

PGW AUTO GLASS, ULC PURCHASE ORDER GENERAL CONDITIONS

1. ACCEPTANCE.

1.1 If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and notice of objection to any different or additional terms in any response to this offer is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offerer's assent to any different or additional terms contained on the front or reverse side herein. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. Regardless of its construction, this Purchase Order incorporates by reference all terms of applicable laws and regulations as adopted in the Province of Ontario providing any protection to Buyer including but not limited to all warranty protection (express or implied) and all of Buyer's remedies under such law or regulation. This Purchase Order will be deemed accepted by Seller by: (i) written confirmation by Seller; (ii) electronic acknowledgement (including an acknowledgement through Buyer's electronic procurement program); (iii) not being rejected by Seller, in writing, within ten (10) calendar days after receipt by Seller; or (iv) Seller undertaking to provide the materials, services or work.

2. INVOICES/ PAYMENTS.

2.1 Seller's invoices shall be in such format and medium (including, without limitation, being in electronic medium as part of Buyer's electronic procurement program) as Buyer may direct from time to time. Payments may be made by cheque, wire transfer, Buyer's Corporate Purchasing Card, or other means mutually agreed upon from time to time. Unless otherwise specified herein, (i) specified payment terms shall begin and payment shall be due after acceptance of the materials or work covered by this Purchase Order at Buyer's designated premises, or receipt by Buyer of proper invoices, whichever is later, and (ii) terms will be 2% 10th prox., net thirty (30) days.

3. PRICES.

3.1 If the price(s) is not stipulated herein, this Purchase Order is not to be filled at any price(s) higher than the last price(s) previously quoted to Buyer by Seller. Unless otherwise specified herein, prices are firm for the term of this Purchase Order and in any event may not be increased without prior documented acceptance from Buyer.

3.2 If at any time during the term of this Purchase Order, Buyer receives from another source an offer to supply material of like quality to that offered by Seller at a price which results in a price lower than the delivered price then in effect hereunder ("Favourable Prices"), Buyer may request Seller to meet such competitive offer. If within five (5) working days after the date of Buyer's request Seller shall not have agreed to meet the competitive offer, Buyer, at its option, may purchase the material from the competitive source and the quantity so purchased shall be deducted from this Purchase Order. Buyer anticipates that it may receive competitive offers from third parties to supply the materials at Favourable Prices through an internet web based trading platform (an "On-line Offer"), and if Seller is provided with a written or electronic invitation to participate in the applicable on-line event that may result in an On-line Offer at least seven (7) calendar days prior thereto, the Seller will meet, or not meet, the Favourable Prices of the On-line Offer during the on-line event. Seller's failure to meet such Favourable Prices during the on-line event shall be deemed a decision not to meet such Favourable Prices regardless of whether Seller specifically notifies Buyer thereof.

4. DUTY DRAWBACK RIGHTS.

4.1 Seller hereby transfers to Buyer all Canadian Goods and Services Tax (GST) and/or Customs Duty drawback rights related to the materials (including rights developed by substitution and rights that may be acquired from Seller's suppliers) which Seller can transfer to Buyer. Seller will inform Buyer of the existence of any such rights and, upon Buyer's request, will supply Buyer with such documents as may be required to obtain such drawbacks, including waivers when required.

5. QUALITY.

5.1 Seller agrees to participate in Buyer's supplier quality and development program(s) and to comply with all quality requirements and procedures specified by Buyer, as revised from time to time. In addition, Buyer shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials and any property of Buyer covered by this contract. Buyer's inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods.

6. CHANGES.

6.1 Buyer may by written notice make changes within the scope of this Purchase Order. Upon such notice the parties shall negotiate an equitable adjustment in price and/or time for performance.

7. PACKING AND SHIPPING.

7.1 Seller shall pack, mark and prepare the materials for shipment in a manner which will prevent damage or deterioration, secure the lowest transportation rates, comply with carrier regulations and otherwise conform to Buyer's instructions. Buyer will pay no charges for packing, crating or cartage unless stated in this Purchase Order.

8. SCHEDULING.

8.1 Deliveries of materials or performance of work shall be strictly in accordance with the schedule referred to on the reverse side hereof and in the exact quantities ordered. Seller will notify Buyer immediately if the schedule cannot be met.

9. WARRANTIES.

9.1 Seller warrants: (a) all materials, services and work furnished hereunder will conform to the requirements of this Purchase Order (including but not limited to all applicable descriptions, specifications, drawings, data and samples, whether supplied by Seller or Buyer) and will be of first class material and workmanship, and free from defects including defects in design (except to the extent designed by Buyer), and will be merchantable and fit for the particular purpose(s) for which the same are to be used; (b) all materials herein described and their sale or use alone or in combination will not infringe any patents, trademarks, trade secrets or proprietary rights of any third party; and (c) in performance of this Purchase Order, Seller has complied or will comply, and all materials or work or services furnished hereunder have been produced or furnished in full and complete compliance, with all applicable Federal, provincial, state and municipal laws and ordinances and all lawful orders, rules and regulations thereunder. Without prejudice to Buyer's other rights and remedies Seller, at its expense and as required by Buyer, shall repair, replace or make good at the convenience of Buyer any defective or non-conforming materials or work. These warranties are in addition to and shall not be construed as restricting or limiting any warranties of Seller, expressed or implied, which are otherwise provided herein or exist by operation of law. At Buyer's election, (i) Buyer may require that Seller promptly deliver to Buyer replacement materials or services, (ii) Buyer may set off that portion of the purchase price attributable to the defective materials or services against current or future amounts owing to Seller, or (iii) Seller shall credit any amounts owing from Buyer for that portion of the purchase price attributable to the defective materials or services. Buyer may ship any defective or non-conforming materials or services to Seller on a freight prepaid basis and, at Buyer's election, deduct the amount of such prepaid freight from amounts owed to Seller or receive prompt reimbursement from Seller. If Buyer elects to receive replacement materials or services, Seller shall deliver such replacement materials or services to Buyer FOB delivery point on an expedited basis. All costs associated with the return of materials or services to Seller and the redelivery of conforming materials or services to Buyer shall be at Seller's sole cost and expense.

10. INSPECTION.

10.1 Buyer reserves the right to inspect and expedite the materials, and their fabrication, at the facilities of Seller or its suppliers. Inspection by Buyer does not relieve Seller of any warranties or obligations hereunder. All materials or services are subject to final inspection and acceptance by Buyer at destination, notwithstanding any prior payment or inspection at source.

11. USE OF INFORMATION/BUYER'S EMPLOYEES.

11.1 All specifications, drawings, samples, designs and other data or information ("Information") furnished by Buyer to Seller hereunder or in contemplation hereof or developed by Seller in connection herewith shall remain Buyer's property. All originals and copies of such documents shall be returned to Buyer upon request. Unless such Information was previously known to Seller free of any obligation to keep it confidential, or has been or is subsequently made public by Buyer or a third party, it shall be kept confidential by Seller and be used only with respect to this Purchase Order.

11.2 From the date of this Purchase Order until two (2) years after the final delivery of materials or services under this Purchase Order, Seller shall not directly or indirectly solicit or hire any person who is or was an employee or contractor of Buyer or any of its affiliates.

11.3 Seller further agrees that in the event of any breach or threatened breach of the covenants set forth in this Section 10, damages would not constitute an adequate remedy, and accordingly, Seller agrees that in the event of a breach, or threatened breach, of this covenant, Buyer shall be entitled to equitable relief, including an injunction prohibiting any such breach, in addition to any other remedies that may be available to Buyer.

12. BUYER'S PROPERTY.

12.1 All tools, tooling, dies, molds, patterns, machinery, fixtures, equipment, software, and any other property furnished to Seller by Buyer or paid for by Buyer for use in the performance of this Purchase Order shall be and remain the sole property of Buyer, subject to immediate removal upon Buyer's request without legal proceedings, notice or liability, used only in filling orders of Buyer, held at Seller's risk for any loss or damage, kept insured by Seller while in Seller's custody or control in an amount equal to the replacement cost thereof, the loss payable to Buyer, and kept free of any lien, attachment, levy, claim or security interest or encumbrance of any kind whatsoever not caused by Buyer. If requested by Buyer, Seller shall execute and return any and all documents and agreements as may be prepared by Buyer acknowledging, among other things, that any such property is the Buyer's property.

13. ALLOCATION.

13.1 Unless otherwise specified herein, in the event that Seller is unable to produce/deliver the materials required hereunder by Buyer due to a circumstance that legally excuses Seller from its' full performance (e.g. a force majeure circumstance), Seller shall allocate its' available supply of the material among its' internal uses and current contract purchasers on a basis no less favourable to Buyer than a pro rata basis.

14. DEFAULT.

14.1 Upon default by either party in performing any obligation hereunder, the other party may give notice in writing of such default to the defaulting party. Unless the default is cured within fifteen (15) days after giving notice, this Purchase Order may be terminated by the party giving notice. Such termination shall not relieve the party in default from any obligations under or from liability for breach of this Purchase Order. Notwithstanding the foregoing, if any material shipped does not conform to its warranties, Buyer may, without prejudice to any of its rights, terminate this Purchase Order without Seller having the right to cure the default. Waiver by either party of a single default, or a succession of defaults, shall not deprive such party of any rights arising by reason of any other default.

15. INDEMNIFICATION.

15.1 Seller assumes the risk of all damage, loss, costs and expense, and agrees to indemnify, defend and hold harmless Buyer, its officers, employees and representatives, from and against any and all damages, claims, demands, expenses (including reasonable legal fees), losses or liabilities of any nature whatsoever, and whether involving injury or damage to any person (including employees of Seller and Buyer) or property, and any and all suits, causes of action and proceedings thereon arising or allegedly arising from or related to the subject matter of this Purchase Order, except where such injury or damage was solely caused by the gross negligence or willful misconduct of Buyer. This indemnity shall survive the termination or cancellation of this Purchase Order, or any part hereof.

16. INSURANCE.

16.1 For work or services done for Buyer on premises designated by Buyer, Seller shall furnish Buyer, prior to commencement of the work or services, certificates of insurance showing that Seller has Comprehensive General Liability (including automobiles) coverages in the minimum amounts and form as may be specified by Buyer and a clearance certificate or letter confirming that the Seller has Workers' Compensation coverage and that its account with the applicable Workers' Compensation board is in good standing, and such coverages shall not be allowed to change or expire until all services or work have been completed and accepted. The Buyer may retain from any payment otherwise due hereunder the amount of any assessment or contribution due the Seller or any sub-contractor or agent of Seller with respect to Workers' Compensation.

17. DISPUTES.

17.1 Except to the extent of a claim to enforce the confidentiality or non-solicitation obligations set forth in Section 10 or to collect on an undisputed delinquent account, and as a precondition to instituting any legal action, any controversy, claim or dispute between Buyer and Seller arising out of or relating to the provisions of this Purchase Order shall, upon written request of either party, immediately be referred jointly for resolution to senior executives of each of the Parties who have authority to settle the controversy and who are at a higher level of management than the person(s) with direct responsibility for day-to-day administration of this Purchase Order. Within fifteen (15) days after delivery of the written request of the party, the receiving party shall submit to the other a written response. The request notice and the response shall each include: (i) a statement of the respective party's position and a summary of arguments supporting that position; and (ii) the name and title of any other person who will accompany the senior executive to any meetings regarding the dispute. Within thirty (30) days after delivery of the disputing party's request notice, the senior executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt in good faith to resolve the controversy. The parties agree to honor all reasonable requests for information. All negotiations pursuant to this provision are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the controversy has not been resolved by negotiation within forty-five (45) days of the disputing party's request notice, or if the parties failed to meet within thirty (30) days of such request notice, the parties agree to attempt to settle the dispute by mediation. A neutral mediator shall be selected from ADR Chambers or The Private Court in the City of Toronto or by other means mutually agreed upon by the parties. The mediation shall be conducted under mediation procedure rules selected by the agreed upon mediator, or such other rules mutually agreed upon by the parties. All mediation proceedings are non-binding. This mediation must be concluded within any period mutually agreed upon by the parties or if there is no such agreement, within forty-five (45) days of the selection of the mediator. Unless the parties expressly agree otherwise, each party shall bear its own costs, legal and expert fees incurred in the mediation, and evenly share the cost of the mediator. If after proceeding in good faith (i) the parties are unable to agree on a neutral mediator within thirty (30) days of the failure of the senior executives to meet as required aforesaid or the failure of the senior executives to resolve the dispute, whichever is earlier; or (ii) with the assistance of a neutral mediator, the parties do not resolve the dispute within the period prescribed in this Section, either party may initiate litigation to resolve the dispute.

18. CANCELLATION.

18.1 Buyer reserves the right to cancel this Purchase Order, or any part thereof, at any time, without cause, by written notice to Seller. In such event, Buyer shall pay for all materials or services delivered, completed, and accepted by Buyer and a reasonable settlement shall be reached, consistent with the price specified in this Purchase Order. Upon receipt of notice of cancellation hereunder, Seller shall, unless otherwise directed, immediately discontinue all work in process and immediately cancel all orders or subcontracts given or made pursuant to this Purchase Order. Additionally, Buyer may terminate a Purchase Order, in whole or in part, upon reasonable written notice to Seller, if control of Seller changes (including (i) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of the services or materials; (ii) the sale or exchange of a controlling interest in the shares or other ownership interests of Seller; or (iii) the execution of a voting or other agreement of control). Seller shall provide Buyer with written notices of a proposed and actual change of control at least ten days prior to the date the change of control is scheduled to occur and within ten days after the change of control has become effective.

19. NOTICE.

19.1 All documents, notices and communications to be given hereunder or in connection herewith shall be in writing, signed (signing may be by an electronic signature) by the party giving or making the notice or communication and shall be deemed given when: (i) (x) delivered in person or by messenger or (y) sent by facsimile or electronic mail on the date of receipt of a facsimile or electronic mail, provided that the sender can and does provide evidence of successful transmission and that such day is a business day (and if it is not, then on the next succeeding business day) or (z) three (3) business days after being deposited in the Canadian mail in a sealed envelope with sufficient postage affixed, registered or certified, return receipt requested, and (ii) addressed to Seller or Buyer at the addresses set forth on the reverse side hereof, or to such other addresses or designee(s) as may be hereafter designated by a party after providing written notice thereof to the other party.

20. SOLICITATION.

20.1 Seller agrees to report promptly to the Vice President, Purchasing and Distribution, any solicitation by an employee, agent or representative of Buyer or Seller of an offer or gift which is intended to induce or influence the other party to engage in conduct which is corrupt, deceptive or otherwise improper.

21. REPRODUCTIONS.

21.1 This Purchase Order, and all documents relating hereto and thereto, may be stored and/or reproduced by any means or process including electronic or mechanical means. Any reproduction shall be admissible into evidence as the original in any litigation without regard to whether the original is in existence. If a party signs this Purchase Order and then transmits an electronic facsimile of the signature page, (including, without limitation, in PDF format), the receiving party may rely upon such electronic facsimile as an originally executed signature page without any modification or change to this Purchase Order, unless such modification or change is noted on such electronic facsimile by the transmitting party. If this Purchase Order is made available electronically and a party signifies its consent to be bound by this Purchase Order by clicking "I agree" (or words of similar import) where indicated at the bottom of this Purchase Order or otherwise signifies its consent in accordance with the terms specified by Buyer's electronic procurement program, then the receiving party may rely upon such consent to this Purchase Order.

22. WORK ON BUYER'S PREMISES.

22.1 When work under this Purchase Order is performed on Buyer's premises, Seller agrees to indemnify and protect Buyer against all liability for injury or damages to any person or property arising therefrom. Seller agrees upon request to furnish a certificate from its insurance carriers showing that it carries a workmen's compensation, public liability and property damage insurance coverage acceptable to Buyer.

23. CUSTOMS AND EXPORT MATTERS. *This provision only applies for services or materials involving cross-border transactions.*

23.1 To the extent permitted by law or Treaty, and as applicable, Seller shall assign to Buyer all such credits which arise from this Purchase Order with the right to reassign such credits as determined by Buyer. Additionally, Seller shall provide Buyer all necessary information and documentation of Seller relating to the materials or services supplied under this Purchase Order and required to comply with applicable customs, product marking, country of origin, and other laws. Seller shall hold Buyer harmless for any and all increased costs or customs duties or other penalties or damages incurred by Buyer as a result of deficient or erroneous documentation supplied by Seller for purposes of establishing the status of materials or services supplied under this Purchase Order under the North American Free Trade Agreement and its implementing laws and regulations.

24. MISCELLANEOUS.

24.1 (a) The failure of either party in any one or more instances to insist on performance of any of the provisions hereof, or any part thereof, shall not be construed to be a waiver of such provision, or any part thereof in the future; (b) This Purchase Order, its performance, any interest herein or in any monies due or to become due herein, may not be assigned or subcontracted by Seller without the prior written consent of Buyer; (c) The remedies herein reserved by Buyer shall be cumulative, and additional to any other or further remedies provided in law or equity; (d) All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer for setoff or counterclaim arising out of this or any other of Buyer's contracts or agreements with Seller; (e) This Purchase Order is executed in English, and in the event this Purchase Order is translated into a language(s) other than English this version in English shall be controlling on all questions or interpretations and performance; (f) This Purchase Order, including all documents referenced herein, contains the entire agreement of the parties with regard to the subject matter hereof, supersedes any prior communications, commitments or contracts between the parties relating to the subject matter hereof, and no modification of this Purchase Order shall be of any force or effect unless reduced to a writing that specifically references this Purchase Order, states an express intent to modify or amend this Purchase Order, and is signed by the parties; and (g) This contract is made under the laws of the Province of Ontario (without giving effect to the conflict of law principles thereof) and this contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein (except as the provisions of such laws are herein varied), and in the previous regard Seller and Buyer mutually agree that the United Nations Conventions on Contracts for the International Sale of Goods does not apply to this Purchase Order or the sale by Seller to Buyer of any services or materials contemplated hereunder.