



# AGC GLASS NORTH AMERICA GENERAL TERMS AND CONDITIONS & LIMITED WARRANTY

## A. GENERAL TERMS AND CONDITIONS

**1. OFFER, ACCEPTANCE, CONSIDERATION.** These General Terms and Conditions (“**Terms**”) apply to the sale of all products by AGC Flat Glass North America, Inc. d/b/a AGC Glass North America and its related and affiliated companies (collectively herein referred to as “**AGC**”) to the person, party, company, or entity purchasing the product(s) (“**Customer**”). AGC and Customer are collectively referred to herein in the plural as “**Parties**” and singular as “**Party**”; “**days**” as used herein shall mean calendar days, excluding federal holidays, unless otherwise expressly noted. AGC may provide these Terms in hardcopy or electronically, and may modify them at any time in AGC’s sole discretion without notice. Publication, including updates, of these Terms at <http://agcglassna.com> shall constitute constructive notice of the same. If these Terms are provided with respect to a purchase order from Customer, then this document is a rejection of that offer and these Terms are, and shall be construed as, an offer by AGC to sell to Customer the products described at the price agreed to in writing by AGC subject to these Terms. Any agreement by AGC to provide products to Customer is conditioned on Customer’s acceptance of these Terms which shall be deemed given upon the occurrence of the earlier of the following: (a) Customer’s express or implied acceptance of these Terms, including execution of AGC’s Customer Application and Agreement required to establish an account and credit with AGC; or (b) Customer’s receipt of AGC products without notifying AGC in writing of objection to these Terms prior to delivery; or (c) Customer failure to notify AGC in writing of objection to the Terms within five (5) business days of receipt thereof, whether electronically or in hardcopy; or (d) Customer’s prior acceptance of these Terms with respect to other purchases of AGC products in the course of doing business with AGC. Exchange, receipt and sufficiency of good and valuable consideration for the Terms is hereby acknowledged by the Parties.

**2. PRODUCT-SPECIFIC TERMS AND CONDITIONS.** Additional terms and conditions specific to products provided by AGC to Customer may be set forth in an accompanying price list or AGC quotation (“**Additional Terms and Conditions**” or “**ATCs**”), and, if so, are hereby incorporated herein by reference and binding on Customer.

**3. ENTIRE AGREEMENT.** The entire agreement (the “**Agreement**”) between the Parties consists exclusively of: (a) these Terms; (b) an AGC invoice setting forth the price and quantity of product(s) sold to Customer and any other additional invoices sent by AGC in connection therewith (together, “**Invoice**”); (c) ATCs, if any; and (d) any additional, express warranty provided separately in writing by AGC, if any. The Agreement constitutes all terms and conditions with respect to any sale of product(s) by AGC to Customer. Further, no terms or conditions provided or stipulated by Customer by any means to AGC, including, but not limited to, any terms or conditions made part of a purchase order or some other document provided by Customer to AGC irrespective of AGC’s action or inaction with respect to the same, shall be made a part of the Agreement without a written agreement from AGC expressly indicating that such terms or conditions are to be made a part of or shall alter the Agreement. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions

and does not serve to modify or amend these Terms. These Terms cannot be modified, amended or supplemented except by a writing signed by a duly authorized officer of AGC.

**4. PRICING.** AGC will adhere to the pricing provided to Customer in writing that is expressly stated to be “firm” (“**Firm Price**”) for the stated period of time which, unless expressly stated otherwise in writing by AGC, will in no event be longer than thirty (30) days, provided that AGC may withdraw or modify a Firm Price at any time for any reason upon notice to Customer, by any means, including, phone, mail, email or facsimile. Additionally, any Firm Price shall be void, and enforceable only at AGC’s election, in the event: (a) Customer misrepresented to AGC, or failed to inform AGC of, any fact or circumstance considered material by AGC; or (b) Customer changes any order specifications or variables relied upon by AGC in preparing the initial Firm Price. AGC may change AGC’s published prices and discounts, if any, at any time without notice to Customer. If AGC issues a price change, AGC will notify Customer, and Customer shall pay the new prices for those products not already (i.e. prior to the date of notice) arranged to be shipped prior to the effective date of such price change. Any additions to outstanding orders will be at prices in effect when the additional order is accepted by AGC. All prices are based on the cost of labor, materials, transportation, rates of applicable taxes and custom duties and any other costs (collectively, “**Costs**”) as of the date of the quote or the date of sale, whichever is later. AGC may, in the event of any increase in any of its Costs after the date of a quote or an offer of a Firm Price, whether or not arising out of an event of force majeure or a failure of presupposed conditions, adjust, in AGC’s sole discretion, its quote or offer of a Firm Price to reflect such increases.

**5. ENERGY AND FREIGHT SURCHARGES.** All Customer purchases are subject to, and Customer shall be invoiced and pay, in addition to the price of the product(s) and Costs, all energy and freight surcharges including, but not limited to, all natural gas and diesel fuel surcharges (collectively, “**Surcharges**”). AGC, in its sole discretion, may issue and invoice Surcharges quarterly, or other frequency as may be set forth in writing by AGC to Customer.

**6. TAXES.** Customer shall pay all national, provincial, and municipal tax, any manufacturer’s tax, retailer’s tax, sales tax, excise tax, duty, custom, inspection or testing fee, or other tax, fee or charge of any nature whatsoever (excluding AGC’s income taxes), imposed or assessed by any governmental or quasi-governmental authority, or measured by any transactions between AGC and Customer (collectively, “**Taxes**”) in addition to the prices quoted or invoiced. AGC will invoice all Taxes to Customer. In the event AGC is required to pay any Taxes, Customer shall provide to AGC, if available, an exemption certificate or other document acceptable to the authority imposing Taxes in a timely manner, and in no event later than fourteen (14) days from AGC’s request for the same. AGC will not rebate to Customer Taxes imposed or assessed for invoices issued before an exemption certificate is received by AGC.

**7. PAYMENT TERMS.** Customer shall pay the net invoice amount for products sold to Customer within thirty (30) days from the date of Invoice unless otherwise stated on the Invoice. If, at any time

during AGC's performance with respect to an order, AGC in its sole discretion determines that Customer should not be afforded the payment terms originally agreed to, AGC may require full or partial payment in advance or any other adequate assurances, including, but not limited to, adequate assurance of payment from Customer before proceeding with the order. If the net invoice amount is not paid when due, such amount will, from and after the due date, bear an interest rate of one and a half percent (1.5%) per month or the maximum annual rate of interest allowable by law, whichever is lesser. Any applicable cash discount will be stated on the Invoice. Cash discounts are not allowed on and will not be applied to any invoiced item other than the purchase price for the product (e.g. not applicable to Taxes, Surcharges, crating or other charges).

**8. NO WITHHOLDING PAYMENT.** Customer expressly waives all right to, and shall not, set off or otherwise withhold any payment to AGC under the Agreement or any other agreement with AGC for any reason whatsoever, including, but not limited to, reasons related to any dispute or credits that Customer believes are owed it by AGC.

**9. US CURRENCY ONLY.** Customer shall pay all prices, applicable Taxes, Surcharges and any other charges or fees under the Agreement to AGC in United States Dollars (US\$) unless AGC agrees otherwise in writing.

**10. MINIMUM UNIT OF SALE:** AGC's minimum unit of sale is 42,000 pounds or more to meet any published carrier tariff minimums with respect to the mode of transport used for delivery. Other AGC products from the same facility may be combined to meet truckload minimum weight. AGC may refuse Customer orders for quantities deemed by AGC, in its sole discretion, to be insufficient to make a production run of the specific product ordered by Customer. AGC may charge a market price for orders that are less than 42,000 pounds.

**11. PACKAGING:** Unless Customer has provided AGC other packaging instructions and AGC has agreed to the same in writing, Customer hereby selects or shall be deemed to have selected AGC's standard packaging material. The standard separator is powder interleaving material. Unless otherwise agreed to by the Parties, AGC's pricing reflects and includes its standard packaging only. AGC may change its standard separator at any time at its sole discretion and without notice. No mixed product packages are available. AGC may charge, and Customer shall pay, additional amounts if Customer's order necessitates custom packaging i.e. outside AGC's standard packaging. AGC HEREBY DISCLAIMS ALL RESPONSIBILITY FOR ANY DAMAGE TO PRODUCTS CAUSED BY, ARISING OUT OF OR AS A RESULT OF ANY PACKAGING MATERIAL, DEFECTS RELATED THERETO OR FITNESS THEREOF FOR ITS INTENDED PURPOSES. CUSTOMER HAS RELIED ON CUSTOMER'S OWN KNOWLEDGE, SKILL AND EXPERTISE IN SELECTING THE PACKAGING MATERIAL.

**12. RACKS:** Products may be packaged and transported on AGC's glass transportation rack equipment (e.g. steel racks or rolling

racks) ("Rack Equipment"). All Rack Equipment is the sole and exclusive property of AGC and AGC has all right, title and interest thereto. Customer shall use reasonable care in unloading, loading and using the racks. Customer shall use Rack Equipment only for receiving, storing, and transporting AGC glass products on Customer business premises and for no other purposes whatsoever, including without limitation, inventory storage and other storage or shipment of Customer or third party products. Customer shall use Rack Equipment consistent with its intended purposes, with due care and caution, and in compliance with all laws, rules, regulations and statutes. Customer shall keep the Rack Equipment free and clear of all liens and claims. Customer shall be responsible for knowledge of and training its personnel on the proper use, maintenance, and transportation of Rack Equipment, including, but not limited to, proper Rack Equipment stacking, binding and loading techniques. Customer shall return the Rack Equipment to AGC consistent with AGC's Rack Equipment return policies and any Rack Equipment agreement entered into with AGC. AGC may require Customer to enter into a separate Rack Equipment agreement as a condition of providing Rack Equipment to Customer.

**13. FREIGHT:** Continental United States and Canada delivery of products covered by this document will be FOB AGC's manufacturing plant. Incoterms 2010 shall apply to international shipments other than Canada; unless otherwise agreed to in writing by the parties as ATC, CPT named place of destination shall apply. For all shipments, AGC may ship products by way of common carrier, contract carrier or AGC's own transportation means; methods and route of shipment shall be at AGC's sole discretion, unless otherwise expressly agreed to in advance by the Parties in writing as ATC. Customer shall be solely responsible and pay for all additional expenses associated with or incurred by AGC with respect to the method or route of shipment specified by Customer. AGC may, in its sole discretion, without liability or penalty, make partial shipments of products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of an Order. AGC will not be responsible for any loss, damage, or delay whatsoever, or associated costs, caused by any carrier or shipper, and Customer shall be responsible for filing and recovering on any and all freight or shipping damage claims. Freight charges to destinations that fall within standard carrier routes in the continental United States and Canada are usually prepaid and covered by the price of regular AGC products bought in full truckloads; however, Customer shall pay all additional freight charges assessed by AGC for shipments (a) less than full truckloads, (b) of specialty products, (c) to destinations that do not fall within standard carrier routes, or (d) any combination of the foregoing.

**14. DELIVERY AND ACCEPTANCE:** Delivery of products by AGC to a carrier at the FOB point will constitute delivery to Customer, regardless of whether AGC pays the freight. Customer may be charged for any warehousing fees, demurrage fees, trucking and other expenses occasioned by or incident to any delays requested or made for the convenience of Customer beyond the scheduled

shipping date. Customer, as consignee, shall unload freight in the presence of carrier and conduct a visual inspection of products at the time of unloading. Customer shall inform carrier of any discrepancies upon completion of the visual inspection of products. Customer shall note all claims for shortages, errors, damage or any other discrepancies between the freight shipped as described in the bill of lading and that received on the bill of lading in writing to AGC within ten (10) business days after delivery of shipment. Failure to do so within this time frame shall constitute a waiver of all such claims by Customer and unconditional acceptance of the products. Any liability of AGC for non-delivery of the products is limited to either replacing the products within a reasonable time or adjusting the Invoice for such products to reflect the actual quantity delivered.

**15. WAREHOUSING.** AGC's pricing only includes shipping costs for shipping Customer's order as a single combined shipment and does not include shipping costs for separating Customer's order into multiple shipments, if necessary or requested by Customer; Customer shall pay AGC all additional amounts for any such shipping costs. Customer shall also pay a warehousing charge of one and one-half percent (1.5%) of the total invoiced amount per month to be applied to the Invoices for products not shipped to or picked up by Customer within thirty (30) days after notice from AGC that those products are ready for delivery. If any products ordered by Customer remain in AGC's warehouse for more than sixty (60) days after AGC's notice the products are ready for pick-up, then in addition to the warehousing charge, Customer shall be obligated to take and pay for all such products upon and in accordance with written notice from AGC. If Customer refuses, AGC may, in its sole discretion, pursue any one or more of the following remedies: (a) ship the products to Customer and charge Customer the purchase price for such products plus any additional Taxes, Surcharges, Costs, freight and expenses that are or will be incurred by AGC; or (b) resell the products to a third party and seek reimbursement from Customer of the difference of the sales price of those products as sold to the third party and the full price without any discounts that AGC would have charged Customer for those products, plus any additional Taxes, Surcharges, Costs, freight and expenses that are or will be incurred by AGC; or (c) destroy the products and charge Customer for the purchase price for those products plus any additional Taxes, Surcharges, Costs, freight and expenses that are or will be incurred by AGC; or (d) file a claim, suit or other proceeding in a court of competent and lawful jurisdiction. Notwithstanding the foregoing in this section, AGC and Customer may execute an AGC Stocking Program agreement to provide the terms and conditions of AGC's warehousing of Customer's products ("Stocking Program") which shall control over the terms and conditions of this Section 15; the implementation of any Stocking Program is contingent upon AGC's and Customer's execution of a written agreement in respect thereto. Upon termination of the Stocking Program, Customer shall be obligated to purchase any stock products warehoused by AGC for Customer under the Stocking Program within sixty (60) days of the termination date without setoff or deduction.

**16. SAFETY SPECIFICATIONS.** In any order for safety glazing materials, Customer shall correctly reference the safety standard to which the glass product must be manufactured, certified and labeled. CUSTOMER SHALL NOT GLAZE ANNEALED GLASS IN HAZARDOUS LOCATIONS (AS DEFINED BY APPLICABLE CODES AND NATIONAL, PROVINCIAL, AND MUNICIPAL LAWS). GLASS TO BE GLAZED AND USED AT SUCH HAZARDOUS LOCATIONS MUST BE AN APPROVED SAFETY GLASS. AGC DISCLAIMS ALL RESPONSIBILITY AND LIABILITY FOR NONCOMPLIANCE WITH SAFETY SPECIFICATIONS, AND CUSTOMER'S ACTIONS AND OMISSIONS.

**17. CANCELLATION.** Customer may not cancel an order of products that has begun production and shall be responsible for full payment therefor. Customer may only request cancellation of an order for products by providing a written request to AGC prior to the production or shipment of that order by AGC. AGC, in its sole discretion, may accept a request for cancellation. If AGC accepts a request for cancellation, then Customer shall pay AGC: (a) for all costs incurred by AGC prior to acceptance of cancellation, including, but not limited to, costs of materials and work furnished or completed; and, additionally, (b) liquidated damages of ten percent (10%) of the amount to be originally invoiced for the cancelled order of products to compensate AGC for lost profits, lost opportunity, and such other damages that the Parties hereby acknowledge are too difficult to calculate. The Parties agree that these liquidated damages are fair and reasonable and shall not be deemed a penalty. Sale of products to Customer or any other party shall always remain in AGC's sole discretion notwithstanding prior course of dealing or performance, usage of trade, or otherwise. AGC may refuse at any time to sell products to Customer with or without cause and with or without notice.

**18. FORCE MAJEURE.** AGC shall be excused from performance under the Agreement should an event occur beyond AGC's control, such as, but not limited to, acts of God, damage to AGC offices, plants or facilities, fire, floods, crime, including theft, war, threats or acts of terrorism, workplace violence, weather events, strikes, work stoppages, accidents, production delays, utility outages, shortages, delays of carriers, delay by suppliers of materials, actions by or priorities of government or any department thereof, or any other event or action beyond the reasonable control of AGC, that prevents any of AGC's obligations hereunder, including, but not limited to, manufacture or shipment of the products. AGC will declare a force majeure event in writing to Customer and, if AGC intends to perform the Agreement at a later date, notify Customer, to the extent possible, of the length of the expected delay and any contingency plan. AGC, in its sole discretion, may cancel any Customer order, in full or in part, due to a force majeure event. AGC shall not be responsible to Customer or any other party for any loss, damage, fees, penalties or costs whatsoever as a result of a force majeure event.

**19. INTELLECTUAL PROPERTY.** AGC shall have, and Customer hereby assigns to AGC, any and all right, title and interest in any intellectual property ("IP") created, arising out of, related to, or resulting from the Agreement, including, but not limited to,

patents, trademarks, tradenames, copyrights, trade secrets, knowhow, drawings, designs, creations, or inventions. All right, title and interest in IP, including, but not limited to, patents, trademarks, tradenames, copyrights and trade secrets, with respect to all AGC products belong to AGC Flat Glass North America, Inc. (or their respective owners in the case of third-party products). No IP rights whatsoever, including, but not limited to, any license rights, are hereby granted or implied to be granted by AGC to Customer in any of AGC's IP. Customer may only use AGC's products in accordance with the Terms herein and for no other purposes unless pre-approved by AGC in writing. AGC neither represents nor warrants that its products do not violate any third party IP rights.

**20. SUITABILITY OF PRODUCTS.** Customer shall be solely responsible for determining the suitability for use, including, but not limited to, use for Customer's intended purposes, of products purchased from AGC. CUSTOMER SHALL NOT RELY ON ORAL OR WRITTEN REPRESENTATIONS BY EMPLOYEES OR AGENTS OF AGC CONCERNING THE SUITABILITY OR QUALITY OF PRODUCTS SOLD BY AGC. ANY SUCH REPRESENTATIONS ARE NOT AUTHORIZED BY AGC.

**21. LIMITED WARRANTY.** AGC warrants its products exclusively to Customer and no other party, and only to the extent set forth in the written, express limited warranty described below ("**Warranty**"). The Warranty applies only to products which have been PAID IN FULL by Customer. AGC, at its sole discretion, may elect to provide an additional warranty to Customer pursuant to specific terms and conditions that AGC will separately provide to Customer in writing at the conclusion of a given project or as otherwise agreed between the Parties, and such additional warranty shall supplement and be subject to the same terms and conditions of this Warranty, unless otherwise expressly noted by AGC in writing. Any additional warranty shall also be exclusively between AGC and Customer, and no other party. AGC neither guarantees nor warrants production lead times, shipment delivery dates or inventory availability. EXCEPT FOR ANY EXPRESS APPLICABLE LIMITED WARRANTY, AGC DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, REGARDING ANY PRODUCTS PROVIDED OR SOLD BY AGC TO CUSTOMER, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, OR RELATED TO ANY OTHER MATTER.

**22. LIMITATION OF LIABILITY. IN NO EVENT WILL AGC'S LIABILITY OF ANY KIND WITH RESPECT TO ANY DEFECTIVE OR NON-CONFORMING PRODUCTS, BREACH OR REPUDIATION OF ANY TERM OF THE AGREEMENT, ANY TORT (INCLUDING NEGLIGENCE), OR FOR ANY OTHER REASON WHATSOEVER INCLUDE ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES INCLUDING, BUT NOT LIMITED TO, OVERHEAD, LOSS OF PROFITS, OR LOSS OF BUSINESS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE AND NOTWITHSTANDING THE FAILURE OF ANY**

**AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. ADDITIONALLY, IN NO EVENT WILL AGC'S LIABILITY OF ANY KIND PURSUANT TO ANY THEORY INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT, STRICT LIABILITY, AND WARRANTY EXCEED THE AMOUNT PAID BY CUSTOMER AND RECEIVED BY AGC UNDER THE APPLICABLE CUSTOMER ORDER. IN THE EVENT THAT NO AMOUNT HAS BEEN PAID BY CUSTOMER AND RECEIVED BY AGC UNDER THE APPLICABLE CUSTOMER ORDER, THEN AGC'S TOTAL LIABILITY SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). FOR PURPOSES OF THIS SECTION, "AGC" INCLUDES AGC AND ITS PARENT, RELATED, AND AFFILIATED COMPANIES, AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, INSURERS, SUBCONTRACTORS, AND SUPPLIERS.**

**23. CHOICE OF LAW/FORUM.** The Agreement is conclusively deemed to be a contract made under the laws of the Province of Ontario, and for all purposes is to be construed in accordance with the laws of the Province of Ontario, without regard to principles of conflicts of laws. Further, the United Nations Convention for the Resolution of Disputes shall not apply under any circumstances. The United Nations Convention on Contracts for the International Sale of Goods does not apply to Agreement. The Parties further agree that any legal or equitable proceeding relating to this Agreement or any order shall be brought exclusively in the courts of Toronto, Ontario, and that this shall be the exclusive forum and venue for resolving all disputes relating to the Agreement, any order, or any other matter between Customer and AGC.

**24. NO WAIVER/CUMULATIVE REMEDIES.** Waiver by AGC of a breach by Customer of any terms of the Agreement shall not be deemed a waiver of future compliance therewith, and such term, as well as all other terms hereunder, shall remain in full force and effect. If any term of the Agreement is or becomes, at any time, unenforceable or invalid under any applicable law, rule or regulation, no other term of the Agreement shall be affected thereby, and the remaining terms of the Agreement shall continue with the same effect as if such unenforceable or invalid term shall not have been inserted in the Agreement. No waiver or renunciation shall be effective against AGC unless set forth in writing and signed by a duly authorized officer of AGC. The rights of AGC under the Agreement are cumulative and not alternative.

**25. SUCCESSORS/ASSIGNMENT.** The Agreement shall be binding upon and shall inure to the benefit of the Parties, their legal representatives, successors, and assigns, including any party that acquires all or substantially all of the assets of Customer or AGC. The Agreement may not be assigned by Customer without the prior written consent of AGC.

**26. RELATIONSHIP OF THE PARTIES.** The relationship between Customer and AGC is that of independent contractors. Nothing contained in the Agreement is intended to create, nor will be construed as creating, any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary

relationship between the Parties; neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

**27. ATTORNEYS' FEES.** AGC shall be entitled to full reimbursement from Customer of AGC's attorneys' fees, costs, and expenses arising out of or related in any way to any action at law or in equity to enforce or interpret the terms of the Agreement.

**28. SURVIVAL.** Any terms of the Agreement which, expressly or by their nature, extend beyond the termination or cancellation of the Agreement shall survive any termination or cancellation of the Agreement, including, but not limited to, Sections 19-28 of these Terms.

## B. LIMITED WARRANTY

AGC hereby provides this limited, express warranty ("**Warranty**") to Customer, which is subject to and incorporates the Terms of Agreement. This Warranty applies to all AGC products, subject to all of the terms and conditions herein.

### ALL PRODUCTS

The following warranty terms and conditions apply to all AGC products, but are expressly subject to the time frame, exceptions, and additional terms and conditions for specific products as set forth below.

**1. REMEDY.** AGC's sole responsibility and Customer's **SOLE AND EXCLUSIVE REMEDY** under warranty or under any theory of contract, tort, negligence, strict liability or any other claim of liability, including, but not limited to, any claim arising out of or related to any consumer protection or consumer fraud statute, rule or regulation, shall be limited exclusively to furnishing Customer with a replacement product, FOB AGC's manufacturing facility nearest the product's installation, without charge. If AGC cannot provide a replacement product (as determined by AGC in its sole discretion), then Customer's exclusive remedy shall be a refund of AGC's original selling price. **IN NO EVENT SHALL AGC BE LIABLE FOR COSTS INCURRED IN THE REMOVAL OF FAILED PRODUCTS, THE INSTALLATION OF REPLACEMENT PRODUCTS, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, RELIANCE, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES INCLUDING, BUT NOT LIMITED TO, OVERHEAD, LOSS OF PROFITS, OR LOSS OF BUSINESS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.** In the event that a product is replaced pursuant to an applicable AGC warranty, the replacement product is warranted only for the remainder of the warranty period applicable to the original product. AGC neither guarantees nor warrants production lead times, shipment delivery dates or inventory availability. This Warranty shall not apply to any product beyond the provided warranty period. **THESE EXCLUSIVE REMEDIES SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES EVEN IF THE**

## APPLICABLE LIMITED WARRANTY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

**2. RIGHT OF INSPECTION.** Customer shall make available to AGC for inspection any product that Customer claims to be defective or subject to a claim under this Warranty in its installed application. The Warranty is void if Customer fails or refuses to provide or make reasonably available the alleged defective product for inspection by AGC as set forth above within a reasonable time of making the claim, which in no event shall exceed thirty (30) days after submission of the written claim. Additionally, the Warranty is void if Customer alters, removes, destroys, or disposes of the product from its installed application (*i.e.*, from any end product or installation/glazing system) before AGC completes its inspection or review of the same.

**3. WARRANTY PROCEDURE.** In the event of a warranty claim, Customer shall submit a written claim for warranty coverage to AGC within one hundred twenty (120) days from the date it knew, or reasonably should have known, of the product's alleged failure to comply with its warranty, including all of the following: (a) a full copy of this Limited Warranty, (b) proof Customer is a covered party by providing a copy of the original purchase order, (d) proof of date of delivery of product(s), and (c) all specifics of the claim, including description, nature and location of purported defect(s) ("**Warranty Claim**"). To be valid, Warranty Claims must be received by AGC within the warranty period. If Customer fails to timely submit a Warranty Claim, then Customer shall be deemed to have forever waived any claim for warranty coverage with respect to the product(s) (and all similar product(s) shipped to Customer), and AGC shall not have any responsibility or liability for such product(s). In no event shall a claim for warranty coverage be considered after the expiration of the specified product's warranty period. Customer shall make the product(s) available for inspection by AGC, as set forth above. Any replacement or refund made by AGC pursuant to this Limited Warranty shall constitute a full settlement and release of all claims of Customer with respect to product(s) subject to Warranty Claim and shall be a complete bar to any subsequently filed claim, dispute or proceeding.

**4. LIMITATIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, AGC MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF ANY KIND REGARDING ITS PRODUCTS, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, OR ANY OTHER MATTER.** In particular, but without limitation, AGC assumes no responsibility for, and this Warranty shall be void and will not cover the product, for or under any one or more of the following circumstances:

- Glass breakage;
- Failure of products due to improper usage or improper handling, loading, unloading or storage;
- Failure as a result of incompatibility with other glazing or installation materials including, but not limited to, sealants, lubricants, setting blocks, gaskets, coatings, insulation, desiccants, muntins, blinds, or any other materials;

- Failure of products due to faulty installation, drainage design, improper weeping or weep design. This includes, but is not limited to, the requirement that the glazing channel have appropriate drainage/weeping that conforms to all IGMA recommendations and requirements so as to prevent water accumulation;
- Building construction or design where edges of the product are exposed to the environment;
- Failure of products due to severe and/or extreme weather conditions including, but not limited to: hurricanes, tornadoes, earthquakes, hail, excessive heat, cold, or humidity;
- Damage to products caused by chemicals used on or around the products;
- Products when Customer fails to follow accepted industry installation and care procedures, such as (and as applicable), but not limited to, those set forth in publications by the Glass Association of North America and the Insulating Glass Manufacturers Alliance;
- Failure of products due to Customer not following AGC's instructions regarding the products;
- Failure of any kind if the product was subject to additional processing, fabrication or alteration by Customer or anyone other than AGC, including, but not limited to, application of coatings, films, tapes, adhesive backings, additional edging, beveling, and v-grooving;
- Damage resultant from cleaning with, or exposure to, abrasive cleaners, sharp objects, wire brushes, steel wool, acids or other caustic material of any type;
- Products that are installed by Customer or another that are not continuously and adequately mechanically supported on all sides including, but is not limited to, improper size and location of setting blocks;
- Products if they are used or installed outside of either the continental limits of the United States or Canada.
- Products installed in a vehicle of any kind or
- Products that have been retrofitted including, but not limited to, the addition of any type of film (e.g., safety or security film).

No one, but a duly authorized officer of AGC who does so in writing, may alter, modify, amend, supplement or change this Warranty in any manner. Any alteration, modification, amendment, supplement or change to this Warranty, whether done verbally or in writing, by anyone other than a duly authorized officer of AGC shall not be binding on AGC and will be void and have no effect.

#### SPECIFIC PRODUCTS

In addition the foregoing Warranty terms and conditions applicable to all products' warranties, AGC hereby provides to Customer the following additional limited warranties with respect to the specific products identified subject to the respective additional terms and conditions herein:

**5. INSULATING GLASS UNITS.** AGC warrants its AGC Insulating Glass Units against material obstruction to vision due to defects in

material or workmanship that results in film formation or dust collection on the internal glass surfaces caused exclusively from the failure of the hermetic seal, other than through glass breakage, for a period of FIVE (5) YEARS for AGC Single Seal and Duraseal® insulating glass units, and TEN (10) YEARS for AGC Dual Seal, Intercept®, Super Spacer®, and Duralite® insulating glass units from the date of manufacture or the certified date of substantial completion of the building exterior on a commercially bid project as captured in writing and agreed to between AGC and Customer ("**Substantial Completion**"), whichever is later. If the Parties fail to agree to a date of Substantial Completion in writing, the Warranty shall commence on the date of manufacture. In addition to those conditions set forth in Clause B.4. above for which AGC assumes no responsibility, AGC, without limitation, assumes no responsibility for and this Warranty shall be void and will not cover this specific product for or under any one or more of the following additional circumstances:

- Products due to incompatibility with the organic hermetic seal with other glazing or installation materials including, but not limited to, sealants, lubricants, setting blocks, gaskets, coatings, insulation or any other materials;
- Products installed in or near a high-moisture environment including, but not limited to, swimming pool enclosures, saunas, spas, hot-tub enclosures, or greenhouses;
- Products installed in a position beyond vertical (greater or less than 90 degrees)(i.e., "sloped glazing") or structural glazing applications. However, for Dual Seal that is constructed with both a (1) polyisobutylene primary seal and (2) silicone secondary seal, the warranty period for slope-glazed product is abbreviated to FIVE (5) YEARS and structural-glazed product is TEN (10) YEARS, each from the date of manufacture or Substantial Completion, whichever is later;
- Products manufactured with a capillary tube that contain a sputter coated glass surface in the airspace;
- Products if the unit seal is not fully protected by a minimum 15/32 inch face-covering or "bite"; or
- Products if the overall unit size exceeds sixty (60) square feet.

**AGC MAKES NO WARRANTY AS TO AND HEREBY DISCLAIMS ANY RESPONSIBILITY FOR THE LEVEL OF FILL OF ANY INERT GAS WITHIN AN INSULATING GLASS UNIT NOR DOES AGC WARRANT THE RATE OF DISSIPATION OF INERT GASES OR THE AMOUNT OF GAS REMAINING IN A PARTICULAR INSULATING UNIT ANY TIME AFTER MANUFACTURE. DISSIPATION OF INERT GAS FROM AN INSULATING GLASS UNIT IS AN INHERENT PROPERTY AND SHALL NOT BE CONSIDERED A DEFECT.**

**6. PYROLYTIC-COATED GLASS.** AGC warrants its Comfort Select™ and Energy Select™ pyrolytic coated glass against cracking, peeling, or deteriorating under normal environmental glazed conditions for a period of TEN (10) YEARS from the date of manufacture.

**7. ANNEALED AND POST-TEMPERABLE SPUTTER COATED LOW-E GLASS.** AGC warrants its Comfort Select™, Energy Select™, and Stopray Vision™ sputter coated Low-E glass against cracking, peeling, or deteriorating under normal environmental glazed

conditions for a period of TEN (10) YEARS from the date of manufacture or Substantial Completion, whichever is later. In addition to those conditions set forth in Clause B.4. above for which AGC assumes no responsibility, AGC, without limitation, assumes no responsibility for and this Warranty shall be void and will not cover this specific product for or under any one or more of the following additional circumstances:

- Comfort Select™, Energy Select™, and Stopray Vision™ sputter coated Low-E glass if it has not been properly edge-deleted using industry standards designed to prevent the silver layer(s) from coming in contact with moisture;
- Comfort Select™, Energy Select™, and Stopray Vision™ sputter coated Low-E glass if it is not fabricated into an insulating glass unit within six (6) months of the date of shipment for annealed coatings and within three (3) months from the date of shipment for post-temperable coatings;
- Products for color-related issues between annealed and post-temperable sputter-coated low-e glass that could occur in the field, when evaluated using ASTM C1376\*, if the two (2) coatings are combined on the same elevation or side of a building (as post-temperable color is affected by the heating process). Checking the color after heat treatment and prior to installation is the sole responsibility of Customer;
- Products for color-related issues that could occur in the field between laminated sputter-coated low-e glass (which has the sputter coating embedded against the interlayer) and non-laminated low-e sputter coated glass, when evaluated using ASTM C1376\*. Laminated low-e glass can have significant color shifts of coating color as compared to non-laminated low-e glass. Color compatibility is the sole responsibility of Customer;
- Products where the coatings are used on surfaces other than the recommended surface(s) as set forth in AGC's technical service document(s) for the product, which are available to Customer upon request to AGC; or
- Products where the hermetic seal of the insulating glass unit fails.

**8. TEMPERED GLASS.** AGC warrants for a period of ONE (1) YEAR from the date of manufacture or Substantial Completion, whichever is later, that its tempered glass will meet, at the time of the sale, specifications as defined by ASTM C1048\*, Standard Specification for Heat Strengthened and Fully Tempered Flat Glass, and ANSI Z97.1\* or CPSC 16 CFR 1201 Category II. In addition to those conditions set forth in Clause B.4. above for which AGC assumes no responsibility, AGC, without limitation, assumes no responsibility for and this Warranty shall be void and will not cover this specific product for or under any one or more of the following additional circumstances:

- Products that are modified or subjected to any fabrication such as, but not limited to, grinding, drilling, sand blasting, or which are otherwise fabricated or modified subsequent to tempering; or
- Products that are exposed to temperatures at or in excess of 400° Fahrenheit for a sustained period of time.

**9. LUXCLEAR™ PROTECT.** AGC warrants its Luxclear™ Protect in accordance with the specific warranty terms and conditions for this product as provided separately in writing by AGC.

**10. OTHER FLAT GLASS PRODUCTS.** AGC warrants for a period of ONE (1) YEAR from the date of manufacture or Substantial Completion, whichever is later, that all of its flat-glass products (other than those specific products identified herein with a different warranty period) will meet, at the time of sale, specifications as defined by ASTM Standard Specification for Flat Glass C1036\*, and that AGC's products will be free and clear of all liens or encumbrances.

**11. THIRD-PARTY PRODUCTS.** For products AGC has purchased from a third-party manufacturer and sold to Customer, the third party manufacturer's warranty, if any, shall be passed through to Customer and shall be the sole and exclusive warranty in effect. In the case of third-party products, this Warranty shall be void and not apply but the Terms shall remain in full force and effect in their entirety. With respect to third party products, Customer's sole remedy is directly with the third party manufacturer. For avoidance of doubt, AGC MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO ANY THIRD PARTY PRODUCT(S), WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

\* All ANSI and ASTM standards referenced in the Agreement shall be the corresponding ANSI or ASTM standard as adopted by their respective governing organizations and then in effect at the time of AGC's manufacture of the product.

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