

DIAMOND ROLL UP DOOR, Inc.
STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions ("Terms and Conditions") are entered into by the undersigned buyer ("Buyer") and Diamond Roll Up Door, Inc., (referred to herein, together with any and all affiliates, as "Diamond"). In consideration of the premises and undertakings of Diamond and Buyer herein, it is hereby agreed as follows:

1. **Sales of Goods.** Buyer may purchase from Diamond and Diamond may sell to Buyer from time to time certain goods and products ("goods") pursuant to one or more purchase orders submitted by Buyer in writing, by email or by telephone. Acceptance of any purchase order and sale of any goods to Buyer by Diamond shall be conditioned upon (i) execution by Buyer of a Sales Confirmation in the form provided by Diamond (a "Sales Confirmation"), and / or (ii) acceptance by Diamond of Buyer Purchase Order, and (iii) Buyer's assent to these Terms and Conditions which shall be automatically incorporated into, supplement and govern each Sales Confirmation and the performance of Diamond and Buyer thereunder. To the extent any terms set forth in a Sales Confirmation conflict with these Terms and Conditions, the conflicting terms set forth in the Sales Confirmation shall be controlling. Modifications by Buyer of any Sales Confirmation or any of these Terms and Conditions shall be without force and effect unless approved in writing by an authorized representative of Diamond.

2. **Terms of Payment/Effect of Governmental Action.** The purchase price for goods as set forth in a Sales Confirmation shall be, unless otherwise agreed in writing, (a) F.O.B. Diamond's facility in Upper Sandusky, Ohio or such other shipping point as Diamond shall designate ("shipping point"), (b) exclusive of applicable federal, state and local taxes (including sales and use taxes), excises, duties and import fees, which Buyer shall pay or reimburse to Diamond, and (c) exclusive of freight and delivery charges and insurance, all of which Buyer shall pay. Unless otherwise provided in the Sales Confirmation, Buyer's payment for all goods, applicable taxes and transportation costs shall be net 25 days from the date of the applicable invoice ("invoice date"). All late payments shall bear interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law. If after the issuance by Diamond of a Sales Confirmation a Governmental Action (as herein defined) is issued or enacted, and the effect of such Governmental Action is to require that the applicable goods include additional equipment or comply with new standards, the direct costs associated with conforming the goods to the requirements of the Governmental Action will be added to the applicable invoice and paid by Buyer. As used herein, the term "Governmental Action" means any order, decree, directive, law or regulation promulgated, issued or enacted by any legislative body or agency having jurisdiction, that pertains to the manufacture, operation or sale of any goods.

Diamond's acceptance of purchase orders and shipment of goods pursuant thereto shall at all times be subject to Diamond's approval of Buyer's credit. Buyer agrees that it shall provide to Diamond from time to time any and all financial information which Diamond reasonably requests to establish and maintain Diamond's credit approval. Notwithstanding anything in any agreement between the parties to the contrary, Diamond reserves the right to (a) change Buyer's credit authorization or require different credit terms (any such change in payment terms will be based upon the standard credit underwriting criteria then in effect at Diamond), (b) require Buyer to provide security or credit enhancements acceptable to Diamond and/or (c) require payment in advance, as a condition of accepting purchase orders or completing shipments of goods pursuant to accepted purchase orders. Diamond shall use commercially reasonable efforts to provide Buyer with as much advance notice as practicable of any change in payment terms.

3. **Shipment.** Delivery of goods under a Sales Confirmation shall be F.O.B. shipping point. Diamond will make arrangements to ship the goods by common or contract carrier, with Buyer as the consignee, to such destination. Diamond will make a good faith effort to honor Buyer's shipping instructions and ship goods on or before any stated shipping date; however, such shipping date is an **estimate only** and Diamond shall **not** be liable for any delays in shipment and a delay in shipment shall not relieve Buyer of its obligation to accept the goods. Buyer agrees that it shall be Buyer's responsibility to ensure that the carrier delivering goods to Buyer has adequate insurance in full force and effect to cover any and all loss or damage to any goods which may result from delivery or transport of the goods. Risk of loss and damage to goods shall pass to Buyer upon delivery of the goods by Diamond to the carrier at the shipping point. Claims for any goods lost or damaged during shipment shall be filed by Buyer directly with the carrier, and Buyer is advised to note loss or damage to goods on the freight bill when signing for receipt.

4. **Warranty.** Diamond provides the following warranty to Buyer for wood, aluminum and DuraPlate[®] composite doors and replacement parts used in transportation equipment operated in the U.S.A., Canada and Mexico. Diamond warrants to Buyer that all new wood, aluminum and DuraPlate[®] composite doors and replacement parts sold to Buyer by Diamond shall be free from defects in material and workmanship for a period of 12 months from the date of shipment when properly maintained and used in normal service. The parties understand and acknowledge that this Warranty excludes the following: (a) parts, components or accessories manufactured by others (Diamond hereby assigns to Buyer any warranties in favor of Diamond with respect to any such parts, components or accessories that are incorporated into any doors or parts purchased by Buyer and which may be legally assigned by Diamond); (b) parts that are not defective at time of delivery but which become defective by virtue of usage, including but not limited to normal wear, tear, and

BUYER INITIALS: _____

replacement; (c) normal maintenance; (d) products or parts that have been repaired or altered by anyone other than Diamond's service representatives; and (e) damage due to improper installation, installation of the doors or parts in an unsuitable application, damage due to misuse, negligence, mishandling, accident, mechanical abuse, high temperature, corrosive or chemical washes, or other casualty not caused by a manufacturing defect. There are a variety of uses and applications for wood, aluminum and composite DuraPlate[®] doors and replacement parts. The parties agree that it is the responsibility of Buyer to determine the suitability of the products purchased for its application. Proper installation is the responsibility of Buyer, and Diamond assumes no responsibility for and does not warrant doors and replacement parts that are faultily or improperly installed. THE FOREGOING WARRANTY IS INTENDED SOLELY FOR THE BENEFIT OF BUYER AND IS NON-ASSIGNABLE AND NON-TRANSFERABLE, INCLUDING TO ANY SUBSEQUENT PURCHASERS, LESSEES, OR OTHER PARTY WHO OBTAINS THE DOORS AND PARTS FROM BUYER OR ANY SUBSEQUENT PURCHASER. DIAMOND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF TITLE AND AGAINST INFRINGEMENT.

5. **Buyer's Remedies.** In the event that Diamond breaches any warranty or other provision of these Terms and Conditions, any Sales Confirmation or any other agreement respecting the purchase or sale of goods from Diamond (collectively, "Agreement"), Buyer's exclusive remedy shall be the repair or replacement, at Diamond's option, of any defective goods. Under no circumstances shall Diamond be liable for any reimbursement of labor costs incurred by the Buyer whether as a result of warranty under Section 4 herein or resulting from rectification, installation, return of goods to Diamond, or otherwise. Under no circumstances shall the liability of Diamond, whether in contract, tort, warranty or otherwise exceed the purchase price of the goods. Buyer must notify Diamond in writing of any claim regarding defective or nonconforming goods (a) within ten (10) days after receipt of the goods with respect to any claim not covered by the warranty set forth in Section 4 herein, or (b) within ten (10) days after a defect is or should have been discovered with respect to any claim covered by such warranty. If Buyer fails to notify Diamond timely of a claim, the goods shall be deemed accepted by Buyer without objection and any such claim by Buyer shall be waived. Defective goods shall be returned to Diamond Roll Up Door, Inc., 295 Commerce Way, Upper Sandusky, Ohio 43351 to the attention of Customer Service Department. [Replacement product shall be made available to Buyer, F.O.B., in Upper Sandusky, Ohio. Freight costs, if any, shall be at Buyer's expense.] Buyer acknowledges and agrees that it will not assert a right of offset or recoupment against Diamond or any affiliate thereof or its directors, officers or employees, or any affiliate thereof with respect to any future, present or prior sales transactions involving any new or used goods or any other obligation of Diamond to Buyer.

The rights and remedies provided to Buyer herein shall be the SOLE and EXCLUSIVE rights and remedies of Buyer and Buyer hereby waives all other rights and remedies provided by applicable law or equity, including without limitation, INDIRECT, incidental, consequential, liquidated, punitive or any other damages. DIAMOND SHALL NOT BE LIABLE TO BUYER FOR ANY LOST PROFITS, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR SIMILAR DAMAGES (INCLUDING LOSS OF CARGO, LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUES, COST OF CAPITAL, COST OF BUSINESS INTERRUPTION, OR ANY OTHER DAMAGES), OR ANY CLAIMS OR DEMANDS BROUGHT BY OR AGAINST BUYER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, DIAMOND'S NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF WARRANTY. DIAMOND SHALL HAVE NO OBLIGATION TO REPLACE OR REPAIR ANY GOODS WHICH ARE LOST OR STOLEN OR DESTROYED OR DAMAGED BY FIRE OR ANY OTHER PERIL. IN NO EVENT SHALL DIAMOND'S AGGREGATE LIABILITY TO BUYER ARISING OUT OF, RELATED TO OR IN CONNECTION WITH THE SALE OF ANY GOODS UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE PAID TO DIAMOND BY BUYER FOR SUCH GOODS. ANY ACTION AGAINST DIAMOND MUST BE BROUGHT WITHIN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THE EXCLUSION OF INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, PUNITIVE, AND OTHER DAMAGES IS INDEPENDENT OF AND SHALL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

6. **Diamond's Remedies.** In the event of a default by Buyer, or if Diamond reasonably deems itself insecure, Diamond may suspend all shipments until all delinquencies and defaults are cured and adequate assurances of performance by Buyer are given to Diamond. BUYER SHALL BE LIABLE TO DIAMOND FOR AND SHALL PAY TO DIAMOND ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY DIAMOND TO COLLECT THE PURCHASE PRICE FROM BUYER OR OTHERWISE TO ENFORCE ANY AGREEMENT IN THE EVENT OF BUYER'S BREACH. In the event of a default by Buyer, Diamond shall have all remedies available under the Ohio Uniform Commercial Code, Chapter 1301 et seq as amended, and as otherwise provided by applicable law.

7. **Indemnification.** Buyer shall notify Diamond of any accident or condition resulting in personal injury or property damage involving any goods. In the event Buyer fails to notify Diamond within thirty (30) days thereof, Buyer shall hold harmless and indemnify Diamond from any claims, injury or damage resulting therefrom. Buyer agrees to hold harmless

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and indemnify Diamond from any claims, including but not limited to claims for violations of any statute or regulation, for personal injury, property damage, patent infringement or appropriation of proprietary technology arising out of any equipment, materials, designs or specifications furnished by Buyer.

8. **Waiver/Severability.** Failure by Diamond to insist upon strict compliance with any of the terms or conditions of any Agreement (including, without limitation, these Terms and Conditions) shall not be deemed a waiver of such terms or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times. In case any one or more of the provisions contained in any Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby.

9. **Governing Law.** The laws of the State of Ohio shall govern any Agreement in all aspects, including execution, interpretation, performance and enforcement, without regard to principles of conflicts of law. DIAMOND AND BUYER AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH ANY AGREEMENT, WHETHER BASED UPON CONTRACT OR OTHERWISE, SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF OHIO.

10. **Effective Date/Modification/Entire Agreement.** These Terms and Conditions shall become effective upon execution hereof as to all existing, in-process and future transactions between Buyer and Diamond. Except as provided for herein, no modification, amendment, extension or alleged waiver of these Terms and Conditions or any Sales Confirmation will be binding on either party unless in writing and signed by the party sought to be bound. THESE TERMS AND CONDITIONS, TOGETHER WITH ANY APPLICABLE SALES CONFIRMATION, CONSTITUTE THE FINAL WRITTEN EXPRESSION OF THE PARTIES WITH RESPECT TO BUYER'S PURCHASE OF GOODS FROM DIAMOND, and this Agreement supersedes and replaces all prior agreements and understandings, written or oral. These Terms and Conditions shall be binding upon and shall inure to the benefit of the Diamond and Buyer and their respective successors, assigns and legal representatives. ANY AND ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS MADE OR GIVEN TO BUYER THAT DIFFER IN ANY WAY FROM THE TERMS OF THESE TERMS AND CONDITIONS SHALL BE WITHOUT FORCE AND EFFECT.

By signing below, Buyer expressly agrees to the terms above. IN WITNESS WHEREOF, these Terms and Conditions have been executed as of this _____ day of _____, 201__.

Executed by the BUYER:

Executed by the DIAMOND:

Signed by the BUYER

Signed by Diamond

Name

Name

Witness

Witness

BUYERS INITIALS: _____