



## GLASS & METAL CRAFT, LLC GENERAL TERMS AND CONDITIONS OF SALE

1. **The Agreement.** All sales by Glass & Mirror Craft, LLC (doing business as Glass and Metal Craft, Cuda Metals and Fulcrum Architectural Design Assist) ("Seller") to the buyer identified on the face of any invoice ("Buyer") shall be governed by the following terms and conditions of sale. The Agreement between Seller and Buyer with respect to the sale of fabricated glass and metal described on the face of this invoice (the "Goods") shall consist only of the terms appearing herein, and in Seller's quote or proposal and any attachments, exhibits or supplements (collectively, the "Contract"), together with any terms mutually agreed to in writing hereafter by Seller and Buyer. Buyer's issuance of a purchase order constitutes its acknowledgment that Seller's quote is the first document exchanged, containing the essential elements of, and therefore constitutes an offer. Seller objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller. Seller agrees to furnish only the quantity and type of goods described in the Order Confirmation or Quotation, which may vary from project plans, specifications and/or Buyer's purchase order(s). Seller shall not be obligated to make any changes or additions to the goods described in Seller's Order Confirmation or Quotation, unless Seller agrees in writing and, if necessary, adjustment is made to the price and delivery terms. Unless otherwise agreed in writing, all goods supplied by Seller, including those produced to meet an exact specification, will be subject to tolerances and variations consistent with usage of trade, regular Seller's manufacturing practices or practical testing and inspection methods. The Contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from the Contract, shall not be binding on Seller. This Contract constitutes the entire agreement between Buyer and Seller. No affirmation, representation or warranty concerning the Goods made by an agent, salesperson, employee or representative of Seller shall be binding on Seller unless the affirmation, representation or warranty is specifically included within this written Contract. No statements, recommendations or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions hereof.

2. **No Implied Acceptance.** No action by Seller, such as delivery of Goods or the rendering of services, will be deemed an acceptance by Seller of any order from Buyer with terms different or additional than those contained in this Contract.

3. **Terms of Payment.** Payments for certain specialty or custom goods may require a deposit or full payment as determined by the Seller. Otherwise, payments are due from Buyer on the thirtieth (30th) day after the date of Seller's invoice. Payments shall be made to Seller at the address specified in the invoice, without any offset or deduction for any reason, including retainage. Buyer waives all rights of offset and

deduction. Buyer's payment obligations shall not be conditioned on Buyer's receipt of payment from any third party. Pro rata payments shall become due as shipments are made. If any shipment is delayed by Seller at the request of Buyer, payment shall become due based on the date when Seller is prepared to make shipment, and Seller may invoice based on such date. If any shipment is delayed by Seller at the request of Buyer, after a seven day grace period, such shipment shall be subject to storage charges at a rate of \$500.00 per crate per month, with any partial month treated as a full month. These charges are subject to same payment terms as original order. If after the ninetieth (90th) day, including the seven day grace period, shipment still hasn't occurred, Seller will make arrangements with Buyer to ship goods to off-site facility at Buyer's cost and direction, at which point Buyer will have taken possession and ownership of goods and be responsible for any further shipments. Under no circumstance shall seller be liable for any costs, fees, damages or loss to goods or materials stored pursuant to this section. Seller specifically disclaims any liability for, or damage resulting from, the storage of finished goods or materials stored hereunder in any manner contrary to industry standards or specific storage requirements identified by Seller in any product documentation. Prices are F.O.B. Seller's shipping point unless otherwise stated in the Contract. When any payment is not paid on or before its due date, Buyer agrees to pay a late charge on the sum outstanding, from the due date for receipt of payment to the actual date of receipt of payment, at a rate of the lesser one and one-half percent (1.5%) per month and the highest rate permitted by law on the unpaid balance, and any costs of collection incurred by Seller, including, without limitation, attorneys' fees. If a payment is not paid on or before its due date, Buyer agrees that Seller may also cease performance under this Contract. Whenever, in the judgment of Seller, the financial condition of Buyer does not justify the continuation of production or shipment on the specified terms of payment, Seller may require full or partial payment in advance. As security for payment of all amounts due to Seller, Buyer grants to Seller a security interest in all Materials sold by Seller to Buyer, and Seller will have all rights of a secured party under the Uniform Commercial Code with respect to the Materials. Buyer appoints Seller as its attorney-in-fact with authority, at Seller's option, to take actions as Seller deems reasonable in the circumstance to perfect the above security interest in any one or more jurisdictions, and Buyer shall pay all applicable filing fees.

4. **Delivery.** Delivery dates are estimates and are not guaranteed, and all shipments are subject to Seller's availability of Goods. Seller shall not be responsible for claims for error in quantity, weight or number not made in writing within ten (10) days after Buyer's receipt of Goods. After this period, Buyer will be deemed to have irrevocably accepted the Materials, if not previously accepted. After acceptance, Buyer will have no right to reject the Materials for any reason or revoke acceptance. Claims for damage due to shipping must be made by Buyer to the freight carrier. Buyer must contact Seller before returning any Materials and all returns will be pursuant to Seller's instructions. Seller will not be liable for any delay in performance of this Contract or delivery of Goods when the delay is caused directly or indirectly by fire, flood, accident, riot, acts of God, war, governmental interference, strikes or other labor difficulties, shortage of labor, fuel, power, materials or supplies (including, without limitation, the failure of Seller to receive Goods from its supplier or its supplier asserting a force majeure claim), transportation delays, or any other cause or causes whatsoever beyond its control. Each installment of Goods to be delivered under this Contract is to be considered as a separate sale and Buyer shall be liable to pay the agreed price for each such installment without regard to any failure to deliver other installments, and Seller's breach or default in the delivery of any Goods shall not give Buyer the right to refuse any other installments.

5. **Termination or Modification.** This Contract may be modified or terminated only upon Seller's written consent. If all or part of this Contract is terminated, Buyer, in the absence of contrary written agreement with Seller, shall pay termination charges based upon expenses and costs incurred in the

production of the Goods to the date such termination is accepted by Seller plus a reasonable profit, except that any Goods completed on or before Seller's acceptance of such termination shall be accepted and paid in full by Buyer.

6. **Shipment; Risk of Loss.** Seller's sole obligation with respect to delivery shall be to place the Goods in the possession of a carrier, make appropriate arrangement for their transportation, and obtain and deliver documents necessary to enable Buyer to obtain possession of the Goods. Buyer shall be responsible for all other aspects of shipment and delivery, including, without limitation, the obligation to obtain and maintain all appropriate insurance and pay all transportation costs. Buyer shall also pay all loading, unloading, and other charges incidental to transportation. Seller will attempt to follow Buyer's shipping instructions, but may make reasonable changes thereto. Buyer assumes all risk of loss of Goods delivered by Seller to the carrier.

7. **Inspection.** Buyer shall inspect the goods upon receipt and notify Seller in writing of any claims that the goods are non-conforming within ten (10) days after delivery. Seller shall be allowed reasonable opportunity to inspect the goods, and cure any claim of alleged non-conformity, including reasonable access to the goods whether on Buyer's premises, at a storage facility or on the job site. No goods may be returned to Seller without prior written consent.

8. **Limited Warranty.** Seller provides a limited warranty for goods shipped pursuant to an order. Seller's warranty terms are set forth in a separate warranty certificate available upon request. Seller's warranty will be void if full payment for the goods is not received within the agreed upon terms of sale. Any verbal representations intended to modify any existing warranty shall be invalid and unenforceable against Seller.

EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED ABOVE, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES AND THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GOODS OR ANY PART OF COMPONENT THEREOF AND NO WARRANTY SHALL BE IMPLIED BY OPERATION OF LAW OR OTHERWISE. BUYER ASSUMES FULL RESPONSIBILITY THAT THE MATERIALS PURCHASED UNDER THE AGREEMENT MEET THE SPECIFICATIONS AND/OR INTENDED USE OF BUYER, AND SELLER MAKES NO REPRESENTATION WITH RESPECT TO THEM. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE SET FORTH HEREIN. BUYER UNDERSTANDS AND AGREES THAT BUYER'S FAILURE TO ADHERE TO THIRD-PARTY HARDWARE VENDOR RECOMMENDATIONS RELATED TO THE GOODS VOIDS ANY AND ALL WARRANTIES OF THE SELLER.

Seller's liability on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from the Goods or the Contract between Seller and Buyer, will in no case exceed the price allocable to the specific Good that gives rise to the claim. The remedies contained in this Warranty constitute the sole recourse of Buyer against Seller for breach of any of Seller's obligations under this Contract, whether of warranty or otherwise. In no event shall Seller be liable for incidental, consequential, or special damages, including, without limitation, lost revenues, profits, or recall expenses. No variation or change from this Warranty will be binding upon Seller unless made in writing and signed by an officer of Seller. Unless otherwise specifically provided on the quotation or invoice, the Agreement does not include any services of

Seller in connection with installation, testing, or evaluation of the Materials. The sole remedy of Buyer in connection with any acts or omissions of Seller in the provision of technical support will be the provision of further technical support to Buyer reasonably required to correct the act or omission.

9. **Indemnification.** Buyer shall indemnify Seller against, and hold Seller harmless from, any and all claims and liabilities, including reasonable attorneys' fees, arising out of, connected with, or resulting from the Goods, including, but not limited to, the selection, delivery, possession, use, or operation by Buyer of the Goods.

10. **Taxes.** Sales, use, occupation, excise and other taxes upon the production, sale or use of the Goods are not included in the price and such taxes or any costs in connection therewith, wherever levied and whether imposed before or after payment of invoice, shall be paid by Buyer.

11. **Governing Law.** The terms and conditions of this Contract shall be governed, construed, interpreted and enforced in accordance with the domestic laws of the State of Michigan, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Michigan or in any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan. Any action for breach of this Contract, including any breach of warranty, must be commenced within one (1) year after the cause of action has accrued.

12. **Assignment and Delegation.** No right or interest in this Contract shall be delegated or assigned by Buyer without the written permission of Seller. Any attempt at assignment or delegation shall be void unless made in conformity with this paragraph.

13. **Entire Agreement.** Seller's Quotation, these Terms of Sale, Seller's Order Confirmation, Limited Warranty and any supplemental documents annexed herto by Seller, contains the complete and entire agreement between the parties as to the subject matter hereof, and replaces, supersedes, any prior or contemporaneous communications, representations, or agreements, whether oral or written, with respect to such subject matter.