

**VYTEX CORPORATION**  
**TERMS AND CONDITIONS OF SALE**

**THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.**

**BY PLACING AN ORDER FOR PRODUCTS FROM VYTEX CORPORATION (INCLUDING THROUGH ITS WEBSITE), YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS.**

1. Terms and Conditions; Order Acceptance. These Terms and Conditions of Sale ("Terms and Conditions") of VYTEX CORPORATION ("Seller") shall govern and apply to the sale of any of Seller's products and services (collectively, "Products") to any buyer ("Buyer" sometimes referred to as "you", or "your" as the context requires) described in any Buyer order, order form, electronic order (including, without limitation, orders placed via Seller's website), purchaser order (including, without limitation, Seller's quote for Products requested by Buyer), agreement and/or contract (collectively, the "Order"), and shall be incorporated by this reference into such Order. These Terms and Conditions are subject to change by Seller (sometimes referred to as "Vytex", "us", "we", or "our" as the context may require) without prior written notice at any time, in our sole discretion. You agree that your Order is an offer to buy, under these Terms and Conditions, all Products listed in your Order. All Orders must be accepted by us, as evidenced by our delivery to you of our written Order Acknowledgement ("Order Acknowledgement"), or we will not be obligated to sell the Products to you. We may choose not to accept any Orders in our sole discretion. After having received your Order, we will send you a confirmation email with your Order number and details of the items you have ordered set forth in our Order Acknowledgement. Seller's agreement to be bound is expressly conditioned upon Buyer's acknowledgement and agreement, which acknowledgement and agreement is given by Buyer's acceptance of these Terms and Conditions, that these Terms and Conditions and the terms of the Order Acknowledgment supersede any additional or inconsistent terms included in Buyer's Order. The Order (to the extent any of its terms and conditions are not additional to or inconsistent with these Terms and Conditions and the terms and conditions of the Order Acknowledgment), these Terms and Conditions and the Order Acknowledgment are collectively referred to herein as the "Agreement".

2. LIMITED WARRANTY. Seller's limited warranty with respect to the Products can be found at <https://vytexwindows.com/homeowners/warranty/> ("Seller's Limited Warranty"). **SELLER'S LIMITED WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED. SELLER DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller's liability under the Agreement with respect to defective Products sold by Seller to Buyer shall be limited to the express obligations of Seller set forth in Seller's Limited Warranty. Buyer must give Seller written notice of any claim of breach of warranty in accordance with the terms set forth in Seller's Limited Warranty.

**THE REMEDIES DESCRIBED IN SELLER'S LIMITED WARRANTY ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SELLER'S LIMITED WARRANTY. SELLER'S LIABILITY WILL UNDER NO CIRCUMSTANCES EXCEED THE ACTUAL AMOUNT PAID BY BUYER FOR THE DEFECTIVE PRODUCT(S) THAT BUYER HAS PURCHASED FROM SELLER, NOR WILL SELLER UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS OF PRODUCTION, WORK, USE, BUSINESS, REPUTATION, REVENUE OR PROFIT, ANY DIMINUTION IN VALUE, COSTS OF REPLACEMENT GOODS OR SERVICES, OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES, WHETHER DIRECT OR INDIRECT.**

**SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

3. Payments. Buyer agrees to pay all sums due to Seller according to the terms stated in Seller's invoices for Products, including service charges of 2% per month on all amounts past due. All amounts payable pursuant to Seller's invoices shall be paid, in accordance with the terms set forth in such invoices, in cash, by check, via credit card or by wire transfer. Buyer shall reimburse Seller for all costs incurred in collecting any overdue payments and related interest, including, without limitation, reasonable attorneys' fees, legal costs, court costs, and collection agency fees which Buyer agrees shall not be less than an amount equal to 25% of all amounts due. If a check tendered by Buyer is returned for insufficient funds, uncollected funds or stopped payment, Buyer shall pay Seller a twenty-five dollar (\$25.00) service fee.

4. Taxes. If Seller is required to pay non-income related federal, state, local or other taxes, excises or charges, or increases thereof upon the production, sale or transportation of the Products sold pursuant to the Agreement not now included in the price specified therein, Buyer shall reimburse Seller for the same.

5. Shipping; Pick-Up. Unless Buyer has specified that it will pick-up Products from Seller's facilities, Seller will arrange for shipment of the Products to an address designated by Buyer. Title to and risk of loss of all Products sold pursuant to the Agreement shall pass to Buyer as follows: (a) if Buyer has specified that it will pick-up Products from Seller's facilities, title to and risk of loss passes to Buyer upon Buyer's receipt of the Products at Seller's facilities for loading on the vehicle(s) used by Buyer to pick-up the Products from Seller's facilities, and (b) otherwise, title to and risk of loss passes to Buyer upon Seller's delivery of the Products to the address designated by Buyer.

6. Buyer Risk. Buyer assumes all risks and liability for results arising out of Buyer's unloading, storage, handling and/or use of the Products, or arising out of compliance or non-compliance with federal, state, municipal or local laws and regulations with reference thereto.

7. Buyer Indemnity. Unless Product sold pursuant to the Order fails to meet Seller's Limited Warranty referenced in Section 2 above, Buyer shall indemnify, defend and hold Seller

harmless from all costs, expenses, damages, judgments or other loss, including costs of investigation, litigation and reasonable attorney's fees, arising out of Buyer's selection, installation, use, sale and further processing of the Product(s) sold pursuant to the Agreement.

8. Force Majeure. Either party to the Agreement shall be relieved from liability thereunder for failure to perform any of the obligations herein imposed, except the obligation to pay for the Product(s) already delivered, for the time and to the extent of such failure to perform, if Buyer's failure to take, use or consume, or Seller's failure to make delivery or fulfill the Order, is occasioned by any cause or causes of any kind or character reasonably beyond the control of the party failing to perform (any such cause herein called "force majeure") , including, without limitation: (1) Acts of God, fire, explosion, flood, hurricanes; (2) strikes, lockouts or other industrial disturbances or riots; (3) War, declared or undeclared; (4) compliance with any Federal, State, Municipal or Military law, regulation, order, or rule, foreign or domestic, including priority, rationing, allocation or pre-emption orders or regulations, or cancellation of Seller's license to operate its plant; (5) shortage or breakdown or other failure of facilities used for manufacture or transportation, shortage of labor, power, fuel or raw materials; or (6) total or partial shutdown due to Seller's normal plant turnaround. In the event of either party being rendered unable by force majeure to carry out its obligations under the Agreement, other than to make payments due thereunder, such party shall give notice and full particulars including the expected duration of such force majeure in writing, and upon the giving of such notice the obligations of the party giving such notice, so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall be so far as possible remedied with all reasonable dispatch. The party impacted by the force majeure shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure are minimized. Upon the cessation of the cause or causes for any such failure or delay, performance thereof shall be resumed, but such delay shall not, except by mutual agreement, operate to extend the term of any agreement or obligate the Seller to make up deliveries or Buyer to purchases quantities so missed. It is understood and agreed that the settlement of strikes or lockouts involving the parties hereto shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the employees involved, when such course is inadvisable in the discretion of the party having the difficulty; provided, however, if such party's failure or delay remains uncured for a period of thirty (30) consecutive calendar days following written notice given by it under this Section 9, the other party may thereafter terminate this Agreement upon five (5) calendar days' written notice.

9. Seller Discretion. Seller may distribute its supply of raw materials and/or finished goods among itself, for its own manufacturing uses, its customers and Buyer in such manner as Seller deems practicable. Buyer agrees to accept, as full and complete performance by Seller, deliveries in accordance with such determination as Seller may make. In no event shall Seller be required to purchase material or Products from third persons in the event Seller invokes one of the above mentioned clauses, nor will Seller be liable for any cost increases suffered by Buyer in

purchasing Products from a third party.

10. No Waivers. The waiver by Seller of a breach of any provision of these Terms and Conditions by Buyer shall not operate or be construed as a waiver of any subsequent breach by Buyer. These Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

11. TERMS AND CONDITIONS HAVE PRECEDENCE. ANY TERMS AND CONDITIONS OF ANY BUYER ORDER OR OTHER INSTRUMENT ISSUED BY BUYER IN CONNECTION WITH THE SUBJECT MATTER OF ANY ORDER, WHICH ARE IN ADDITION TO OR INCONSISTENT WITH THE TERMS AND CONDITIONS EXPRESSED HEREIN OR IN THE ORDER CONFIRMATION, WILL NOT BE BINDING UPON SELLER IN ANY MANNER WHATSOEVER UNLESS EXPRESSLY ACCEPTED BY SELLER IN WRITING.

12. Notices.

(a) To Buyer. Seller may provide any notice to Buyer under these Terms and Conditions as follows: (i) by sending a message to Buyer's email address provided in the Order or (ii) by personal delivery, overnight courier or regular US mail to Seller's physical address provided in the Order. It is Buyer's responsibility to keep its email and physical addresses current by written notice (per these terms) to Seller.

(b) To Seller. To give Seller notice under these Terms and Conditions, you must contact Seller as follows: (i) by sending a message to the following Seller email address: [accounting@vytexwindows.com](mailto:accounting@vytexwindows.com) or (ii) by personal delivery, overnight courier or registered or certified mail to Seller at Seller's address reflected on the Order Acknowledgement. Seller may update its email or physical address for notices to Seller by updating such address in these Terms and Conditions.

(c) Notices provided by personal delivery will be effective immediately upon delivery. Notices sent by email will be effective on the next business day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered. Notices provided by registered or certified US mail will be effective three (3) business days after they are sent. Notices provided by overnight courier will be effective one (1) business day after they are sent.

13. Litigation Costs and Expenses. If Seller institutes any legal suit, action, or proceeding against Buyer to enforce the Agreement (or obtain any other remedy regarding any breach of this Agreement – other than late payment costs addressed in Section 3 hereof), including, but not limited to, contract, equity, tort, fraud, and statutory claims, in addition to all other remedies to which Seller may be entitled, Buyer shall reimburse Seller for all costs and expenses incurred by Seller in conducting or defending the suit, action, or proceeding, including reasonable attorneys' fees and expenses, court cost and other expenses.

14. Governing Law; Jurisdiction. These Terms and Conditions shall be governed by, and construed and enforced in accordance with the laws of the State of Maryland. If any clause or provision of these Terms and Conditions shall be held in violation of applicable law, or otherwise invalid or unenforceable, these Terms and Conditions shall be interpreted as if such provisions were limited to the extent legally permitted or, if such a clause or provisions shall be prohibited in its entirety, it shall be null and void and these Terms and Conditions as so modified shall remain in full force and effect. Buyer and Seller specifically agree that any legal action brought relating to the Order will be brought and tried in the federal or state courts located in Howard County, Maryland. Any controversy, dispute or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered, in Howard County, Maryland, by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS DECIDED TO ENTER INTO THE AGREEMENT IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.