

SAGE ELECTROCHROMICS, INC. SAGE TERMS OF SALE

1. SAGE Electrochromics, Inc., a New Jersey corporation ("SAGE"), agrees to furnish only the goods described in the quote from SAGE to the Customer ("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 SageGlass® products meeting the standard SageGlass® product performance specifications and having the standard product performance characteristics. Contact your SAGE Sales Representative for details.
3. 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.
4. 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.
5. 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.
6. 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.
7. SAGE has no window, curtain-wall or skylight system design or application responsibility to the Customer or any third party.
8. 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.

9. All claims for breakage are the responsibility of the Customer.
10. 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.
11. SAGE shall not be liable for incidental, indirect or consequential damages of any kind. Sage's sole liability to Customer shall be limited, at SAGE's option, to either furnishing an equal quantity of new material to replace the defective material or refunding the purchase price. 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.
12. Material returned to SAGE shall not be accepted for credit.
13. 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.
14. Unless otherwise stated in the Quote, freight terms for delivery to Canada, United States, and Mexico (the "North American Markets") are FOB to the Customer's named location. For shipments outside of the North American Markets, standard freight terms are Incoterms 2010, CIF.
15. The Customer shall inspect the products upon receipt and within 24 hours notify SAGE of any claim that the products are nonconforming (claims for loss, damage or breakage are discussed in paragraph 14 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.
16. 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.
17. 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.

18. 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.

19. SAGE requires that when glazing SageGlass® products, the IGMA or Glass Association of North America (GANA) glazing guidelines be followed. The IGMA Glazing Guidelines for Sealed Insulating Glass Units, for Commercial and Residential Use TM-3000-90(04) states, "For dry glazed systems, an adequate seal should consist of a minimum of 0.70 N/mm (4lb/in) and not exceeding 1.75 N/mm (10 lb/in) applied to the edges of the insulating glass unit by gaskets or other fastening systems."

Failure to follow these guidelines may result in irreparable damage to the insulating glass units and will void the SageGlass® Limited Warranty.

20. Inherent manufacturing limitations, product characteristics and applications will determine the product IGU make-up and size, and its ability to meet the requirements of the Customer's project. Contact a SAGE representative for specific information and to determine the optimum SageGlass® product for the Customer's project. The IGU make-up may contain lites that are heat strengthened or tempered, dependent on the glass thickness and customer requirements. Inherent roller wave distortion will run parallel to the base of the glass as installed, unless otherwise specified or if base dimension is greater than 94" for glass $\leq 8\text{mm}$ or greater than 90" for glass $> 8\text{mm}$. If the base dimension is greater than 94" or 90", dependent on the glass thickness, the roller wave shall be perpendicular to the base. Maximum size available 1.8 x 3.0m (72 x 120"). SAGE recommends caution when using SageGlass® product in structural (i.e. "butt" glazed) applications due to the need to protect the wire that extends from one side of the insulating glass unit from environmental exposure. Where structural glazing is required, SAGE recommends that no more than two sides have silicone glazing so that the wire can be protected from the environment in one of the two sides that are captured by framing. Where structural glazing is required, SAGE must be notified at time of order to ensure that the SageGlass insulating glass unit construction is specified appropriately.

21. Neither the Customer nor SAGE shall be liable for any failure to perform its obligations (except for failure to make a timely payment) 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"). Any party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party

was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

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. 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.
30. 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.
31. 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.



SAGE Electrochromics, Inc.

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