

## **TERMS OF SALE AGREEMENT**

This Terms of Sale Agreement (Agreement) is between NATIONAL PARTITIONS, INC. and its affiliates (Manufacturer) and Purchaser (Customer), who each agree as follows:

**1. TERMS OF ALL SALES:** (a) All sales of Manufacturer's Products to Customer shall be made under and subject to the provisions of the Manufacturer's quotation, order acknowledgement, and this Agreement. (b) Unless otherwise established by Manufacturer, all sales will be due and payable before shipment. Deposits may be required. (c) All shipping expenses, such as freight, delivery charges etc. are the customer's responsibility. (d) Sales and use taxes, or fees of any kind, if any, shall be paid by Customer. (e) For any non-catalog items, Customer will furnish Manufacturer with specifications and Manufacturer will furnish Customer with a price quote. Unless otherwise stated on the quotation, all items quoted will be Manufacturer's standard design and materials and may represent an alternative to the item requested. It is the Customer's responsibility to determine the acceptability/reliability of the specifications delivered to Manufacturer and further, the use of the Product for the purposes of the end-user/customer before placing an order with Manufacturer. (f) All weights, gages, dimensions and tolerances for Manufacturer's Products will be subject to standard permissible variations as determined by the manufacturer. (g) No orders placed with Manufacturer will be delayed except as may be specifically agreed in writing at time of acceptance of order. If an order is delayed before manufacturing is complete it shall be subject to revised current pricing when it is released to proceed. If an order is partially or fully manufactured and delayed from shipping, the Customer agrees to pay storage fees of .2% (2/10ths of a percent) of the order price per day, and third party storage fees if applicable. If there is shipping delay by the Customer, all invoices for the order must be paid immediately, periodic storage fees will be due on receipt, and any balance due must be paid in full before shipment. (h) Should an order be cancelled, the Customer shall be responsible to pay Manufacturer per its cancellation policy (see paragraph 6). Under no circumstance, shall the

Customer not pay for Manufacturer's work completed or purchases made for the order.

**2. CLAIMS AGAINST MANUFACTURER:** If the Customer believes it has a claim of any nature whatsoever against the Manufacturer, it shall give the Manufacturer written notice with detailed explanation and pictures, within ten (10) days of the occurrence of the event upon which the claim is based. See paragraph 14 for the required delivery method. In default of such notice and proper delivery, the claim is waived.

**3. PRODUCT LIABILITY:** (a) Manufacturer shall be responsible only for repairing manufacturing defects of the Product. Manufacturer shall not be liable for any damages or expenses caused directly or indirectly by Customer or third parties as a result of scheduling, delivery, construction, handling, installation, assembly, unpacking, storage, or use of the Product in any way. (b) Customer shall be liable for any representations or warranties made by it without the approval of Manufacturer in its advertising, brochures, manuals, or by its agents, employees, or representatives, whether in writing or orally with respect to each Product. (c) Customer agrees to defend, indemnify, and hold Manufacturer, and its officers, directors, agents, affiliates and employees, harmless against all costs, expenses, and losses (including reasonable attorney's fees and costs) incurred through claims of third parties against Manufacturer based on Customer's breach of any representations or warranties contained herein or as a result of any of Customer's actions or inactions.

**4. LIMITED WARRANTY:** All of Manufacturer's Products sold to Customer, except those Products manufactured by others or for which a specific warranty has been published, and provided full payment per terms has been made by the Customer for the Product, shall carry the following: LIMITED WARRANTY: Manufacturer warrants that interior products furnished by Manufacturer under this Agreement will be free from defects in workmanship and material for a period of ten (10) years after delivery to Customer, and one (1) year for exterior Products.

Written notice as to any claim or defect must be furnished per paragraph 2 and delivered per paragraph 14. In default of such proper notice and delivery, or should full payment per terms not have been made, the claim is waived. Upon satisfactory demonstration of the merits of the claim, Manufacturer will, within a reasonable time, make any necessary repair or corrections, or at the option of Manufacturer, replace the defective article free of charge. Charges for correcting defects will not be allowed unless approved in writing by the Manufacturer, and manufacturer has specifically authorized the amount that it will allow. All charges for correcting a defect shall not exceed the amount paid for that item. This warranty will not apply to defects caused by improper installation or handling, or to any of Manufacturer's Products which shall have been repaired or altered by anyone other than Manufacturer, without Manufacturer's written consent, or which have been subjected to misuse, neglect or accident. Customer is expected to touch up minor cosmetic or finish defects and understands that these types of defects are typically corrected at the job site. NO FURTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE NOT SPECIFIED HEREIN, ARE MADE BY THE MANUFACTURER, and this paragraph sets forth the full extent of liability arising from the manufacture, use or sale of the Products and materials sold hereunder. No allowances will be made for delays or loss of profit, nor for any other special, indirect or consequential damages or injuries, whether based on tort or contract.

**5. PRODUCTS MANUFACTURED BY OTHERS:** Products furnished, but not manufactured by Manufacturer, shall be warranted only to the extent of the original manufacturer's warranty. Claims shall be made directly with that manufacturer.

**6. CANCELLATION AND RETURN POLICY:** All orders are subject to progress billings per the following fee schedule: Three (3) days after receipt of the order no charge; afterwards a minimum cancellation fee of 5% will apply. After drawings are complete or sent out for approval, the minimum cancellation fee is 25%. Reworking of drawings during the approval process can increase

the cancellation fee. Once the approval drawings are approved the minimum cancellation fee is 50%. Cancellations are not allowed for any reason for non-stock items, materials or outsourced items purchased, or after an order is placed in production, and are subject to full invoicing. Orders are considered placed in production (and non-cancellable) when the shop drawings and bill of materials are complete and released by our operations team to the plant manager. Shipped orders are non-returnable. Before shipment, should the Customer not pay deposits or invoices per terms, the Manufacturer may cancel the order at its sole discretion and progress billings per this paragraph shall be due from Customer.

**7. PAYMENT BY CREDIT or DEBIT CARD:** All payments processed by credit or debit card (hereafter Card Payment) by the Customer shall be subject to the following terms, and further in consideration of Manufacturer paying the transaction fee the Customer agrees to be bound by these terms. The Card Payment is a non-cancellable transaction. The Customer agrees not to dispute or cancel the Card Payment with their bank or card company. The Customer understands that breach of this agreement shall have a minimum penalty of 8% plus other remedies available to Manufacturer per this Agreement. **IMPORTANT NOTE:** If the Purchaser is due a refund, Manufacturer will properly issue a refund once it is approved by its management. Disputing a Card Payment is not an appropriate or allowed way to obtain a refund or credit, and is still considered a breach of this agreement, regardless if a refund is due.

**8. FORCE MAJEURE:** Manufacturer shall not be deemed in default for failure of performance under this Agreement, provided such failure is due to strikes, riots, insurrections, fire, acts of God, inability to obtain labor, machinery, material, funds, or merchandise, or for any cause beyond their reasonable control.

**9. EXAMINATION ON DELIVERY:** Customer agrees to compare all packages received with the packing list to insure proper quantities and sizes have been received. Customer agrees any damage to any shipping packages

or containers or missing packages or containers must be noted on the delivery receipt, at the time of delivery, and given to the delivering driver. Customer understands that failure to properly mark the delivery receipt for any of the above issues shall constitute acceptance of the delivery as is, excluding concealed damage. Customer understands that time is of the essence for concealed damage claims and shall make these claims with the carrier within five (5) days of receipt of the shipment, or in the required time per carriers policy. All claims for loss or shortage, or any damage in transit must be made with carrier by the Customer immediately, and the Customer shall also notify the Manufacturer immediately of such claims. Claims for shortage, improper or damaged material for which Manufacturer would be responsible will not be recognized by Manufacturer unless a written notice to the Manufacturer specifying in detail the nature and extent of the shortage, damage, etc. is furnished within five (5) days after the delivery of Products. Refer to paragraph 2 and paragraph 14 for proper notice and delivery instructions.

**10. WAIVERS:** Any waiver by either party of any provision of this Agreement or breach hereof shall not constitute a waiver of that provision or the breach on any future occasion or of any other provision or breach of this Agreement. Neither failure nor delay on the part of a party to exercise any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any singular or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No understanding or course of dealing between the parties shall be effective to change, modify or discharge any provision of this Agreement or to constitute a waiver of any breach.

**11. SEVERABILITY:** In case any provision of this Agreement is held to be prohibited by or invalid or unenforceable under applicable law by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof. The parties agree to substitute any such prohibited or invalid provision by another which shall lead to the economic result nearest to the one which would have resulted under the provision held invalid or prohibited.

**12. BINDING ARBITRATION:** (a) Any disputes, controversies, or differences arising between the parties hereto in connection with this Agreement, will be settled by mutual negotiation. At the sole discretion of Manufacturer, it may choose for any dispute, controversy, claim or difference which cannot be solved by such mutual negotiation and is greater than \$25,000.00 (twenty five thousand dollars), to be finally settled by binding arbitration administered by the American Arbitration Association (Arbitration) by Manufacturer serving written notice upon the Customer. Any such Arbitration will be held in Anderson County, Tennessee, according to the Commercial Dispute Resolution Procedures (Including Mediation and Arbitration Rules) of the American Arbitration Association as amended and in effect at the time the Arbitration is commenced (Commercial Arbitration Rules). (b) The Arbitration will be heard by a single arbitrator (Arbitrator) chosen according to the Commercial Arbitration Rules as amended and in effect at the time the Arbitration is commenced. (c) There will be no discovery in the Arbitration other than as set forth in this Agreement, including, without limitation, written interrogatories, sworn depositions, and stipulations of admissions. (d) The prevailing party shall be entitled to recover all costs incurred and reasonable attorney's fees, including but not limited to attorney's fees in all investigations, trials, bankruptcy and appeals.

**13. COLLECTION EXPENSES:** Customer agrees to pay all expenses associated with the collection of delinquent debts, including reasonable attorney's fees, Manufacture's administrative costs and expenses, and interest charges for all of the above expenses at the maximum rate of 1-1/2% per month or at the highest interest rate allowed by law.

**14. PRODUCT RECLAMATION:** Customer agrees that shipped orders not paid in full per terms may be reclaimed as arranged by Manufacturer. Customer shall pay all expenses associated with the reclamation of Product. Product reclaimed is non-refundable.

**15. NOTICES:** All notices required under this Agreement or given in connection with it shall be in writing and sent by personal delivery, or overnight next day delivery service by an entity that provides a trackable send and receive date such as the United States Postal Service, Federal Express, or United Parcel Service. The notice shall be marked to the attention of the President at National Partitions, Inc., 10300 Goldenfern Lane, Knoxville, TN 37931. Such notice shall be deemed given on the date sent. Electronic notices such as facsimile machines, email etc., are not acceptable. Delivery to any person other than the President at National Partitions is not acceptable. In default of such proper notice and delivery as described herein, the claim is waived.

**16. GOVERNING LAW AND VENUE:** The validity, interpretation and enforcement of this Agreement and all other instruments and documents executed in connection with this transaction shall be governed by Tennessee law. Notwithstanding anything contained herein to the contrary, each party shall have the right to institute judicial proceedings if necessary. Venue for any court proceedings pursuant hereto shall be in Anderson County, Tennessee. Customer agrees that any judicial proceedings filed by the Customer outside of this Venue shall be dismissed at the Manufacturer's request for a change of Venue. Should a different Venue other than Anderson County, Tennessee be used, Customer agrees to pay travel related expenses for Manufacturer's representatives. Customer further agrees to be bound by any judgement, including by default, from judicial proceedings in this Venue and to be bound by the Uniform Enforcement of Foreign Judgments Act.

**17. WAIVER OF JURY TRIAL:** To the extent a claim, dispute, difference or matter hereunder is not subject, as a matter of law, to resolution by binding Arbitration, the parties agree that the venue for any such required judicial proceeding shall be Anderson County, Tennessee. CUSTOMER AND MANUFACTURER HEREBY MUTUALLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL

BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT.

**18. BUILDING CODES AND PERMITS:** Customer agrees that Manufacturer shall have no responsibility or obligation to have all drawings submitted or reviewed with regards to building code compliance. Further, building permits may be required and are the responsibility of the Customer or end-user.

**19. INDEMNIFY AND HOLD HARMLESS:** Customer agrees to indemnify and hold harmless, Manufacturer, its affiliates, its employees, successors, assigns, agents, officers, directors, and representatives from all costs, expenses and losses incurred by any claim with regards to Customer's failure to comply with the conditions contained herein.

**20. AGREEMENT BINDING IN SUCCESSORS:** This Agreement shall be binding and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

**21. ENTIRE CONTRACT, EXECUTION AND AMENDMENTS:** This Agreement (including the Quotation, Order Acknowledgement, and Exhibits hereto) incorporates the entire understanding of the parties in respect of its subject matter, and supersedes any and all prior agreements, contracts, undertakings or arrangements, written or oral. This Agreement without modification shall be considered executed and binding without the need for signatures on the date an order is placed by the Customer with the Manufacturer. This Agreement may not be amended except by means of a written instrument signed by both parties. No amendment to this Agreement (including the Exhibits hereto) nor any change, change order, modification, addition, deletion, or the like to any purchase order by Customer for any of the Products purchased by Customer from Manufacturer under this Agreement shall be binding upon Manufacturer unless in writing and executed by both Customer and the President of Manufacturer.