



# GORDON BULLARD AND COMPANY

## GENERAL TERMS AND CONDITIONS OF SALE

**1. GENERAL** - These General Terms and Conditions (the "**Terms**"), together with the purchase order (the "**Order**") and the Order Confirmation (as defined below), if any, govern, to the exclusion of all other terms, the sale of Arcluce North America, Inc. (the "**Seller**") products (the "**Products**"), to the Customer. "**Customer**" is defined as the purchaser of the Products from Seller. The Terms shall prevail over any conflicting clauses contained in Customer's general terms and conditions of purchase, which shall have no effect. The Terms supersede any and all previous agreements and understandings, whether written or oral, between the parties with respect to the subject matter.

**2. PRICE LIST** - This price list (the "**Price List**") supersedes all previous price lists. The indicated prices are net of V.A.T., and the Seller reserves the right to modify the Price List without any prior notification.

**3. ORDERS; CONFIRMATION** - Orders for the Products will only be binding on Seller upon Seller's acceptance (the "**Acceptance**") by either (I) Seller's written order confirmation (the "**Order Confirmation**") or (II) Seller starting to carry out the Customer's Order.

**4. CANCELLATION; RETURN POLICY** - All Accepted Orders are final and cannot be cancelled. No Product shall be returned to or accepted for return by Seller without prior written authorization from Seller. All approved returns are subject to Seller's inspection upon receipt. Credit will not be allowed for damaged or used material. Seller in its sole discretion may apply standard restocking charges for the returned Products value. All Products authorized for return are to be shipped prepaid to Seller, accompanied by a document specifying the invoice details related to each single Product. In any case, if ordered Products have been personalized on the basis of a Customer's request, Customer shall pay the whole original price. Customer shall pay the whole original price for Orders cancelled more than fifteen (15) calendar days after Order Confirmation is sent by the Seller.

**5. SHIPMENT AND RISK OF LOSS** - Shipping terms shall be Ex Works (Incoterms applicable at the date of the execution of the Order). Seller's factory, and the risk of loss passes in accordance with such terms. Such Terms shall be applicable even in case of special arrangements where the Seller pays the carriage.

All shipping and delivery dates are:

**A)** Subject to Customer furnishing complete shipping and delivery instructions in such a manner as to reach Seller timely before the date of any shipment and delivery specified in the Order and/or Order Confirmation.

**B)** To be considered approximate and not of the essence, since the ability of Seller to complete and deliver the Products ordered by such date may be dependent upon conditions over which Seller has no reasonable control or which it cannot predict exactly. In no event shall Seller be liable for any actual, special, consequential or exemplary damages of any kind, known and unknown, anticipated and non-anticipated, including without limitation, lost profits or lost production resulting from delays in production, shipment or delivery.

Seller shall be authorized to make partial shipments of Orders depending on the availability of Products, without prejudice to the payments due by the Customer, even if the order is not completely filled.

If the Customer does not provide the Seller with specific instructions as for the shipment method, Seller shall be authorized to use the means of transportation that Seller deems, at its discretion, most suitable for the delivery.

**6. NO LIABILITY FOR DELAY IN DELIVERY** - Seller shall not be liable for damages or costs that Customer incurred for delay in delivery of the Products.

**7. PRODUCTS' FEATURES** - Seller shall have the right to modify the designs and/or specifications of the Products at any time without notice to the Customer. In the event of any such change, Seller shall have the right to supply the Products so modified.

**8. PACKAGING** - Products will be supplied with Seller's customary packaging.

**9. INSPECTION** - Customer shall inspect the Products upon their arrival at the delivery destination and shall within eight (8) business days after delivery give written notice to Seller of any claim for damages, defects, differences in quantity or nonconformity. Failure to give such notice within said period shall constitute irrevocable acceptance of the Products and acknowledgment that the Products have been received by Customer in good condition and free of damages.

**10. TITLE AND RIGHT OF POSSESSION** - Title to the Products shall remain with Seller until the Purchase Price (as defined below) has been paid in full (including any interest and any additional amounts) by Customer. Customer hereby grants to Seller a first priority security interest in the Products until the Purchase Price has been paid in full. Seller shall have the right to file a UCC-1 Financing Statement to perfect a security interest on all or any portion of the Products, at any time.

The Customer shall sell the Products to a third party (the "**Third Party**") only if the Purchase Price (as defined below) has been paid in full and if the sale to the Third Party included a retention of title clause as the one herein.

If the Customer sells the Products to a Third Party before having performed the full payment in favor of the Seller, the sale between Seller and Customer will automatically be discharged and the Products will be considered as being sold by Seller to Third Party. Customer shall insure the Products on his own name or on the Third Party's name and shall be able in any event to provide evidence of such insurance to the Seller.

**11. PAYMENT** - The full purchase price for the Products (the "**Purchase Price**") is due and payable according to the conditions set forth in the Order Confirmation or in the invoice. If no term is specified therein, payment shall be due within \_\_\_\_ ( ) calendar days from the delivery of the relevant Products.

If any payment is not made when due, in addition to Seller's other rights and remedies Customer shall be liable for late interest charge calculated at the lesser of (I) \_\_\_\_\_ percent ( ) per month or (II) the highest rate permitted by law. Customer shall have no right to setoff or withhold any payment due by the Seller or any kind of credits that the Customer has towards the Seller.

**12. CUSTOMER'S DEFAULT** - In addition to any other remedy available to Seller, if (I) Customer defaults in payment of any part of the Purchase Price when due, (II) Customer fails to perform its obligations, (III) Customer becomes insolvent or bankrupt or a petition for appointment of a receiver is filed by or against Customer, (IV) Customer makes an assignment for the benefit of its creditors, or (V) Seller reasonably deems that collection of the Purchase Price is insecure, then the full amount of the Purchase Price then unpaid shall become immediately due at the sole option of Seller, and if not paid immediately, Customer shall return the Products to Seller on demand and at Customer's sole cost. Seller shall retain all payments of the Purchase Price made prior to such an event as liquidated damages and not as a penalty.

### 13. LIMITED WARRANTY

(a) The Products are guaranteed for a period of twenty-four (24) months from delivery Ex

Works (the "**Warranty Period**") against defects in materials and workmanship. This limited warranty shall not apply if (I) the Products are not used for the intended purpose and are not installed, used, or maintained in accordance with the Installation and Maintenance Instructions provided by Seller, (II) any such defect results from causes external to the Products after delivery or use of non-original spare parts, or (III) the Product has been modified without the prior written consent of Seller. Seller's obligation under this warranty shall be limited, at its sole option, to the repair or replacement of any defective Product. Seller shall not be responsible for the cost of removal or installation of any such Product found to be defective or shipment of the replacement product. If requested by Seller, Customer shall return any Products found to be defective to Seller, shipping prepaid by Customer, for inspection once an authorization number is granted from Seller. Normal wear and tear items, including but not limited to lamps, switches or any other electrical or mechanical items subject to normal wear and tear, are excluded from this warranty. Seller shall not be liable under this warranty unless the complaint is submitted promptly after discovery of the defect. Customer provides a detailed description of the problem, and Seller establishes to its sole satisfaction that the Product has been properly installed, maintained and operated. The remedy set forth in this warranty shall be the Customer's sole and exclusive remedy for claims that arise out of or relate to the Product. The Customer waives any other right or remedy, whether in contract (for breach of contract, breach of warranty or otherwise), in tort (for negligence, strict liability, misrepresentation or otherwise), in equity, under any statute, rule or regulation or upon any other basis.

(c) **NO OTHER WARRANTIES.** The warranties in this section are in lieu of all other warranties, either expressed or implied and of all other warranties or liabilities of any kind. Seller neither assumes nor authorizes any other person to assume for seller any other obligation, warranty or liability in connection with the products. Except for the express warranties set forth herein, customer acknowledges and agrees that seller has not made and shall not be deemed to have made, and has expressly disclaimed, any representation or warranty, express or implied, as to the condition, value, design, operation, merchantability or fitness for use for any particular purpose of the products or any part thereof. The seller disclaims any warranty if the products have not been properly installed, used or maintained, or if spare parts and components not manufactured by or on behalf of seller have been used.

**14. LIMITATION OF LIABILITY** - notwithstanding anything in the contract to the contrary, whether such liability is a result of a breach of contract, a breach of warranty, or otherwise, seller's liability is limited to the value of the products, and in no event shall seller be liable to customer or any third party for any punitive, incidental or consequential damages, including but not limited to, damages resulting from loss of use of the products, loss of production, loss of the content of the tank, or loss of profits or income or loss of business opportunity. Seller shall not be liable for damages of customer arising out of defects caused by improper use of the customer's products by customer or repairs incorrectly carried out by customer or other third party, for damages not caused by goods supplied by seller, or deriving from third parties' equipment or parts, and shall not be responsible for providing any type of services on such equipment or parts.

**15. INDEMNITY** - Customer shall indemnify, defend and keep harmless Seller, and shareholders, its officers, directors, managers, employees, and agents from and against any losses, liabilities, damages, demands, obligations, fines or civil penalties, expenses, costs, and fees (including, but not limited to, court costs and reasonable attorney's fees) of whatsoever kind and nature (collectively, the "**Losses**"), imposed on, incurred by or asserted against Seller, its shareholders, officers, directors, managers, employees, and agents, in any way relating to or arising out of (a) the use, operation, possession or disposition of the Products by Customer, (b) the willful misconduct or gross negligence of Customer or any of its officers, directors, employees or agents, or (c) the negligence of Customer or any of its officers, directors, employees or agents, to the extent that Losses are caused by such negligence.

**16. TRADEMARK; IP** - Customer acknowledges Seller's exclusive right, title and interest in and to the Seller trademarks and any and all Seller's intellectual property rights pertaining to the Products. Customer shall not take any act or step impairing Seller's intellectual property rights or do anything that may otherwise adversely affect the Seller's intellectual property rights.

**17. CONFIDENTIALITY** - Customer shall maintain as confidential any information furnished or disclosed by Seller, whether disclosed in writing or orally, relating to the business of the Seller, including its products and customers, drawings, know-how, research and development, patent applications and registered patents, trademarks, ideas, whether patentable or not, financial and marketing information, and these Terms, including the pricing terms under which the Customer has agreed to purchase the Products. Customer shall use the same degree of care to protect the confidentiality of the disclosed information as the Customer uses to protect the confidentiality of its own information, but not less than reasonable care. Customer shall disclose such information only to its employees having a need to know such information to perform the transactions contemplated by these Terms and the Order. The obligation to maintain the confidentiality of such information shall not extend to information in the public domain at the time of disclosure, and/or information that is required to be disclosed by law or by court order.

**18. FORCE MAJEURE** - Seller shall not be responsible for delays or failure to fulfill any obligation under the Terms and the Order due to strikes, fire, acts of nature, acts of God, embargoes, currency restrictions, labor shortages, war, terrorism, epidemics, civil riot, import or export restrictions, shortage of materials or labor, or any other cause beyond Seller's reasonable control, even if Seller knew, had reason to believe, or was advised of the possibility of any such cause.

**19. TAXES; DUTY AND PERMITS** - Sales tax, value added, property, use, excise, occupational tax or any other Federal, state or municipal tax, duties or surcharges, permit fees, registration and inspection fees and costs have not been included in the Purchase Price, and Customer hereby assumes and agrees to pay and/or reimburse Seller for any of the above taxes, assessments, duties, or fees.

**20. WAIVER** - The failure of either party to enforce at any time any of the provisions of the Terms and of the Order shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce any such provisions. No agent, salesman, or other party, is authorized to bind Seller by an agreement or warranty not set forth herein. The parties' status is that of independent contracting vendor and customer. In the event any provision of these Terms or the Order proves to be invalid or unenforceable, such provision shall be disregarded and the non-conflicting valid provisions shall remain in full force and effect.

**21. GOVERNING LAW; ARBITRATION; ATTORNEYS' FEES** - These Terms and the Order shall be governed by and construed in accordance with the laws of the Kalamazoo, Michigan, USA, exclusive of its conflict of law provisions. Any dispute between the parties arising out of these Terms or the Order shall be submitted to final and binding arbitration in the City of Kalamazoo, Michigan, USA, under the Commercial Arbitration Rules of the American Arbitration Association then in effect, upon written notice and demand of any Party therefor. The arbitration shall be conducted by one (1) arbitrator, in the English language. Any arbitration award rendered shall be binding, final and conclusive upon all parties, and judgment thereon may be entered in any Court having jurisdiction thereof. The prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party.



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**22. Marketing:** The Manufacturer shall provide the Representative with marketing literature at no cost. The manufacturer shall provide service and product support as requested to the Representative.

The Representative shall actively and diligently promote the sale of the Products in the Territory during the Term hereof. All the brands should be displayed on the representative's website, including links to brands' websites and products. If the representative fails to represent and promote the manufacturer's lines and products on their website and online platforms it shall constitute grounds for termination of the contract by the Manufacturer with all rights reserved for such cancellation including but not limited to any payments, warranties, commissions, and all terms and conditions relative to cancellation policy.

**23.NOTE\*:** Intentional commercial circumvention between any or all Gordon Bullard and Company business partners including but not limited to: contractual sales agencies, factories, distributors, suppliers, and showrooms will result in cancellation of purchase order with all rights reserved for such cancellation including but not limited to any payments, warranties, commissions, and all terms and conditions relative to cancellation policy.