

MILGARD DEALER TERMS AND CONDITIONS OF SALE

Updated May 20, 2020

This document states the terms and conditions ("Terms") for the sale by Milgard Manufacturing LLC ("Milgard," "we," "us" or "our") of window, door and skylight products ("Products") to buyer (hereinafter "you" or "yours").

1. APPLICATION OF TERMS. A contract for Products incorporating these Terms will be formed when we accept your order by sending you a written order acknowledgement ("OA"). Our acceptance of your order is conditional upon your acceptance of these Terms. We deem material and object to any of your terms and conditions additional to or different from these Terms (except additional terms specifying quantity, description of the products ordered and shipping instructions). Prices are predicated on the enforceability of these Terms and would be higher if these Terms did not apply, or if we were to negotiate the terms. Therefore you accept these Terms in exchange for such lower prices.

2. EXPRESS WARRANTIES. We warrant to you only, while you own the Products, that our Products will conform to the description or specifications in the OA (the "Product Specifications") and be of such quality as to pass without objection in the trade when delivered, subject to all limitations and disclaimers in these Terms (the "Dealer Warranty"). Express written warranties on our Products provided to end users (collectively, the "End User Warranties") are published from time to time and available on our website at www.milgard.com.

3. WARRANTY REMEDY. Your exclusive remedy against us for Products that do not conform to the Dealer Warranty ("Nonconforming Product") will be limited, at our option, to repair or replacement of Nonconforming Product or issuance of a credit in accordance with these Terms. In any event, our liability for any damages will be limited to the purchase price of the Nonconforming Product.

4. LIMITATIONS & DISCLAIMERS OF WARRANTY. The End User Warranties and the Dealer Warranty are our sole warranties with respect to Products and are subject to their stated terms and all of the following limitations and disclaimers (the "Excluded Matters").

(a) The End User Warranties are solely for the benefit of end users specified therein. You have no rights under the End User Warranties.

(b) EXCEPT FOR THE DEALER WARRANTY, WE DISCLAIM ALL WARRANTIES TO YOU, EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IN REGARD TO INFRINGEMENT. NO WARRANTY SHALL BE DEEMED TO ARISE FROM ANY SAMPLE, SALES PRESENTATION, COURSE OF DEALING, OR USAGE OF TRADE.

(c) Many of our products are performance tested according to published voluntary industry standards (e.g. AAMA/WDMA/CSA 101/I.S.2/A440) and have associated ratings (e.g. air, water, structural, thermal) (collectively, "Ratings"). Ratings are based on the performance of samples tested in a laboratory setting and are for comparison purposes only. Ratings are a guide for the user in determining suitability and do not constitute a warranty of any nature.

(d) Any technical assistance and information we furnish is given as an accommodation. You assume all liability for the proper application of such information, using your own technical expertise.

(e) It is solely your responsibility to select Products that conform to all applicable laws, ordinances, and building, safety and energy codes, standards and requirements and local weather conditions, and all applicable architectural and other designs and specifications for any particular project (collectively, "Project Specification Requirements").

(f) The Dealer Warranty does not cover claims arising from the handling, storage, transportation or installation of products after delivery, from modification, misuse, or abuse of the Product, from the sale of a Product for an inappropriate application or under defective, unclear or otherwise insufficient Project Specification Requirements.

5. LIMITATIONS ON ACTIONS & LIABILITY. You have one year to bring any and all claims under these Terms, beginning on the date of delivery. WE WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM DELAY IN DELIVERY. OUR MAXIMUM DIRECT AND INDIRECT LIABILITY, IF ANY, FOR ALL DAMAGES, FOR INJURIES TO

PERSONS OR PROPERTY, ARISING FROM BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, IS LIMITED TO THE PRICES PAID FOR THE AFFECTED PRODUCTS. WE WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES AND PROFITS, EVEN IF WE ACTUALLY KNOW OF THE POSSIBILITY OF SUCH DAMAGES. THE RIGHT TO RECOVER DAMAGES WITHIN SUCH LIMITATION IS YOUR EXCLUSIVE ALTERNATE REMEDY IN THE EVENT THAT ANY OTHER REMEDY AVAILABLE UNDER THESE TERMS FAILS OF ITS ESSENTIAL PURPOSE. THE LIMITATIONS IN THIS SECTION 5 SHALL APPLY TO DIRECT CLAIMS AND CLAIMS FOR WHICH YOU MAY BE ENTITLED TO INDEMNIFICATION FROM US.

6. DEALER PRODUCT STATEMENTS. You have no authority to create any warranty, representation, advertising or other claim, promise or obligation on our behalf. You shall, prior to or at the time of sale, pass through the End User Warranties to qualified end users in accordance with their terms.

7. ORDERS. We accept no telephone orders. Orders must be placed via our electronic ordering system (the "Portal") or by PO. Orders must state clearly the quantity, size, series, finish and complete description of the Products ordered. You accept all responsibility for the order, notwithstanding errors in it, if you fail to notify us of any discrepancies within 24 hours after we send you the OA.

8. PRICES, TERMS & SHIPMENT. You agree to pay for our Products at the prices in effect at the time we send the OA. Normal credit terms are "2% 10 Prox, Net End of Month." We give no cash discount. You are entitled to no set off, counterclaim or retainage. You are responsible for any and all sales, use, VAT, GST and other taxes or duties of any sort assessed in connection with any sale, purchase and resale of Products. Prices are (a) F.O.B. shipping point if the Products are shipped by common carrier or your truck, or (b) F.O.B. destination point if the Products are shipped by our truck. Delivery shall occur and title and risk of loss of the Products will transfer to you at the applicable F.O.B. point. You are responsible and will reimburse us for any damage to our trailers and other equipment

occurring at your designated delivery destination. We reserve the right to adjust prices and or impose surcharges from time to time upon thirty days' notice when our costs are affected by fluctuating prices for energy, fuel, materials, component parts, or delivery incurred by us to manufacture and deliver the Products.

9. ALLOWANCES, LATE PAYMENTS, ETC. Early payment discounts, allowances, rebates, and other programs (collectively, "Allowances"), if any, are earned and paid only if your accounts (including those of your affiliates) are current with us and all of our affiliates. Further, if your account is not current with us or any of our affiliates (hereinafter a "Payment Default"), we may, in addition to all other remedies, (a) terminate our dealer relationship with you if you do not cure the Payment Default within 10 days from our demand, (b) cancel outstanding orders we may have accepted, (c) withhold shipments; (d) reject orders; and/or (e) require reasonable assurance of performance. In addition, Allowances are not earned (and any earned Allowances shall be forfeited) if the ratings issued by any agency, such as S&P, Moody's, or Fitch, relating to you or any of your affiliates, are lower than investment grade quality. Any earned Allowance may be withheld or be used to satisfy obligations of you or your affiliates to us or any of our affiliates.

10. DELIVERY. Shipping and delivery dates are our best estimates of when we will ship and deliver Products. You must inspect our Products promptly upon delivery for any failure to conform to the Product Specifications and notify us within 5 business days of any Nonconforming Product. You must not resell or install Nonconforming Product. Your failure to discover and report any Nonconforming Product prior to installation of the Products will constitute a full and complete waiver of any claim by you for nonconformance. We may require a reasonable opportunity to inspect the Product and confirm the nonconformity. We will not provide or pay for labor for removal or installation of Nonconforming Product.

11. VARIATIONS IN QUANTITY, SHORTAGES & ALLOCATION. Deliveries scheduled to be made over an extended number of shipments may vary from your order in quantities by up to 10%, plus or minus, for each Product involved, and we will adjust the billing accordingly. We will not be responsible for any claim for shortage not reported within 15 days of delivery.

12. RETURNED GOODS. You will need our approval, and issuance of a return authorization number, before returning any Nonconforming Products. Products that conform to the OA may not be returned.

13. PATENT & TRADEMARK INFRINGEMENT. If the Products are designed or made by you or according to your specifications, you will defend, hold harmless and indemnify us and our affiliates against any Claims (as defined in Section 21) we may incur in relation to any alleged intellectual property infringement.

14. EXCUSE OF PERFORMANCE. We will not be liable for delay in delivery or for non-delivery, in whole or in part, caused by any contingency beyond our control or the control of our suppliers, whether or not foreseen or foreseeable, including but not limited to failure or delay in transportation, acts of any government, judicial action, labor disputes or actions, fire, accident, acts of nature, pandemic, epidemic, quarantine, shortage of labor, fuel, raw material or machinery or technical failure ("Force Majeure"). Upon any Force Majeure event or circumstance, we may allocate supplies among our customers as we determine in our sole discretion. The parties specifically agree that it is a condition of performance of our obligations that no event of Force Majeure has arisen that impedes our performance.

15. CONFIDENTIALITY. You will strictly protect all of our Confidential Information, and not use or disclose our Confidential Information to any third party except to do business with us. Our "Confidential Information" includes information relating to product costs and pricing, design and production, strategic plans; financial statements; methods of manufacture or assembly; sketches, drawings, formulas, materials, models, test data, know-how, show-how, manuals and records; and any computer code. "Confidential Information" does not include any information which you can demonstrate by written evidence (a) is generally available to the public other than through disclosure by you or your representatives; or (b) is known to you on a non-confidential basis prior to your receipt from us, or (c) is independently developed by you without use of our Confidential Information; or (d) is rightfully provided to you by a third party.

16. CREDIT APPROVAL. You will provide all financial information we reasonably request from time to time to establish or continue your credit

limit and terms. All orders are subject to approval of our Credit Department and we may at any time reject any order except upon receipt of payment or upon terms and conditions or security satisfactory to us. We shall retain, and you hereby grant us a security interest in any Products we ship to you until the full purchase price is paid. We may file a Uniform Commercial Code Financing Statement to protect our interest in all Products sold to you until you make payment in full.

17. CANCELLATION. Our Products are made to order so you may not cancel orders without our written approval. We may impose any condition on cancellation in our discretion.

18. DEFAULT. You may not terminate any order for our failure to deliver Products or other breach of our obligations, in whole or in part, unless (a) you have first notified us in writing specifying such breach, and (b) we have not remedied such breach within 30 days after we receive your notice. If we deliver Nonconforming Products, you will have the rights set forth in paragraph 3 of these Terms, but delivery of Nonconforming Products will not be deemed a breach for purposes of termination of the order. If you properly terminate an order for our breach, you need not pay for Product not delivered before the effective date of such termination. This section is your sole remedy for our failure to deliver Products and is in lieu of all other remedies you may have.

19. ASSIGNMENT. You cannot assign any order or any claim against us arising directly or indirectly out of or in connection with any order. We may assign, without consent, any order and these Terms to any subsidiary or affiliate of ours or to an entity or person that requires all or substantially all of the business to which the order and these Terms relate.

20. PATENTS, INVENTIONS, TECHNICAL DATA & OTHER INTELLECTUAL PROPERTY. You do not and will not acquire ownership or any rights in our patents, inventions, processes, technical data, brands, trade names and copyrights or other intellectual property ("Our IP") regardless when Our IP is invented, conceived, generated, created, produced or registered. We reserve all rights in Our IP and you will not reproduce or use Our IP for any purpose whatsoever except as necessary to do business with us or resell our Products.

21. INDEMNIFICATION BY YOU. You shall defend, indemnify and hold us and our affiliates harmless from and against all liabilities, losses, claims, costs and expenses (including reasonable attorneys' fees) related to any claim, investigation, litigation or proceeding (whether or not we are a party) brought by a third party ("Claims") to the extent arising out of (a) the installation or repair of Products by you or anyone on your behalf; (b) your selection of Products for any particular application; (c) any representation, warranty, claim or promise made by you or your agents to anyone relating in any way to the Products (other than in our Product literature and End User Warranties as we are then offering them) without our prior express written consent; (d) your negligence, willful misconduct, or breach of your agreements with us, or any negligence or willful misconduct of your agents, representatives or subcontractors; and (e) your sale or delivery to a customer of a Product which contained defects or nonconformities which you could have discovered on reasonable inspection.

22. INDEMNIFICATION BY US. We shall defend and indemnify you from and against all Claims brought by a third party to the extent arising out of (a) defects in the design, materials or workmanship of Products existing as at the time the Products left our control; or (b) our negligence or willful misconduct. Otherwise, you will not seek defense or indemnification from us, and you hereby waive such right even where otherwise afforded by contract or statute (e.g. Arizona Revised Statute § 12-684, California Civil Code § 1792, Idaho Code § 6-1407, North Dakota Century Code § 28-01.3 04, 12 Oklahoma Statutes § 832.1, Texas Civil Practices and Remedies Code § 82.002). We shall not be required to defend or indemnify you to the extent the Claim arises by reason of your negligence, willful misconduct, breach of your agreements with us, or on account of any occurrence or circumstance against which we are entitled to indemnification from you. We shall have no obligation whatsoever to you without timely notice from you and your every timely effort to afford us an opportunity to repair or replace the Product.

23. INDEMNIFICATION PROCEDURE. A party desiring indemnification pursuant to Section 21 or 22 of these Terms (the "Indemnitee") must promptly notify the other party (the "Indemnitor") of the relevant Claim. The Indemnitor shall have no obligation to indemnify the Indemnitee if the Indemnitor's ability to do so is prejudiced by the

Indemnitee's failure to give prompt notice or any other act or omission by the Indemnitee. The Indemnitor may in its discretion take over the entire defense and settlement or other disposal of such Claim, at the Indemnitor's expense. The Indemnitor will not be responsible for any defense costs incurred or settlements agreed to by the Indemnitee absent a written agreement signed by the Indemnitor.

24. REMEDIES. Our rights and remedies under these Terms are in addition to all other remedies provided by law or equity. We are entitled to recover our costs and attorneys' fees in the enforcement or defense of any rights under these Terms or with respect to any order. Your rights and remedies in connection with Products (including indemnification) shall not extend to any of our affiliates or insurers.

25. PAST-DUE ACCOUNTS. We may assess late charges on all past due invoices equal to 1.5% per month (18% per year) or the maximum rate or charge allowed by applicable law, whichever is less.

26. SETOFF. In addition to any right of setoff provided to us by law, we or any of our affiliates may offset any amounts due to you or your other affiliates against any obligations you or your affiliates may owe to us or any of our other affiliates, and we may deduct such amounts without any other prior notice.

27. GOVERNING LAW AND FORUM. All orders will be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Washington without regard to any conflict of laws provisions. You agree to exercise any right or remedy in connection with these Terms exclusively in, and you agree to submit to the jurisdiction of the appropriate state or federal court of, the State of Washington, with venue in Pierce County.

28. ENTIRE AGREEMENT. These Terms contain the entire agreement relating to the transaction covered by these Terms. These Terms may not be waived, changed, extended or discharged orally except by agreement in writing and signed by the authorized representative of the party against whom enforcement of any such waiver, change extension or discharge is sought.