



RAM Industries

8600 Commerce Park Dr.
Houston, TX 77036
Tel: 281-495-9056
Fax: 281-495-6778
www.ramwindows.com

TERMS AND CONDITIONS OF SALE

Unless otherwise expressly agreed to in writing and provided with respect to a particular sale, all sales are made in accordance with and subject to the following Terms and Conditions of Sale:

1. **PRICES.** All prices are firm for 30 calendar days from the date of quotation. After 30 calendar days from the date of quotation, all quoted prices are subject to change by Seller without prior notice. In any event, all prices are subject to adjustment on account of any errors or omissions by Seller or for specifications, quantities, materials, installation, shipment arrangements or other terms and conditions which are not part of the original price quotation. Unless explicitly stated otherwise, prices are exclusive of all taxes and other charges imposed by federal, state, municipal or other governmental authority upon production, severance, manufacture, delivery, storage, consumption, sale, use or shipment of the Products, all of which taxes and other charges will be charged to and paid by Buyer. Buyer is responsible for obtaining and providing to Seller any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability.

2. **DELIVERY AND INSPECTION.** Unless otherwise specified, prices are F.O.B. Seller's factory, with freight allowed to Buyer's job site or other pre-designated location. The time of delivery shall be the approximate time when the Products are ready for pickup at that location by Buyer or by a carrier for delivery to the Buyer. Seller cannot project delivery on items quoted until credit is approved and Seller is in receipt of final approved Quotation, and for commercial projects the Window / Door Submittal Package (i.e. Specification Checklist and Shop Drawings). Thereafter, all ship dates provided by Seller are approximate dates when the Product is expected to be shipped. No absolute assurances can be given as to the exact date of shipment and/or time of arrival of Product. Buyer assumes all risks of loss or damage upon Seller's delivery of the Products to the initial carrier. Seller has no obligation to deliver Products against any order by Buyer, unless and until the Quotation, and for commercial projects the Window / Door Submittal Package (i.e. Specification Checklist and Shop Drawings), have been accepted. In any event, Seller shall not be liable for any delay or failure in delivery. Buyer shall reimburse Seller for any cost to Seller resulting from delays caused by Buyer. Products on which delivery is delayed due to any cause within the Buyer's control, may be placed in storage by Seller at the Buyer's risk and for its account. Buyer shall be liable for all costs and expenses incurred by Seller in holding or storing Products by Buyer or at Buyer's request. Seller has no obligation to deliver Product to Buyer if Buyer has any amount past due. Buyer shall make an inspection of Products shipped by Seller immediately upon receipt at Buyer's destination and failure of Buyer to give Seller written notice of any claim for damages, shortages or otherwise within 72 hours after such receipt shall constitute an unqualified acceptance of such Products.

3. **CANCELLATION AND RETURNS.** Orders may be modified by Buyer only on Seller's written consent and will be considered a new order. If Buyer causes changes to be made, or delays or interrupts the progress of work, or fails to provide necessary information, Buyer will on demand reimburse Seller for all charges and expenses caused by such changes or delays including costs of raw materials, supplies, and labor cost for work in progress, plus overhead and reasonable profit. Orders which have been accepted may be canceled by Buyer only upon: (a) Written notice to Seller subsequently accepted in writing by Seller and; (b) Payment to Seller of reasonable cancellation charges. Products are not in any event to be returned to Seller without prior written authorization. Units are not returnable unless damaged beyond repair prior to delivery or ordered incorrectly by Seller.

4. **PAYMENT TERMS.** All orders by Buyer are subject to credit investigation and approval prior to acceptance by Seller. If credit is approved and extended to Buyer, Seller's payment terms are net thirty (30) days from date of invoice. Seller may, in its sole judgment, require such other payment terms as it deems appropriate (including full or partial payment in advance of shipment, or at the time of order) or revoke any credit previously extended. A deposit is required from Buyer on any order where RAM's supplier also requires a deposit. Amounts owed by Buyer shall be paid without holding any retainage and/or set-off for any amounts, which Buyer may claim are owed by Seller and regardless of any other controversies which may exist. Payment shall be made at Seller's office as designated on its invoice or at such other location as Seller may designate in writing from time to time.

5. **PAST DUE ACCOUNTS.** A finance charge of the lesser of 1.5% per month (18% APR) or the highest contract rate permitted by law will be assessed on all of Buyer's past due accounts. An invoice is past due if the net amount is not paid within 30 days from date of invoice. Interest charged on past due invoices will be assessed from the date on which that invoice was written. The above charges will be billed on the date that the invoice becomes past due on each monthly period thereafter. Seller reserves the right to pursue any lien options available.

6. **WARRANTIES.** Seller warrants that the Products will be free from defects in material and workmanship under the conditions of normal use and service and after proper installation for a period of ten (10) years from the date of original delivery for single family residential properties and for a period of two (2) years from the date of delivery for commercial properties (non-single family residential properties) including schools, churches, hotels, apartments, townhomes and rental properties. With respect to insulated glass products, the warranties apply to Cardinal IG insulated glass only and are otherwise limited to a period of five (5) years from the date of original delivery for single family residential properties and for a period of one (1) year from the date of delivery for commercial properties. Non-Cardinal IG insulated glass units and special glazing products have a warranty period of one (1) year from date of delivery. Buyer's sole and exclusive remedy under Seller's warranty is limited to repair or replacement by Seller, at its option, free of charge, F.O.B. Seller's factory of such parts of the Products as (I) are covered by said warranty, and; (II) are returned to Seller's principal place of business within the warranty period, and; (III) upon examination are found by Seller to have been defective in material or workmanship. Seller will not be responsible for any costs incurred in making replacements under this warranty, including but not limited to costs of removal, installation or reinstallation of any part and/or parts. Seller reserves the right to discontinue or change any Product as manufactured. In the event warranty remedy is required, and if the part or component of the window originally installed is not available, Seller may, at its option, substitute a part of equal quality. Enforceability of this warranty is limited to the original Buyer. The provisions of this warranty shall not apply and no warranty of whatever kind shall exist with respect (I) to any Product or part thereof which as been subject to misuse, negligence or accident or which as been repaired, replaced or altered by anyone other than Seller or (II) to any Product or part thereof that has deteriorated due to normal wear, usage or exposure to saltwater and/or harsh environment, and Seller shall have no responsibility for the performance of any Product it has sold when the Product has been subjected to conditions which vary materially from the conditions which such Products are usually tested under pursuant to industry standards. In addition, Seller is not responsible for damages of whatever nature resulting from improper measuring, installation or operations beyond design capability, intentional or accidental. Any substitution of parts not manufactured or authorized by Seller or any modification of or tampering with Seller's Product shall void the warranty. The provisions of this warranty are valid only when the Product's installation instructions are properly followed. All warranties are void and Seller shall have no liability to Buyer or any other person, if, pursuant to Buyer's request, either written or oral, (I) any Product is provided to Buyer in an unglazed or less than final or complete state or (II) a Product is manufactured pursuant to specifications provided by Buyer or its representatives which are inconsistent or different from industry standards (e.g., non-tested sizes or field glazed). Except as otherwise provided by law, Seller shall have no warranty obligations until goods have been paid for in full. Seller does not assume or authorize other persons to assume on its behalf any other obligations or liability beyond this warranty. **SELLER MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

7. **LIMITS OF LIABILITY AND EXCLUSIVE REMEDY.** Buyer's exclusive remedy against Seller shall be as set forth in the preceding paragraph. In no event shall Seller be liable to Buyer, either directly or by way of contribution or indemnity, for direct, special, incidental or consequential damages such as, but not limited to, property damage, loss of profit damages based on loss of use of the product, or damages for cover, regardless whether the claim for any such damages be based on warranty, express or implied, contract, tort or otherwise.

8. **FORCE-MAJEURE.** Seller shall not be liable for any damages based on cover, or consequential damages (including but not limited to, loss of profits, or damages based upon loss of use of the product), for any failure to or delay in delivery due to Acts of God, floods, tornadoes, hurricanes, earthquakes, or other weather conditions, accidents (whether or not caused or contributed to by Seller's negligence), strikes, or other labor disputes (whether against Seller, its suppliers or carriers, and whether or not due to the fault of the Seller), delay of carriers, shortages of materials, fuel or energy, breakdown of Seller's equipment, orders, requirements or results of any government, government agency, or any officer or official thereof, or any similar causes, whether or not beyond Seller's control. In the event that there is a delay in delivery due to such cause or causes, Seller shall have the option to cancel without any liability to Buyer or make delivery within a reasonable time after the termination of the cause or causes of the delay.

9. **SPECIFICATIONS.** All Products are subject to Seller's standard tolerances and standards for specifications. Seller reserves the right to make substitutions and modifications in the specifications of any Products, provided that such substitutions or modifications do not materially affect the performance of the Products or the purposes for which they can be used. Except in the particulars specified by Buyer and expressly agreed to in writing by Seller, all Products shall be produced in accordance with Seller's standard practices. All products, including that produced to meet an exact specification, shall be subject to tolerances and variations consistent with usage's of the trade and regular factory practices concerning: dimension, weight, straightness, flatness, section, composition and mechanical properties, normal variations in finish, internal conditions and quality, and deviations from tolerances and variations consistent with practical

testing and inspection methods. The Window / Door Submittal Package (i.e. Window Specification Checklist and Shop Drawings) specify the product being provided. Seller is not privy to Contract Documents and may or may not be privy to Plans and Specifications. Plans and Specifications are often conflicting, incomplete, or are subject to change during the bidding stage. Therefore, Seller is bound to the Window / Door Submittal Package (i.e. Window Specification Checklist and the vertical/horizontal Shop Drawings) provided to and signed off on by the Buyer, owner and/or architect.

10. **INSTALLATION.** Unless otherwise specified, Seller assumes no obligation to install any Products sold, or to place them in working order after Buyer has installed them.

11. **BREACH.** In the event of failure of Buyer to make any payment to Seller when due, Seller shall be entitled, at its sole option, to: (a) Suspend shipment of any or all Products to Buyer, whether or not the contract covering said Products has been accepted; (b) Cancel any contracts then outstanding for the sale of goods to Buyer; and/or (c) To the extent permitted by law, recover from Buyer all expenses incurred by Seller in the collection of said payment, including reasonable attorney's fees.

12. **WAIVER.** Seller's waiver of any breach by Buyer of any of the provisions of this sale shall not constitute a waiver of any other breach of the same or any other provision. Seller's rights and remedies under any provision of this sale shall be in addition to and not in substitution of any other rights and remedies available to Seller under applicable law.

13. **INDEMNIFICATION.** Buyer shall indemnify and hold Seller harmless from and against any and all claims, causes of action, judgments and expenses incurred in connection therewith including reasonable attorneys' fees, made upon or brought against Seller by any person whomsoever, which are in any way related to or connected with this Product described herein or the manufacture or use of the same, and without limiting the generality of the foregoing such claims of personal injury, death, property damage, loss of profit, damages based upon loss of use of any product, patent, trademark, trade name infringement, whether or not such claims are based in whole or in part upon Seller's breach of any warranty, express or implied, negligence or other.

14. **ASSIGNMENT.** Buyer shall not (by operation of law or otherwise) assign its right or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation without such consent shall be void and ineffective for all purposes. If an assignment or delegation is made by Buyer without the prior written consent of Seller, then Seller may, at its sole option, and without limiting any other remedy which Seller may have at law or in equity, either specifically enforce this contract or require Buyer to pay the Seller all costs, lost profits, incidental, consequential, special, exemplary and other damages and expenses suffered or incurred by reason of such assignment or delegation.

15. **ORDER OF PRECEDENCE.** Buyer assents to all terms and conditions contained herein, including those which are different from or in addition to any terms and conditions contained in any form heretofore or hereafter supplied by Buyer to Seller, and Buyer's acceptance of the products shall be conclusive evidence of such assent. Seller hereby gives notice that it objects to any terms or conditions contained in any form or document heretofore or hereafter supplied by Buyer to Seller which are in addition to, or different from the terms and conditions herein contained.

16. **ENTIRE AGREEMENT.** The Terms and Conditions shall constitute the sole and exclusive agreement between the Buyer and Seller, and the same may not be altered, amended, modified or rescinded except in writing signed by the Buyer and Seller.