

ABSI SALES AGREEMENT AND LIMITED WARRANTY

Terms & Conditions

1. **SOLE & EXCLUSIVE SALES AGREEMENT.** This Sales Agreement and Limited Warranty ("**Agreement**") is included by reference in your signed Contract ("**Contract**") with Associated Building Supply, Inc. ("**ABSI**"). This Agreement constitutes the exclusive and complete terms of the Contract. The Contract between ABSI and you ("**Buyer**" or "**You**") does not create a third-party beneficiary agreement. No general contractor, owner, or other third party may rely upon the performance of the Contract. The subject of the Contract is the sale of doors, windows, and related construction materials ("**goods**") by ABSI to Buyer. ABSI will order the goods from a third-party manufacturer ("**Manufacturer**"). The order will require that the goods be manufactured to the specifications included in the Contract. Some or all goods may have to be custom manufactured to meet the Buyer's specifications.
2. **PAYMENT, SERVICE CHARGES, AND DEFAULT.** For Your protection, do not make a deposit or other payment in cash. Make all checks payable exclusively to Associated Building Supply, Inc. No ABSI employee is authorized to accept payment by cash. You will not be given credit for any cash payment or for any check made payable to anyone other than Associated Building Supply, Inc. Final payment of any unpaid balance of the Contract price is due and payable upon delivery and before the truck is unloaded unless other payment terms are specified in the Contract. At ABSI's sole discretion, payment by cashier's check may be required. If the Contract allows delivery before payment in full, or any check is returned unpaid, the sale shall be deemed a credit sale. If any payment is not made when due, Buyer shall pay interest at 1.5% per month on such past due payment. If the Buyer fails to pay within 30 days after the due date, the payment must be delivered to ABSI at 4025 Spencer Street, Suite 205, Torrance, CA 90503. If the Buyer fails to make any payment when due, ABSI may suspend any performance due on its part concerning the Contract.
3. **BUYER WAIVES CLAIMS FOR DELAYS AND ECONOMIC DAMAGES.**
 - 3.1 Delivery Dates Are Estimates, And Delays Are Foreseeable. It is foreseeable that some of the Products delivered by ABSI may be incomplete, damaged, non-conforming, defective, or fewer than the number ordered (collectively, "Defective" or "Defective (s)"). Therefore, all delivery dates quoted or given by ABSI are estimates only; ABSI makes no representation or promise that Defect-free Products will be ready for delivery by the estimated or quoted dates.
 - 3.2 Buyer's Duty To Inspect. Buyer represents and warrants that it will: (i) thoroughly inspect the Products promptly after delivery; (ii) not install, or attempt to repair, any Products thought to be Defective without ABSI's prior written consent; and (iii) give ABSI and or the Manufacturer a reasonable opportunity to inspect, repair, and replace the Defective Products before Buyer installs or sells them. Buyer assumes all risk of delays.
 - 3.3 Buyer Waives Claims For Delay Damages. BUYER HEREBY WAIVES AND RELEASES ABSI FROM ALL CLAIMS FOR DELAY DAMAGES.

- **3.4 Buyer Waives Claims For Economic Damages.** BUYER HEREBY WAIVES AND RELEASES ABSI FROM ALL CLAIMS FOR ECONOMIC DAMAGES, including delay damages, even if ABSI is aware of or is advised in advance of the possibility of such damages and/or even if such damages are a result of ABSI's mistake or negligence. The term "economic damages" as used herein includes, but is not limited to: (i) damage to other property; (ii) loss of use of property; (iii) the cost to remove Defective Products; (iv) the cost to install any materials or Products to replace Defective Products; (v) the cost to repair any damages caused by the removal of Defective Products or by the replacement of Defective Products; (vi) loss of actual or anticipated earnings, profits, or revenue; (vii) damage to reputation; (viii) liquidated damages; (ix) back-charges for liquidated or other damages; (x) loss of business or employment opportunities; (xi) overhead and overtime expenses; and, (xii) any special, economic, or incidental loss or damage however caused including damages incurred because ABSI did not deliver the Products within the time Buyer needed them.
4. **QUOTATIONS & PROPOSALS.** No verbal or written quotation or proposal shall be binding unless included in the Contract Documents. The term "Contract Documents" means the signed Contract itself, all documents included explicitly in the Contract by reference, and any other document in writing signed by the party against whom enforcement is being pursued. This Agreement is one of the documents included in the Contract by reference. The provisions of this Agreement and the other Contract Documents shall constitute the sole, exclusive, and entire Agreement. If Buyer does not take delivery of goods manufactured specifically for Buyer within ten days of the day that they are ready for delivery, Buyer shall pay reasonable storage fees for the goods and pay interest for the goods at the rate of 1.5% per month from the date the goods were ready for delivery.
5. **PRICE INCREASE.** If the Buyer's Contract with ABSI requires shop drawings and specification work, the contract price is subject to increases imposed by the Manufacturer. Because of supply chain volatility, price increases for glass, aluminum, steel, wood, freight, labor, etc., the Manufacturer may increase its prices to ABSI during a shop drawing review period. The shop drawing review period may take many months to complete. It is only after the shop drawings are signed and approved by the Buyer that ABSI can release its order to the Manufacturer, and the Manufacturer can begin production. Between the time the Buyer signs the Contract and the time that ABSI authorizes production, the Manufacturer has the right to raise its prices to ABSI. If the Manufacturer raises its prices during that time, ABSI will notify the Buyer of the price increases and include a copy of the Manufacturer's written price-increase notice. The Contract price shall be increased by the same percentage as the Manufacturer's percentage increase, and the sales tax shall be adjusted to account for the automatic Contract price increase.
6. **DELIVERY.** Deliveries are "tailgate" only. Buyers must pay for and provide labor to offload the goods from the delivery truck. However, if, at the time of delivery, Buyer has failed to provide a sufficient number of willing and readily available people to unload the goods, ABSI may unload the goods or participate in unloading. Buyer assumes all risk of damage, theft, shortage, or any other loss to the goods the moment that any party, including an ABSI

employee, begins removing the goods from the delivery truck. Buyer waives all claims based upon damage, shortage, or theft of the goods as soon as the unloading begins.

7. **CLAIMS PROCEDURE.** Buyer's failure to strictly comply with the claim's procedure outlined in this section shall be a complete waiver and bar to any claim or set-off against ABSI unless ABSI acknowledges, in writing, the timely receipt of the claim. Buyer must make any claim for shortage, defect, nonconformity, damage, non-delivery, or for any other reason, to ABSI, in writing, by certified return receipt requested mail, within ten days of the date Buyer discovered or could have reasonably discovered the claim, but in no event later than 30 days from the date the goods were delivered (or, in the case of claimed non-delivery, within 30 days of the date ABSI requests payment for the goods). Buyer must prove that it gave timely notice by producing a post office proof of delivery to ABSI at the address given for ABSI in the Contract. Claims for breakage or shortages must be noted by the Buyer on the delivery ticket at the time of receipt/delivery. ABSI may respond to one or more verbal or untimely claims without waiving the requirement of strict compliance with all of the claim's procedures in this section for that claim or any other past, present, or future claim. Any suit against ABSI must be filed within one year after the delivery by ABSI of any item giving rise to any claim and all claims.
8. **RETURNS.** All sales are final. Custom goods specially manufactured to the Buyer's specifications may not be returned for credit unless they fail, in a material way, to conform to the Contract specifications.
9. **LIMITED WARRANTY.** THE GOODS ARE SOLD AS IS EXCEPT FOR CLAIMS BASED UPON THE MANUFACTURERS' WARRANTIES. ABSI's sole obligation to the Buyer is to assist the Buyer in presenting its warranty claims to the Manufacturer. ABSI's sole liability with respect to the condition of the goods sold to Buyer is limited to the adjustment, if any, provided by the Manufacturer of the defective or damaged goods. Except as to the title, there are no other warranties, written, oral, or implied, with respect to the goods. BUYER WAIVES ALL CLAIMS BASED UPON IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
10. **LIMITATIONS OF LIABILITY.** ABSI's liability to Buyer, whether arising out of or related in any way to any contract, negligence, strict tort, warranty, statute or any other legal basis for liability, shall be limited to ABSI's choice of any one of the following: (a) the repair of goods by ABSI or the Manufacturer; (b) the replacement of the allegedly defective or non-conforming goods without any obligation to remove or pay the cost of removal of the allegedly defective or non-conforming goods or to pay for installation of the replacement goods, or to pay for any damages caused by the removal of the allegedly defective or non-conforming goods; or (c) the cancellation of the Contract, Buyer's return of the goods in question to ABSI (if the goods were delivered to Buyer), and ABSI's refund of any payments made by Buyer to ABSI for the goods (except that a refund shall not be required to cancel the Contract if ABSI assigns its contract claim for a refund as set forth below. These remedies are exclusive, and the Buyer waives all other remedies and claims. Buyer's failure or refusal to give ABSI a reasonable opportunity to inspect and repair defective goods shall be a complete bar to any claim or offset against ABSI and/or the Manufacturer. In addition,

ABSI shall not, under any circumstances, be responsible for special, economic, consequential, or incidental damages such as, but not limited to: loss of profits, revenue, goodwill, business opportunity, or reputation; the cost of purchasing replacement goods; damage to other goods or structures; labor expenses; or damages caused by delays, back-charges, or loss of use. Risk of loss shall transfer to the Buyer upon delivery of goods to the Buyer's place of business, to the Buyer's employees or agents, to a job site, or to any other location specified by the Buyer. If the Manufacturer fails to manufacture and deliver the goods to ABSI for any reason, and the Manufacturer refuses or fails to return any deposits and advance payments, ABSI shall assign to the Buyer ABSI's contractual right to recover the Buyer's deposits and advance payments given to the Manufacturer by ABSI. For example: If Buyer chooses windows manufactured by XYZ and XYZ requires a deposit of \$10,000, and ABSI requires an advance payment from Buyer of \$11,000 (\$10,000 for XYZ and \$1,000 for ABSI for shop drawings or other services), and ABSI prepares the shop drawings and gives a \$10,000 deposit or advance payment to the Manufacturer to produce the windows, but the Manufacturer fails to manufacture the windows and fails to return the \$10,000, ABSI shall assign its Contract with the Manufacturer to Buyer so Buyer will have the direct legal right to recover the \$10,000 deposit from the Manufacturer. ABSI's sole liability to Buyer, with respect to deposits and advance payments, shall be to assign its Contract with the Manufacturer to Buyer if the Manufacturer fails to manufacture the goods or fails to deliver them to ABSI and also refuses to refund all advance payments it received from ABSI with respect to the goods.

- 11. ATTORNEYS FEES AND VENUE.** In any action by ABSI against Buyer to recover payment for goods sold by ABSI to Buyer, the prevailing party shall be entitled to attorneys' fees of 33.3% of the claim. However, if the Buyer files an Answer (even if the Answer is allowed to be filed by the Court after a default has been entered and/or even if the Answer is ultimately stricken), the prevailing party shall be entitled to reasonable attorneys' fees to be determined by the Court which may be more or less than 33.3% of the claim. In addition, the successful party shall be entitled to request and receive post-judgment collection costs and attorneys' fees, whether the judgment awarding attorneys' fees was based on the percentage formula or the reasonable attorneys' fee provision.

Any suit arising from Contract, tort, or otherwise must be brought in the Los Angeles Superior Court [in the Chatsworth Courthouse or the Central District] or the Federal District Court in Los Angeles. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

- 12. AUTHORIZATION TO SIGN THE CONTRACT.** Each individual who signs the Contract represents and warrants that he/she has the authority to sign the Contract on behalf of his/her respective company.
- 13. SECURITY INTEREST.** Buyer hereby grants ABSI a security interest in all goods (and the proceeds from goods) purchased by Buyer from ABSI. Buyer also grants ABSI an additional security interest in all business accounts receivable, inventory, equipment, and cash accounts of Buyer on the condition that ABSI shall not perfect this additional security

interest unless and until Buyer's indebtedness to ABSI includes at least \$20,000 of indebtedness that is more than 60 days past due.

14. **SEVERABILITY.** If any part of this Agreement is held invalid or unconscionable, that part shall be fully severable, and the remaining provisions shall remain in full force and effect.
15. **ENTIRE AGREEMENT.** The Contract Documents constitute the entire and exclusive understanding between Buyer and ABSI and supersede all prior written or oral representations, warranties, statements, promises, and understandings and may not be modified or terminated, except by a document, in writing, signed by the party against whom enforcement is sought. Neither Buyer nor ABSI has made any promises or representations to induce the other to enter into the Contract Documents. Neither Buyer nor ABSI relies upon any promise or representation not contained in the Contract Documents. There are no collateral verbal agreements between ABSI and Buyer. If any provision in this Agreement is inconsistent or in conflict with the provisions in the Contract, the conflicting or inconsistent provision in the Contract shall be controlling.
16. **WAIVERS.** ABSI may delay exercising or may omit to exercise any right or remedy without waiving that or any other past, present, or future right or remedy. ABSI's consistent waiver of any right or remedy shall not modify the terms of this Agreement nor establish a "course of dealing" that could be construed as a waiver of any of the provisions of this Agreement.
17. **COLLATERAL RECOVERY.** If ABSI successfully asserts a claim against a third party on a mechanic's lien, stop notice, payment bond, or other statutory remedy, ABSI shall credit Buyer's account only with the net amount recovered by ABSI after deduction of all costs, actual attorney's fees, and interest. Furthermore, if ABSI is unsuccessful in its attempt to recover from a third-party collateral source, ABSI's reasonable costs and attorneys' fees may be added to Buyer's account if the lack of success was due in part or in full to Buyer's failure to help ABSI prove that the goods purchased from ABSI were used on the job for which Buyer purchased the goods or because Buyer misrepresented any material fact to ABSI. In any mechanic's lien, stop notice, payment bond action, or other statutory remedial action against third parties, all ABSI invoices shall be deemed due within 30 days of the invoice date, notwithstanding any contractual provision to the contrary.
18. **SPECIFICATIONS OF GOODS.** ABSI's sole obligation with respect to the design specifications of the goods is to have them manufactured in accordance with the specifications included in the Contract Documents. If the Contract Documents are missing some specifications needed by the Manufacturer to manufacture the goods ("Missing Specs"), ABSI may provide, at its sole discretion, the Missing Specs to the Manufacturer and shall not be liable for any damages if its choice falls within the range of specifications allowed by applicable building codes and statutes. ABSI shall not be liable for any damages if the specifications in the Contract do not conform or comply with the owner's/architect's specifications, building codes, and any applicable statute, including but not limited to the ADA. Any changes to the specifications in the Contract Documents must be in writing, signed by both the President of ABSI and Buyer (or by someone with Buyer's ostensible authority), and must state that there is either no change in price or state the amount of the

increase or decrease in price. Specifications cannot be changed once the Manufacturer places an ABSI order for production.

19. **INDEMNIFICATION.** Buyer shall defend, indemnify, and hold ABSI harmless from and against all claims by third parties for delays or other damages excluded or limited by this Agreement.
20. **CAPTIONS AND INTERPRETATIONS.** Paragraph titles, headings, and captions are inserted in this Agreement as a matter of convenience for anyone reading it. They may not describe the full scope of any provision, and they should not be interpreted to limit or negate any provisions thereunder. **There is no substitute for carefully reading this entire Agreement and/or for seeking legal advice with respect to it.**
21. **CREDIT CARD FEES:** Effective October 2, 2023, all credit card transactions will be subject to a prevailing fee.
22. **REFUNDS AND CANCELLATIONS.** All sales are final except as set forth herein. A ten to fifty percent (10% to 50%) cancellation fee will apply to all canceled orders based on services rendered and manufacturers' cancellation terms. Shop Drawing deposits are non-refundable. ALL PRODUCT ORDERS ARE MADE TO ORDER (CUSTOM) AND ARE NOT SUBJECT TO CANCELLATION OR REFUND WHERE PRODUCTION HAS ALREADY COMMENCED.

Revised 8-26-22 GS, Revised ST 5-2-24, Revised 10-22-24 ELY

Copyright © 2022 by George Sykulski, PLC