

Top Shelf Closets and Glass
TERMS AND CONDITIONS

I. Definitions

In these terms and conditions:

"Customer" means the party or parties identified as such in the Sales Order, Invoice or quotation (defined below as);

"Goods" means the products or services listed in the Sales Order, Invoice or quotation; "Order" means a Sales Order, Invoice or quotation accepted by the Customer.

"Party" means either the Customer and the Seller, and "Parties" means the Customer and Seller; "Seller" means Top Shelf closets and glass, dba "Top Shelf" "Terms" means these terms and conditions.

"lands" means the lands to which the Goods shall be delivered; "Owner" means the registered owner of the Lands;

"Carrier" means the carrier hired to deliver the Goods to the Lands.

2. General

A. Top Shelf's Standard Terms and Conditions will form a part of this subcontract and supersede terms set forth by the Customer Contract or the Prime Contract.

B. All Goods supplied shall only be offered, rendered, delivered, or provided according to these Terms. These Terms constitute the entire agreement between the Parties with respect to the provision of the Goods and supersede all other terms either expressed or implied by law. None of the Terms set out herein may be added to, waived, modified, superseded or otherwise altered except by a written instrument signed by an officer of the Seller and delivered to Customer. No employee or agent of Seller is empowered to change or amend these Terms as set out herein. Failure to enforce any or all these Terms in a particular instance shall not constitute a waiver of or preclude subsequent enforcement of any or all such Terms. If any part or parts of these Terms are held invalid, such holding shall not invalidate the remainder of these Terms.

C. The proposal is based on the Seller's drawings and materials specifications. The Customer understands that the Seller will provide materials according to the drawings and materials specifications detailed in the Seller's proposal, shop drawings, and specifications.

D. If sample products are required for mock-up rooms, additional charges for production and installation will be billed. If mock-up products are not approved, further charges for removal and installation may be billed.

E. An extra charge for site meetings above 1 hour will be billed if attendance at the conference is required when Top Shelf is not scheduled to be on-site (only applicable for jobs outside the greater Edmonton area).

F. Any damage to the supplied products caused by other trades after the Seller's product has arrived or is installed in the building will not be Seller's responsibility.

3. Bond Fee if required:

A. Annual rates (12-month project duration or Jess) from the bond is the issuance date.

B. 50% performance & 50% labour 1.85% of the contract value.

C. 100% performance & 100% labor 2.4% of the contract value.

D. If the project duration exceeds 12 months, an additional prorated bond fee will be billed monthly.

4. Terms of Payment

A. All custom or special orders require a deposit equal to 50% of the total price of the Goods (the "Deposit") before the Seller initiates production of the Order. The Customer acknowledges that the Seller will not begin production of the order until it has received the Deposit.

- B. Payment is to be made according to the agreed-upon Schedule of Values, which is to be confirmed by the Customer's signature, for whom this proposal is prepared. The Schedule of Values, agreed upon by Top Shelf and the Customer, will form a part of the subcontract and supersede any other payment terms set forth by the Customer or the Prime Contract. The payment terms detailed in these Terms and Conditions will apply without an agreed-upon Schedule of Values.
- C. Payment can be made via EFT or bank draft. A credit card is an optional form of payment for invoices under \$3000, but only if made within 30 days.
- D. All NSF cheques will be subject to a 50.00 NSF charge.
- E. All payments shall be made in the currency specified by the Seller.
- F. Top Shelf shall retain title to the goods if any materials are delivered without payment until the invoice is paid in full.
- G. Interest shall accrue at 2% above the RBC prime rate current as of the billing date per month on any past due amounts and shall be calculated from the invoice date until the same is fully paid, both before and after judgment. The customer shall be responsible for all collection costs incurred by the Seller, including, without limitation, legal fees and disbursements on a solicitor and his client basis.
- H. Installation will be progress billed.

5. Cancellations, Pricing changes, and Returns

- A. Custom orders cannot be cancelled or returned. In the event of contract termination, the Seller will be paid for all materials produced or purchased up until the date of termination. The deposit is non-refundable.
- B. All cancellations and returns of stocked items are subject to a cancellation/return fee equal to 25% of the total value of the returned goods. All claims for damages to Goods in transit must be made to Carrier,
- C. Pricing changes based on goods listed in Top Shelf's proposal will result in pricing revisions.
- D. Prices are subject to revision after the final site measure.
- E. All prices quoted are valid for 30 days.
- F. The customer must issue a purchase order or approved change order within 7 days of the change directive/change order request.

6. Shipment, Delivery, and Installation

- A. The customer acknowledges that the carrier provides the shipping schedule and that any delays in the delivery of the Goods are outside of the Seller's control.
- B. If the Seller is not installing the goods, the Customer shall unload the Goods within the time limit the Carrier allows. If the Seller is providing installation services, the Seller will provide manual labour to handle the goods on-site, and the Customer shall provide all hoisting and offloading equipment and operator to offload the products and hoist them to the upper floors of the project. Notwithstanding anything herein to the contrary, the Customer acknowledges, consents, and agrees that title to the Goods passes to the Customer only at such time as the Seller receives payment of the final price of the Goods in full.
- C. The Customer must provide the Seller with at least 6 weeks between the confirmation of finishes & shop drawings and the date of delivery of the first shipment. For schedule changes to further deliveries, there must be at least 3 weeks between the requested delivery date and the date the construction schedule is changed. If the Customer revises the construction schedule after the goods have already been put into production, or after the goods have already been shipped, or if the Customer is incapable for any reason of accepting delivery of the goods on-site, the Customer will be responsible for paying all costs related to storage, warehousing, labour, and all other expenses incurred due to the Customer's failure to receive the goods. Unless otherwise stated on the bid submission form, the pricing does not include storage, demurrage, warehousing and related labor costs.

The Customer will have a limited time to receive and return the container once it arrives in the destination city. If the Customer cannot receive and return the container within the specified period, the Customer will be responsible for all related costs, including but not limited to storage, demurrage, chassis charges, and extra delivery.

D. Delivery numbers and labour as specified in the bid document; any additional trips due to the customer's delays on-site may incur additional charges.

E. The proposal is based on installation performed during regular working hours. Expedited work and materials may result in extra charges, including overtime hours.

F. Work to be performed sequentially, from floor to floor. Additional mobilizations/demobilizations will incur extra costs to the Customer and require an approved change order.

G. The Seller will remove all its trash and dump it into Contractor/Owner-supplied bins. The seller is not responsible for any final cleaning or cleaning required in common/public areas.

7. Limited Warranty

A. Subject to the limitation of warranty set out in these terms and conditions, the Seller warrants to the Customer that the Goods that are manufactured or produced by the Seller shall be free of defects in material and/or workmanship attributable to manufacture for the duration of time that is specified in Top Shelf's warranty documents. The applicable product-specific terms & conditions are specified in the warranty documents for each product.

B. The preceding warranties do not apply to any Goods which have been subject to misuse, neglect, accident, modification, or damage resulting from improper handling after such Goods are delivered to the Carrier in good order or from exposure by anyone other than the Seller to weather or extreme atmospheric conditions.

C. The preceding warranty is EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, BY STATUTE OR OTHERWISE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

D. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE SELLER DOES NOT WARRANT ANY TEMPERED GLASS PRODUCTS.

E. The Seller shall not be liable to the Customer for special, indirect, consequential or incidental losses or damages of any kind or nature whatsoever, or other costs, charges, penalties or liquidated damages, regardless of whether arising from breach of contract, warranty, tort, strict liability or otherwise, even if advised of the possibility of such loss or damage or if such loss or damage could have been reasonably foreseen.

F. The Seller's sole obligation for failing to comply with this warranty shall be, at its sole discretion, to either repair, replace or issue credit for any nonconforming or defective Goods within the above warranty period:

- i. the Seller has received written notice of nonconforming or defective Goods.
- ii. after obtaining the Seller's written authorization, the Customer has, at its sole cost and expense, returned such nonconforming or defective Goods to the Seller and
- iii. the Seller has determined that the Goods are nonconforming or defective and that such nonconformity or defect is not the result of some misuse by the Customer or any third party.

G. Warranty service will not be provided until the materials and labour are paid for in full.

8. Claims for shortage and defective goods (Supply only Products)

A. Any claims by the Customer for shortages, defects, or damage must be made in writing to the Seller within 3 days following receipt of the Goods by the Customer. If the Customer does not provide such notice within the period set out herein, the Customer shall be deemed to have accepted the Goods as delivered. The Seller reserves the right to confirm such shortage, defect, or damage.

B. The Seller reserves the right to inspect and confirm, in its sole discretion, any alleged nonconformity or damage before authorizing a return, replacement or credit to the Customer.

C. Notwithstanding the preceding, goods custom-made for the Customer are not eligible to be replaced unless such Goods are materially inconsistent with the instructions and specifications approved by the Customer and such instructions contain no error. For greater certainty, the Customer further acknowledges that any error caused by the written instructions and specifications given to the Seller by the Customer shall not be sufficient cause to reject the Goods.

D. The Customer acknowledges that any model or sample shown to Customer is used merely to illustrate the general type and quality of the Goods ordered by the Customer and not to represent that the Goods supplied to the Customer will necessarily conform in all respects to the sample or model.

9. Taxes

Customer shall pay all taxes or other levies imposable or imposed by any government, governmental unit or similar authority with respect to the charges made or payments received in connection with the Order.

10. Revisions by Seller

The Seller reserves the right to revise these terms and conditions with respect to subsequent Orders by written notice to the Customer of any such revisions. Any such revisions shall be binding upon the Customer without further action unless the Customer objects to such revisions by written notice to the Seller within ten days of receipt of such revisions.

11. Governing Law, Resolution of disputes

The Order, these Terms, and the performance thereof shall be governed by, subject to and construed under the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to any provision regarding conflict of laws—the Customer specifically attorneys to the exclusive jurisdiction of the Courts of the Province of Alberta.

12. Force Majeure

Any delay or failure of the Seller to perform its obligations under this Offer shall be excused if, and to the extent, that the delay or failures are caused by an event or occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, action by any governmental authority. {whether valid or invalid}, fires, floods, windstorms, explosions, riots, natural disasters, pandemics or other outbreaks of disease, wars, sabotage, labour problems {including lockouts, strikes and slowdowns}, inability to obtain power, material, labour, equipment or transportation, or court injunction or order, provided that a lack of funds shall not be an event or occurrence beyond the reasonable control of the Seller.

13. Joint and Several Liability

The term "Customer" as used herein may be applicable to one or more party and the singular shall include the plural. If more than one party is referred to as the Customer in the Order, then their obligations and liabilities shall be joint and several.

14. Enurement

These Terms shall ensure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.