

**PILKINGTON NORTH AMERICA, INC.**  
**GENERAL TERMS AND CONDITIONS OF SALE**

**SECTION 1. TERMS**

**1.1** Unless otherwise expressly agreed in writing by the Seller, these General Terms and Conditions of Sale ("**Conditions**") apply to any sale of Aftermarket Glass Replacement products ("**AGR Products**") and Architectural Glass products ("**AG Products**", and together with AGR Products, "**Products**") by Pilkington North America, Inc. ("**Seller**") to the buyer of such Products ("**Buyer**") and supersede any earlier conditions issued by the Seller, whether oral or written, and shall override any terms or conditions of the Buyer. Any additional, inconsistent or different terms or conditions contained in Buyer's purchase order or other documents submitted to Seller by or on behalf of Buyer at any time, whether before or after the date hereof, shall be deemed a material alteration and not a rejection of these terms and conditions, and are hereby expressly rejected by Seller. Ordering, acceptance or delivery of the Products hereunder shall constitute acceptance of these Conditions. Products will be deemed accepted by Buyer unless Seller is notified in writing of non-acceptance within ten (10) days after receipt by Buyer.

**1.2** The Seller reserves the right to amend, vary or enhance these Conditions by posting the same to its website at <http://epremierecom.us.pilkington.com> and <https://www.pilkington.com/en/us/architects/resource-library>. The version of these Conditions effective at the time the Buyer places an order applies to the sale of Products under the order.

**1.3** The entire agreement (this "Agreement") between the Seller and the Buyer consists exclusively of: (a) these Conditions, (b) Buyer's purchase order (except for the terms and conditions preprinted therein and anything therein rejected by the Seller), (c) Seller's invoice setting forth the description, quantity and price of Product sold to Buyer along with any product-specific Terms and Conditions referenced therein, and (d) any additional express warranty by the Seller, if any. For AG Products, the minimum unit of sale is a full truckload or container and this requirement can be met by a combination of AG Products from the same factory of origin. In addition, the Seller may announce and apply minimum unit of sale requirements for all or some AGR Products for all or some customers.

**1.4** The product information contained in the Seller's publication is for the sole purpose of giving an approximate idea of the Products described in it and shall not form a part of a contract for sale of such Products.

**1.5 For AG Products:** Cancellation of orders by Buyer for custom or modified Products will not be accepted and Buyer will be responsible for the full agreed-upon price.

**SECTION 2. DELIVERY**

**2.1 For sales of AGR Products to truckload customers and sales of AG Products:** The Products will be delivered DAP Buyer's place of business (per Incoterms 2020), unless the Buyer arranges vehicles to pick up Products on terms of FCA point of shipment. The risk of the Products shall pass to the Buyer at the time they are unloaded from the Seller's delivery vehicle (if delivered on DAP terms) or they are loaded on the Buyer's collection vehicle (if delivered on FCA terms). Any claim of shortages, errors, or damage must be noted on the bill of lading and notified to the Seller within forty-eight (48) hours after delivery.

**2.2 For sales of AGR Products to wholesale customers:** The Products will be delivered to the Buyer FCA point of shipment (or Seller's Distribution/Service Center, if Buyer arranges vehicles to pick up AGR Products), and the risk of the Products shall pass to the Buyer at the time they are loaded on the Seller's delivery vehicle at the point of shipment (or on the Buyer's collection vehicle in the Distribution/Service Center). The Buyer shall take delivery of the AGR Products within 7 days of the Seller giving it notice that the Products are ready for delivery. Any claim of damage must be notified to the Seller within forty-eight (48) hours after delivery (or before the Buyer's collection vehicle leaves the Distribution/Service Center, if damage is visible from outside the packaging).

**2.3 For all Products:** Any dates specified by the Seller for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence. If no dates are so specified, delivery shall be within a reasonable time. Delivery is always subject to the availability of the Seller's stock.

**2.4 For all Products:** If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or the Seller is unable to deliver the Products because the Buyer has not provided appropriate instructions, documents, licenses or authorizations, the Products shall be deemed to have been delivered and Seller may additionally charge Buyer for any reasonable storage or additional transport costs which result and the risk in the Products shall pass to the Buyer.

**2.5 For all Products:** The Seller may deliver the Products by separate installments. Each installment shall be a separate Contract and shall be invoiced and paid for pursuant to the Contract.

**2.6 For all Products:** Pallets, frames, stillages, and all other distribution equipment for AG Products are the property of the Seller and must be returned to the Seller on demand. Metal crates and some packaging materials (designed by the Seller for recycling) for AGR Products are the property of the Seller and shall be returned to the Seller unless otherwise negotiated. Use of distribution equipment for any purpose other than carriage and storage of the Products supplied by the Seller is prohibited.

**SECTION 3. PRICE AND PAYMENT TERMS**

**3.1** Unless otherwise agreed upon by authorized personnel in writing by the Seller, all Product prices are subject to change without notice and the Products will be invoiced at the prices effective at the date of shipment .

**3.2** Time for payment shall be of the essence. Buyer will pay all amounts payable pursuant to such invoices in full in immediately available lawful funds of the United States of America at the address specified on the invoice, at the time of delivery of the Products or, if the Seller's Credit Department has accepted the Credit Application by the Buyer, in accordance with the terms established by the Seller.

**3.3** Prices of all Products are exclusive of sale taxes, duties and levies of any kind whatsoever as well as applicable delivery, packing and other charges (in case of AGR Products) and energy surcharges. The Buyer is solely responsible for the payment of any such taxes, duties or levies.

**3.4** In the event of Buyer's breach or default under these Conditions, Seller shall be entitled to all rights under the Uniform Commercial Code ("UCC") and all rights at law and in equity; Buyer agrees to reimburse Seller for all collection costs, court costs, attorneys' fees and expenses, and other charges incurred by Seller.

#### **SECTION 4. TITLE AND INTELLECTUAL PROPERTY**

**4.1** The Products remain the sole and absolute property of the Seller as legal and equitable owner until payment (including any delivery or service charge) has been received in full by the Seller. After the Seller receives payment in full for the Products, title to the Products is deemed to have immediately passed to the Buyer. Notwithstanding that the Seller has retained title to the Products, the Seller is entitled to maintain an action for outstanding invoices as soon as payment falls due. Additionally, Seller shall have the right to retain a security interest in the Products sold or shipped and to require Buyer to execute a security agreement and authorize filing of financing statements under the applicable provisions of the UCC. Buyer hereby grants such security interest to Seller and authorizes such filing.

**4.2** All right, title and interest in Intellectual Property, including, but not limited to, patents, trademarks, tradenames, copyrights and trade secrets, with respect to all Seller Products belong to Seller. No Intellectual Property rights whatsoever, including, but not limited to, any license rights, are hereby granted or implied to be granted by Seller to Buyer in any of Seller's Intellectual Property. Buyer may only use Seller's Products in accordance with the Terms herein and for no other purposes unless pre-approved by Seller in writing. Seller neither represents nor warrants that its Products do not violate any third-party Intellectual Property rights.

#### **SECTION 5. LIMITED WARRANTY**

**5.1** The Seller applies separate warranty policies (or return policies) to AGR Products and AG Products, copies of which are found on Seller's website or available upon request. PNA MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED IN FACT OR IN LAW, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

**5.2** No employee, agent or representative of PNA has the authority to bind PNA to any oral representation or warranty concerning the Products. ANY SUCH WRITTEN OR ORAL REPRESENTATION OR WARRANTY WILL BE VOID AND UNENFORCEABLE.

#### **SECTION 6. LIABILITIES; LIMITATIONS OF LIABILITY**

**6.1** In no event will Seller or its parent, related or affiliated entities, directors, officers, employees or agents be liable to Buyer or any third party for any indirect, special, reliance, consequential, incidental, punitive, or special damages whatsoever, without regard to cause or theory of liability (including, without limitation, damages for loss of business profits or revenue, business interruption, loss of business information or other pecuniary loss) arising out of these Conditions. The foregoing limitation will apply notwithstanding any failure of essential purpose of any limited remedy. Additionally, in no event will Seller's (to include Seller's parent, related and affiliated entities, and its directors, officers, employees, and agents) liability of any kind pursuant to any theory including, but not limited to, contract, tort, strict liability, and warranty, exceed the amount paid or to be paid by Buyer to Seller under the applicable Buyer order. **THE SOLE AND EXCLUSIVE REMEDY OF BUYER OR ANY OTHER PARTY AGAINST SELLER FOR ALL CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, FOR ANY LOSS OR DAMAGES ARISING OUT OF, CONNECTED WITH OR RESULTING FROM, THE SALE OR FAILURE TO SELL, SHALL BE REPLACEMENT OF SUCH PRODUCT SOLD HEREUNDER, IN ACCORDANCE WITH THE DELIVERY SECTION ABOVE OR REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCT. BUYER AND SELLER AGREE THAT THE EXCLUSIVE REMEDY SET FORTH HEREIN DOES NOT CAUSE THE CONTRACT TO FAIL OF ITS ESSENTIAL PURPOSE.**

#### **SECTION 7. FORCE MAJEURE AND ALLOCATION**

**7.1** Seller will not be responsible for delays or failure in performance resulting from acts beyond its control, including but not limited to, acts of God; acts of war; acts of public enemy; fire; floods; labor disputes, strikes or lockouts; breakdowns or accidents; inability to secure rail cars, trucks or barges or other delays in transportation; inability to procure supplies or other materials; government actions, regulations, orders or rulings; acts or omissions of Buyer; or any other events or other conditions beyond Seller's control, whether similar or dissimilar to the foregoing acts or occurrences (an "Event of Force Majeure"); provided, however, Seller will (i) immediately provide written notice to Buyer of the date and nature of the Event of Force Majeure and the anticipated period of time during which the force majeure conditions are expected to persist and (ii) make all reasonable efforts to reduce the effect of any failure or delay by the Event of Force Majeure. Notwithstanding the foregoing, an Event of Force Majeure will not relieve or affect in any way Buyer's obligation to pay any amounts due and owing under these Conditions. During times of shortage, Seller shall have the right to allocate among its customers in accordance with Section 2-615 of the UCC.

#### **SECTION 8. CONFIDENTIALITY**

**8.1** Each party will maintain in confidence and safeguard all business and technical information which is disclosed by one party ("discloser") to the other ("recipient") in connection with these Conditions and which is designated confidential at the time of disclosure, and any other information that, due to the type of information and the nature of disclosure, should reasonably be viewed by the recipient as confidential information of the discloser whether or not so marked or identified, and use the same only for its performance of these Conditions; provided, however, the obligations under this Section do not apply to information that (i) is or becomes available to the public through no fault of the recipient; (ii) was known to the recipient prior to the disclosure under these Conditions; (iii) becomes available to the recipient on a non-confidential basis from a third party not restricted by contract or law regarding such information; (iv) is disclosed with the prior written consent of the discloser; or (v) is required or compelled by law to be disclosed, provided that the recipient gives all reasonable prior notice to the discloser to allow it to seek protective or other court orders.

**8.2** Section 8.1 does not preclude the Seller from assigning its rights under this Agreement to a third party.

#### **SECTION 9. MISCELLANEOUS**

**9.1** No Assignment. These Conditions will not be assigned in whole or in part by any party without the prior written consent of the other party, such consent not to be unreasonably withheld. This Agreement will be binding on and inure to the benefit of the parties hereto, and their legal representatives, successors in interest and permitted assigns.

**9.2** Governing Law. These Conditions will be construed in accordance with the laws of the state of Ohio without reference to its choice of law rules, and any dispute arising out of or relating to these Conditions will be resolved solely by final and binding arbitration pursuant to this Section 9.2. Unless the parties otherwise agree in writing, the arbitration will be conducted in Toledo, Ohio before a single arbitrator. The arbitrator will be jointly selected and mutually approved by the parties or, if

the parties are unable to agree, will be appointed by the America Arbitration Association ("AAA"). The arbitration will be conducted in accordance with the AAA's rules of commercial arbitration. The parties initially will share equally the fees and expenses of the arbitration. However, the prevailing party (if applicable and as determined by the arbitrator) will be entitled to recover from the non-prevailing party all such fees and expenses (including without limitation reasonable attorneys' fees). Any arbitration decision so rendered will be final and binding, and judgment thereon may be entered in any court of competent jurisdiction. The parties will arbitrate disputes in confidence. Nothing in this Section 9.2 will prevent either party from seeking preliminary equitable relief in any court.

**9.3 Severability.** If any provision of these Conditions is held invalid, illegal or unenforceable, that will in no way affect, impair or invalidate any other provision, and all other provisions of these Conditions will be in full force and effect.

**9.4 No Waiver.** No delay or omission by either party hereto to exercise any right or power hereunder will impair such right or power or be construed to be a waiver thereof. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach.

**9.5 Technical Information; Hazards and Precautionary Procedures.** Any technical information or assistance Seller or its affiliates provide is given and accepted at Buyer's risk and is not a warranty or a specification. A material Safety Data Sheet ("SDS") with complete safety information is available from Seller. Buyer agrees that it will familiarize itself with all hazards and precautionary procedures with respect to the handling, transportation or use of the Product and will manage the Product accordingly. **Buyer agrees to provide or make available such SDS to all persons who may purchase, use or come into contact with the Product including its employees and customers.** Buyer agrees to indemnify Seller for any claims made against Seller or its affiliates, and for associated damages and expenses (including reasonable attorneys' fees and expenses), due, in whole or in part, to Buyer's failure to familiarize itself with such hazards and precautionary procedures, to manage accordingly or to provide such information as set forth above or required by law.