



INDUSTRIAL LOUVERS, INC.

Terms and Conditions

- 1. Controlling Terms and Conditions.** These Terms and Conditions, together with other documents signed or referenced in documents signed by Industrial Louvers, Inc. ("ILI"), constitute the entire contract (the "Contract") between ILI and Customer with respect to sales of the goods (and provision of any services) ("Goods") by ILI to Customer and supersede all prior verbal and written understandings, promises and agreements. Any contrary, different or additional terms or conditions in a purchase order or any other communication from Customer are expressly rejected unless contained in a written document signed by an authorized officer of ILI that specifically references the Contract by name and such contrary, different or additional provisions are individually initialed by ILI. Customer expressly agrees that no collateral contracts, terms, conditions, warranties, promises or undertakings exist between Customer and ILI with respect to the sale of the Goods.
- 2. Custom Goods.** Orders of custom Goods are firm and non-cancellable. If for any reason an order is cancelled prior to delivery, Customer will be held responsible for all drafting, design, engineering, labor, and material purchase costs incurred to date. Custom Goods will be produced based on specifications/shop drawings produced by ILI and approved in writing by the Customer. ILI is not responsible for identifying conflicts in specifications/shop drawings and other documents submitted by Customer or Customer's representatives, and ILI will not be responsible for any delays caused by defects or conflicts in the specifications/shop drawings or other documents provided by Customer or on behalf of Customer, including conflicts between the structural drawings and the architectural drawings. ILI will not have reviewed all documentation prior to issuing a Quotation. Quotations are provided in good faith based upon information received by ILI prior to issuing the Quotation. Prices and delivery timing are subject to change based on receipt of additional information, including complete specifications/shop drawings, which vary or make known to ILI aspects of Goods required not included in the Quotation. Products, accessories, finishes, anchors, fasteners, miscellaneous trim pieces, sealants and other items not specifically referenced in the order/quote are not included.
- 3. Payment Terms.** Unless otherwise agreed to in writing by ILI, Customer agrees to pay ILI in full within thirty (30) days from the date of ILI's shipment of the Goods the purchase price stated in the Contract for the Goods. ILI reserves the right to change the credit terms based on ILI's credit reviews conducted at any time prior to shipment of the Goods, including requiring immediate payment in advance. If bonds or additional insurance are required for any purpose, the cost shall be borne by Customer. Undisputed portions of invoices must be paid without respect to disputed portions. Customer agrees to promptly notify ILI's customer service personnel of any disputed invoice and confirm such notice in a written communication delivered to such person prior to the due date of the invoice; otherwise such dispute or claim is waived. Customer waives the right to assert offsets or counterclaims with respect to undisputed invoices or portions of invoices. Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to one and one-half percent (1.5%) per month or the highest rate permissible under applicable usury law. Customer agrees to pay reasonable costs and expenses (including attorneys' fees) incurred in collection of any amounts not timely paid when due. All lien waivers, releases and warranties are conditional upon receipt of prior payment in full.
- 4. Taxes.** Unless otherwise agreed in writing by ILI, the price does not include sales, use, excise or similar taxes or any shipping, delivery or insurance costs. Customer agrees to pay (or if ILI is required by law to pay then pay to ILI) any such amounts, excluding ILI income tax. Any taxes applicable to Customer that are to be paid by ILI may be included in the invoice issued to Customer for the Goods.
- 5. Shipment.** Shipment lead time is based on ILI's standard lead times commencing as of the date that specifications/shop drawings (including field measurements and/or guaranteed dimensions, if applicable), and color approvals are signed-off on by Customer and ILI. Except as otherwise agreed by ILI in writing, (a) all Goods will be delivered FOB ILI's plant and title to and risk of loss concerning the Goods passes to Customer upon ILI's shipment of the Goods, (b) shipment and/or delivery dates are estimates only, and (c) packaging, and shipment if ILI arranges shipping, of the Goods will be in accordance with ILI's normal practices existing from time to time (i.e., a single wood-crate delivered on box or flatbed truck with no additional handling or loading equipment), and the carrier will be Customer's agent and Customer will make all claims with respect to damage in transit to the responsible carrier. Customer's rejection of the Goods will not shift such risk of loss until the Goods are returned to ILI, freight prepaid, pursuant to ILI's written authorization. Customer agrees to inspect all shipments of Goods to Customer upon arrival and notify ILI in writing within two (2) days of any shortages or other failures of the Goods to conform to the Contract which are reasonably discoverable upon arrival. Customer's failure to timely notify ILI as set forth above constitutes acceptance of the Goods and a waiver of claims. If Customer requests ILI to hold delivery of Goods ordered, at ILI's option, ILI may delay delivery of the Goods ordered and (a) invoice Customer on the original date the Goods were to be shipped, and (b) require Customer to pay reasonable storage fees.

6. **LIMITED WARRANTY.** ILI warrants that the Goods conform when shipped by ILI to the specifications signed-off on in writing by ILI. Customer agrees to abide by ILI's standard allowable variations (e.g., finishes may vary in color shading and gloss). EXCEPT AS OTHERWISE STATED IN A WRITTEN DOCUMENT SIGNED BY AN AUTHORIZED OFFICER OF ILI, THIS LIMITED WARRANTY IS ILI'S ONLY WARRANTY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THE CONTRACT, ILI MAKES NO REPRESENTATIONS OR WARRANTIES AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. ILI's sole liability and Customer's sole remedy for a breach of this Limited Warranty are, at ILI's option, repair, replacement or a refund for the noncompliant portion of the Goods. Except pursuant to a warranty expressly granted in writing by ILI, no claim of any nature may be made against ILI with respect to Goods unless a written notice is received by ILI in writing within 90 days after ILI's shipment of such Goods.
7. **Indirect Damages.** Notwithstanding anything to the contrary, ILI shall have no liability to any person for indirect, incidental, consequential, liquidated, special or exemplary damages of any description or any back charges or penalties, and under no circumstance shall ILI's liability of any type and for any cause exceed the purchase price applicable to the Goods which give rise to a claim.
8. **Force Majeure.** ILI shall not be held liable or responsible to the Customer nor be deemed to be in default under, or in breach of any provision of, this Agreement for failure or delay in fulfilling or performing any obligation of this Agreement when such failure or delay is due to force majeure, and without fault or negligence for so failing or delaying performance. Force majeure is defined as causes beyond the control of ILI, including, without limitation, acts of God; acts, regulations, or laws of any government; war; civil commotion; destruction of production facilities or materials by fire, flood, earthquake, explosion or storm; labor disturbances; epidemic; and failure of public utilities or common carriers. In such event ILI shall immediately notify the Customer of such inability and of the period for which such inability is expected to continue. ILI giving such notice shall thereupon be excused from such of its obligations under this Agreement and is thereby disabled from performing for so long as it is so disabled and the 30 days thereafter. To the extent possible, ILI shall use reasonable efforts to minimize the duration of any force majeure.
9. **General Provisions.** No amendment or modification of any provision of the Contract shall be binding unless set forth in a written document signed by ILI and Customer. No waiver of any provision of the Contract shall be binding unless set forth in a written document signed by the party granting the waiver. All disputes between ILI and Customer relating to the Contract or otherwise between ILI and Customer shall be governed and construed by the laws of the State of Minnesota, without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction, and all dispute resolution proceedings shall be brought exclusively in the state or federal courts located in Wright County, Minnesota, and the parties irrevocably consent to the jurisdiction and venue of such courts.