

TERMS AND CONDITIONS FOR ALL SALES OF GOODS



1. **Terms and Conditions of Sale.** This Agreement shall cover all materials delivered to Purchaser, by Seller, at Purchaser's request, whether specifically itemized herein or not. If not itemized herein such materials shall be invoiced to Purchaser at Seller's prevailing price at time of delivery. Any receipt signed by any watchman or employee of Purchaser, owner, general contractor, carpenter contractor, or any other authorized agent shall be sufficient evidence of delivery. All orders are subject to the terms and conditions set forth in this Agreement and Seller's warranty in effect as of the date of delivery.
2. **Warranty Summary.** Seller warrants that the products delivered pursuant to this Agreement will be free from defects in material and workmanship at the time of delivery or, if installation is included, upon installation. **SELLER SPECIFICALLY DISCLAIMS ALL OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** No affirmation of fact or promise made by Seller, its agents or employees shall constitute a warranty. Seller's obligation with respect to the products sold herein shall be limited to furnishing repair or replacement materials for factory defective materials at ACPI's sole option or reinstallation if applicable. Under no circumstances shall any back charges be rendered by Purchaser without Seller's prior written consent.
3. **Nonconforming Shipments.** Any claim for defective goods, errors, transit damages or shortages shall be presented in writing by Purchaser to Seller within five (5) days from receipt of goods by Purchaser, but no claim shall be made by Purchaser for incidental, indirect, special, or consequential damages. Seller is not responsible for damage after (i) delivery for material only jobs or (ii) installation for installed jobs. Defective product will be handled in accordance with Seller's Standard Limited Warranty. For further information on ACPI's Warranty, see the brand's official website for the products purchased.
4. **Storage Fee.** All orders must be picked up or received by Purchaser (if Seller is delivering the order) within thirty (30) days from the date Seller provides notice to Purchaser that the order is at the delivery point. Seller will apply a \$20.00 per day storage fee to Purchaser's account for any order not picked up or received within the 30-day period, and the order will not be released until such storage fee is paid.
5. **Undelivered Orders.** Orders left at the delivery point, or not accepted for delivery, for more than 60 days after notice to Purchaser that the order is available, will be cancelled and Purchaser's deposit for Cash Sales will be retained as liquidated damages. Credit Purchasers will be invoiced and liable for an amount equal to 50% of the total order as liquidated damages.
6. **Returns. THERE IS NO CANCELLATION, RETURN OR REFUNDS ON ANY SPECIAL/NON-STOCK ORDERS.** Returns are permitted on stock items that are not damaged and have not been previously installed, and a restocking and handling fee of 25% of the total order will be charged. The product, including the original carton, must be in good condition and accompanied by the sales receipt. Returns must be received by Seller within 14 days of purchase. All transportation costs for returned goods must be paid by Purchaser. On permitted returns, a refund check will be issued within 120 days. There are no cash refunds.
7. **Financial Stability.** If, at any time before shipment, the financial responsibility of Purchaser becomes impaired or unsatisfactory to Seller, in Seller's sole judgment, cash payment or satisfactory security or assurances other than those herein provided may be required by Seller.
8. **Default.** For credit sales, Purchaser agrees that delivery of product under this Agreement is subject to such credit limit placed upon Purchaser's account by Seller's Credit Department. Failure of Purchaser, even after making partial payment on account in accordance herein, to perform any of its obligations under this Agreement shall give Seller the option, upon notice to Purchaser, to suspend shipments or to cancel this Agreement or that portion of it as may remain unexecuted, without prejudice to any other rights or remedies of Seller.
9. **Insurance.** Upon execution of this Agreement and for the duration of the warranty period, Seller shall maintain insurance in accordance with following limits: Commercial General Liability \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations; Automobile Liability \$1,000,000 combined single limit; Umbrella Liability \$2,000,000 each occurrence and in the aggregate; Worker's Compensation and Employer's Liability \$1,000,000 each accident, each employee, and policy limit.
Upon Purchaser's written request, Seller shall provide a Certificate of Insurance for the above-mentioned limits. Purchaser and owner (if applicable) may be listed as additional insureds on the General Liability policy only. If endorsement for ongoing operations ISO Form CG2010 (4/13) or endorsement for completed operations ISO Form CG2037 (4/13) are required by Purchaser, such endorsement(s) will be issued in blanket form only. In no event shall limits per project, waiver of subrogation endorsements, umbrella amounts exceeding those set forth above, or primary and noncontributory endorsements apply to this Agreement.
10. **Indemnity; Limitation of Liability.** Purchaser shall indemnify, defend and hold harmless Seller, including its directors, officers, agents and employees, from all claims, losses, damages, expenses (including reasonable attorneys' fees and court costs), and liabilities for injury to or death of any person, or for loss or damage to any real or tangible personal property arising out of the acts or omissions of Purchaser under this Agreement. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, SELLER'S TOTAL AGGREGATE LIABILITY FOR DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, SHALL NOT EXCEED THE PRICE PAID BY PURCHASER UNDER THIS AGREEMENT.**

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11. **Force Majeure.** Seller shall not be responsible for contingencies beyond its control, such as fire, government seizure or control, acts of God, strikes, factory or labor conditions, or any other unfavorable causes that may or shall prevent shipment at the time or times provided for herein. Quoted delivery dates are Seller's best estimate based on current schedules. Incremental or additional costs incurred by Seller, as a result of Purchaser's alteration of the delivery schedule, will be borne by Purchaser.
12. **Offset.** Purchaser agrees to (i) waive any right to offset, whether under this Agreement or under applicable law or otherwise, any amount owed by Seller to Purchaser against any amount then owed or in the future to be owed by Purchaser to Seller and (ii) pay to Seller the full amount owed to Seller in accordance with the terms of this Agreement. For the avoidance of doubt, Purchaser does not waive any substantive claim (other than with respect to its right to offset as described in the preceding sentence) that it may have against Seller.
13. **Legal Expenses and Collection Costs.** Purchaser shall be liable for all reasonable costs of collection and statutory attorney's fees incurred by Seller by reason of Purchaser's failure to pay on account when due.
14. **Waiver.** Waiver by Seller of any default by Purchaser shall not be deemed a waiver by Seller of any default by Purchaser which may thereafter occur.
15. **Termination.** This Agreement may be terminated by Purchaser only when approved in writing by a duly authorized officer or agent of Seller. In the event of termination, Seller will take immediate steps to mitigate termination costs to Purchaser, but Purchaser shall reimburse Seller for the costs of all labor, overhead and material costs and other commitments made by Seller in reliance upon this Agreement. Insolvency of Purchaser, the filing of a petition in bankruptcy or the commencement of any insolvency or receivership proceeding shall be deemed a termination by Purchaser.
16. **Security Interest.** Seller retains a security interest in the materials and product ordered herein until payment in full has been received.
17. **Ownership of Materials.** Designs, processes, drawings, specifications, reports, photographs, data and other technical or proprietary information relating to this order shall remain the property of Seller, and Purchaser agrees that it will not use any of such items or information therein for the production or procurement from any other source of articles furnished in connection with this order, nor reproduce or otherwise appropriate the same without the prior written authorization of Seller.
18. **Publicity.** Purchaser agrees that it will not disclose or make available to any third party the terms or provisions of this Agreement, including but not limited to the items referred to in paragraph 15, without the prior written authorization of Seller.
19. **Assignment.** Purchaser may not transfer or assign this Agreement without the prior written authorization of Seller.
20. **Order of Precedence.** In the event of a conflict between the terms of this Agreement and any other document presented by Purchaser pursuant to this order, including but not limited to any purchase order issued by Purchaser, the terms of this Agreement shall govern.
21. **Remedies.** Notwithstanding any other provision herein, Seller shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief. Nothing herein shall be construed to limit any other remedies available to Seller.
22. **Survival.** Any obligations which by their nature would survive termination of this Agreement, including but not limited to the obligations of confidentiality and indemnification, shall survive such termination.
23. **Severability.** These terms and conditions shall be severable and the invalidity or unenforceability of any of them under any circumstances shall not affect those terms and conditions which are not held to be invalid or unenforceable.
24. **Entire Agreement; Amendment.** These terms and conditions constitute the entire understanding of the parties related to the subject matter hereof and may be amended or modified only by written agreement of the parties to this Agreement.
25. **Governing Law; Jurisdiction.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Texas. Each party agrees (i) that the exclusive jurisdiction for the resolution of any dispute, proceeding, or legal action (jointly "Proceeding") related to this Agreement or the transactions contemplated hereunder shall reside in the state or federal courts located in Dallas, Texas and (ii) not to assert any claim that it is not subject personally to the jurisdiction of such court, that the Proceeding is brought in an inconvenient forum, that the venue of the Proceeding is improper, or that this Agreement may not be enforced in or by such court.

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