



## TERMS OF SALE

**ACCESS WINDOW AND DOOR DESIGN CENTRE LTD.  
and ACCLIVITY FIELD SERVICES  
(\*ACCESS\*)**



### **1.0 ORDERS**

#### **1.1 General Order Process**

If a party (the "Customer") wishes to purchase a product from ACCESS (the "Product"), the Customer shall fill out an order form provided by ACCESS indicating a description of the Product and the desired delivery date. ACCESS shall then provide a quote (the "Quote") to the Customer based on the consultation with the Customer. The quote shall contain a detailed description of the products offered by ACCESS (the "Products"), along with design description and sizes. Orders cannot be processed unless ACCESS receives the following from the Customer:

- 1.1.1. The Quote, signed and dated by the Customer, indicates the acceptance of the terms contained therein. The Customer is responsible for their order and needs to verify that everything on the quote is correct, including size, swing, configuration, quantity, extras, etc.
- 1.1.2. A signed sales agreement in the form prescribed by ACCESS (the "Sales Agreement");
- 1.1.3. The required non-refundable deposit payment.

#### **1.2 Orders of custom-designed products**

1.2.1 Once the Customer's order (the "Order") has been processed, such sale shall be final. As all custom-designed products are specifically made for each Customer, the Order cannot be canceled or changed after it is confirmed by the Production Department. Cancellations or changes of any other order must be approved in writing by ACCESS at its sole discretion. If an existing order is changed, it shall be treated as a cancellation, and additional Processing Fees will apply. A new signed quote will be required for changed Orders. Full payment for the canceled Order may still be required at ACCESS's sole discretion.

#### **1.3 Orders of spare parts**

- 1.3.1 You may return most unused and undamaged spare parts that were not custom-ordered and/or custom-designed and/or custom-made (which includes custom-cut) within 30 days of delivery EXW Winkler, Manitoba for a full refund. Shipping costs are not refundable.
- 1.3.2 All returned products must be returned at the Customer's expense to ACCESS's head office in Winkler, Manitoba. ACCESS does not accept any shipping charges for returned Products.

1.4 ACCESS reserves the right to reject any order at its sole discretion.

1.5 Occasionally, products or colors are discontinued. Whenever we receive notice of discontinued items, we will notify you immediately and give you the option to change or cancel your order. If an order has been placed for a discontinued Product, such sale shall be canceled, and the Customer shall receive a refund for any payment made for such product.

### **2.0 GENERAL PAYMENT TERMS**

2.1 The Customer shall be required to make payment as follows:

#### **2.1.1 Payments for Products and Shipping:**

- 2.1.1.1 For orders over CAD \$2,000.00, fifty percent (50%) of the purchase price shall be required as a non-refundable deposit upon signing the Sales Agreement, with the remaining portion payable seven (7) days prior to the shipping date.
- 2.1.1.2 For orders under CAD \$2,000.00, the entirety of the purchase price is payable upon signing the Sales Agreement.

#### **2.1.2 Payments for Installation:**

- 2.1.2.1 All payments for installation charges shall be made by credit card unless otherwise approved by the Finance Manager.
- 2.1.2.2 Customer agrees to submit their credit card information to ACCESS prior to installation scheduling.
- 2.1.2.3 Customer agrees that a hundred percent (100%) of the estimated installation price will be pre-authorized on their credit card before installation work begins and charged after the installation is completed.
- 2.1.2.4 After installation is completed, the customer will receive a detailed final invoice that may differ (higher or lower) from the estimated price depending on the actual work performed as required. The customer agrees that their credit card will be charged the amount outstanding on the final installation invoice.

2.2 Order processing shall begin earliest at such time as the first payment has been made by the Customer to ACCESS and all order details have been finalized.

2.3 Credit Card payments are accepted free of charge up to a maximum of \$20,000 per order. Any credit card payments, except for installation charges, exceeding \$20,000.00 will have a surcharge of 3%.

2.4 Ownership of the Product shall remain with ACCESS until such time as payment of the purchase price has been made in full, plus any applicable interest, penalties, and any other costs, including payment of any note or extension given or judgment secured.

2.5 Until such time as full payment is made pursuant to the above, the Product shall remain at the risk of the Customer, and the Customer may not part with possession of the Product but must keep the Product insured, in good condition, free and clear of all liens and encumbrances.

2.6 ACCESS does not accept charges or back charges of any kind unless agreed to in writing.

2.7 The Customer shall be responsible to pay any taxes, duties, or other fees imposed by any governmental authority on the sale of the Product unless the Customer provides ACCESS with a tax exemption certificate or other documents acceptable to the authority imposing the tax or charge.

2.8 The Customer will not withhold payment of the completed Products or any other amount payable to ACCESS in connection with the purchase of the Product in the event of any dispute between the Customer and ACCESS.

2.9 The cost of cleaning glass, uPVC frames, interior doors, and/or other products is not included in the contract price.

### **3.0 DELIVERY**

3.1 Once the Order has been processed, the Customer shall receive an order confirmation. The target delivery date shall be between five (5) and twelve (12) weeks of receipt of the order confirmation. However, please note that delivery times may vary depending on the Product ordered, availability of materials, back-ordered inventory, factory slowing or overload, or other unforeseen problems.

3.2 The Product shall be considered delivered upon either:

- 3.2.1 Pick-up of the Product by the Customer at the manufacturing plant or head office of ACCESS in Winkler, Manitoba; or
- 3.2.2 Transport of the Product to the shipping address designated by the Customer on the sales agreement.

3.3 If delivery is to be included, the Products will be delivered and stored in an area closest to the off-loading area. It is the responsibility of the Customer to ensure that proper site access is available to ACCESS. If the customer refuses to receive shipped products for any reason, ACCESS will charge additional shipping fees back to the customer.

3.4 Shipping Damages: All shipped products must be received by the customer regardless of condition. The Customer must report any shipping damages or shortages within forty-eight (48) hours of delivery. Shipping damages or shortages not reported within forty-eight (48) hours of delivery will be the responsibility of the Customer. ACCESS assumes no responsibility for scratched or broken products once the shipment of products has been received.

3.4.1 Third-party delivery: Damages need to be noted on the Bill of Lading (BOL) of the carrier before signing the BOL and pictures of the damage must be submitted to ACCESS within 48 hours of delivery.

3.4.2 ACCESS delivery: Damages need to be noted and signed off on the Shipping List or Invoice and pictures of the damage must be submitted to ACCESS within 48 hours of delivery.

3.5 Large multi-lite units: Large multi-lite windows can be easily damaged during handling if the glazing is installed. When ACCESS judges this to be the case, the units will be shipped unglazed but with all components to glaze the window. The customer is responsible for glazing the window after the proper installation of the frame.

3.6 Handling: Glazed windows and insulated glass units over 2.3 m<sup>2</sup> (25 ft<sup>2</sup>) should only be moved using professional glazing suction cups. Smaller insulated glass units should not be handled without protective gloves. ACCESS is not responsible for damage caused by improper handling.

3.7 ACCESS will not be responsible for the loss resulting from delays in supply caused by strikes, lockouts, labor disputes, raw material shortages, transportation delays, or other matters beyond ACCESS's control.

3.8 If the Customer has not picked up the Product or agreed to delivery arrangements for the Product within thirty (30) days after the Product is ready for pick-up or delivery, ACCESS may charge a storage fee. If the Customer has not picked up the Product or agreed to delivery arrangements for the Product within sixty (60) days after the Product is ready for pick-up or delivery, ACCESS may, in its sole discretion, elect to cancel the Order and further sell the Order or parts of the Order to other customers.



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**4.0 LIMITATION OF LIABILITY AND INDEMNITY**

- 4.1 Except as provided in any express written warranty subsequently provided by ACCESS to the Customer, ACCESS makes no representation or warranty, whether written, oral, statutory, express, or implied, concerning any products, including but not limited to any warranty of merchantability or fitness for a particular purpose, and ACCESS shall have no liability of any kind for any losses or damages due to any delays in fulfilling orders accepted from the Customer, delays in meeting delivery dates, or delays in shipping, or for any losses or damages resulting from causes beyond the immediate and direct control of ACCESS. In no event shall ACCESS be liable for any special, indirect, incidental, or consequential, punitive, or other similar damages, whether for breach of any warranty, for breach or repudiation of any other term of condition of sale, or for liability on the basis of negligence, strict liability or otherwise, even if ACCESS shall have been advised in advance of the likelihood thereof. In all situations and circumstances (including, without limitation, if for any reason the exclusion of damages in this provision is not enforceable or void), ACCESS's liability to the Customer or others shall not, in any event, exceed the amount actually paid by the Customer to and received by ACCESS for that portion of the Products involved or, if the matter does not directly involve specific products, then for the portion of the Products most closely related to the matter. The Customer further acknowledges and agrees that incorrect installation, repair, or maintenance of the Products may result in any warranty otherwise applicable becoming null and void.
- 4.2 In addition to the above, ACCESS is not responsible for the following:
- 4.2.1 Differences between the Product approved for production and the building plans or other requirements of the Customer;
  - 4.2.2 Structural work or any other work relating to the building and/or rough opening framework where the Product is to be installed;
  - 4.2.3 Flashing and/or waterproofing around openings;
  - 4.2.4 Ensuring that the Product meets any applicable regulations, national or local codes, by-laws, or safety glass regulations.
- 4.3 The Customer will indemnify, defend, and hold harmless ACCESS, its affiliates, and their respective owners, shareholders, directors, officers, employees, agents, representatives, and assigns, from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses, (including, without limitation, attorney's fees and expenses) caused by, attributable to, resulting from, or arising out of:
- 4.3.1 The activities, actions, or operations of the Customer, its affiliates, or the respective employees, agents, or representatives thereof, including, without limitation, acts of negligence or willful misconduct;
  - 4.3.2 The Customer's Use, installation, or Repair of the Products;
  - 4.3.3 Breaches by the Customer of any of its representations or obligations hereunder.

**5.0 GENERAL**

- 5.1 ACCESS reserves the right to modify or amend the Terms of Sale at any time, effective upon publishing an updated version of the Agreement on the website of ACCESS located at [www.accesswd.ca](http://www.accesswd.ca), or as part of any Sales Agreement.
- 5.2 Any failure by ACCESS to enforce, at any time or for any period of time, any of the provisions hereunder shall not be construed as a waiver by ACCESS of the right of ACCESS to enforce such provisions.
- 5.3 The Terms of Sale and the Customer's rights and obligations hereunder may not be assigned or transferred without the consent of ACCESS, expressed in writing.
- 5.4 The obligations of the Customer herein shall survive the termination of the Sales Agreement and the Customer shall be bound by such obligations after termination hereof.
- 5.5 The Terms of Sale shall be read with all changes of gender or number required by the context.
- 5.6 If the Customer has a Dealer Agreement with ACCESS, such Agreement shall supersede the terms herein.
- 5.7 The invalidity of any provision of the Terms of Sale or any covenant herein contained shall not impair the validity of any other provision herein set out.
- 5.8 Any changes to the Terms of Sale shall not be effective unless made in writing, signed by ACCESS and the Customer.