



ITI GLASS TERMS AND CONDITIONS OF SALE

- 1) **Entire Agreement.** ITI Glass, a division of Wickham Industries, Inc. a Kansas corporation ("ITI"), hereafter sets forth the terms and conditions of its sale to its Customer. The Customer's purchase order is expressly subject to the terms and conditions stated in this document and these stated terms and conditions supersede and replace any terms and conditions which appear on Customer's purchase order. No failure of ITI to object to any terms and conditions contained in any communications for Customer shall be construed as a waiver of the terms and conditions stated in this document or as an acceptance by ITI of any such terms and conditions.
- 2) **Payment Terms.** Unless otherwise stated on a specific invoice, payment terms for any Order shall be in 30 calendar days, with no retainage or set-off allowed. Buyer's payment obligations shall not be conditioned on Buyer's receipt of payment from any third party. Buyer shall be responsible for ITI's costs of collections, including but not limited to, reasonable attorney's fees in the event of Buyer's default or non-payment. If the net invoice amount should remain unpaid after 60 days, such amount will bear interest at the rate of eighteen percent (18%) per annum until paid or, alternatively, at the highest annual rate of interest to which ITI and Customer could legally agree. ITI reserves the right to withhold future shipments if timely payment for prior shipments has not been received. ITI Glass accepts credit cards for payment. A processing fee of 3% of the total invoice amount will apply to the credit card transaction.
- 3) **Credit Terms.** ITI may, in its sole discretion, agree to grant credit terms to Buyer. If ITI exercises its option to refuse to grant credit to the Customer, ITI shall not be liable for any damage, loss or cost whatsoever to the Customer. Any credit terms are subject to ITI's continuing approval of Buyer's credit. If, in ITI's sole discretion and determination, Buyer's credit or financial standing becomes unsatisfactory, ITI may withdraw or modify its credit terms. ITI reserves the right to review all accounts that have invoices not paid over 60 days after the invoice date for continued Credit.
- 4) **Limited Warranty.** ITI will provide to Customer a Limited Warranty on certain products as stated in ITI's Limited Liability Warranty document. Customers should refer to the Limited Liability Warranty document for any additional terms, limitations, and length of warranty on the specific product being purchased. The terms of ITI's Limited Liability Warranty are hereby incorporated as terms and conditions of its sale to its Customer. Notice of any claims made under ITI's Limited Liability Warranty must be received by ITI within the applicable warranty period for the specific product purchased or the warranty claim will not be covered.

ITI warrants its products against defective materials or workmanship in accordance with the terms of its Limited Liability Warranty applicable to the specific product being purchased. This warranty is made only to customers who purchase product directly from ITI and is not for the benefit of any other party. ITI's products are intended for installation and/or use by persons having the requisite skill and know-how to handle, install or use this product in accordance with the instructions published by the Glazing Association of North America (GANNA). Failure to comply with GANNA standards will void ITI's Limited Warranty. Breakage is not covered under this warranty. In the event a product is found and verified by ITI to be defective and is otherwise covered under the terms of ITI's Limited Liability Warranty, ITI will replace the unit without charge, FOB nearest shipping point to the place of installation or, at ITI's option, refund the purchase price of the product. In no event will ITI's total aggregate liability exceed the purchase price of the product. If ITI elects to replace the defective product, ITI shall not be liable for any other expenses, including, but not limited to, removal of the defective unit, installation of replacement units, any labor,

materials, and/or any other damages, including incidental, indirect, special, or consequential damages, or any other losses or damages of any nature whatsoever. Further, the warranty of the replacement will be limited to the remainder of the warranty period of the original product. ITI's Limited Liability Warranty is applicable only if the product is installed, handled, unloaded, and stored in accordance with ITI's instructions and if the glazing compound used in the installation is compatible with our insulating glass sealant. ITI reserves the right to have all glass reported as being defective under this warranty field inspected by an ITI representative and/or have the allegedly defective material returned to ITI for inspection before any warranty claim is initiated. The Purchaser's exclusive remedy is limited to the legal remedies described in this document and as further specified and limited by the Limited Liability Warranty terms applicable to the specific product being purchased. ITI will not be liable for any incidental or consequential damages of any kind. ITI's warranty will be void in the event that full payment is not received for goods and services within the agreed upon terms of sale.

ITI's Limited Liability Warranty is given only to the Customer who is the first non-consumer purchaser of ITI's products and is not given to any subsequent owners or any other user of such products or to any other person or entity.

- 5) THE PRECEDING EXPRESS LIMITED WARRANTIES, AND THE SPECIFIC LIMITED LIABILITY WARRANTY TERMS INCORPORATED HEREIN BY REFERENCE, AND AS ARE APPLICABLE TO THE TYPE OF PRODUCT PURCHASED, ARE THE EXCLUSIVE WARRANTIES MADE BY ITI AND ITI MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS SOLD IN CONNECTION WITH THIS DOCUMENT, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER. THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY SPECIFICALLY DISCLAIMED.

THE EXPRESS REMEDIES STATED IN THIS DOCUMENT, AND THE SPECIFIC LIMITED LIABILITY WARRANTY REMEDIES INCORPORATED HEREIN BY REFERENCE, AND AS ARE APPLICABLE TO THE TYPE OF PRODUCT PURCHASED, WILL BE THE EXCLUSIVE REMEDIES AVAILABLE TO CUSTOMER AGAINST ITI FOR ANY DEFECTS IN THE PRODUCTS SOLD IN CONNECTION WITH THESE DOCUMENTS OR FOR ANY DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ITI'S NEGLIGENCE. ITI WILL NOT IN ANY EVENT BE LIABLE TO THE CUSTOMER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, WHETHER FOR DEFECTIVE OR NONCONFORMING PRODUCTS, BREACH OR REPUDIATION OF ANY AGREEMENT OR TERM OF THIS DOCUMENT, NEGLIGENCE, OR ANY OTHER REASON.

ITI will not be liable for any damages, penalty, or liquidated damages caused as a result of any delay in delivery or failure to deliver due to any cause beyond ITI's reasonable control, including without limitation, Act of God; act of the Customer; embargo or other governmental act, regulation or request; fire; accident; strike; slowdown; war; riot; flood; delays in transportation; or inability to obtain necessary labor, materials or manufacturing facilities ("Force Majeure Events"). In the event of any Force Majeure Event, ITI shall be entitled to extend scheduled delivery dates for a period of time equal to the time lost by reason of the Force Majeure Event.

- 6) Customer agrees to indemnify and hold ITI harmless from and against any and all damages, claims, and other losses of each and every kind and nature whatsoever made against Customer and/or ITI (including without limitation, all costs and attorney fees incurred by ITI), to the extent that such claims or losses are not expressly covered under the terms of ITI's Limited Liability Warranty.
- 7) Quotations. Unless otherwise agreed to and accepted by ITI, any quotations issued by ITI may be accepted by Purchaser only for a period of sixty (60) days from the date the quotation is issued. The purchaser's attempted acceptance of ITI quote after this period creates no obligation on ITI unless subsequently accepted by ITI in writing.
- 8) Order Holds and Cancellations. After Purchaser's Order has been accepted by ITI, the Order cannot be put on hold, modified, cancelled, or changed without ITI's written consent. In the event that Purchaser places any order on hold for more than thirty (30) days, Purchaser shall be responsible for, and

reimburse ITI for, all material, labor and overhead costs incurred by ITI as a result of the hold. If the Purchaser cancels any Order, Purchaser shall be responsible for payment to ITI for reasonable cancellation or order change charges. Such cancellation or order change charges may include, but not be limited to, the Contract Price for all goods shipped by ITI to Purchaser, the Contract Price for all finished goods inventory in the possession of ITI, all other direct costs incurred by ITI to the extent not able to be mitigated using reasonable mitigation efforts, and storage charges as outlined in other sections of this document. In addition, if at the time the Purchaser cancels the Order ITI has work in progress with respect to the Order on any of its shop floors, ITI shall be allowed to finish the production on the goods that are on the shop floor at the time the Order is cancelled, place the goods in finished goods inventory, and bill the Purchaser the Contract Price for such goods.

- 0) **Storage Charges.** Any completed Orders that the Purchaser fails to accept delivery of goods by the delivery date stated on the ITI Order Confirmation shall be subject to storage charges at a rate of \$150.00 per crate or shipping rack per month. These storage charges shall be payable by the Purchaser according to the payment terms in this document. Under no circumstances shall ITI be liable for any costs, fees, damages or loss to goods or materials stored pursuant to this Section. ITI specifically disclaims any liability for, or damage resulting from, the storage of finished goods or materials stored hereunder in any manner contrary to industry standards or specific storage requirements identified by ITI in any product documentation.
- 1) **Delivery Racks.** ITI occasionally delivers goods on Steel or Wooden Delivery Racks. These racks are provided as a service to the Purchaser and remain property of ITI. The purchaser is responsible for making the racks available for pick up by ITI as soon as possible after delivery. After 30 days unreturned racks will subject the Customer to a rack rental charge of \$25.00 per rack per month or any portion of a month. Lost or stolen racks will be charged at a rate of \$100.00 (wood) or \$500.00 (steel) per rack. Handling or use of any rack while in Customer's care is at Customer's risk.
- 2) **Other Costs.** Buyer acknowledges and agrees that the Contract Price does not include manufacturer's gross receipts taxes, sales or use taxes, or any other state, local, and federal taxes and/or assessments that may be payable on the transaction, unless otherwise agreed in writing by ITI. All additional delivery costs arising from local labor agreements shall be the responsibility of the Purchaser. The purchaser further agrees that all square foot pricing is invoiced on the basis set forth in the ITI QUOTATION.
- 3) **Delivery, Title to Goods and Risk of Loss.** The delivery date, if specifically stated on the ITI Order Confirmation, is an estimate only and ITI shall not be bound by such date. ITI shall not be liable for any direct, incidental, or consequential loss or damage to Buyer, or third parties, due to delay or not delivering in accordance with the estimated delivery date regardless of the cause. ITI will select the method of delivery. Title to the goods and risk of loss shall pass at the time of delivery to the customer unless otherwise set forth in writing by ITI.
- 4) **Inspection.** The purchaser shall inspect the goods upon receipt and notify ITI in writing of any claim that the goods are nonconforming within ten (10) days after delivery. ITI shall be allowed a reasonable opportunity to inspect the goods, and cure any claim of alleged non-conformity, including reasonable access to the goods whether on Buyer's premises, at a storage facility or on the job site. Subject to Purchaser's signing a confidentiality agreement and compliance with ITI procedures and facility safety practice, Buyer may arrange to inspect the goods at ITI's manufacturing facilities. However, such inspection shall not interfere with ITI's operations. The buyer's rejection of any in-process goods or non-conforming finished goods arising out of such inspection must be made in writing to ITI prior to shipment of such goods. No goods may be returned to ITI for credit without ITI's prior written consent.
- 5) **Governing Law.** Customer agrees that this agreement, and any Order, shall be governed by, and construed according to, the laws of the State of Kansas. Customer further agrees that the sole and exclusive venue for any claims related to or arising from customer's purchases shall either be in the District Court in and for Sedgwick County or in the United States District Court for the District of Kansas.