

SCHEDULE "A" - TERMS AND CONDITIONS

These Terms and Conditions, along with the information included in the Quote, govern the relationship between the Parties.

WHEREAS the Client wishes to use the Company's Services, as detailed in the attached Quote;

AND WHEREAS the Company has agreed to provide the Services in accordance with this Agreement;

NOW THEREFORE IN CONSIDERATION of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. For the purposes of this Agreement, the following words and terms have the following meanings:
- 1.1.1. "**Agreement**" means these Terms and Conditions along with the Quote;
 - 1.1.2. "**Company**" means Alberta Vinyl Windows & Doors Ltd. o/a Everlast Group of Companies;
 - 1.1.3. "**Customer**" means the party identified as the Customer in the Quote;
 - 1.1.4. "**Delivery Location**" means the location for delivery of Product identified in the Quote;
 - 1.1.5. "**Delivery Date**" is the date agreed to by Customer and Company in writing prior to the Product going into production;
 - 1.1.6. "**Free on Board (Shipping Point)**" refers to the term as defined in the Incoterms® 2020 rules and its definition is adopted by reference in this Agreement.
 - 1.1.7. "**Fee(s)**" means the fee, or such other payment amounts or arrangements as are identified in the Quote for the Company's Services;
 - 1.1.8. "**Parties**" means the Customer and Company, and "**Party**" means the applicable one of them;
 - 1.1.9. "**Product**" means the one or more products identified in the Quote;
 - 1.1.10. "**Product Invoice**" means the invoice for the Product;
 - 1.1.11. "**Quote**" means the written terms attached to this document, which contain the details specific to the relationship between the Customer and Company, and which may identify the following: Customer, Customer contact information, description of Products or Services to be provided, structure of Fee(s) for the Products or Services, payment method and payee, and any other relevant information;
 - 1.1.12. "**Services**" means the services such as installation, lockouts to be provided by the Company to the Customer as outlined in the Quote;
 - 1.1.13. "**Service Invoice**" means the invoice for any Services; and
 - 1.1.14. "**Taxes**" means all sales, use, customs, excise, or other taxes presently or hereafter payable regarding the Product or Services.

2. ENGAGEMENT AND SERVICES

- 2.1. The Customer engages the Company to provide the Product and perform the Services as per the Quote, and the Company accepts the engagement.
- 2.2. All Services to be provided by the Company will be performed with promptness and diligence, and requires the cooperation, civility, and professionalism from the Customer as well as the Company. Except as otherwise provided in this Agreement, the Company will have full control over how the Services are provided, including such specifics as working time, methods, and decision making. The Customer will provide access to its information, property, and personnel as may be reasonably required to permit the Company to perform the Services.

- 2.3. The Customer is responsible for and will ensure that any areas of any property where the Product is to be provided or Services are to be performed are safe, prepared, accessible, and available to the Company for the purposes of performing the Services, the adequacy of which will be assessed at the Company's sole discretion.
- 2.4. Products will be delivered to the Delivery Location specified in the Quote. The Products are delivered Free on Board (Shipping Point), which means upon shipping of the Products to the Customer, all risk of loss or damage and other incident of ownership pass to Customer, but the Company retains a security interest in the goods until purchase price is paid. All deliveries are subject to the weight at the shipping point prior to delivery and that weight shall govern.

3. FEES & BILLING

- 3.1. All payments shall be made payable to Alberta Vinyl Windows & Doors Ltd. o/a Everlast Group of Companies
- 3.2. The Company will issue a Product Invoice on the earlier of the following:
 - 3.2.1. Delivery of the Product to Customer; or
 - 3.2.2. Delivery Date, regardless of actual delivery of the Product to the Customer.
- 3.3. Payment of the Product Invoice is due on delivery of the Product unless other payment terms are agreed in writing.
- 3.4. The Company will issue a monthly Service Invoice.
- 3.5. Payment of the Service Invoice is due on the date of the Service Invoice being issued unless other payments as agreed.
- 3.6. The Product Invoice or Service Invoice will include a description of the Product or Services provided, and indicate the total Fees being claimed by the Company. Fees for Products or Services may be combined on one invoice and the resulting invoice is then considered both a Product Invoice and a Service Invoice.
- 3.7. Invoices pursuant to this agreement will be payable by one of the following means: cheque, e-transfer, EFT, wire, cash, Visa or MasterCard. Payment instructions to be provided by the Company on request.
- 3.8. A credit card fee of 1.5% of the Fees will be added to all payments made by credit card.
- 3.9. On any Product Invoice or Service Invoice that is not paid within 28 days, interest will be charged on the outstanding balance at a rate of 20% per annum compounded monthly (approximately 1.5% per month) from the date the invoice is due, until invoices and accumulated interests are paid.
- 3.10. The Customer shall pay all Taxes, and the Customer shall reimburse Company for any Taxes paid by the Company.
- 3.11. The Company reserves its rights to increase the Fee or charge additional amounts for the Services, should the Company deem that hazardous conditions arise during or prior to the performance of the Services.
- 3.12. Company shall have the continuing right to review and approve Customer's credit, and the Customer agrees to provide the information required by the Company to review and approve the Customer's credit. Should the Customer's credit change, the Company may at any time demand advance payment, additional security or guarantee of prompt payment.
- 3.13. If any Product not accepted by the Customer more than one month after the Delivery Date a monthly storage fee will be charged equal to the greater of \$500 or 1% of the Product Invoice total. Storage fees will be charged in full for partial months, and will be issued as a Service Invoice.
- 3.14. Customer assumes responsibility for all risk of loss or damage for product stored at the Company's location after one month of storage.
- 3.15. Product held at the Company's location more than one month past the Delivery Date must be paid for prior to delivery or pickup regardless of credit terms.

4. WARRANTY

- 4.1. The warranty for any Products or Services provided are available on the Company website: <https://avwd.com/warranty/>.
- 4.2. If a Product or the subject of a Service experiences an issue that would otherwise be covered by the warranty while a Product Invoice or Service Invoice is past due, the warranty will not apply. The Company's may, in it's sole discretion, apply some or all of the warranty on the Product.

5. LIMITATION OF LIABILITY & INDEMNITY

- 5.1. **THE COMPANY IS NOT LIABLE FOR ANY DAMAGES, LOSSES, LIABILITIES, CLAIMS, COSTS (INCLUDING LEGAL COSTS AND REASONABLE STAFF COSTS), FINES AND PENALTIES WHICH ARE OF AN INDIRECT NATURE. THE COMPANY IS NOT LIABLE FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF PRODUCTION, LOSS OF EARNINGS, LOSS OF CONTRACT, COST OF CAPITAL, LOSS OF ANY USE OF ANY FACILITIES OR PROPERTY OPERATED OR OWNED BY ANY PARTY, AND ANY OTHER INDIRECT, CONTINGENT, OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER WHICH ARE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP CONTEMPLATED BY THIS AGREEMENT, OR THE COMPANY'S PRODUCTS OR SERVICES.**
- 5.2. **THE COMPANY'S MAXIMUM LIABILITY IN CONNECTION WITH THIS AGREEMENT UNDER ANY CAUSE OF ACTION (INCLUDING CONTRACT, TORT, OR OTHERWISE) IS, WITH RESPECT TO ANY EVENTS, LIMITED TO A MAXIMUM OF \$1,000,000, AND THE COMPANY'S MAXIMUM CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEE(S) RECEIVED BY COMPANY PURSUANT TO THIS AGREEMENT TO A MAXIMUM OF \$3,000,000.**
- 5.3. **THE CUSTOMER AGREES AND ACKNOWLEDGES THAT IF ANY INVOICES ARE OUTSTANDING FOR 45 DAYS, THE CUSTOMER WILL INDEMNIFY THE COMPANY FOR ALL ADMINISTRATIVE, ENFORCEMENT, AND LEGAL COSTS, ON A SOLICITOR AND OWN CUSTOMER BASIS, INCURRED BY THE COMPANY FOR ANY ACTIONS COMMENCED TO COLLECT ON THE INDEBTEDNESS OF THE CUSTOMER TO THE COMPANY.**

6. REMEDIES

- 6.1. The Company may immediately terminate the Agreement if the Customer:
 - 6.1.1. refuses to give the payment, security or guarantee required under Article 3.12; or
 - 6.1.2. fails to pay any Product Invoice or Service Invoice within 28 days of it being due.
- 6.2. If the Company terminates the Agreement:
 - 6.2.1. the Company may refuse to deliver any undelivered Product
 - 6.2.2. the Company may recover any unpaid Product; and
 - 6.2.3. the Customer shall be liable for Company's damages as a result of termination including loss of reasonable profits.
- 6.3. If the Company, upon termination of the Agreement, repossesses or retains any Product, the Company's damages shall be the contract price of the goods plus freight, storage, handling & all other disposal costs incurred, less the then-current reasonable scrap value of the goods.
- 6.4. If Products supplied are not merchantable, then the Customer may notify the Company within 14 days of Delivery, and then:
 - 6.4.1. the Customer will give the Company 30 days to investigate any Product not merchantable;
 - 6.4.2. the Company may, at its option, either replace the Product or refund the Fees upon the return of the Product; and

- 6.4.3. Customer shall not return any Product until after the Company has investigated and the Customer receiving the Company's written return instructions.
- 6.5. In the event of a breach by the Company, the Customer may provide in writing 30 days notice to remedy said breach. If no notice of breach is provided by the Customer within 90 days of the Customer receiving the Product and completion of any Services, the Customer is to have deemed to have waived any breaches.

7. FORCE MAJEURE

- 7.1. The Company will be excused from any delay or failure in performance required by this Agreement if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, strikes, lock-outs, or other serious labour disputes, riots, earthquakes, floods, health emergencies, explosions, or other acts of nature, shortage of labor, transportation, raw materials, energy sources or failure of usual means of supply, or priorities, allocations or limitations or other acts required or requested by government bodies. Company may, at its option, cancel this Agreement or delay performance hereunder for any period reasonably necessary due to any of the foregoing, during which time this Agreement shall remain in full force and effect. Company shall have the further right to then allocate its available goods between its own uses and its customers in such manner as Company may consider equitable.
- 7.2. In the event of the continuation of any event referenced in Article 7.1 beyond a period of 60 days, either Party may terminate this Agreement by giving 30 calendar days' written notice of such termination to the other Party.

8. MISCELLANEOUS

- 8.1. Upon the completion or termination of this Agreement, all legal obligations, rights, and duties arising out of this Agreement will terminate, except for:
 - 8.1.1. such legal obligations, rights, and duties as have accrued prior to the effective date of termination; and
 - 8.1.2. specifically Articles 5 and 6.
- 8.2. This Agreement is the entire agreement and understanding between the Parties with regard to the Products and Services, and supersedes all prior agreements, correspondence, and representations of any kind.
- 8.3. The headings in this Agreement are for convenience only and are not to be construed in any way as additions or limitations of the covenants contained in this Agreement.
- 8.4. Any Party may waive performance of any condition in writing to all other Parties, but such waiver of a condition will not be considered a waiver of that condition for succeeding performance.
- 8.5. Notices to the Parties may be provided to the contact information contained in the Quote, including by email.
- 8.6. This Agreement may not be modified, altered, or amended except by an instrument in writing. Any such modification, amendment or change will be effective on the date of delivery or such later date as the Parties may agree therein.
- 8.7. The Customer may not assign any part or all of its interest in this Agreement without Company' written agreement. The Company may assign this Agreement to any party substantially carrying on a business providing the Company's Services.
- 8.8. This Agreement enures to the benefit of and be binding upon the Parties hereto and their respective trustees, successors, and assigns.
- 8.9. If any provision of this Agreement is deemed to be invalid, void, or unenforceable by any court having jurisdiction, such determination will not invalidate, void, or make unenforceable any other provision, agreement, or covenant of this Agreement, and such other provision, agreement, or covenant will remain in full force and effect.

- 8.10. The applicable provisions of this Agreement will continue in effect after termination or expiry hereof to the extent necessary, including but not limited to, providing for payments, limitation of liability, and any indemnification obligations under this Agreement.
- 8.11. Unless otherwise specifically provided in writing, the Parties understand that they are not partners, joint venturers, or agents of each other. No Party has the power to bind the other Party or Parties in any manner whatsoever.
- 8.12. This Agreement will be governed by and interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, and the Parties irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Alberta, in Calgary.
- 8.13. This Agreement and the Quote may be executed in multiple counterparts, each of which is an original, and which together are one instrument. Counterparts may be transmitted electronically including by email as a PDF attachment.

These Terms and Conditions last updated April 1, 2023.