



## Terms & Conditions

All sales are expressly limited to, and made conditional upon, the acceptance of the purchaser indicated on this Quote, Sales Order, or Confirmation ("Purchaser") of the exact terms and conditions contained in these Terms & Conditions. The terms and conditions of purchase and/or sale contained on any request for quotation, purchase order, or other document received from Purchaser are expressly superseded hereby and shall not be construed as part of the agreement indicated on this Quote, Sales Order, or Confirmation between Monumental Windows and Doors™ ("MWD") and Purchaser. This document, the Dealer Agreement, if any, completed by Purchaser, MWD's fabrication and installation instructions, and MWD's Limited Lifetime Warranty, if any, given on selected products, if given in writing, and referencing this Quote, Sales Order, or Confirmation (the "Limited Warranty"), constitute the complete and exclusive statement of the terms of the agreement between MWD and Purchaser with respect to the subject matter hereof and supersedes any writing, document, or agreement of Purchaser. MWD and Purchaser acknowledge that all of the terms and conditions herein are fair and reasonable and reflect an acceptable allocation of the rights and obligations of the parties of the sale contemplated herein. EXCEPT FOR THE LIMITED WARRANTY (AS HEREIN DEFINED), MWD MAKES NO OTHER, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR WARRANTY THAT MATERIAL SHALL BE FIT FOR A PARTICULAR PURPOSE OR USE. No affiliate, stockholder, subsidiary, director, officer, or employee of MWD shall be in any way liable in connection with the products which are the subject of this Quote, Sales Order, or Confirmation (the "Product"), whether under any warranty, representation or condition or otherwise.

### 1. Inspection

- a) **Inspection at Plant** – Purchaser may, and if MWD so requests, Purchaser shall, inspect the Products at MWD's manufacturing site located at 79-919 Country Club Drive, Bermuda Dunes, CA (the "Plant"). Such inspection shall be conducted so as not to unreasonably interfere with MWD's operations. Purchaser's approval or rejection of the Products resulting from such inspection must be communicated to MWD in writing prior to commencement of fabrication of the Products. Failure to communicate a rejection of the Products before fabrication shall be deemed an approval of the Products by the Purchaser.
- b) **Inspection Upon Receipt** – If not inspected as set forth in (a) above, the Products shall be inspected by Purchaser upon receipt, and failure of Purchaser to notify MWD of defects or nonconformities in writing within 24 hours of receipt of the Products by Purchaser shall be deemed an acceptance of the Products and a waiver of all claims for damages based on any defect or nonconformity of the Products, except claims for breach of express limited warranties as set forth in any applicable Limited Warranty (and subject to the provisions, limitations, conditions, exceptions, and procedures contained therein). If Purchaser has approved the Products prior to delivery pursuant to (a) above, then the Products delivered shall not be defective or nonconforming if they conform to the Products so inspected or to the specifications set forth in this Quote, Sales Order, Or Confirmation. Purchaser shall have no right to revoke acceptance of the Products.
- c) **Rejection** – If Purchaser does not accept the Products, then Purchaser shall provide proof of purchase to MWD and shall afford MWD a reasonable opportunity to inspect the Products. Purchaser shall hold such Products in a safe place and shall protect them from damage or destruction. Purchaser shall not return any Products without the prior written consent of MWD. If MWD determines that the Products are defective or nonconforming, MWD shall furnish instructions for their disposition.
- d) **Purchaser's Sole Remedies** –

- a) **Nonconforming or defective Products** – Upon validation by MWD of any Product nonconformity or breach, MWD shall at its option either (1) furnish Purchaser with a replacement Product, or if the Product is no longer made, a replacement Product, which in the sole discretion of MWD, is comparable to the original Product, F.O.B. the Plant, freight collect, or (2) refund the original purchase price (less freight and other charges) which the Purchaser paid for the failed portion of the Product. A comparable replacement may have characteristics including, but not limited to, color, shading, and/or surface appearance, which vary from the original Product but shall nonetheless satisfy MWD's obligation to replace the Product. If MWD elects to supply a replacement Product, any Limited Warranty on the replacement Product shall extend only for the balance of the original Limited Warranty period of the failed Product. Purchaser agrees and accepts that in no event shall MWD be liable for removal of defective Product or replacement or reinstallation of the Product or cost thereof. At MWD's request, any defective Product which is replaced pursuant hereto shall be returned to MWD, at Purchaser's expense, within 30 days after replacement. In no event shall MWD be responsible for any costs attendant to replacing nonconforming or defective Products (including, but not limited to, labor costs), other than as specified in subsections (1) or (2) of this subsection (d)(a). If costs, including, but not limited to, labor, are incurred for any reason in the replacement of any Products so mentioned, Purchaser agrees to indemnify and hold harmless MWD for these costs.
- b) **Limitations** – Any action for breach of contract or otherwise with respect to transactions contemplated hereby must be commenced by Purchaser within one year after the alleged breach occurred. If any applicable law prohibits the limitation of the time to bring any such action or would cause this or any other provision of these Terms & Conditions or related documentation to be void or unenforceable, then the period set forth above shall be the shortest period permitted by applicable law or which would not cause any such avoidance or unenforceability.

### 2. Disclaimers and Remedies

THE PROVISIONS OUTLINED IN THESE TERMS AND CONDITIONS AND IN ANY APPLICABLE LIMITED WARRANTY CONSTITUTE PURCHASER'S SOLE AND EXCLUSIVE REMEDY UNDER ANY CLAIM OR THEORY OF LIABILITY, INCLUDING CLAIMS BASED UPON FAILURE OF, OR DEFECT IN, PRODUCTS SOLD HEREUNDER, WHETHER THE FAILURE OR DEFECT ARISES BEFORE OR DURING ANY LIMITED WARRANTY PERIOD AND WHETHER A CLAIM, HOWEVER INSTITUTED, IS BASED UPON CONTRACT, INDEMNITY, LIMITED WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. MWD SHALL NOT BE LIABLE FOR CONSEQUENTIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, CLAIMS OR COSTS OF ANY NATURE INCLUDING, WITHOUT LIMITATION, LABOR COSTS OF ANY KIND RELATING TO THE REMOVAL OF FAILED OR DEFECTIVE PRODUCTS AND/OR REINSTALLATION OF REPLACEMENT PRODUCTS THEREFORE, OR DAMAGES, CLAIMS, OR COSTS OTHERWISE ARISING FROM, OR IN CONNECTION WITH, ALLEGED BREACH OF ANY LIMITED WARRANTY OR NEGLIGENCE ON THE PART, OR STRICT LIABILITY, OF MWD. MWD RESERVES THE RIGHT TO CHANGE, ALTER OR AMEND, IN ANY FASHION, WITHOUT NOTICE, THE PROVISIONS OF ITS WARRANTIES FOR ANY OR ALL OF ITS PRODUCTS. THE FOREGOING NOTWITHSTANDING, NO EXTENSION OR EXPANSION OF ANY LIMITED WARRANTY SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY MWD'S PRESIDENT.

### 3. Allowable Variations, Standards and Tolerances

Except for the particulars specified by Purchaser and expressly agreed to by MWD in writing, all Products shall be produced in accordance with MWD's standard practices. All Products, including goods produced to meet exact specifications shall be subject to tolerances and variations (concerning dimension, finish, section, deflection, normal variations in surface) consistent with custom and usage in MWD's industry.

### 4. Delay

All orders are accepted by MWD upon the express understanding by Purchaser that, if a specific shipping date is designated on a quotation, or sales order, or confirmation, or other written or oral communication, MWD shall not be liable for delays in delivery of the Products, all such shipping dates to be considered non-binding estimated shipping dates. Without limiting the foregoing, in no event shall MWD be liable for any delays caused by inability to obtain transportation, equipment, labor, or material; insurrection, fires, floods, storms, or embargos; actions of any civil or military authorities, whether legal or de facto; strikes, lockouts, or other labor difficulties; riots; acts of God, acts of terror, delay in delivery of specifications or additional specifications or changes in the specifications, or other circumstances beyond the control of MWD.

### 5. Delivery

Delivery of Products by MWD to common carrier at the Plant shall constitute delivery of the Products to the Purchaser. Therefore, all risk of loss, damage or destruction and any incidental or consequential damages attendant thereto shall be Purchaser's sole responsibility. The full amount of invoice for Products must be paid by Purchaser regardless of any such loss, damage, or destruction. ALL CLAIMS AND ALLOWANCES FOR DAMAGE TO THE PRODUCTS INCURRED IN TRANSIT MUST BE FILED AGAINST, AND BE PRESENTED TO, THE CARRIER OF PURCHASER. UNDER NO CIRCUMSTANCE MAY PURCHASER DEDUCT SUCH CLAIMS AND ALLOWANCES FROM AMOUNTS DUE MWD. Products sent by mail are insured at the cost of the Purchaser.

### 6. Additional Services, Credit, and Payment

- a) **Additional Services** – If, through Purchaser's error change in specification, services must be repeated one or more times, Purchaser shall pay MWD upon demand for such extra services.
- b) **Credit** – MWD may decline to make any shipment or delivery or perform any work, except upon receipt of payment in full by, or security satisfactory to MWD from, Purchaser as a condition of such shipment or delivery or commencement of work or upon such other terms and conditions deemed satisfactory to MWD in its sole discretion.
- c) **Payment Terms** – All estimates, prices, and terms of sale and payment shall be as quoted by an authorized representative of MWD, in writing, or shall be as shown on the applicable quotation, sales order, or invoice. No cash discounts shall be allowed on any transportation charges included in the price. All payments shall be made in legal tender of the United States of America.



## Terms & Conditions, continued

### 7. Taxes

Any taxes which MWD may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, process, use or consumption of any Products covered hereby, including taxes upon or measured by the receipts from the sale of such Products, shall be for the account of the Purchaser, who shall promptly pay the amount thereof to MWD upon demand. Such amounts shall not be subject to any cash or other discounts.

### 8. Collection

In the event that affirmative action (including, without limitation, consultation with lawyers or collection efforts prior to the filing of any lawsuit) is required on the part of MWD to collect any amount owing to MWD by Purchaser, Purchaser shall pay to MWD all costs of collection including, but not limited to, legal fees incurred by MWD and return check charges deemed appropriate by MWD, but in no event less than \$25 per returned check.

### 9. Waiver

A waiver by MWD of any breach by Purchaser of these Terms & Conditions must be in writing to be binding upon MWD and shall not constitute a waiver by MWD of any other breach by Purchaser.

### 10. Amendments

These Terms & Conditions may not be modified, including pursuant to any order made by Purchaser or in any other document, unless such modification is made in writing and is executed on behalf of MWD, by its President.

### 11. Cancellation

No cancellation or change order shall be accepted by MWD once materials have been fabricated or any activity has otherwise been undertaken by MWD to process fabrication of materials or other Products to be provided by MWD pursuant to this Quote, Sales Order, or Confirmation. For size or fabrication changes after acknowledgement, MWD will charge appropriately, depending on the status of the order at the time of said change. If changes are required increasing materials dimensions, or orders are cancelled, MWD will determine charges based on salvage values and costs incurred for work done prior to the change order or cancellation order. In no event may Purchaser cancel all or any portion of any regularly entered order unless such cancellation is effected in writing and upon terms that will protect MWD against any and all costs and losses that MWD may suffer due to such cancellation, and Purchaser hereby affirmatively assumes responsibility for, and agrees to pay for, all such costs and losses.

### 12. Purchasers Obligations

Purchaser agrees that

- a.) before using the goods Purchaser shall determine the suitability of the Product for Purchaser's intended use and shall assume all risk and liability whatsoever in connection with that determination;
- b.) Purchaser shall use Products properly; and
- c.) Purchaser shall install the Product in accordance with applicable Federal, State, and local laws and codes, and according to industry accepted installation practices, procedures, and processes.
- d.) Purchaser shall indemnify and hold harmless MWD, and if so requested defend MWD, from any and all costs, claims, damages, judgments, and expenses (including reasonable attorney's fees) suffered or incurred by MWD as a result of, or in connection with, any act, failure to act, error and/or omission or use of the Product by Purchaser, its employees, or customers or any breach by Purchaser of this agreement.

### 13. Applicable Law

THIS QUOTE, SALES ORDER, OR CONFIRMATION AND THESE TERMS AND CONDITIONS AND ALL ORDERS PLACED BY PURCHASER WITH MWD HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, AND WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS QUOTE, SALES ORDER, OR CONFIRMATION AND THESE TERMS AND CONDITIONS SHALL BE INSTITUTED IN THE COUNTY OF RIVERSIDE, CA, AND ANY OBJECTION WHICH MAY NOW OR HEREAFTER EXIST TO THE LAYING OF THE VENUE OR TO THE JURISDICTION OF ANY SUCH SUIT, ACTION, OR PROCEEDING IS WAIVED. All sales are expressly limited to, and made condition upon, the acceptance by Purchaser of these Terms & Conditions and the Limited Warranty, if any. The terms and conditions of purchase and/or sale and/or limited or express warranties contained on any purchase order, request for quotation, or other document utilized by Purchaser, whether or not received by MWD from Purchaser, are expressly superseded hereby and shall not be construed as part of the agreement between MWD and Purchaser for the purchase of the Products.