

TERMS AND CONDITIONS OF SALE

1. **GENERAL:** These Terms and Conditions (the “Agreement”), in conjunction with the specific terms of each purchase, which are detailed in each Sales Order (as defined below), constitutes a legally binding contract between Raphael Zollingers Designs, LLC, and Buyer (as defined below).
2. **DEFINED TERMS**
 - A. **Buyer:** Any person buying or offering to buy goods from Seller.
 - B. **Delivery:** Shipment, Personal Delivery, or Installment as defined in Section 6, B.
 - C. **Late Payment:** Buyer’s failure to make a payment in the timeframe specified in Section 5, A.
 - D. **Partial Delivery:** Any Delivery of only some of the Products represented on the Sales Order.
 - E. **Products:** Items and services sold by Seller, including replacement products, fabricated materials, and third-party materials.
 - F. **Price:** The amount Buyer agrees to pay for Products as represented on the Sales Order.
 - G. **Sale:** Buyer’s purchase and Seller’s sale of Products, including the negotiations leading up to the Sales Order, the Sales Order itself, and Delivery.
 - H. **Sales Order:** The document governing the scope and terms of the sale of Products. The Sales Order may include a list of Products ordered by the Buyer, designs and drawings, the Price, additional applicable charges, and the estimated ship/install dates.
 - I. **Seller:** Raphael Zollinger Designs, LLC, and any of its affiliates, independent contractors, employees, or authorized representatives.
3. **PRICE QUOTES:** All Price quotes are FOB origin and do not include taxes. Price quotes are subject to change at any time prior to Seller’s issuance of a Sales Order.
4. **SALES ORDER**
 - A. Seller’s issuance of a Sales Order shall constitute acceptance of Buyer’s offer to purchase Products.
 - B. If any change is made to the scope or timing of a Sales Order, Buyer will issue a revised Sales Order that will supercede any previously issued Sales Order.
 - C. If Seller’s cost of materials changes after the issuance of a Sales Order, Seller may increase the Price accordingly to reflect the increased cost of materials.

5. PAYMENT

A. Timing of Payments

- i. **Deposit:** No later than [five (5)] days after the issuance of a Sales Order, Buyer must remit to Seller a deposit, including (i) 100 percent of the portion of the Price that represents the cost of materials and (ii) 50 percent of the portion of the Price that represents the cost of labor.
- ii. **Final Payment:** No later than [five (5)] days after Delivery, Buyer must remit to Seller payment in full for the balance remaining on the Price, without any deduction or setoff.

B. **Form of Payments:** Buyer must pay in U.S. dollars and is responsible for all bank charges and fees for letters of credit, wire transfers, or other instruments of payment. Buyer remains indebted to Seller for any rejected or invalid form of payment or for any reason that causes Seller not to receive payment.

C. **Partial Payments:** Buyer must remit pro rata payment on any Partial Delivery.

D. Late Payments

- i. A Late Payment will operate to make all other Sales Orders immediately due and payable.
- ii. A Late Payment will allow Seller to cancel further performance on any other agreement with Buyer.
- iii. A Late Payment will allow Seller to charge daily interest on Buyer's account balance at the maximum rate allowed by law.

E. If Seller determines that the financial condition of Buyer at any time jeopardizes Buyer's ability to perform under the Agreement, Seller may require cash payments or additional security before further performance.

F. Seller shall retain a security interest in the Products until Buyer has made the final payment.

6. DELIVERY

A. Delivery schedules specified in the Sales Order are approximate only. Seller is not responsible for any damage, including but not limited to special, consequential, or incidental damages, caused by delay in delivery whether resulting from causes within or beyond Seller's control.

B. Types of Delivery

- i. **Shipment:** When Seller uses a carrier for shipment, Delivery shall be FOB origin.
- ii. **Personal Delivery:** When Seller delivers Products directly to Buyer, Delivery is complete when Seller places Products at the Buyer's disposal. Delivery does not include inside delivery, unloading assistance, lift gate service, residential or job site delivery, or any other charges.
- iii. **Installment:** When Seller installs Products, Delivery is complete when Products are available for Buyer's use.

C. **Risk of Loss:** Risk of loss passes to the Buyer upon Delivery.

D. **Non-Conforming Delivery:** Failure of Buyer to notify Seller within seven (7) days of Delivery of visible defects in the Products, quantity shortages, or incorrect shipments, Buyer shall be deemed an unqualified waiver of any rights to return products on the basis of visible defects in the Products, quantity shortages, or incorrect shipments.

7. **PERFORMANCE DELAYS:** Seller shall not be liable for any delay or failure of performance caused by forces outside Seller's reasonable control, including but not limited to natural disasters, worker conflicts, or unavailability of supplies or other necessities.

8. LIMITED WARRANTY

A. This warranty shall be the exclusive remedy for any claim arising in connection with the sale, transportation, installation, use, misuse, maintenance, or repair of Products.

B. **Scope of Warranty:** Seller warrants that Products will conform to the Sales Order and will be free from latent defects in material and workmanship for a period of ninety (90) days after Delivery.

- i. This warranty will not apply:
 1. to damage resulting from installation or specification that does not comply with Seller's specifications;
 2. to any Products that have been subject to misuse, neglect, accident, or modification;
 3. to damage resulting from unusual wear and tear on or improper maintenance of Products;
 4. to damage resulting from the failure of a third-party's product; or
 5. to custom Products.

ii. This warranty does not cover:

1. costs relating to re-installation or fabrication of Products;
2. any special consequential, or incidental damages arising out of the use or application of Products.

C. **Claims Under Warranty:** To make a claim under this warranty, Buyer must submit a written request to Seller via email to rzollinger@gmail.com. Seller will make the final determination as to whether the Buyer's claim is covered under the warranty. If Seller determines that the Buyer's claim is covered under the warranty, Seller will have the option to replace the Product or refund the Price of the Product.

9. LIMITATION OF LIABILITY

- A. Buyer hereby releases and forever discharges Seller from any and all liability, losses, costs, expenses, causes of action, claims, or suits by Buyer or third parties arising in connection with the sale, transportation, installation, use, misuse, repair, or maintenance of Products.
- B. Buyer shall indemnify and hold harmless from any and all liability, losses, costs, expenses, including reasonable attorneys fees, causes of action claims and suits, whether based upon negligent or intentional acts or omissions of Seller, arising in connection with the sale, transportation, installation, use, misuse, repair, or maintenance of Products.

10. INTELLECTUAL PROPERTY

- A. All inventions discoveries, and improvements developed by Seller in the course of fulfilling Buyer's Sales Order are and remain the property of Seller.
- B. Buyer represents that the Products and any affixed labels are free from any known claim for copyright, trademark, or patent infringement and agrees to indemnify Seller against such infringement liability. Buyer shall provide Seller reasonable assistance in the defense of any suit arising in connection with copyright, trademark, or patent infringement, of which suit Seller shall have sole charge and direction. Buyer shall have the right to be represented in such suit by advisory counsel at Buyer's expense.

11. **GOVERNING LAW:** This Agreement shall be governed by the law of the State of New York.

12. **FEES:** Seller shall be entitled to recover from Buyer reimbursement for all attorneys' fees and other costs or expenses incurred in enforcing Seller's rights under this Agreement.