

The Terms and Conditions are an integral part of the Sales Contract, which is a legally-binding agreement between Millennium Forms, LLC and the purchaser, and the purchaser's principal(s) and agent(s), of the Materials identified in the Sales Contract.

**DEFINITIONS.** The Terms and Conditions are referred to as "Terms." The purchaser and the purchaser's principal(s) and agent(s) are collectively referred to as "Customer." Millennium Forms, LLC, is referred to as "Millennium Forms." The materials purchased under the Sales Contract are referred to as the "Materials."

**SCOPE.** The Terms shall apply to all quotations and offers made, and to all Sales Contracts accepted, by Millennium Forms. The Terms apply regardless of any course of dealing between the Customer and Millennium Forms, or usage of trade in the industry. If the Terms conflict with any terms and conditions affixed to any procurement document issued by the Customer, the Terms shall govern, and the acceptance of the Sales Contract is conditioned upon the Customer's acceptance of the Terms, whether the Customer accepts the Terms by a written acknowledgement, by implication, or by acceptance of and payment for Materials ordered hereunder. Any failure by Millennium Forms to object to provisions contained in any communication from the Customer shall not be deemed a waiver of the Terms.

**ACCEPTANCE OF THE MATERIALS.** The Customer acknowledges and agrees to all the following:

1. Due to the method of manufacturing the Materials of Stainless steel (LIC), there will be variances in color, appearance, finish, and sheen among the Materials, including the samples provided for review and the Materials purchased under the Sales Contract; Millennium Forms has explained to the Customer and the Customer understands that, because of the method of manufacturing the Materials, the color, appearance, finish, and sheen of the Materials will appear dichromic (i.e., the color experienced will change depending on the available ambient or focused light, as well as the position and angle at which a person is viewing) for LIC.
2. Due to the method of manufacturing the Materials of ZALMAG®, there will be variances in color and will appear as a color range in ZALMAG® coatings; Natural ZALMAG®'s surface finish will be apparent through the Pre-Patina II and Black coatings. Furthermore, ZALMAG® surfaces (Natural, Pre-Patina II, and Black) age to grey tones. White marks can appear on ZALMAG®'s zinc surfaces; however, such marks do not reduce the material's lifespan. ZALMAG® reacts to handling, installation, equipment pressure, and environment. Due to the nature of ZALMAG® patinas based on handling, installation, equipment pressure, and the environment; Surface blemishes are to be expected and are not a Warrantied claim.
3. Millennium Forms' stainless steel LIC "samples" differ from "submittals." Samples are provided to Customer "off-the-shelf" as examples of color, finish, sheen, etc. Submittals are sent AFTER project is contracted, Material is obtained for the project and colored using the LIC process, to show actual color achievable on Project-specific Materials.
4. Failure to expediently remove plastic protective coating will prevent transfer of adhesive and/or coating.
5. The Materials may be scratched during installation, which is not harmful to their corrosion resistance. Surface rust can occur from "free iron" and/or carbon steel. "Free Iron" and/or carbon steel are often found in tools used in installation and/or in grinding dust. We recommend the use of non-ferrous tools to prevent "free iron" and carbon steel contamination; materials shall be installed in

accordance with standards and practices set forth by local and national building authorities.

6. The Customer has directed Millennium Forms to manufacture and/or procure raw material on behalf of the Customer, as agreed in the Sales Contract, and to send the same to the Customer, and the Customer has agreed to pay Millennium Forms for the same;
7. Millennium Forms is a supplier of materials only. Millennium Forms strongly recommends that the Customer engage a professional installer to fabricate and/or install the Materials;
8. THE CUSTOMER'S SIGNATURE OR OTHER WRITTEN ACKNOWLEDGMENT ON THE TERMS CONSTITUTES THE CUSTOMER'S ACCEPTANCE OF THE SALES CONTRACT, THE MATERIALS, THE OBLIGATION TO PAY ALL FEES AND CHARGES FOR THE MATERIALS, AND ALL OF THE AGREEMENTS, TERMS AND CONDITIONS CONTAINED IN THE SALES CONTRACT UNDER THE UNIFORM COMMERCIAL CODE OR OTHERWISE; and
9. MILLENNIUM FORMS HAS PROVIDED A COPY OF THE MATERIAL'S LIMITED WARRANTY. THE CUSTOMER UNDERSTANDS THAT THE ONLY RECOURSE FOR REJECTION OF ALL OR ANY PART OF THE MATERIALS OR FOR ANY OTHER DAMAGES BELIEVED TO HAVE BEEN INCURRED AS A RESULT OF THE CUSTOMER'S PURCHASE OR USE OF THE MATERIALS SHALL BE THE CUSTOMER'S RIGHTS UNDER THE LIMITED WARRANTY, WHICH IS INCORPORATED INTO THE TERMS.

**PAYMENT.** In addition to the purchase price for the Materials as stated on the Sales Contract, Customer is solely responsible for all applicable sales, value added, turnover, revenue and excise taxes, import duties (including brokerage fees), and other taxes applicable to the sale of the Materials, as well as all freight, packaging, insurance, handling, and all other associated charges. Unless otherwise expressly provided in the Sales Contract, payment terms are as follows: 50% deposit upon entry into the Sales Contract, with the remaining balance due upon the completion of manufacturing and before shipment. Millennium Forms will not procure or produce Materials until the initial 50% deposit is received. Procurement and production of Materials is scheduled on a first-come, first-served basis; good communication, a fully-signed Sales Contract, and receipt of the 50% deposit are the best ways to ensure the Customer's order is completed in a timely manner.

**DELIVERY / TITLE.** Shipping dates are estimates only. Millennium Forms will make a good faith effort to complete delivery of the Materials as indicated by Millennium Forms in writing. However, Millennium Forms does not assume responsibility or liability, and will accept no charge, for loss or damage due to delay or inability to deliver, regardless of whether such loss or damage was made known to Millennium Forms, including, without limitation, Millennium Form's delay or non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors, or suppliers, fires, explosions, floods, breakdown of or damage to plants, equipment, or facilities, or any other causes of any kind whatsoever beyond Millennium Form's reasonable control. Under no circumstances will Millennium Forms be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expenses (regardless of whether based on negligence) arising directly or indirectly from delays or failure to give notice of delay. Customer is responsible for storing materials in a cool, dry, protected location while in Customer's possession.

Title and risk of loss to the Materials shall pass to the Customer at Millennium Forms' loading docks. Loss or damage that occurs during shipment is the Customer's responsibility, regardless of which party selects the carrier, and regardless of whether the cost of shipment is borne by either party.

Customer shall notify Millennium Forms within ten (10) days of receipt of the Materials if the Customer claims parts of the order are incorrect. Damaged Materials or missing skids/crates shall be reported to Millennium Forms the day Materials arrive. Failure to notify Millennium Forms in writing regarding any such missing, incorrect, or damaged Materials within such period shall be deemed an unqualified waiver of any right to return Materials on a basis that the Customer's order has missing, incorrect, or damaged Materials.

**WARRANTIES.** Customer shall be entitled to the warranties contained in the LIMITED WARRANTY made a part of the Terms. MILLENNIUM FORMS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, OTHER THAN THOSE CONTAINED IN THE LIMITED WARRANTY.

**DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MILLENNIUM FORMS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES OR LOSSES ARISING OUT OF PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF PROFITS, BUSINESS INTERRUPTION, PROFESSIONAL NEGLIGENCE OR LIABILITY, IMPROPER STORAGE, PROJECT DELAYS, BACK CHARGES, OR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATED TO THE PURCHASE, INSTALLATION, OR USE OF THE MATERIALS, EVEN IF SUCH LOSSES OR DAMAGES ARISE FROM THE COMMISSION OF A TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, BY MILLENNIUM FORMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**INDEMNITY.** EXCEPT TO THE EXTENT CAUSED BY MILLENNIUM FORMS' SOLE GROSS NEGLIGENCE, CUSTOMER SHALL DEFEND ITSELF AT ITS OWN COST AND EXPENSE, AND INDEMNIFY AND HOLD HARMLESS MILLENNIUM FORMS, MILLENNIUM FORMS' OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) BROUGHT OR CHARGED BY ANY PERSON OR ENTITY (OTHER THAN CLAIMS MADE UNDER THE LIMITED WARRANTY IN ACCORDANCE WITH ITS TERMS) RELATED TO OR IN CONNECTION WITH THE CUSTOMER'S PURCHASE OF, THE INSTALLATION OF, OR THE USE OF, ALL OR ANY PART OF THE MATERIALS. THIS INDEMNITY SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DAMAGE, LIABILITY, OR EXPENSE IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHERWISE. MILLENNIUM FORMS MAY CHOOSE TO BE REPRESENTED BY AND ACTIVELY PARTICIPATE THROUGH ITS OWN COUNSEL IN ANY SUIT OR PROCEEDING RELATED TO THIS INDEMNITY, AND THE COSTS OF SUCH REPRESENTATION SHALL BE PAID BY THE CUSTOMER.

**ARBITRATION.** Any dispute as to any claim under the Sales Contract will be settled by final, binding arbitration in the City of Elkhorn, Wisconsin, by three (3) arbitrators, one (1) of whom will be appointed by Millennium Forms, one (1) of whom will be appointed by Customer, and the third of whom will be appointed by the first two (2) arbitrators. If either party fails to appoint an arbitrator within twenty (20) days of a request in writing by the other party to do so, or if the first two (2) arbitrators cannot agree on the appointment of a third arbitrator within twenty (20) days of their designation, then such arbitrator will be

appointed by the American Arbitration Association ("AAA"). Except as to the selection of arbitrators, which will be as set forth above, the arbitration will be conducted promptly and expeditiously in accordance with the commercial arbitration rules of the AAA, so as to enable the arbitrators to render an award within ninety (90) days of the commencement of the arbitration proceedings. Judgment upon the award rendered by the arbitrators may be entered in any court having competent jurisdiction thereof. Each party will bear the expenses of the arbitrator it selects and will jointly share the expenses of the third arbitrator and of the arbitration proceedings.

**LIMITATION OF LIABILITY AND REMEDIES.** Notwithstanding any other provision of the Sales Contract (including, without limitation, all damages referenced above and all direct or general damages), to the extent that Millennium Forms is found liable for an award of monetary damages for any reason arising as a result of, in connection with, or as a consequence of the Sales Contract, Millennium Form's sole entire aggregate liability under any provision of the Sales Contract and Customer's exclusive remedy for all of the foregoing shall be limited to the amount paid by Customer to Millennium Forms for the Materials. The foregoing limitations, exclusions, and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

**GENERAL:** Customer acknowledges reading and understanding the Terms and agrees to be bound by them. Any action against Millennium Forms under the Sales Contract or related to the Materials must be brought within one (1) year after the cause of action accrues. Nothing in the Sales Contract shall create or be deemed to create any third-party beneficiary rights in any person or entity (including any employee). No failure or delay of Millennium Forms to exercise any right, power, or remedy, or to recognize any breach or default under the Sales Contract shall operate as a waiver thereof or as a waiver of a subsequent or different breach, default, right, power, or remedy. Millennium Forms retains the intellectual property in all Materials. The sale of any Materials does not convey to Customer any license by implication, estoppel, or otherwise. Millennium Forms retains the copyright in all documents, catalogs and plans supplied to Customer pursuant to or ancillary to any Sales Contract. Section headings are for convenience only and have no legal or interpretive effect. Any provision of the Sales Contract prohibited or unenforceable in any jurisdiction shall be ineffective only to the extent of such prohibition and shall not invalidate the remaining provisions of the Sales Contract. The Sales Contract constitutes the entire understanding of the parties with respect to the subject matter thereof, and supersedes all prior agreements and communications. No additional terms, conditions, waivers, or alterations of the Sales Contract shall be binding unless in a writing signed by Millennium Forms and the Customer. The Sales Contract shall be governed by and construed under the laws of, and under the Uniform Commercial Code as adopted by, the State of Wisconsin, without regard to its choice of law rules. All notices and other communications under the Sales Contract shall be in writing, shall be addressed to the respective party, and shall be considered given (i) on the date of service if served personally, (ii) on the third day following mailing if sent by United States certified mail, postage prepaid, return receipt requested, (iii) on the first business day following delivery to an overnight courier, if served by overnight courier, or (iv) on the date of confirmed delivery if served by facsimile (fax) service or by e-mail (with read receipt requested) before 5:00 p.m. central time (standard or daylight savings as applicable) on a business day. Any signed document transmitted by fax or e-mail shall be treated in all manner and respects as an original document, and the signature of a party upon a document transmitted by fax or e-mail shall be considered an original signature.

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Project name

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Customer (Purchaser)

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Customer signature

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Date

SAMPLE