Customer's purchase order or any other document.

2. Delivery and Risk of Loss.

(a) Unless otherwise stated in the Agreement, the risk of loss of all goods purchased by Customer passes to Customer as follows: (i) if CGS arranges shipping, risk of loss passes when the goods are available for unloading at Customer's delivery location; or (ii) if the goods are picked up by Customer or shipped by a carrier arranged by Customer, risk of loss passes when the goods are loaded on the truck at CGS's facility. Customer is solely responsible, and will pay all costs for filing any claims for loss, damage or delay with carriers that Customer arranged and for extra charges of carriers for Customer delays in unloading trucks or containers. CGS and Customer agree that the use of Incoterms (such as "FCA" or "CIF") in purchase orders or confirmations is not intended to change this allocation of risk of loss.

(b) Delivery dates or other times of performance are non-binding estimates and are based on CGS's timely receipt of accurate and complete orders and specifications from Customer and are subject to applicable lead times for the goods ordered.

(c) Partial deliveries are permitted. A variation in the quantity delivered amounting to less than 5% of the quantity ordered is acceptable as proper performance, and Customer will pay for the amount actually delivered.

3. Payment and Credit; Expenses. Customer will pay for all goods ordered on its behalf and delivered by CGS on the terms printed on the invoice or confirmation submitted by CGS. CGS may, but is not obligated to, establish credit terms for Customer, and may change those terms, create or change credit limits or cease extending credit from time to time in its sole discretion, and may require cash payments in advance or security satisfactory to CGS. CGS reserves the right to cancel any sale if CGS deems Customer unable to pay for the goods ordered. Customer will pay all costs for: special packing, shipping or other handling requested by Customer and agreed to by CGS and other special costs incurred by CGS as a result of special actions or requests by Customer.

4. Pricing. All orders are accepted by CGS under condition that prices remain subject to change with 30 days written notice unless there are other explicit commercial agreements in place between Buyer and Seller. Accordingly, by default all orders are subject to prices in effect at time of shipment, regardless of time of order placement. All prices are based on current market conditions, materials costs, and production costs, and Seller reserves the right to communicate and adjust prices accordingly if there are changes in raw material costs, labor rates, or other factors outside of Seller's control



that may occur before the date of shipment.

## 5. Order Changes:

(a) **Firm Fixed Window for Changes or Cancellations:** Reasonable changes, reschedules, or cancellations to orders may be made up until six (6) weeks prior to the scheduled shipment date. Significant changes or cancellations requested within six (6) weeks of the scheduled shipment date will not be permitted unless approved in writing by Seller, and may be subject to additional fees, cancellation charges, or other special penalties.

(b) Any changes to quantities, specifications, or delivery schedules requested by Buyer after the order has been placed are subject to Seller's review and approval, at Seller's sole discretion. If changes are approved, Seller may revise the delivery schedule, pricing, and other terms to reflect any increased costs or delays resulting from such changes. **Special Expedites:** In cases where Buyer requests changes to a previously Seller-accepted order that will require additional costs to be incurred beyond those included in initial order prices, Seller reserves the right to appropriately communicate and potentially require special expedite fees, so that the Buyer might decision & confirm the revised schedule request and thereby accept such associated expedite fees and charges.

(c) **Cancellations:** Cancellations made within six (6) weeks of the scheduled shipment date will not be accepted, and Buyer will remain liable for the full payment of the original order even if a shipment is thereby cancelled or refused, potentially resulting in a 100% cancellation fee obligation from Buyer to Seller. If Seller approves such a cancellation request, Buyer may be subject to cancellation fees that reflect Seller's reasonable costs incurred in preparing and scheduling the order.

(d) **Custom or Special Orders:** Any orders for custom or non-standard products, which are manufactured to Buyer's specifications, are non-cancellable and non-returnable once production has begun, regardless of the time remaining before the scheduled shipment date.

(e) **Approval for Modifications:** Any requests for changes or cancellations within the four (6)-week window must be submitted in writing and will only be accepted upon written confirmation from Seller. Seller reserves the right to refuse any requests for changes or cancellations within this period.

(f) Orders involving custom or specially manufactured products with extended lead times or complex production processes (collectively, "Special Orders") are subject to the following additional terms:

(i) **Non-Cancellable and Non-Returnable:** Once production has begun on any Special Order, it is considered non-cancellable and non-returnable under any circumstances. Buyer will remain liable for the full payment of the order, regardless of any requests for changes or cancellations.

(ii) **Changes to Special Orders:** Changes to the specifications, quantities, or delivery schedules of Special Orders may not be requested once production has commenced. Any requests for changes made prior to the commencement of production must be submitted in writing and are subject to Seller's sole discretion. If approved, changes may result in additional costs and extended lead times, which will be communicated to Buyer in advance.

(g) By placing an order, Buyer acknowledges and agrees to these terms. Any changes or cancellations not made in accordance with the above terms will not be honored, and Buyer will remain responsible for the full payment of the order as originally placed.

6. Taxes. Prices quoted by CGS do not include (and Customer will pay) all taxes, tariffs, duties, or fees of any kind which may be levied or imposed on either party by federal, state, municipal, or other governmental authorities in connection with the sale of the goods (except income taxes of CGS due on the sale of the goods).



7. Late Payments: Consequences and Cost of Enforcement. If Customer fails to make a payment when due, this constitutes a material breach of the Agreement and: (a) all amounts outstanding to all CGS will become due immediately; (b) CGS has the right to cancel any pending orders; and (c) Customer will pay interest on all amounts outstanding to CGS at a rate equal to the lesser of 1½% per month or the highest rate permitted by applicable law, all without prejudice to any other rights CGS may have, including any right to claim actual damages. If Customer's bank returns a Customer check for non-sufficient funds ("NSF"), Customer is required to repay the amount of the check and all additional charges immediately, including, but not limited to, related NSF fees and other bank fees, upon notice from CGS. Customer will pay all costs of collection of any amounts due to CGS, including court costs, reasonable fees and charges of attorneys and their firms (or in-house counsel) and other expenses.

## 8. Limits on Warranties and Damages.

(a) Subject to Customer's adherence to the process set forth in Section 7 below, CGS warrants to Customer only that the goods will be as described on the written order confirmation (or, if there is no written order confirmation, on the invoice) and, with respect to clear glass products, subject to tolerances and variations consistent with usages of the trade and with factory practices concerning dimensions, tolerances and variations consistent with practical testing and inspection methods. CGS may provide to Customer additional written CGS limited warranties for certain fabricated, coated or safety glazing products. CGS's advertising, product brochures and sales presentations present CGS's opinion only; do not present representations, affirmations or promises; are not part of the basis for the bargain; and should not be relied on by Customer. **CGS's sole liability under warranty or contract, or on any other basis, is limited to either replacement of the goods or a refund of the purchase price actually paid by Customer, at CGS's sole option. THE FOREGOING WARRANTIES STATE CGS'S ENTIRE WARRANTY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY RELATED TO THE GOODS. EXCEPT AS EXPRESSLY SET FORTH ABOVE, CGS MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND CGS EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** No CGS employee has authority to give any oral warranty, or to change or supplement CGS's written warranties without specific written authorization from a CGS corporate officer addressed to Customer.

(b) CGS will have no liability for defects, whether hidden or apparent, resulting from the improper storage, use, installation, processing or other treatment of the goods. Customer will be liable for any loss resulting from any failure to apply all professional standards, customary instructions and written instructions from CGS, if any, in relation to the goods.

(c) EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED IN THIS SECTION 6, CGS WILL NOT BE LIABLE UNDER ANY THEORY OF RELIEF, INCLUDING, WITHOUT LIMITATION, BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR RELATED TO CUSTOMER'S ORDER OR CGS'S ACTS OR OMISSIONS, FOR: (i) INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, DAMAGE TO PROPERTY, OR LOSS OF USE; OR (ii) ANY DAMAGE OR LOSS IN EXCESS OF THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER. Any action by Customer must be commenced within one year after the cause of action has accrued.

(d) Nothing in this Section 6 excludes or restricts liability for death or personal injury directly resulting from CGS's gross negligence.

## 9. Deadlines for Inspection and Claims.

(a) Customer will inspect each delivery from CGS, and will notify CGS of, and will note in writing on the bill of lading any discrepancies between the delivery and the bill of lading (including breakage), and will sign the note and have the driver sign the note, before the driver leaves Customer's premises; otherwise CGS will not give credit for any discrepancies.

(b) Customer will inspect all goods purchased, and will notify CGS of any damage or apparent defects by the end of the seventh business day after the day of delivery, and in any event before Customer processes the goods. Customer will



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retain goods damaged in transit and goods with apparent defects, and make them available for inspection by CGS for two weeks after notifying CGS of the damage or apparent defect, or longer if so requested by CGS, and will return such goods to CGS at CGS's request and expense.

(c) CGS will have no liability whatsoever for any damage, apparent defect or non-conformity of which CGS is not notified by Customer, or if the relevant goods are not made available for inspection, in the manner required by this Section 7. All requests for credits must be made in writing to Customer's CGS account manager. Credit requests must include case tags.

## 10. Security Interest.

(a) Customer grants to CGS a security interest in all goods sold by CGS to Customer, and all proceeds and products thereof, to secure payment of the price of such goods and the interest and costs of collection described in Section 5 above. This security interest is a purchase money security interest. Customer authorizes CGS to file financing statements in connection with this security interest.

(b) CGS will be designated as a direct and intended third party beneficiary of any mechanic's lien or similar lien filed and/or recorded by Customer and/or claims made by Customer under any bond for labor, materials or services related to goods purchased pursuant to these Terms, and CGS will have a direct right in any proceeds paid relative to the lien, and a direct right of action to enforce the terms and conditions of such lien.

11. Waivers. Any waiver by either party of a default will not be considered a continuing waiver, but applies only to the specific provision and specific occurrence identified in the waiver.

12. Indemnification by Customer. Customer agrees to indemnify, defend, and hold harmless CGS, its subsidiaries and affiliates, and each of their respective directors, officers, shareholders, agents and employees, against any loss, liability, demand, damage, claim, action, suit, proceeding, deficiency, reasonable out-of-pocket costs (including, without limitation, reasonable legal and accounting fees), or expenses directly or indirectly relating to, arising from, or in connection with: (a) Customer's failure to comply with any of its obligations under the Agreement; (b) Customer's negligence or willful acts or omissions in relation to the goods or the Agreement; (c) Customer's improper use, installation, processing or treatment of the goods or integration of the goods with systems or components not supplied by CGS; (d) CGS's manufacture of the goods in accordance with Customer's drawings, specifications or other instructions; (e) Customer's failure to apply all professional standards, customary instructions or written instructions from CGS in relation to the goods; or (f) any unauthorized use of CGS's Racks (defined below).

## 13. Packaging and Transport Materials.

(a) When the order confirmation, delivery document or other written instruction from CGS so indicates, packaging and transport materials ("Racks") remain the property of CGS, and Customer will return all Racks at Customer's expense without delay in good condition. Customer will pay upon receipt of an invoice for any Racks (plus the cost to transport such Racks back to CGS) not returned within 5 days after CGS's written request for such Racks. Customer will not transfer or purport to transfer such Racks or an interest in such Racks.

(b) CGS's Racks are designed solely for the transport and temporary storage of the goods delivered to Customer using such Racks. Customer is only authorized to use such Racks for receiving and temporarily storing the goods that Customer purchases from CGS and for no other purpose. Customer will not remove such Racks from Customer's premises (except to return them to CGS) without CGS's prior written consent. Customer will not remove CGS's labels or markings from such Racks.

14. Bankruptcy. If Customer becomes insolvent, files a voluntary bankruptcy proceeding, or has an involuntary bankruptcy petition filed against it without obtaining discharge of that petition within 75 days, or has a receiver appointed



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over all or any of its assets, then CGS will have the right to terminate all orders and contracts by notifying Customer to that effect, without prejudice to CGS's right to payment of the price of delivered goods and any damages CGS might suffer.

15. Special Services or Products. Special services or products, such as fabrication by CGS of glass provided by Customer, will be subject to additional terms and conditions established by CGS for the particular operation.

16. Compliance with Laws. Customer will be responsible for compliance with any and all federal, state or local laws, rules or regulations respecting the goods, including the safety, use or export of the goods.

17. Authority. Customer represents and warrants to CGS (a) that it possesses all of the corporate (or other entity) approvals and authorizations to empower it to enter into the Agreement and to fulfill all of its obligations; and (b) that it is financially solvent and possesses and/or has readily available to it the financial means and resources required for the performance of its obligations under the Agreement.

18. Governing Law. The Agreement will be governed by the laws of the State of Ohio, USA. The parties agree that the 1980 UN Convention on Contracts for the International Sale of Products will not apply.

19. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to the Agreement or the transactions contemplated by the Agreement must be instituted only in the United States District Court for the Northern District of Ohio or in an Ohio state court, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding, without prejudice to CGS's right to bring litigation in the courts of Customer's location. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

20. Force Majeure. CGS will not be liable or responsible to Customer, nor be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts beyond CGS's control, including, without limitation: (a) acts of God (including an earthquake, snow emergency or tornado); (b) flood, fire or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of the Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. CGS will promptly provide notice to Customer of the force majeure event, stating the period of time the occurrence is expected to continue and will use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized.

21. Assignability. Customer may not assign, delegate or otherwise transfer any of its rights or obligations under the Agreement without CGS's prior written consent. Customer's request for such consent must be accompanied by, and will be subject to CGS's evaluation of, the proposed transferee's completed and signed Application for Credit from CGS. No assignment or delegation by Customer will relieve Customer of any of its obligations under the Agreement.

22. Successors and Permitted Assigns. The Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.