

## **SAGE TERMS OF SALE**

1. SAGE Electrochromics, Inc., a New Jersey corporation (“SAGE”), agrees to supply to the direct purchaser (“Customer”) of the SageGlass® products (“Products”) described in the quote attached to the Supply Agreement at Exhibit A, to the extent there is a Supply Agreement or in all other instances the final quote agreed between the Parties (in each case, the “Quote”) in accordance with these Terms of Sale, the Limited Warranty document provided by SAGE and the Technical Information Bulletin provided by SAGE, which may vary from project plans, specifications, and/or purchase orders. Any capitalized, but undefined term used herein shall have the meaning ascribed to such term in the Quote.
2. The prices set forth in the Quote are based solely upon the specifications, make-ups, or other contract documents, which are specifically identified in the Quote. Items not otherwise specified are excluded. The contract is based on supply of Products meeting the standard Product performance specifications and having the standard product performance characteristics. Contact your SAGE Sales Representative for details.
3. Notwithstanding anything to the contrary stated herein, no later than September 30th of each calendar year during the Term of the Agreement, the Seller may increase the Price of any Product by up to 3% by giving notice to Buyer at least 60 days prior to September 30th of each calendar year. However, Seller may increase the Price of a Product more than 3% during each calendar year (i) with respect to raw materials price increase, by providing the Buyer with evidence of documented prices increases for raw materials actually used in the production of the Products; such evidence shall be in a redacted form without divulging any confidential or proprietary information, but shall be sufficient for Buyer to determine the full basis for such an increase; (ii) with respect to labor costs increase; provided such additionally price increase shall not exceed 10%.
4. Any past due payments shall accrue interest on the total outstanding amount of the purchase price of the products at the lesser of a rate of 12% per annum or the maximum rate permitted by law.
5. The estimated shipment and delivery dates contained in the Quote, if any, are estimates only. SAGE will not be liable for any loss or damage to the Customer or others due to delay or non-delivery in accordance with the estimated date regardless of the cause. SAGE will select the method of delivery unless otherwise agreed to by SAGE and the Customer in writing in the Quote or otherwise.
6. Parties agree that while SAGE shall use all commercially reasonable efforts to meet its lead times, SAGE may from time to time extend its lead times as a result of unavailability of raw materials, labor or operational constraints, but SAGE shall only do so by providing the Customer with a 15 day prior written notice. Such extension of lead-times shall not be deemed a breach of the Contract.
7. Completed orders unable to be accepted by the Customer within 14 days of the original ship date are subject to storage charges. Storage charges will be assessed at \$175.00 per crate/A-Frame per month. The storage charges will be payable net 30 days. SAGE will not be liable for damage to materials stored longer than 90 days nor will SAGE be liable for damage or failure of any materials stored in any manner contrary to industry standards and/or specific storage requirements identified by SAGE in any product materials.
8. Unless otherwise agreed to in writing by SAGE, all products, including those produced to meet an exact specification, shall be subject to tolerances and variations consistent with the usage of trade, regular factory practices, and practical testing and inspection methods.

9. SAGE has no window, curtain-wall or skylight system design or application responsibility to the Customer or any third party.
10. THERE ARE NO WARRANTIES FROM SAGE THAT EXTEND BEYOND THOSE WARRANTIES SPECIFICALLY SET FORTH IN THE LIMITED WARRANTY DOCUMENT PROVIDED BY SAGE TO CUSTOMER ("LIMITED WARRANTY"). EXCEPT AS OTHERWISE SET FORTH IN THE LIMITED WARRANTY, SAGE EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
11. With respect to the Limited Warranty, unless specifically set forth in the Limited Warranty, SAGE will not accept any charge or expense, including labor for modification, removing, inspecting, or installing the Products. If the Customer has failed to timely pay for its products, SAGE may, without notice or demand to the Customer, void the Limited Warranty. Any oral representations intended to modify any existing SAGE warranty shall be invalid, void and unenforceable against SAGE. Extended warranties may be available at additional cost and are subject to management and technical approval of glazing details.
12. All claims for breakage are the responsibility of the Customer.
13. SAGE shall not be liable for indirect, consequential, incidental, special or punitive damages of any kind, including but not limited to lost profits or revenues, under any theory of law or equity. SAGE's sole liability related to non-compliance with its Limited Warranty shall be as set forth in the Limited Warranty. However, in the event that such SAGE product provided to Customer is to be used for a purpose that would categorize such glass as a consumer product under the terms of the Magnuson-Moss Warranty Act, then the terms of the Limited Warranty would apply.
14. Product returned to SAGE shall not be accepted for credit.
15. After the Customer's order has been accepted, the order may not be modified, cancelled or changed without SAGE's prior written consent and SAGE shall not be obligated to make any changes or additions to the products described in the Quote or cancel the order unless an equitable adjustment is made, if necessary, to the price and delivery terms or for cancellation. SAGE's shipping of the goods is subject to SAGE receiving all required payments per the payment schedule set forth in the Quote. Customer's failure to pay per the payment schedule in the Quote will result in SAGE withholding shipment of the goods.
16. Unless otherwise stated in the Quote, freight terms for delivery are as follows:
  - Within the United States: FOB to the Customer's Destination
  - Canada and Mexico: DPU Place of Destination Incoterms® 2020
  - Europe: DDP Customer's Destination Incoterms® 2020
  - All Others Locations: CIF Port of Destination Incoterms® 2020
17. The Customer shall inspect the products immediately upon receipt. If any warranty related issues are discovered, the Customer shall within 24 hours notify SAGE of any claim that the products are nonconforming (claims for loss, damage or breakage are discussed in paragraph 16 above). SAGE shall be allowed reasonable opportunity to inspect and cure any claim of alleged non-conformity. Customer's failure to notify SAGE within 24 hours of receipt of the goods of (a) any errors or (b) Customer's rejection of the goods shall constitute acceptance by Customer.
18. The Customer acknowledges that the prices set forth in the Quote do not include manufacturer's gross receipts taxes, sales or use taxes, or any other state, local, or federal taxes and/or assessments

that may be payable on the transaction unless otherwise stated in writing by SAGE. All additional delivery costs arising from local labor agreements shall be borne by the Customer.

19. The Customer will not make any representation or warranty to any third party for which SAGE may become obligated. Under no circumstances shall SAGE be liable to or agree to indemnify the Customer or any third party for any loss, costs, damage or expense (including attorney's fees) resulting from the Customer's or any third party's actions or conduct. The Customer shall indemnify and hold SAGE and its directors, officers, shareholders, employees, agents, and their respective successors, assigns and heirs harmless from and against any loss, costs, damage, or expense (including attorney's fees) resulting from any charge or claim of personal injury or property damage arising out of the Customer's performance under this order, the Customer's negligence or willful misconduct or for any representations or warranties made by the Customer to any third party.
20. Prices are subject to review upon receipt of final sizes and quantities. Structural calculations are not provided by SAGE. SAGE is not responsible for determining load resistance. Any additional requirements resulting from review of technical data will be assessed appropriate charges.

The Customer shall be responsible for the accuracy of all documents, data, glass take-offs, shop drawings, specifications, architectural drawings, and CAD files furnished by the Customer to SAGE. SAGE shall not be liable for any errors or omissions in documents, data, glass take-offs, shop drawings, specifications, architectural drawings, and CAD files furnished by the Customer, including but not limited to drawings not drawn to scale, not accurately depicting glass sizes, not depicting glass edges, or that do not depict proper orientation of the glass.

21. SAGE shall not be liable for any failure to perform its obligations where such failure is a result of Acts of God or Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike or lockout or any other cause beyond a party's reasonable control ("Force Majeure").
22. SAGE's standard packaging method is crates/A-Frames. Custom packaging will incur an additional charge and notification and agreement of custom packaging requirements are due at time of the initial order.
  - **Export:** The price set forth in the Quote is based on crates/A-Frames not to exceed 2,500 lbs. (1134 kg). Custom packaging requests are subject to review and will incur additional charges. Custom packaging requests include but are not limited to by location designation *i.e.* floor, elevation, building. All custom packaging requirements and agreement are due at time of the initial order.
  - **Domestic:** The price set forth in the Quote is based on crates/A-Frames not to exceed 2,000 lbs. (907 kg). Custom packaging requests are subject to review and will incur additional charges. Custom packaging requests include but are not limited to by location designation *i.e.* floor, elevation, building. All custom packaging requirements and agreement are due at time of the initial order.
  - Miscellaneous and replacement orders will incur additional packaging charges of US \$250.00 per crate/A-Frame.

23. **DISCLAIMER: SAGE DOES NOT PERFORM SPECIFICATION REVIEWS OR INSTALLATION ACTIVITIES. SAGE SPECIFICALLY DISCLAIMS ANY ASSERTION OR ASSUMPTION THAT**

**SAGE MAY HAVE REVIEWED AND/OR APPROVED THE SPECIFICATIONS FOR THE PROJECT, AS SAGE HAS NOT AND WILL NOT PERFORM SUCH TASKS. SAGE IS A SUPPLIER OF MATERIALS ONLY. SUBMISSION OF A PURCHASE ORDER TO SAGE SHALL ACT AS CONFIRMATION THAT ALL SUCH SPECIFICATION REVIEWS AND INSTALLATION RELATED ACTIVITIES ARE THE RESPONSIBILITY OF THIRD PARTIES THAT ARE TO BE ENGAGED BY A PARTY/PARTIES OTHER THAN SAGE. SAGE SHALL HAVE NO DUTY, OBLIGATION OR LIABILITY IN CONNECTION WITH SPECIFICATION REVIEWS OR INSTALLATION RELATED ACTIVITIES.**

24. All orders are subject to and the Customer is bound by these Terms of Sale and Limited Warranty without change, unless otherwise set forth in writing and accepted in writing by SAGE. To the extent any other terms and/or conditions from any other source (including from the Customer, or any terms of any order from the Customer), conflict with these Terms of Sale, these Terms of Sale shall govern.
25. SAGE reserves all lien, contract, and other rights, may require joint payment, and may withhold shipments in the event that it is not, or has reasonable cause to believe that it will not be, paid in accordance with its credit terms.
26. Remit checks to: SAGE Electrochromics, Inc., 29268 Network Place, Chicago, IL 60673-1292 There is a \$25 additional fee per wire transfer payment.
27. Payment terms are subject to completion of credit application and satisfaction of SAGE's credit requirements.
28. Invoices rendered by SAGE covering goods not in dispute shall be paid by Customer, regardless of disputes relating to other invoices (or other goods on the same invoice) or other delivered or undelivered goods and as to such disputed invoices Customer waives any right it may have to assert offsets, defenses or counterclaims.
29. If Customer is purchasing "Controls" from SAGE, then the following license terms ("License Terms") apply:
  - 29.1. SAGE grants to Customer a non-exclusive, non-transferable, limited license to use the Software solely for Customer's own use. The configuration and execution of the Software is supervised by a license key either supplied separately for use of the Software by SAGE to Customer or installed by SAGE, at SAGE's sole discretion (the "License Key"). The License Terms permit use of the Software, only within the boundaries established by the License Key. "Software" means (i) the software offered to you by SAGE and any underlining licenses provided to SAGE by its licensors under the brand name FIN™ Framework in any release and (ii) any related electronic or written documentation.
  - 29.2. The license grant is subject to the following limitations:
    - a) If the Software was obtained by Customer from SAGE as embedded in a hardware device (such as a building controller), Customer may only use the Software as embedded in such hardware device for connection across a network to as many data points as permitted by the License Key, and access the Software via a browser on a computer owned or licensed by Customer in accordance with the related documentation for the Software.
    - b) If the Software was obtained by Customer from SAGE for use on a single machine, then Customer may only install the Software on a single machine owned or licensed by Customer

- at any one time for connection across a network to as many data points as permitted by the License Key. Customer may make only one copy of the Software as an archival backup copy of the original.
- c) The number of users permitted to concurrently access the Software may be limited in accordance with the License Key.
  - d) If this Software includes any related documentation provided in electronic form, Customer may print copies of this electronic documentation.
  - e) Customer may not distribute, sublicense, rent, lend, lease, assign or transfer the License, the Software or its components, in whole or in part without express written consent from SAGE.
  - f) Customer may not or direct any third party to reverse engineer, de-compile, or disassemble the Software except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
  - g) Customer also shall not or direct any third party to (i) modify or create a derivative work of the Software, or (ii) extract any individual parts except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
  - h) This License does not grant Customer any rights whatsoever in relation to the trademarks or service marks of SAGE or any of this third party software providers or any other, Siemens or their affiliates, as applicable
  - i) If a misuse of the Software by Customer requires SAGE or any licensor of SAGE to engage in any legal or other proceeding to enforce their rights under these License Terms, SAGE and/or its Licensor shall be entitled to recover from Customer, in addition to any other sums due, reasonable attorney's fees, costs and disbursements unless otherwise agreed in a separate writing between the Parties.
  - j) The above mentioned terms and conditions apply to service packs, extension packs, platform releases and any other updates, releases, revisions, enhancements, or supplements to the original Software provided by SAGE and its Licensors ("Updates"), unless SAGE or its Licensors provide other terms along with the Update.
  - k) The Software may contain certain components such as open source software components or third party components licensed by SAGE or its Licensor (each, a "Component"). Each Component may have a separate end user license agreement (a "Third Party License"). The terms of any Third Party License (if any) that apply to the Software are specified and part of the Additional Terms made available for Customer's review at [www.usa.siemens.com/btcpseula](http://www.usa.siemens.com/btcpseula).
  - l) These License Terms are effective from the first date Customer installs, copy or otherwise uses the Software. Without prejudice to any other rights of SAGE, Customer's license rights terminate automatically and immediately without notice if Customer fails to comply with any provision or condition of the License Terms. In such a case Customer will be obliged to destroy all copies, all related materials of the Software and all its components.
30. This agreement shall be governed and construed according to the laws of the State of Minnesota, U.S.A. and, to the extent applicable, the federal laws of the United States of America. The Customer and SAGE hereby exclude the application of The United Nations Convention for the International Sale of Goods.
31. Any controversy or claim arising out of or relating to the Quote, these Terms of Sale, the Limited Warranty, or any other document, agreement, instrument or contract related to the forgoing, or the breach of any of the forgoing, shall be resolved by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The number of arbitrators shall be one (1). The place of arbitration shall be in Minneapolis, Minnesota, U.S.A. The language of the arbitration shall be English. Any arbitration proceeding hereunder must be instituted within one (1) year after the controversy or claim arises. Failure to institute an arbitration proceeding



within such period shall constitute an absolute bar to the institution of any proceedings respecting such controversy or claim, and a waiver thereof. Any award, order or judgment pursuant to such arbitration shall be deemed final and binding on SAGE and the Customer and may be entered or enforced in any court of competent jurisdiction. SAGE and the Customer agree to submit to the jurisdiction of any such court for purposes of the enforcement of any such award, order or judgment.

32. The above conditions and terms of sale will not be abrogated or altered, in any way, nor shall any collateral agreement be binding on SAGE, unless set forth in writing and signed by an officer of SAGE. In the event of any conflict between the terms hereof and any purchase order of Customer, the terms hereof shall govern. No modification of these Terms of Sale shall be effective unless made in writing on a subsequent date hereof and executed by SAGE. Acceptance by Customer of any SAGE glass delivered hereunder shall constitute acceptance of these Terms of Sale.