

HMI National Hospitality Division Terms and Conditions of Sale

General

The term “HMI,” as used herein, shall refer to the Hospitality Division of HMI Glass Inc., including its parent company, subsidiaries, affiliates, and related entities. The term “Purchaser,” as used herein, shall mean the party purchasing the products (the “Products”) specified in HMI’s quote (the “Quote”) provided to Purchaser. HMI’s Quote to Purchaser incorporates HMI National Hospitality Division’s Terms and Conditions of Sale (these “Terms and Conditions”) and shall constitute HMI’s offer to sell the Products to Purchaser (HMI’s “Offer”). HMI’s Offer is conditioned on and subject to these Terms and Conditions, and HMI’s sale, shipment, or delivery of Products to Purchaser shall be governed exclusively by these Terms and Conditions. Any additional or differing terms and conditions stated on any documents prepared or submitted by Purchaser, including those contained in Purchaser’s purchase orders, releases, drawings, or communications (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. Purchaser shall be deemed to have accepted these Terms and Conditions by submitting a purchase order to HMI, making a payment to HMI, accepting delivery of the Products, allowing HMI to commence manufacturing the Products or engaging in any other conduct sufficient to manifest an intent to purchase the Products. **HMI’S OFFER IS EXPRESSLY SUBJECT TO AND CONDITIONED ON THESE TERMS AND CONDITIONS.**

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 the Quote unless HMI, in its sole discretion, elects to extend the quotation period. All quotes are subject to increase for any reason without notice. The latest quote supersedes and invalidates all preceding quotes supplied by HMI for the Products. Discounts and price adjustments are at the sole discretion of HMI. Volume discounts do not apply to piecemeal ordering of Products and will only apply when HMI manufactures all Products ordered at once. Itemized pricing may be affected by changes to the quantity of Products ordered. Verbal quotes are provided for information purposes only and are not binding until reduced to a written quote. Quotes estimate shipping fees and do not include taxes.

Taxes

Any sales tax, use tax, 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, 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 by invoice.

Payment

HMI requires an advanced payment of 50% of the Product’s price to begin manufacturing unless the Credit Manager agrees otherwise in writing. HMI will invoice Purchaser for the deposit amount upon receipt of the purchase order. HMI will invoice Purchaser for each shipment, and payment is due 30 days from the invoice date. All past due amounts shall bear interest rate equal to current Secured Overnight Financing Rate (SOFR) plus 2.5%.

Shipment and Delivery

Products shall be shipped FOB from HMI’s facility to Purchaser’s designated destination. Title to the products and risk of loss or damage shall transfer from HMI to Purchaser upon the carrier’s receipt of the Products at HMI’s facility. In the absence of an 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. Shipping fees estimated in the Quote are subject to increase for any reason, including due to an increase in the number of required shipments. Purchaser is responsible for unloading Products, including providing forklift and operator, if necessary. If Purchaser delays delivery for more than five (5) days, HMI will charge storage and redelivery fees to Purchaser amounting to 0.25% of the total value of the Products whose delivery has been delayed. If delivery company incurs detention fees, the fees will be invoiced to Purchaser. Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser.

Security Interest

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

Returns and Refunds

Returns and refunds are subject to the terms and conditions of its Commercial Warranty, 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 authorized HMI personnel.

Limited Commercial Warranty

HMI warrants its Products in accordance with its Commercial Warranty. The terms contained in HMI’s Commercial Warranty supersede these Terms and Conditions to the extent there are any inconsistencies between them. HMI will provide a copy of its Commercial Warranty upon Purchaser’s request.

Inspection and Storage

The Purchaser must inspect the Products upon receipt and notify HMI of any apparent defects or discrepancies within one (1) day of delivery. If HMI is notified thereafter, the Purchaser will be responsible for 50% of the remake cost and delivery fee, which may only be nullified by authorized HMI personnel. Failure to provide timely notice of defects or discrepancies constitutes acceptance of the Products’ condition. Due to unpredictable climate and job site conditions, all materials must be stored indoors under cover protected from direct sunlight, rain, snow, ice, dust, and debris. Any material found to be stored in an unprotected environment will be excluded from HMI’s warranty.

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 HMI may not be canceled or changed except with HMI’s written consent fifteen (15) business days 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.

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) installation of the Products; (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.

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.

© Copyright: HMI (2024/05)