



PANELITE TERMS AND CONDITIONS DATED AS OF SEPTEMBER 1, 2009

1.0 General

- 1.1 Panelite LLC is the seller and is referred to herein as "Panelite". Any person buying or offering to buy goods from Panelite is the "Buyer". The products, including replacement products, sold by Panelite are the "Product" or the "Products". Products which are listed by product code on Panelite's current price sheet will be referred to herein as "Standard Products". Products which are not listed by product code on Panelite's current price sheet, but which are quoted per project and given unique product codes shall be referred to herein as "Custom Products".
- 1.2 The Panelite Sales Order Acknowledgement (referred to herein as "Sales Order Acknowledgement") shall be the governing document describing the scope and the terms of the Sales Order (referred to herein as "Sales Order"), including but not limited to the Products ordered by Buyer, the price which Buyer agrees to pay for the Products, additional charges if applicable, and the estimated ship date for the Products. If applicable the Sales Order Acknowledgement may reference drawings or specifications. If any change is made in the scope or timing of the Sales Order, a revised Sales Order Acknowledgement will be issued and this revised Sales Order Acknowledgement shall supersede all previously issued Sales Order Acknowledgements.

2.0 Acceptance

- 2.1 Panelite's issuance of this form is expressly conditioned upon Buyer's assent that the terms herein are the sole and exclusive agreement (the "Contract") between Panelite and the Buyer. Such assent is deemed given unless Buyer notifies Panelite in writing of the specific objection to any term hereof within ten (10) days after the issuance of this form. Mere tender of a purchase order with different or additional terms is not a specific objection.
- 2.2 Neither silence nor any other conduct including acceptance of Buyer's order shall constitute acceptance of terms on any form supplied by Buyer which are different from or additional to these terms. Such different or additional terms are hereby rejected. Except where an overriding agreement exists between Panelite and Buyer, or unless mutually agreed to, in writing, between the Buyer and Panelite, the terms and conditions contained herein shall not be superseded or modified by the terms and conditions in any purchase document provided by Buyer or purchase order acknowledgment, even if the acknowledgment is signed by Panelite.

3.0 Modification of Material Furnished by Panelite

- 3.1 All catalogs and other material furnished by Panelite, including price lists, are subject to modification by Panelite and are not binding in detail unless so stated in writing by Panelite.
- 3.2 Panelite reserves the right to correct clerical and typographical errors at any time.
- 3.3 Panelite reserves the right to modify, improve, or discontinue Products, or to change specifications, at any time, without notice.

4.0 Prices; Taxes; Freight and Handling

- 4.1 **Prices.** Prices specifically quoted by Panelite are valid if accepted within thirty (30) days of the date of the quotation. Otherwise, unless Panelite has specified in writing that any quotation is binding for a specified period not yet expired, price quotes are subject to change at any time prior to Panelite's issuance of a Sales Order Acknowledgment which shall constitute acceptance by Panelite of the Buyer's order.
- 4.2 **Taxes.** Unless otherwise agreed in writing by the parties, customs duties or use, excise, value added or similar taxes are not included in the price; consequently, in addition to the price specified on the Sales Order Acknowledgment, the amount of any present or future use, excise or other similar taxes shall be paid by Buyer. Prices are based upon shipment of the entire quantity at completion of manufacture or upon Panelite's partial shipments as manufactured or upon Buyer's delivery schedule accepted by Panelite.
- 4.3 **Freight and Handling.** Unless specifically stated on the Sales Order Acknowledgement, Panelite's prices do not include packing, freight and handling charges.



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5.0 Delivery; Schedule; Inspection

- 5.1 Delivery of the Products shall be FOB destination freight prepaid and allowed, unless Buyer chooses to use Buyer's own carrier, in which case delivery of the Products shall be FOB origin from such U.S. facility of Panelite as Panelite may designate. When Panelite's carrier is used, delivery is complete when Panelite's carrier places the Products at the disposal of Buyer at the destination specified on the Sales Order Acknowledgment. Unless expressly stated on the Sales Order Acknowledgment, delivery does not include inside delivery, unloading assistance, lift gate service, residential or job site delivery, or any other accessorial charges.
- 5.2 Any delivery dates furnished by Panelite are estimates only, and do not bind Panelite to deliver the Products on the dates indicated unless Panelite agrees in writing to be so bound. Panelite reserves the right to make partial shipments and to submit separate invoices to Buyer for each such shipment. If Buyer defaults in its obligations in regard to any shipment, Panelite may suspend any additional shipments until Buyer cures such default.
- 5.3 Delivery dates, even if otherwise binding, are subject to change for any cause which interferes with Panelite's delivery of the Products, including acts of God, labor or civil unrest, war, or lack of raw materials, components, utilities, or transportation.
- 5.4 If Panelite fails to comply with binding delivery or other performance dates, Panelite shall not incur any liability whatsoever for any direct, indirect, consequential, incidental or special damages, including claims for lost profits or customers' claims which may be incurred by Buyer or any other person.
- 5.5 Delivery FOB destination shall be by any method of transport chosen by Panelite, and shall be at the sole expense of Buyer. Although Panelite will use all reasonable endeavors to comply with any stated delivery date, it accepts no liability for any loss or damage resulting from any delay, whether or not due to the negligence or default of Panelite or otherwise.
- 5.6 Buyer is responsible for inspecting all Product immediately upon receipt. Products which are will-called without packaging cannot be returned once accepted. For Products which are crated or otherwise packaged such that Products cannot be inspected on receipt, Panelite does not accept claims for damage unless the following conditions are met: [1] Panelite must be informed of claim within two (2) business days for concealed damage, and within five (5) business days for visible shipping damage, after which no claims will be honored; [2] Damage (unless concealed) must be noted on the carrier's Bill of Lading by the person receiving the shipment [3] Claims must be submitted before the Products are cut or installed. Panelite will not refund or replace any Products that have been cut, installed or otherwise altered after receipt; [4] Any damaged Product must be returned to Panelite in accordance with Panelite's instructions for return before any replacement or refund will be issued.
- 5.7 If source inspection is required, it shall be performed at reasonable times agreed upon in advance by the parties and shall be limited to plant areas designated by Panelite.
- 5.8 If Buyer requests to delay the shipment of the Products from the shipping date specified on the Sales Order Acknowledgment, Panelite reserves the right to return the Products to inventory and issue a new lead time for the order.

6.0 Title/Risk of Loss

- 6.1 Subject to the provisions of Paragraph 6.2 hereof, when Products are shipped FOB destination title and risk of loss in regard to the Products pass to Buyer when Panelite places the Products at the disposal of Buyer or Buyer's agent; when Products are shipped FOB origin title and risk of loss in regard to the Products pass to Buyer when Panelite places the Products at the disposal of Buyer's carrier.
- 6.2 If Buyer has agreed to the creation of a security interest or charge against the Products, but such interest or charge is not permissible under the laws of the jurisdiction in which the Products are to be delivered, Panelite hereby reserves title to all Products sold hereunder as security for full payment of all sums due by Buyer to Panelite.



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7.0 Payment

- 7.1 Any U.S. Buyer shall pay the invoice price of the Products in full, without any deduction or set-off of any kind whatsoever, on the terms and in the currency specified on the Sales Order Acknowledgment. Any foreign Buyer shall pay by wire transfer the invoice price of the Products in full, without any deduction or set-off of any kind whatsoever, on the terms and in the currency specified on the Sales Order Acknowledgment.
- 7.2 Buyer shall pay all bank charges for letters of credit, wire transfer or instruments of payment.
- 7.3 Interest will be charged daily on past due accounts at a rate of the lesser of (i) the rate of interest customarily charged by Panelite on credit sales to its customers in the currency specified and (ii) the maximum rate of interest allowed by law.
- 7.4 If Panelite determines that the financial condition of Buyer at any time jeopardizes Buyer's ability to perform its obligations hereunder, Panelite may require cash payments or additional security satisfactory to Panelite before further performance by Panelite. Buyer's failure to pay in a timely manner any invoice shall operate to make all other invoices of Panelite to Buyer immediately due and payable and, at Panelite's option, shall be grounds for cancellation of any further performance by Panelite.

8.0 Limitation of Warranty

- 8.1 Unless otherwise specified by Panelite in writing, all Products are sold "as is." Panelite warrants all items delivered under the Sales Order Acknowledgment referred to herein to be free from latent defects in material and workmanship for a period of one (1) year from date of shipment for Laminated Series, Cast Polymer Series, Bonded Series, and Sheet Laminate Products and ten (10) years from date of shipment for Insulating Glass Units. All work or services will conform to applicable drawings or specifications as referenced in the Sales Order Acknowledgment.
- 8.2 This warranty shall apply only to Products installed, fabricated and/or maintained in accordance with the Panelite Installation Specifications available at www.panelite.us or from a Panelite Product Specialist.
- 8.3 In the event of a warranty claim, Panelite shall have the option to either replace the Product or refund the purchase price of the Product. In no event does this limited warranty cover any costs relating to (re)installation or fabrication expense or any other direct or indirect loss. In no event shall Panelite be liable for any special, consequential, or incidental damages arising out of the use or application of the Product.
- 8.4 THIS WARRANTY DOES NOT COVER:
- [a] Damage resulting from unusual wear and tear on the Product;
 - [b] Damage resulting from improper maintenance, such as the use of abrasive cleaners;
 - [c] Damage resulting from installation or specification that does not comply with Panelite Installation Specifications, including but not limited to:
 - [i.] Products exposed to water or moisture without use of a recommended edge treatment
 - [ii] Products subjected to temperatures above 160 degrees Fahrenheit
 - [iii] Products used in structural or load-bearing applications
 - [d] Damage resulting from accident or abuse;
 - [e] Damage resulting from the failure of a third-party's product;
 - [f] Custom Products
 - [g] Products that have been altered in any way after receipt, other than by fabrication or installation in accordance with Panelite Installation Specifications;
 - [h] Variations in color, honeycomb cell geometry, and facing texture⁽¹⁾;
 - [i] Slight variations in color between approval samples for custom colors, and the finished Panelite panel;
 - [j] Visible glass fibers in the facing. Fiberglass reinforcement is used in Panelite Laminated Series and Cast Polymer Series panels to provide a strong and durable facing material. Glass fibers, occasionally apparent in certain light conditions as scratches, are inherent in the material and are not considered to be defects.

⁽¹⁾ "facing texture" applicable to fiberglass reinforced facings only



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- 8.5 Any claims must be submitted in writing to Panelite's Warranty Department at 5835 Adams Boulevard, Culver City CA 90232 or by email to info@panelite.us.
- 8.6 Panelite's obligation under Paragraph 8 shall be limited to defects of which Panelite is notified within one (1) year from the date of shipment for Laminated Series, Cast Polymer, Bonded Series, and Sheet Laminate Products and ten (10) years from the date of shipment for Insulating Glass Units and shall be limited, if Panelite is satisfied that such defects exists, at the option of Panelite to i) replacement or repair of the defective items, or correction of any defective work or services and payment of any transportation charges incurred by Buyer; or ii) refund of the original purchase price of the defective item, material, work or services plus any transportation charges incurred by Buyer in which case, Buyer shall, wherever feasible, request and follow any reasonable instruction from Panelite for disposition or return of these items at Panelite's expense.
- 8.7 Any custom Product combination or customized aspect of a Product specified by Buyer may be subject to prototypes or testing by mutual consent agreed upon in writing and at the expense of Buyer, after completion of which Panelite will notify Buyer of the warranty terms, if any, given by Panelite with respect to such Product combination or aspect. If Buyer chooses not to proceed with recommended prototypes or testing, no warranty will be issued for the custom Product or aspect of the Product.
- 8.8 REGARDLESS OF WHETHER THE WARRANTY MENTIONED IN PARAGRAPH 8.1 IS GIVEN, IN ALL INSTANCES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, ARE EXCLUDED. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS AGREEMENT.
- 8.9 Panelite shall not be liable to Buyer or any other person, whether by indemnification, contribution or otherwise, for special or consequential damages, whether arising from defective workmanship or materials or design, breach of warranty, or from any other cause whatsoever.

9.0 Limitation of Liability

- 9.1 Panelite's liability for any claim of any kind, including negligence for any loss or damage arising out of, connected with, or resulting from Buyer's order or from the performance or breach of the terms thereof, or from the design, manufacture, sale, delivery, resale, inspection, repair operation or use of any product or part thereof covered by the purchase order accepted by Panelite shall not exceed the price allocable to the product or part which gives rise to the claim and shall terminate in accordance with the above clause in Section 8.1, However, the unexpired portion of the original warranty provided under Section 8.1 shall be applied to items repaired, corrected, or replaced under that section.
- 9.2 Buyer's sole and exclusive remedy against Panelite is the repair or replacement of defective Products or refund of the purchase price provided herein. Buyer agrees that no other remedy shall be available to Buyer including direct, indirect, incidental or consequential damages for lost profits, lost sales, injury to property, or any other incidental or consequential loss.
- 9.3 Any technical advice furnished by Panelite with reference to the use of its Products is given without charge and Panelite assumes no obligation or liability for the advice given or results obtained. Any technical advice furnished by Panelite shall not constitute a warranty, which is expressly disclaimed, all such advice being given and accepted at Buyer's risk.
- 9.4 Panelite shall not be liable for delay or failure of performance in fires, floods, strikes, or other differences with workers accidents, unforeseen shortages or unavailability of fuel, power, transportation, raw materials or supplies, inability to obtain or delay in obtaining necessary equipment or governmental approvals, permits or licenses, labor shortages, war (declared or undeclared), riot, government orders or regulations, legal interference or prohibitions, defaults on the part of suppliers, or other causes beyond Panelite's reasonable control and without Panelite's fault or negligence. Under any such circumstances, Panelite shall have the additional time needed to complete the Order and the right to allocate its available supply, in the manner it selects, to itself and among any and all customers, including but not limited to, its subsidiaries and affiliates.



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10.0 Patents, Trademarks and Copyrights.

10.1 Panelite represents that the Products, in the form to be delivered to Buyer, are free from any known claim for U.S. patent infringement and that any affixed labels or trademarks are free from any known claim for copyright or trademark infringement and agrees to indemnify Buyer against such infringement liability based upon Buyer possession or resale, provided that; (a) Panelite is promptly notified by Buyer of any such claim for such infringement; (b) such infringement is claimed specifically against the Product "as delivered" by Panelite to buyer and unchanged by any acts of Buyer from such "as delivered" state; and (c) such infringement was not a result of use or sale of the Product in combination with other items and would not have occurred from the product by itself. In the event of suit, Panelite shall, at Panelite's election, have sole charge and direction thereof, in which event Buyer shall provide Panelite reasonable assistance in the defense thereof as Panelite may require. Buyer shall have the right to be represented in such suit by advisory counsel at Buyer's expense.

11.0 Equipment

11.1 Extrusion dies, physical or digital tooling, patterns, molds, physical or digital models, or other equipment manufactured or acquired by Panelite to fill the Buyer's Purchase Order shall remain the property of Panelite and in its sole possession and control. Any mold or tooling service or other equipment charges assessed by Panelite are for the use of such equipment and convey no ownership or intellectual property rights to Buyer.

12.0 Changes

12.1 Buyer may by written order submit a request for changes within the general scope of the Sales Order, in any one or more of the following and Panelite, subject to the terms of paragraph 12.2 shall comply therewith: (a) drawings, designs, or specifications where the goods are specially manufactured for Buyer in accordance therewith, (b) method of shipment or packing, (c) time and or/place of delivery, and (d) the period of performance of work.

12.2 If any such change causes an increase or decrease in the cost of or the time required for the performance of any part of the work under the Sales Order Acknowledgment, an equitable adjustment shall be made in the Sales Order Acknowledgment price and/or delivery schedule, and the Sales Order Acknowledgment will be modified in writing accordingly. Panelite must assert any claim for adjustment within 90 days from the date of the receipt of the modification or change. If the parties fail to agree on any claim for equitable adjustment within a reasonable time after the submission by Panelite, Panelite has the right to discontinue the performance of that Sales Order pending resolution of the adjustment. If any property made obsolete or excess as a result of a change is included in Panelite's claim for adjustment, Buyer shall prescribe the manner of disposition of such property. If Buyer fails to give such disposition within 30 days after the property is determined to be obsolete or excess, Panelite has the right to ship the property to Buyer, freight collect. Nothing herein shall limit either party any remedy it may have in any court of competent jurisdiction.

13.0 Cancellations and Returns

13.1 **Cancellation of Orders for Standard Products.** Buyer will be granted a refund of the amount paid to date on the order for standard Panelite Products, less a 15% restocking fee applied to the entire order if order is cancelled by Buyer in writing no more than fifteen (15) days after order placement and prior to shipment. If Buyer cancels the order because the lead-time estimated by Panelite on the Sales Order Acknowledgment will be extended by more than 2 weeks, then no restocking fee applies.

13.2 **Cancellation of Orders for Custom Products.** Deposits on orders for custom Panelite Products that are cancelled by Buyer within seven (7) days of order placement and prior to shipping are refundable, less a cancellation fee; after seven (7) days deposits are non-refundable.

13.3 **Return of Standard Products.** Buyer will be granted a refund of the cost of the order for standard Panelite products returned for reasons not related to shipping damage or faulty material, less a 20% restocking fee applied to the entire order.

13.4 **Return of Custom Products.** Panelite will determine at its discretion and on a case by case basis whether to accept returns of custom products, and if so, on what terms.



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- 13.5 Returns to Panelite may be made only within (3) months of ship date of Products, with prior authorization of Panelite and according to Panelite's instructions. Products returned without prior permission or contrary to instructions will be refused by Panelite.
- 13.6 All returned Products must be in the condition in which they were received; no Products will be shipped or replaced at Panelite's expense if Products have been cut, fabricated or altered in any way from the condition in which they were received.
- 13.7 All framing and channel material is non-returnable.
- 13.8 Refunds for cancellation of orders under paragraphs 13.1, and 13.2 as applicable will be processed within thirty (30) days of Panelite's receipt of Buyer's notice of cancellation. Refunds for return of orders under paragraphs 13.3, 13.4, 13.5 and 13.6 as applicable will be processed within thirty (30) days after the Products have been returned at Buyer's expense to a Panelite facility as designated by Panelite and the Products have been inspected and approved for refund by Panelite. If returned Products are shipped by Panelite or not approved to be in sellable condition after inspection refund amount will be reduced accordingly.
- 13.9 Any claim for replacement Products due to damage in shipping must be received via fax, email or mail **WITHIN TWO (2) BUSINESS DAYS OF RECEIPT OF PRODUCTS FOR CONCEALED DAMAGE AND WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT OF PRODUCTS FOR VISIBLE DAMAGE**, after which no claims for replacement will be honored. Any requests for replacement Product will only be honored once Buyer's compliance with Panelite's installation specifications has been verified, and once defect or damage has been verified and established to be independent of Buyer's or Carrier's responsibility.
- 14.0 Assignment**
- 14.1 The Contract shall not be assignable without the prior written consent of Panelite.
- 15.0 Notices**
- 15.1 All written notices, [requests, demands, consents, certificates, or other Communications] required or permitted to be given hereunder shall be sufficiently given when mailed by (a) certified mail, return receipt requested, postage prepaid, (b) commercial overnight delivery courier, fees prepaid, or (c) facsimile transmission and confirmed by method (a) or (b) above, addressed to Buyer or Vendor, as the case may be, at their respective most recent addresses on file with the other party hereto. Either party may, by like notice at any time and from time to time, designate a different address to which notices shall be sent.
- 16.0 Miscellaneous**
- 16.1 The Contract is not subject to cancellation by Buyer.
- 16.2 The invalidity or unenforceability of any one or more of the terms shall not affect the validity or enforceability of the remaining terms.
- 16.3 The failure of either party to insist upon strict performance by the other party of any term hereof, or to exercise any right hereunder, shall not be deemed a modification of any term hereof or a waiver of its future performance.
- 17.0 Governing Law; Fees**
- 17.1 This Contract and all sales pursuant thereto shall be governed by the law of the State of New York. Panelite shall be entitled to recover from Buyer reimbursement for all attorneys' fees and other costs and expenses incurred by Panelite in enforcing its rights under the Contract.



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18.0 Default

18.1 Panelite may, without prejudice to any other rights it may have by notice in writing to Buyer, terminate any contract or Sales Order immediately if: (a) Buyer breaches any of the terms, provided that if the breach is remediable, Panelite shall allow Buyer seven days from the date of the notice to cure the breach; (b) Buyer becomes unable to pay its debts as they become due or Buyer enters into voluntary or involuntary bankruptcy, receivership, liquidation or similar proceedings, or makes an assignment for the benefit of creditors or has a receiver appointed for any of its assets, or permits judgment against it to remain unsatisfied for seven days, or if the business or assets of Buyer are confiscated, expropriated, seized or taken over by any government agency.

19.0 Dispute Resolution

19.1 Any and all disputes, controversies or claims arising under or relating to this Agreement, upon written notice, must first be referred to a senior management representative from each of the parties who will confer in good faith to attempt to resolve this matter prior to the institution of binding arbitration as provided below. The notice shall describe in detail the claims or issues in dispute and designate that party's representative ("initial notice"). The other party shall have five business days from the receipt of the official notice to designate its representative and add any other issues or claims for resolution not identified in the initial notice. The representatives shall have 30 days from the date of the initial notice to resolve the issues identified on the notices.

19.2 If the parties are not successful in resolving the claims or disputes, then any and all disputes or controversies of any nature whatsoever arising under in connection with, respecting, or in any way relating to any provision of this Agreement, including any disputes regarding the enforceability of this arbitration provision, shall be resolved exclusively by binding arbitration in New York City, New York, in accordance with the Commercial (or International, for international contracts) Arbitration Rules of the American Arbitration Association then in effect. The parties waive any objection to personal jurisdiction or venue in any forum located in New York City, New York. Judgment may be entered on the arbitrator's award in any court having jurisdiction.

19.3 Either party may at any time, without inconsistency with this Agreement, seek from a court of general jurisdiction any equitable, interim or provisional relief only to avoid irreparable injury.

19.4 The Parties intend all statements made and documents provided or exchanged in connection with this dispute resolution process to be confidential and neither party shall disclose the existence or content of the dispute or claim, or the results of any dispute resolution process, to third parties other than outside counsel, except with the prior written consent of the other party, pursuant to legal process or as otherwise required by law.

20.0 Proprietary Data and Process

20.1 All inventions, discoveries, and improvements developed by Panelite in the course of fulfilling Buyer's purchase order or manufacturing product for Buyer are and remain the property of Panelite.

21.0 Indemnity

21.1 Except to the extent caused by the negligence or intentional acts or omissions of Panelite in the development, manufacturing, testing, handling, or supplying product to the Buyer, Buyer shall protect, indemnify, and hold Panelite harmless from all liability, penalties, losses, damages, costs and expenses, including attorneys fees, resulting from the acts or omissions of Buyer in connection with the use of products supplied by Panelite to Buyer.