



## ADAMS CAMPBELL CO

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### Terms & Conditions for all Sales Orders by Adams Campbell

**1. Scope of work.** The terms and conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by Adams-Campbell Co., Ltd. and/or by Accent Ceilings and Walls (jointly, Adams-Campbell). These Terms apply to all sales made by Adams-Campbell except to the extent the Terms conflict with a quotation issued by Adams-Campbell ("Sales Quotation") and signed by a customer ("Buyer"). In the event these Terms conflict with terms set forth in a Sales Quotation, the terms set forth in such Sales Quotation shall govern. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. In addition, these Terms may in some instances conflict with some of the terms and conditions set forth in a purchase order or other procurement document issued by the Buyer ("Buyer Document"). In the event these Terms conflict with terms set forth in a Buyer Document, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein and in the Sales Quotation, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Adams-Campbell's failure to object to provisions contained in a Buyer Document or any communication from Buyer shall not be deemed a waiver of the provisions herein. Adams-Campbell shall be deemed to have objected to any inconsistent terms in any writing submitted by Buyer to Adams-Campbell, and any changes in the Terms contained herein must specifically be agreed to in writing signed by an officer of Adams-Campbell before becoming binding.

**2. Price, Taxes, Quotations, and Special Arrangement.** (a) Prices are subject to change upon thirty (30)-days' notice to Buyer. Any order that can be cancelled and rescheduled pursuant to Section 6(a) is subject to a price change immediately. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by Adams-Campbell are those current at the date of quotation and shall be subject to variation by Adams-Campbell.

(b) In the event that (i) Adams Campbell and Buyer have entered into an arrangement whereby Adams Campbell stocks and holds certain products on behalf of Buyer and periodically releases products in accordance with a written request for such release (collectively, a "Stock, Hold, and Release Arrangement"), and (ii) Buyer has not requested release or otherwise taken custody of all products

under a Stock, Hold, and Release Arrangement within six (6) months after the initial request to Adams Campbell to stock the products (collectively, the "Remaining Products"), then at the end of such six (6) month period, (x) Adams Campbell will invoice Buyer for the full value of all of the Remaining Products at cost, and (y) Adams Campbell will deliver the Remaining Products to Buyer at its cost. Buyer shall immediately pay such invoice and delivery costs.

**3. Delivery and Risk of Loss.** Unless otherwise agreed to in writing by Adams-Campbell, or as set forth in a Sales Quotation, sales (including replacement or spare parts) are EXW Adams-Campbell City of Industry plant (Incoterms 2010) or FOB Adams-Campbell City of Industry plant. Adams-Campbell may deliver products in one or more consignment and invoice each consignment separately. Adams-Campbell reserves the right to deliver product that is not subject to cancellation in advance of the agreed shipping or delivery date. Unless otherwise agreed in writing, delivery time is not of the essence. Except as specified in Section 6(b), Adams-Campbell does not accept liability for any loss arising from delay in delivery of products. Delivery dates are estimates of approximate dates of delivery, not a guarantee of a particular day of delivery, and are based on the prompt receipt of all necessary payments and information from the Buyer. Risk of loss or damage to the products shall pass to Buyer upon delivery by Adams-Campbell to the Buyer at the EXW/FOB point or to a common carrier for shipment at the EXW/FOB point. Buyer shall remain liable to Adams-Campbell for any unpaid balance of the purchase price irrespective of any loss or damage after delivery. Notwithstanding the foregoing delivery terms, Buyer grants a security interest to Adams-Campbell in the products until such date that Buyer completes final payment to Adams-Campbell for the products.

**4. Payment Terms.** Unless otherwise specified by Adams-Campbell in a Sales Quotation, or otherwise agreed by the parties in writing, payment terms shall be net thirty (30) days from the date of invoice (the "Payment Due Date"). Should any amount remain unpaid after the Payment Due Date, without limiting Adams-Campbell's options, Buyer agrees to pay a finance charge on any unpaid balance at a rate that is the lesser of: one and one-half percent (1 ½%) per month, or the maximum interest rate permitted by California law. Unless otherwise agreed in writing, all payments are to be in United States dollars. For contracts outside the Continental United States, Adams-Campbell may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Adams-Campbell. Where payment is made by letter of credit, all costs of collection shall be paid by Buyer. Adams-Campbell may change its credit terms and/or suspend performance under any order when, in the opinion of Adams-Campbell, Buyer's financial condition or record of payment so warrants. In the event that Adams-



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Campbell is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorneys' fees and costs of suit.

**5. Non-Conforming Delivery.** Buyer shall notify Adams-Campbell of any visible defects, quantity shortages or incorrect product shipments within ten (10) days of receipt of the shipment. Failure to notify Adams-Campbell in writing of any visible defects in the products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect shipments, subject to Buyer's rights under Section 7.

**6. Order Non-Cancellable.** (a) Buyer's Cancellation: Except as set forth in a Sales Quotation, Buyer may cancel an order or reschedule delivery if the cancellation or rescheduling is more than ninety (90) days before the shipping date that is agreed to and confirmed in writing by Adams-Campbell (the "Confirmed Shipping Date"), except that Buyer shall accept delivery of all products that are completed at the time of cancellation or rescheduling. All products that are in Adams-Campbell's work-in-process inventory at the time of cancellation or rescheduling shall be paid for by Buyer at a price equal to the completed percentage of the product multiplied by the price of the finished product, as determined by Adams-Campbell. In addition, Buyer shall promptly pay to Adams-Campbell the costs of settling and paying claims arising out of the cancellation or rescheduling under Adams-Campbell's subcontracts or vendor agreements, and any accounting, legal, and clerical costs arising out of the cancellation or rescheduling.

(b) Buyer's Cancellation for Default: Upon written notice to Adams-Campbell, any order may be canceled in whole or in part in accordance with the terms hereof in the event of Adams-Campbell's failure to deliver products by a Confirmed Shipping Date (this failure hereinafter called "Default"). Cancellation by Buyer for Adams-Campbell's Default shall be effective only upon Adams-Campbell's failure to correct such Default within a reasonable period of time, but not less than thirty (30) days after receipt by Adams-Campbell of written notice of such Default. Upon cancellation for Default, Buyer, as its sole remedy, may recover from Adams-Campbell as damages the difference between the cost of procurement from another source (cover) and the contract price, less any expenses saved by Buyer as a result of Adams-Campbell's Default (the "Default Damages"). In no event shall the Default Damages exceed ten percent (10%) of Adams-Campbell's product price multiplied by the number of products unconditionally (not subject to cancellation under Section 6(a)) ordered by Buyer which remain unshipped at the time of cancellation.

(c) Adams-Campbell's Cancellation: In addition to any other remedies provided for in a Sales Quotation, Adams-Campbell shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business. In addition, any order that can be cancelled or rescheduled by Buyer pursuant to Section 6(a) or otherwise may be cancelled or rescheduled by Adams-Campbell, without penalty, so long as thirty (30)-days' notice is given to Buyer.[2]

**7. Limited Warranty.** Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to Adams-Campbell's published specifications or other specifications accepted in writing by Adams-Campbell for a period of one (1) year from the date of shipment of the products. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident, modification, repair, improper installation, or Buyer's alteration. Adams-Campbell shall make the final determination as to whether its products are defective, in its sole discretion. Adams-Campbell's sole obligation for products failing to comply with this warranty shall be, at its option, to repair, replace or issue credit for the nonconforming product where, within fourteen (14) days of the expiration of the warranty period, (i) Adams-Campbell has received written notice of any nonconformity; (ii) after Adams-Campbell's written authorization, Buyer has returned the nonconforming product to Adams-Campbell; and (iii) Adams-Campbell has determined that the product is nonconforming and that such nonconformity is not the result of misuse, neglect, accident, modification, repair, improper installation, or Buyer's alteration. THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ADAMS-CAMPBELL DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. FURTHER, ADAMS-CAMPBELL DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE USE, OR THE RESULTS OF THE USE, OF ITS PRODUCTS, OR THAT ITS PRODUCTS COMPLY WITH APPLICABLE LAWS, REGULATIONS, REQUIREMENTS OR GUIDELINES OF ANY GOVERNMENTAL AGENCY. BUYER WAIVES ANY RIGHT EXTENDING BEYOND THE LIMITED WARRANTY SET FORTH IN THIS SECTION 7 TO CLAIMS FOR NEGLIGENCE BY ADAMS-CAMPBELL IN DESIGN, MATERIAL OR MANUFACTURE. Buyer may pass through this limited



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warranty to any bona fide third-party purchaser of Adams-Campbell products to the extent such pass-through warranties exist.

**8. Limited Liability.** Adams-Campbell shall not be liable for any indirect damages, whether in contract or in tort, including but not limited to, special, incidental or consequential damages, the cost of labor, requalification, rework charges, delay, lost profits, lost savings, or loss of goodwill arising out of the sale, installation or use of any Adams-Campbell product. If Adams-Campbell has any liability for breach of contract, breach of any implied condition, warranty or representation, the aggregate liability of Adams-Campbell to Buyer shall be limited in respect of any occurrence or series of occurrences to the actual amount of the contractual value of the products or services that are the subject of the contract for which Adams-Campbell has been paid by Buyer.

**9. Indemnification and Intellectual Property.** (a) Indemnification: Buyer shall defend Adams-Campbell and its officers, managers, directors, shareholders, employees and agents (collectively, the "Adams-Campbell Indemnitees"), from and against any third party allegations, claims, demands, assessments, fines, suits, investigations or causes of action, and indemnify and hold harmless the Adams-Campbell Indemnitees from all damages, liabilities, judgments, costs, penalties, interest and expenses (including attorneys' fees and costs) and other such losses arising in connection with any suit or proceeding brought against Adams-Campbell that is based on, or related to, any of the following: (i) the sale, installation, or use of the products, (ii) Buyer's activities with respect to the products after acceptance of the products pursuant to the terms in the Sales Quotation, and/or (iii) a claim that any product manufactured to Buyer's specifications constitutes an infringement of any U.S., Canadian, Japanese, EU or EFTA member country, or any other intellectual property rights. Except as otherwise specified in writing, Adams-Campbell makes no warranty that products sold hereunder will not infringe any intellectual property rights of others.

(b) Adams-Campbell Retains its Intellectual Property: All right, title and interest in all product manufacturing/processing information, techniques, tooling, methods and/or processes (collectively, the "Manufacturing Process") shall belong to and be the sole and exclusive property of Adams-Campbell. Any Manufacturing Process developed with respect to any product design shall belong to and be the sole and exclusive property of Adams-Campbell. The sale of any products hereunder does not convey any license by implication, estoppel or otherwise covering combinations of the products with other equipment data or programs. Adams-Campbell retains the copyright in all documents, catalogs and plans supplied to Buyer pursuant to or ancillary to the contract. Unless otherwise agreed in writing, Buyer shall obtain no

interest in any mask or other tooling used in the production of any Adams-Campbell product.

**10. Confidential Information.** Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge, disclose, or communicate to any third party any information of the other that it reasonably knows to be confidential ("Confidential Information"). Confidential Information shall not include information that was known to the receiving party prior to disclosure hereunder, or becomes publicly available or otherwise available to the receiving party other than through a breach by the receiving party of its obligations hereunder.

**11. Force Majeure.** Adams-Campbell shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of Adams-Campbell. The anticipated delivery date and Confirmed Shipping Date, as applicable, shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

**12. Assignment and Subcontracting.** Adams-Campbell shall be entitled at all times to assign its rights under any Sales Quotation (in whole or in part), or other agreement to which it is a signatory, or to subcontract any part of the work or services to be provided under such agreements as it deems necessary or desirable. Buyer may not assign or otherwise transfer its rights or obligations under these Terms or under any Sales Quotation without the prior written consent of Adams-Campbell. No attempt to assign or transfer in violation of this provision will be binding upon Adams-Campbell.

**13. Notices.** All notices or other communications required or permitted to be given pursuant to these Terms or the Sales Quotation shall be in writing and shall be delivered personally or sent by overnight courier or by certified mail, return receipt requested. Notices delivered personally or sent by overnight courier shall be effective on the date received, while notices sent by certified mail, return receipt requested, shall be deemed to have been received and to be effective three (3) business days after deposit into the mail. Notice to Adams-Campbell shall be to Adams-Campbell Co., Ltd., 15343 Proctor Avenue, City of Industry, CA 91745, and notice to Buyer shall be to the address set forth in the Sales Quotation.

**14. Waiver.** Failure by Adams-Campbell to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.



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**15. Applicable Law.** Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the State of California, USA, without regard to its conflicts-of-laws rules.

**16. Attorneys' Fees.** Should a lawsuit or arbitration be commenced to interpret or enforce the terms of these Terms or any Sales Quotation, the prevailing party shall be entitled to recover costs and attorneys' fees in addition to any other recovery to which such party may be entitled.