

“Company” shall mean Commercial Refrigerator Door Company, Inc.

1. Acceptance. These terms and conditions are an integral part of Company’s offer and form the basis of any agreement (the “Agreement”) resulting from Company’s proposal (the “Quotation”) for the sale of the described product (the “Product”). The Quotation is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Quotation. If Customer’s order is an acceptance of the Quotation, without the addition of any other terms and conditions of sale or any other modification, this document shall be treated solely as an acknowledgment of such order. If Customer’s order is expressly conditioned upon Company’s acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with these terms and conditions attached or referenced serves as Company’s notice of objection to Customer’s terms and as Company’s counter-offer to provide Product in accordance with scope and terms and condition of the Quotation. If Customer does not reject or object in writing to Company within 10 days, Company’s counter-offer will be deemed accepted. Customer’s acceptance of Product will in any event constitute an acceptance by Customer of these terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability.

2. Pricing and Taxes. Following acceptance without addition of any other terms and condition of sale or any other modification by Customer, the prices stated are firm provided that notification of release for immediate production and shipment is received at Company’s factory not later than 3 months from order acceptance. If such release is received later than 3 months from order acceptance date, prices may be increased and subject to renegotiation or at Company’s option, the order will be cancelled. Any delay in shipment caused by Customer’s actions may subject prices to increase equal to the percentage increase in list prices during that period of delay and Company may charge Customer with incurred storage fees. In no event will prices be decreased. Manufacturer’s gross receipts, sales, or use tax, Federal, Provincial, State, or Local taxes, handling fees and freight, payable on the transaction under any applicable statute, code, or regulation shall be added to the prices quoted.

3. Performance. Company shall be obligated to furnish only the Product described in the Quotation, and submittal data (if such data is issued in connection with the order), and Company may rely on the acceptance of the Quotation and submittal data as acceptance of the suitability of the Product for the particular project or location.

4. Force Majeure. Company’s duty to perform under this Agreement and the Product prices are contingent upon the non-occurrence of an Event of Force Majeure. If the Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company’s election (i) remain in effect but Company’s obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An “Event of Force Majeure” shall mean any cause or event beyond the control of Company. Without limiting the foregoing, “Event of Force Majeure” includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid); and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

5. Warranty. Company warrants that, for a period of two (2) years from the date of shipment, that the Product manufactured by Company: (1) is free from defects in material and manufacture and (2) has the capacities and ratings set forth in Company’s catalogs and bulletins (“Warranty”). Exclusions from this Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer’s failure to follow the Company-provided maintenance plan; modifications made by others to the Product. Company’s obligations and liabilities under this Warranty are limited to furnishing replacement Product or parts, at its option, FCA factory or warehouse (Incoterms 2000) (f.o.b. factory or warehouse for US domestic purposes) at Company-designated shipping point, freight-allowed to Company’s warranty agent’s stock location, for all non-conforming Company-manufactured Product (which have been returned by Customer to Company. Returns must have prior written approval by Company and are subject to restocking charge where applicable. No liability whatsoever shall attach to Company until Customer’s complete order has been paid for in full and Company’s liability under this Warranty shall be limited to the purchase price of the Product shown to be defective. **THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE.**

6. Indemnity. Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys’ fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

7. Insurance. Upon request, Company will furnish evidence of its standard insurance coverage. Company does not waive any rights of subrogation.

8. Customer Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement, require payment prior to shipping, or suspend performance by delivery of written notice declaring termination, upon which event Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead): (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement.

9. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION PRODUCT LOSS, LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OF FACTS. Should Company nevertheless be found liable for any damages they shall be limited to the purchase price of the Product under the order. **COMPANY DISCLAIMS ANY LIABILITY FOR DAMAGES OF ANY KIND (WHETHER DIRECT OR INDIRECT) ARISING FROM MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS.**

10. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

11. Shipment Dates. Shipment dates even if specified in writing are estimates only. In no event shall Company be liable for delays in shipment. Shipments shall be FCA factory or warehouse (Incoterms 2000) at named shipping point with title and risk of loss passing to Customer upon delivery to the carrier, which delivery shall constitute delivery to Customer for all purposes.

12. Cancellation. Product is specially manufactured in response to orders. If, all or any portion of an order is cancelled by Customer, Customer shall be liable to Company for cancellation charges including but not limited to Company's incurred costs and such profit as would have been realized by Company from the transaction had the order not been cancelled by Customer.

13. Payment. Customer shall pay Company's invoices within net 30 days of shipment date. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment.

14. Claims. Company will consider claims for concealed shortages in shipments or rejections due to failure to conform to an order only if such claims or rejections are made in writing within 15 days of delivery and are accompanied by the packing list and, if applicable, the reasons in detail why the Product does not conform to Customer's order. Upon receiving authorization and shipping instructions from authorized personnel of Company, Customer may return rejected Product, transportation charges prepaid, for replacement. Company may charge Customer any costs resulting from the testing, handling, and disposition of any Product returned by Customer which are not found by Company to be nonconforming.

15. Export Laws. The obligation of Company to supply Product under this Agreement is subject to the ability of Company to supply such items consistent with applicable laws and regulations of the United States and other governments. Company reserves the right to refuse to enter into or perform any order, and to cancel any order, under this Agreement if Company in its sole discretion determines that performance of the transaction to which such order relates would violate any such applicable law or regulation. Any such refusal or cancellation by Company will not constitute a breach of obligation by Company under this Agreement, Customer waives any and all claims against Company for any loss, cost or expense, including consequential damages that Customer may incur by virtue of such refusal or cancellation.

16. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state of New York for Product shipped to a US location and the laws of the province to which Product is shipped within Canada, without regard to its conflict of law principles, and not including the United Nations Convention on Contracts for the International Sale of Goods. To the extent the Product is being used at a site owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

17. U.S. Government Work.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that Product ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). **This provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the sale of the Product is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Quotation or this Agreement, other than the Quotation or this Agreement.