

HMI Sales Order Terms and Conditions

General - The term "HMI" as used herein shall mean HMI Glass Inc., its parent company, subsidiaries, affiliates and related entities. The term "Purchaser" as used herein shall mean the party purchasing the products from HMI as provided herein (the "Products"). The sale, shipment and delivery by HMI of products shall be subject only to and governed exclusively by HMI Sales Order Terms and Conditions (the "Terms and Conditions") set forth herein. Any additional or differing terms and conditions stated on any documents prepared or submitted by Purchaser, including but not limited to those contained in Purchaser's purchase orders, quotes, drawings, and specifications (whether or not such terms materially alter these terms and conditions), are hereby rejected by HMI and shall not become part of the agreement between Purchaser and HMI. **ACCEPTANCE BY HMI OF ANY OFFER IS MADE EXPRESSLY CONDITIONAL UPON THE PURCHASER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN.** Submittal of any further purchase documents by Purchaser, or execution of this offer by Purchaser, or allowing HMI to commence work, shall be deemed acceptance by Purchaser. **ACCEPTANCE BY PURCHASER OF ANY OFFER MADE BY HMI IS EXPRESSLY SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN.**

Prices - Unless otherwise stated, all prices quoted by HMI are based on U.S. dollars and are effective for thirty (30) days from the date of quotation unless HMI, in its sole discretion, elects to extend the quotation period. The Products' prices are set by quotation and subject to increase for any reason without notice. Quotations provided by HMI supersede all other quotations. Discounts and price adjustments are at the sole discretion of HMI. Verbal quotes are provided for information purposes only and are not binding until entered into HMI's software system by an HMI representative.

Credit Card Surcharge Fees - HMI will impose a surcharge of 2.95% for credit card payments in all states permitting. This surcharge is not greater than HMI's merchant discount rate for credit card transactions and is subject to sales tax in some jurisdictions. The Purchaser agrees to pay HMI any surcharge imposed for using a credit card to pay for HMI's Products. The Purchaser will not dispute any surcharge for credit card payments consistent with these Terms and Conditions.

Taxes - Any sales, use, value added tax, or manufacturer's tax which may be imposed upon the sale or use of goods, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and paid by Purchaser. Although HMI's quotation may estimate tax charges, actual taxes will be calculated and charged in HMI's invoice.

Payment - Terms of payment are net 30 days from date of invoice unless otherwise agreed in writing. All past due amounts shall bear interest at the highest rate allowed by law.

Production and Delivery - Products will be delivered to the "Primary Ship-To" location. Any request to have the Products delivered to an alternate location, must be approved in advance by HMI and may be subject to additional costs and fees. Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser including, in the case of custom items, HMI's receipt of complete information necessary to proceed with design and manufacture. If delivery as originally scheduled is delayed by Purchaser, HMI may invoice Purchaser and store the Products at Purchaser's expense. Any "time is of the essence" clause or language and claims for back charges are specifically rejected.

Shipment - In the absence of a written agreement to the contrary, the means of shipment will be at the discretion of HMI. HMI may ship the Products in one or more lots; such lots may be separately invoiced and shall be paid for when due per invoice, without regard to subsequent deliveries. HMI charges a fixed fee for all shipments by HMI truck(s). For shipments by a third-party carrier, including LTL and brokered shipments, fees and costs are based on market prices.

Risk of Loss; Title - Unless otherwise agreed to in writing by an authorized representative of HMI, all Products shall be F.O.B. shipping point where the work is to be performed and shall become the property of Purchaser upon delivery to the carrier. Buyer shall assume all risk and liability for loss or damage after delivery to the carrier. The responsibility of HMI for all shipments ceases upon delivery of Products in good order to the carrier, at which point title transfers to Purchaser.

Security Interest - HMI reserves a security interest in the Products until final payment is received by HMI.

Returns and Refunds – In accordance with, and subject to, the terms and conditions of its Residential and Commercial Warranties, HMI will replace defective Products free of charge. For returns, HMI will provide a Return Merchandise Authorization and schedule the pickup of Products. The Purchaser will be responsible for properly repackaging the Products and freight costs. All returned Products are subject to inspection to determine whether they are defective and entitled to HMI’s warranty. All refunds must be approved and will be issued in the form of customer credit unless otherwise approved by HMI’s CRO, CFO, or CEO.

Inspection and Acceptance - The Purchaser must inspect the Products upon receipt and notify HMI of any defects or discrepancies within fifteen (15) business days of delivery to avoid HMI charging any additional costs related to replacement or refund of Products. If HMI is notified after fifteen (15) business days, the Purchaser will be responsible for 50% of the remake cost, which may only be nullified by the assigned Outside Sales Representative, National Sales Manager, CRO, or CEO. Failure to provide timely notice of defects or discrepancies constitutes acceptance of the Products.

Setoff - HMI reserves the right, at any time, to set-off against any amount that HMI owes to Purchaser (or any of its affiliates) any amount that Purchaser (or any of its affiliates) owes to HMI under any agreement between the parties. “Set-off” means set-off, offset, combination of accounts, netting of dollar amounts of monetary obligations, right of retention or withholding or similar right to which HMI is entitled (whether arising under the Agreement, another agreement, applicable law, or otherwise) that is exercised by HMI.

Changes and Cancellation - Orders placed with and accepted by HMI may not be cancelled or changed except with HMI’s written consent prior to shipment. Purchaser will be responsible for paying HMI a back charge for the total amount of any costs or fees incurred by HMI as a result of the change or cancellation. HMI reserves the right to cancel any sale hereunder prior to delivery in HMI’s sole discretion without liability to Purchaser (except for refund of monies already paid).

Force Majeure - If HMI suffers delay in performance due to any cause beyond its control, including but not limited to acts of God, war, epidemic or public health crisis, national or regional emergency, government order, law, or actions, fire, flood, strike or labor trouble, substantial increase in energy costs or the cost of materials, or delay in obtaining from others suitable services, materials, components, equipment or transportation (each, a “Force Majeure Event”), HMI shall not be liable for any costs or expenses associated with such delay, and the time of performance shall be extended a period of time equal to the period of the delay and its consequences.

Limited Commercial and Residential Warranties - HMI warrants its Products in accordance with its Commercial and Residential Warranties, whichever applies. The terms contained in HMI’s Commercial and Residential Warranties supersede these Terms and Conditions to the extent there are any inconsistencies between them. HMI’s Commercial and Residential Warranties can be found at [\[Need to upload to website and insert link\]](#).

Disclaimer of Liability - **IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL HMI BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ITS PRODUCTS.**

Limitation of Liability - HMI's liability for any claim or action of any kind arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, use, or repair of its Products shall not exceed HMI's price for the sale of such Products which give rise to any claim or action.

Governing Law and Jurisdiction - The rights and obligations of the parties and the terms identified herein shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, including the Uniform Commercial Code as enacted in Kentucky. Any legal or equitable actions arising out of or relating to the Terms and Conditions shall be brought only in Kentucky's Jefferson Circuit Court or the U.S. District Court for the Western District of Kentucky. HMI and Purchaser agree that such court shall have personal jurisdiction over the parties.

Alternative Dispute Resolution - Should any dispute arise between HMI and Purchaser, neither will file a lawsuit unless the following ADR attempts fail: (i) HMI and Purchaser will each designate an officer or executive to confer about the dispute; (ii) if HMI and Purchaser are unable to resolve the dispute, they will each designate an authorized representative to attend mediation in Louisville, Kentucky.

Indemnification - Purchaser agrees to indemnify, defend, and hold harmless HMI from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation attorneys' fees, courts costs, and amounts paid in settlement in good faith), whether or not involving third-party claims, which may be suffered or incurred as a result of any claim, demand, suit, proceeding or cause of action arising in any manner from: (i) any acts or omissions by Purchaser, arising out of or relating to Purchaser's purchase, handling, transportation, export, possession, use, demonstration, marketing, sale, distribution, installation, or maintenance of Products; (ii) any statements, representations (whether oral, written, express or implied), suppression of information, or failure to disclose information of any kind by Purchaser with respect to the Products; (iii) sales by Purchaser to installers that Purchaser knows or has reason to know are not qualified; (iv) the improper use or disclosure of Seller's intellectual property; (v) any intentional misconduct or negligent act or omission of Purchaser, its employees, or its agents; (vi) any contractual obligation assumed by Purchaser toward a third-party; (vii) any misuse or modification of Products by Purchaser or its employees, agents, or contractors; or (viii) Purchaser's failure to comply with any law applicable to the Terms and Conditions or the performance of Purchaser's obligations hereunder.

Export - Purchaser agrees to comply with all local and government import and export controls, including obtaining any required licenses or item classifications necessary to export the Products.

Intellectual Property - HMI retains title and all associated rights to its intellectual property, including but not limited to trademarks, trade names, copyrights, patents, designs, and trade secrets.

Entirety of Agreement - This document, together with any other documents furnished by HMI and referenced herein, shall set forth the entire agreement between the parties. Should any portion herein be deemed to be illegal, invalid, or unenforceable the same shall not affect other terms or provisions of these Terms and Conditions, which shall be deemed modified to the extent necessary to render it enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly.

Assignment - Purchaser may not assign these Terms and Conditions or delegate its duties or rights set forth herein to another party.