

Except as otherwise provided on the face hereof, the parties agree to the following provisions:

Definition. The term “Order” shall mean the written purchase order or instruction to which these Carlex Purchase Order Terms and Conditions (“Terms”) apply or are attached. These Terms are hereby incorporated into the Order by this reference. The terms “Seller” “Goods” and “Services” shall mean, respectively the seller or supplier identified on the Order and the goods and services purchased or ordered in the Order. The term “Buyer” shall mean Carlex Glass America, LLC, and its affiliates located at 7200 Centennial Blvd., Nashville, TN 37209 (hereinafter referred to as “Carlex”).

Acceptance and Modification. The Order and these Terms can be accepted only upon the provisions expressed herein and may not be modified, amended or waived except in writing by Buyer’s duly authorized representative. Buyer hereby objects to any additional or different terms or conditions, whether or not material, contained in any acknowledgment or confirmation of the Order. Seller may accept the Order by acknowledging or confirming it, commencing performance or other means manifesting assent to be bound.

Risk/Property. Any Goods delivered hereunder shall remain at the risk of Seller until delivery to Buyer (including off-loading and stacking) is complete and accepted by Buyer at which point risk shall pass to Buyer. All materials, equipment, tools, dies, molds, together with any copyright, trade secret, patent, design rights and any other forms of intellectual property rights (“IP Rights”), in all drawings, specifications and data supplied by Buyer to Seller shall at all times be and remain the exclusive property of Buyer but shall be held by Seller in safe custody at its own risk and maintained and kept in good condition until returned to Buyer and shall not be disposed of other than in accordance with Buyer’s written instructions, nor shall such items be used otherwise than as authorized by Buyer in writing. Any drawings and specifications furnished by Buyer shall be deemed Buyer’s Information and used only for the work on the Order and shall be returned to Buyer promptly upon completion of the Order.

Delivery. Unless otherwise expressly agreed in writing by Buyer, the terms of delivery of Goods or performance of Services hereunder must be in strict conformity with the Order, and time shall be of the essence as regards such delivery and performance. Inspection and acceptance of all Goods will be performed by Buyer after receipt of the Goods.

Price. The price of the Goods or Services shall be as stated in the Order and, unless otherwise agreed in writing by Buyer, shall be inclusive of all charges. No variation in the price or extra charges, including, without limitation, fuel, shipping, transportation, packing or materials surcharges, shall be accepted by Buyer. Seller is responsible for all taxes, including sales and use taxes, and personal taxes on Buyer owned tooling.

Payment. Unless otherwise agreed in writing by Buyer, Buyer shall pay undisputed sums within sixty (60) days of acceptance of the Goods or Services, but time for the payment shall not be of the essence. Without prejudice to any right or remedy, Buyer reserves the right to withhold payment of sums subject to dispute due, without limitation, to unsatisfactory Services or non-conforming Goods. Buyer reserves the right to offset any amount owing at any time from Seller to Buyer against any amount payable by Buyer to Seller in respect of the Order.

Compliance With Law and Buyer Policies. Seller shall comply with all applicable laws, statutes, rules, regulations, orders, conventions, ordinances and standards of foreign and domestic federal, state and local governments applicable to the Goods and/or Services (“Laws”), including but not limited to the California Transparency in Supply Chains Act of 2010, Laws relating to data protection and privacy, subcontractor selection and motor vehicle safety, and all Laws otherwise referenced in these Terms. All Goods supplied and Services performed hereunder shall be in compliance with all requirements of the Fair Labor Standards Act of 1938, as amended, and Seller shall so state on each invoice. Supplier shall also comply with all written policies and procedures provided to Supplier, which shall include, without limitation, the Carlex Supplier Quality Manual. Seller represents that neither it nor any of its subcontractors, vendors, agents or other associated third parties will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of Goods or provision of Services under these Terms.

Customs Regulations. Seller shall comply with all applicable customs regulations, including labeling requirements and origin marking, which shall include the marking requirements of the United States, Canada and Mexico with respect to service parts. Within thirty (30) days of Buyer’s written request, Supplier shall provide all reasonably requested content, information and certificates for trade preference valuation (including NAFTA).

Safety & Environmental. If the Goods or the Services provided hereunder involve any risk of injury or death to persons or damage to property, Seller shall provide Buyer with a written description of the nature and extent of such risk, including a description of any precautions which should be taken to minimize risk. Seller warrants that, prior to delivery, it will disclose in writing to Buyer any and all chemical substances constituting or contained in the Goods or used in the course of the Services supplied hereunder that are included in the list of chemical substances compiled and published by the Environmental Protection Agency (“EPA”) pursuant to the inventory reporting regulations of the Toxic Substances Control Act and the Emergency Planning and Community Right-to-Know Act. Seller shall provide Safety Data Sheets to Buyer in accordance with 29 C.F.R. Section 1910.1200, and all Goods supplied hereunder shall comply with the Williams-Steiger Occupational Safety and Health Act of 1970 (“OSHA”), as amended, and regulations there under, and comparable state and local regulations. All work shall be performed in compliance with current Federal and State regulations, including U.S. EPA, OSHA, Buyer-specific EH&S policies & procedures and all other highest industry standards.

Warranty & Remedies. Seller expressly warrants with respect to all Goods supplied hereunder that good and marketable title, free and clear of all liens and encumbrances, is transferred to Buyer and that the Goods are first quality, conform to all applicable specifications and samples, are of good merchantable quality and fit for the particular purpose for which it is sold, and are free from all defects in design, material and workmanship. Seller expressly warrants with respect to all Services performed hereunder that performance is good and workmanlike in accordance with the highest industry standards.
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standards, involves no unreasonable risk of injury or damage, conforms to all applicable specifications, is without fault and free from all material defects, errors and omissions. Without prejudice to any other right or remedy which Buyer may have, if Seller breaches any express or implied warranty or any term or condition of the Order as determined in Buyer’s sole discretion, Buyer shall be entitled (a) to rescind the Order; (b) to reject the Goods or Services (in whole or in part) and return them to Seller at the risk and cost of Seller on the basis that a full refund for Goods so returned shall be paid forthwith by Seller; (c) at Buyer’s option to give Seller the opportunity at Seller’s expense either to remedy any defect in the Goods or Services or to supply replacement Goods or Services and carry out any other necessary work to ensure that the terms of the Order are fulfilled (each of which shall be subject to Buyer’s acceptance); (d) to refuse to accept any further deliveries of the Goods or performance of the Services without any liability to Buyer; (e) to carry out at Seller’s expense any work necessary to make the Goods or Services comply with the Order; and (f) to claim such damages as may have been sustained in consequence of Seller’s breach or breaches of the Order. Buyer may, in any event, hold Seller liable for all damages, including Buyer’s legal fees and direct and consequential damages, resulting either from any noncompliance with any of said warranties or from Seller’s negligence, strict liability or other fault.

Indemnity. Seller shall indemnify and hold harmless Buyer, its affiliates and its and their directors, officers, employees, agents and contractors against all claims, losses, liabilities, damages and expenses (including legal and other professional fees and expenses) (collectively, “Claims”) arising as a result of or in connection with (a) failure of the Goods or Services to comply with the covenants and warranties herein, including, without limitation, defective workmanship, quality or materials, (b) any actual or alleged infringement of any intellectual property rights caused in any way by the provision of the Goods or Services; and (c) Seller’s negligence or breach of the Order. Upon Buyer’s written request, Seller shall, at its own expense, defend any suit, action or other proceeding asserting a claim covered by the foregoing indemnity, and Seller shall pay all costs, including attorneys’ fees and litigation costs incurred therefore.

Termination. Buyer may terminate the Order at any time and without cause, in accordance with this Paragraph, by giving written notice to Seller. In such event, Buyer shall pay to Seller, upon presentation of properly supported and itemized invoices, all reasonable actual costs and expenses incurred by Seller prior to termination, which costs shall include the cost of any material supplied hereunder, and the cost of purchased materials and components applicable hereto, including such termination charges as may be contractually imposed on Seller by Seller’s suppliers or subcontractors, provided that Seller shall use all reasonable efforts to minimize or offset such costs, including without limitation terminating cancelable supplier and subcontractor agreements and making beneficial use of the Goods or any part thereof, with Buyer’s prior written consent, and not charging Buyer therefor. In no event shall Buyer’s liability to Seller exceed the amounts payable as of the effective date of termination. Termination under this paragraph shall not affect any other right Buyer may have.

Confidentiality. The parties shall adhere to the duties of confidentiality set forth in any confidentiality agreement in place between them. In the absence of such confidentiality agreement, Seller, on behalf of itself, its employees and agents, agrees to keep in strict confidence all information (including without limitation all IP Rights, technical or commercial data, know-how, specifications, ideas, inventions, technology, processes, initiatives and all documentation relating to the foregoing) disclosed by or relating to Buyer, its affiliates or their businesses or activities and of which Seller becomes aware in connection with the Order and, if the Order involves creative or developmental tasks, created or generated by Buyer or Seller (collectively “Information”). Seller shall use the Information only in performing the Order and shall restrict disclosure of Information to those of its employees, and agents as need to know for the purpose of performing the Order, and it shall ensure that such employees and agents are subject to like obligations of confidentiality. Ownership of the Information shall be vested in Buyer. Upon any expiration or termination of the Order, Seller shall promptly return, or at Buyer’s option, destroy, all Information of Buyer in Seller’s possession. Seller’s obligations of confidentiality and non-use shall survive any expiration or termination of this Agreement.

Force Majeure. Delay in performance or failure to perform hereunder shall be excused to the extent caused by act of God, labor trouble (excluding labor trouble applicable to Seller or to any of its subcontractors or suppliers), fire, act of governmental authority, accident or any other cause beyond the control of the party claiming such excuse and not the result of its failure to exercise due diligence. The party claiming such excuse shall give written notice to the other party within ten days after occurrence of the event giving rise to the claim and shall give in such notice its best estimate of the expected delay period.

Equal Opportunity. Unless exempted therefrom, Seller shall comply with the following orders, rules and regulations and any other applicable equal opportunity requirements, all of which are hereby incorporated by this reference: Section 202 of Executive Order 11246; the affirmative action clauses for the handicapped (41 C.F.R. 60-741.4) and for veterans (41 C.F.R. 60-250.4); the clauses requiring utilization of minority businesses (41 C.F.R. 1-1.1310-2), small businesses (32 C.F.R. 7-104.14 and 41 C.F.R. 1-1.710-3) and female-owned businesses (Executive Order 12138).

IP Rights. Seller warrants that the Goods and Services supplied hereunder and the use to which the same are to be put (according to Buyer’s stated purpose set forth herein or such uses as are inherent in the Goods) do not infringe upon any IP Rights of any third party. If Buyer should be enjoined or interfered with in the use of any Goods or Services supplied hereunder, Seller shall, at its option and sole expense, promptly either furnish Buyer a paid-up license to continue using such Goods or Services or furnish and install replacement Goods or Services satisfactory to Buyer.

Sub-Contracted Materials. Sellers of sub-contracted materials (materials to be resold under Buyer’s name) must provide a Certificate of Liability Insurance in the amount of at least [To Be Determined] and showing Buyer as additional insured.

Miscellaneous. Seller may neither assign the Order or any part hereof, nor delegate performance hereunder without Buyer’s prior written consent, and any attempted assignment or delegation without such consent shall be null and void. The warranties and remedies available to Buyer under the Order shall be cumulative and in addition to those implied by or available at law. The laws of the

state of Tennessee shall govern all matters relating to the Order, without regard to its conflicts of laws rules. The parties hereby agree to submit any disputes or controversies arising from, relating to or in connection with this Agreement or the parties' respective obligations in connection therewith to confidential, binding arbitration in Nashville, Tennessee in accordance with the rules of the American Arbitration Association ("AAA"). The arbitration will be conducted by an individual selected jointly by the parties, or selected by the AAA if the parties fail to agree on an arbitrator within a reasonable period. The award of such arbitration shall be final and non-appealable, except to the extent provided for in the rules of AAA. The arbitrator will have the discretion to impose the costs of the arbitration upon the losing party or divide it between the parties upon any terms which (s)he deems appropriate. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction thereof and the award may be judicially enforced. The Order (which shall for the avoidance of doubt include these Terms, and, if applicable, the Carlex On-Site Work Addendum for Services to these Terms) shall constitute the whole agreement between the parties relating to the subject matter thereof. No waiver of any breach of the Order shall be construed to constitute a waiver of any other breach or of any provision thereof. Upon reasonable notice to Seller, Buyer (or a third-party designee) may inspect or audit Seller's facilities and Buyer Information (including all pertinent documents, data and other information) related to the Order for the purpose of verifying Seller's costs and compliance with the Order. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. Nothing in the Order is intended to, or shall be deemed to, constitute a partnership or joint venture between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind the other party in any other way. Supplier acknowledges and agrees that Buyer's business is conducted in English.

On-Site Work Addendum. If the Order involves performance of work on Buyer's premises, a Carlex On-Site Work Addendum for Services to these Terms is a part of the Order subject to the terms set forth herein and is incorporated herein by reference.