

Drapery Specialists, LLC

Manufacturing Terms & Conditions

The following Agreement is a brief of Drapery Specialists, LLC's Manufacturing contract.

- 1 Pricing.** Prices on the goods specified do not include any city, state, or federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use, and similar taxes, fees, or other charges imposed by governmental entities. If an exemption from a tax is claimed, supporting documents must be furnished by Buyer prior to delivery. Any and all sales quotations provided by Drapery Specialists, LLC to Buyer shall automatically expire thirty (30) calendar days from the date issued, and are subject to termination by Drapery Specialists, LLC by notice to Buyer at any time.
- 2 Minimum Order.** Buyer may be charged a minimum charge for consultation fees/engineering fees/supplier contact or acquisition if these services are provided prior to receiving a Purchase Order or a Manufacturing Contract is signed.
- 3 Terms of Payment.** All orders are initiated by payment of deposit invoice provided to the buyer from Drapery Specialists, LLC. Balance due payments shall be due thirty (30) days after the date of Drapery Specialists, LLC's final invoice. All payments made after thirty (30) days from the date of the invoice shall be subject to a service charge of one and one-half percent (1.5%) per month based on the outstanding balance. For any special order requiring DRAPERY SPECIALISTS, LLC to produce a custom made product, buyer shall pay one-half (50%) of the final balance due prior to delivery of its Purchase Order, one-half (50%) of the total final balance due not less than three (3) days before DRAPERY SPECIALISTS, LLC must deliver or install the goods pursuant to the Order, and the remaining one-half of the final balance due within thirty (30) days of shipment, subject to approved credit.
- 4 Cancellations.** Buyer may not cancel an Order 60 days prior to delivery. Buyer may not cancel or change an Order without the written consent of DRAPERY SPECIALISTS, LLC. If Buyer desires to cancel or change an Order, Buyer must deliver a written request for cancellation of the Order

- to Drapery Specialists, LLC's Burlington, NC office. If DRAPERY SPECIALISTS, LLC consents to Buyer's written request for cancellation of the Order Buyer shall pay to DRAPERY SPECIALISTS, LLC the percentage of the total Order price which equals the percentage of the Order completed by DRAPERY SPECIALISTS, LLC at the time of cancellation.
- 5 **Delivery and Risk of Loss.** All shipments under the Order are F.O.B. Drapery Specialists, LLC's warehouse, Burlington, NC and all risk of loss shall pass to Buyer at that time regardless of the method of shipment that may be elected by Buyer. Shipping will be added as a separate charge on a separate invoice.
 - 6 **Delays.** DRAPERY SPECIALISTS, LLC will not be liable for any delay in the performance of its obligations under the Order, or for any damages suffered by Buyer due to such delay, if the delay is, directly or indirectly, caused by a fire, flood, accident, civil unrest, act of God, war, governmental interference or embargo, labor strike, shortage of materials, or any other cause beyond Drapery Specialists, LLC's control.
 - 7 **Materials.** The Order is conditional upon Drapery Specialists, LLC's ability to obtain the necessary raw materials at a reasonable price, and all shipments under the Order are subject to Drapery Specialists, LLC's supply schedules and any government regulations, orders, directives, and restrictions that may be in effect.
 - 8 **Nonconforming Goods.** Buyer shall inspect all goods upon tender and delivery by DRAPERY SPECIALISTS, LLC, and should any of the goods be nonconforming goods, Buyer must notify DRAPERY SPECIALISTS, LLC, in writing, within ten (10) days of Drapery Specialists, LLC's tender and delivery of the goods describing the nature of any nonconformity. DRAPERY SPECIALISTS, LLC shall have the right and option to repair or replace any nonconforming goods. The failure of Buyer to notify DRAPERY SPECIALISTS, LLC in writing that the goods are nonconforming within ten (10) days of Drapery Specialists, LLC's tender and delivery of the goods, shall constitute acceptance of the goods and Buyer shall be liable to DRAPERY SPECIALISTS, LLC for the total Order price.
 - 9 **LIMITATIONS ON DAMAGES.** DRAPERY SPECIALISTS, LLC SHALL NOT BE

LIABLE TO BUYER FOR ANY LOST PROFITS OR OTHER ECONOMIC LOSS OF BUYER, OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT BY DRAPERY SPECIALISTS, LLC,. ANY OBLIGATIONS OF DRAPERY SPECIALISTS, LLC PURSUANT TO THIS AGREEMENT OR THE FAILURE OF THE GOODS TO PERFORM IN ANY PARTICULAR MANNER.

- 10 **Warranties.** DRAPERY SPECIALISTS, LLC will issue warranty obligations per each product/contract.
- 11 **Special Orders.** Products manufactured by DRAPERY SPECIALISTS, LLC to meet Buyer's particular specifications or requirements, Buyer shall indemnify and hold DRAPERY SPECIALISTS, LLC harmless from any and all claims arising from the purchase, use, or sale of the special goods, and from any related costs, attorneys' fees, expenses, or liabilities incurred by DRAPERY SPECIALISTS, LLC therefrom.
- 12 **Law and Procedure.** The Order, this Agreement and the transaction described therein shall be subject to, construed under and enforced according to the laws of the State of North Carolina. ANY ACTION IN REGARD HERETO OR ARISING OUT OF THE TERMS AND CONDITIONS HEREOF SHALL BE INSTITUTED AND LITIGATED IN THE COURTS OF THE STATE OF NORTH CAROLINA AND NO OTHER. IN ACCORDANCE HEREWITH, THE UNDERSIGNED HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COURTS WITHIN THE COUNTY OF ALAMANCE, STATE OF NORTH CAROLINA. BUYER AND DRAPERY SPECIALISTS, LLC HEREBY WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THE ORDER, THIS AGREEMENT OR THE TRANSACTION DESCRIBED THEREIN.
- 13 **Remedies.** In the event that Buyer is in default or otherwise breaches the Order or this Agreement, DRAPERY SPECIALISTS, LLC shall be entitled to pursue any and all remedies, legal or equitable including an action to recover the total Order price, as well as its costs of enforcing the Order, including, without limitation, its attorneys' fees. In the event that DRAPERY SPECIALISTS, LLC is in default or otherwise breaches the Order, the liability of DRAPERY SPECIALISTS, LLC to Buyer for such breach or default shall be limited to the replacement value of the goods

under the Order which is the sole and exclusive remedy of Buyer for any such breach or default.

- 14 **Entire Agreement.** This Agreement is intended by the parties as a final expression of the terms and conditions of the Order. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can only be modified in a writing signed by both parties. No previous course of dealing between the parties or trade usage may be used to interpret, limit, or otherwise impair the operation of this agreement.
- 15 **Waiver.** DRAPERY SPECIALISTS, LLC shall not be deemed to have waived any rights under this Agreement or the Order unless such waiver is given in writing and signed by DRAPERY SPECIALISTS, LLC. No delay or omission on the part of DRAPERY SPECIALISTS, LLC in exercising any right shall operate as a waiver of such right or any other right. A waiver by DRAPERY SPECIALISTS, LLC of a provision of this Agreement or the Order shall not prejudice or constitute a waiver of Drapery Specialists, LLC's right otherwise to demand strict compliance with that provision or any other provision of this Agreement or the Order. Neither prior waiver by DRAPERY SPECIALISTS, LLC nor any course of dealing between Buyer and DRAPERY SPECIALISTS, LLC, shall constitute a waiver of any of Drapery Specialists, LLC's rights or of any of Buyer's obligations as to any future transactions. Whenever the consent of DRAPERY SPECIALISTS, LLC is required under this Agreement or the Order, the granting of such consent by DRAPERY SPECIALISTS, LLC in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Buyer.
- 16 **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when a record has been actually delivered, deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown upon the Order, received by telecopy or received through the Internet. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address.

Interest and Fees. In the event of any dispute arising out of the Order, this Agreement or the transaction described therein, in addition to an award of damages, the DRAPERY SPECIALISTS, LLC shall be entitled to recover: (1) pre-judgment interest on any amount awarded at a rate of 1 ½% per month, (2) all expenses of litigation, including without limitation all filing fees and court costs; and (3) all attorneys' fees incurred regardless of whether such fees or expenses are incurred before or after the initiation of litigation.