1. DEFINITIONS

In these Standard Terms of Sale ("Terms"), the following words shall have the following meanings (unless the context otherwise requires): “Company” means Creative Pultrusions, Inc., a Delaware corporation, or any of its authorized subsidiaries; “Contract” means the purchase order, sales agreement, or other agreement for the sale of Goods between Company and Customer to which these Terms apply; “Customer” means the person, firm, company or other entity who has placed a Delivery; “Delivery Point” means Company’s address or such other address as Company may specify and shall mean any premises where Company agrees to deliver Goods and shall be subject to the Contract by Customer. The following words are defined in the sections below: “Delivery” (Section 5.1); “HS ABC Policy” (Section 6.3); “Order” (Section 2.1); “Warranty” (Section 7.1); and “Warranty Period” (Section 7.3).

2. GENERAL

2.1 If an offer is not an offer to sell Goods. All orders for Goods by Customer for the (“Orders”), if accepted by Company in its sole discretion, will be accepted subject only to these Terms. DIFFERENT OR ADDITIONAL TERMS PROPOSED BY CUSTOMER OR IN OR IN CONNECTION WITH CUSTOMER’S PURCHASE ORDER FORMS OR OTHER DOCUMENTATION SHALL NOT APPLY TO THE PURCHASE OF GOODS HEREBUNDER AND ARE HEREBY EXPRESSLY REJECTED AND SHALL NOT BECOME PART OF THE CONTRACT. COMPANY’S AGREEMENT TO SELL GOODS TO CUSTOMER IS EXPRESSLY LIMITED TO THESE TERMS AND, IF APPLICABLE, A WRITTEN AND SIGNED AGREEMENT BETWEEN CUSTOMER AND COMPANY TO WHICH THESE TERMS ARE ATTACHED.

2.2 If, subsequent to this Contract, any sale is concluded with the same Customer by fax, telegram, electronically or orally, or by any combination of these, without express reference to these Terms, these Terms shall apply unless expressly modified in a writing signed by both Company and Customer.

2.3 Any statement or representation by Company or its employees or agents upon which Customer intends to rely must be set out in a writing and signed by both parties. Any statement or representation which is not so confirmed in a writing is folowed or acted upon entirely at Customer’s own risk. For the avoidance of doubt, illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of Company and statements of opinion and are provided for information only and form no part of the Contract.

2.4 All quotations shall automatically expire on the expiration date listed in the quotation, if any, but in no event later than (60) days from issuance, and are subject to withdrawal by written or oral notice at any time.

2.5 Verbal, telephone, fax, or email Orders will be executed at Customer’s sole risk and must be confirmed in writing received by Company within 72 hours. No Order shall be deemed to have been accepted by Company until written confirmation of its acceptance is received by Customer from Company.

2.6 No Order which has been accepted by Company may be cancelled by Customer except with the agreement of Company. No amendments to the terms of the Order or acceptance of its acceptance is received by Customer from Company.

2.7 Company may cancel an Order at any time by serving notice in writing on Customer if it does not receive, on request, satisfactory (in Customer’s sole opinion) credit references in relation to Customer. If Company cancels an Order pursuant to this Section it shall have no liability whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by Customer as a result of or in connection with such cancellation.

3. PAYMENT

3.1 In the supply of Goods, prices do not include the cost of Delivery of or all import or customs duties or any other applicable taxes or governmental impositions unless otherwise stated in writing by Company, which taxes, impositions and duties shall be the sole responsibility of Customer. All prices are subject to the addition of any value added tax.

3.2 Company reserves the right at any time prior to Delivery, to increase the price of the Goods to reflect any increase in the cost to Company which is due to any factor beyond the control of Company (including but not limited to, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or any other costs of manufacture), any changes in Delivery dates or quantities, or specifications for the Goods. Company will promptly tender a notice in writing to Customer of such changes or increases and request that Company waive any such changes or increases.

3.3 Company shall be entitled to receive payment for Goods before or after Delivery. Goods will be tendered Delivery. No Order which has been accepted by Company may be cancelled by Customer unless Company is notified in writing of its cancellation, which notice shall be effective upon the written acknowledgment of its receipt by Company from Company.

3.4 The date for Delivery shall be in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from Customer. If Customer is ordering Goods for Delivery outside of the country of manufacture by Company, such Goods may be subject to import duties and taxes which are levied when the Goods reach the specified destination. Customer will be responsible for payment of such import duties and taxes. Customer will comply with all laws and regulations of the country for which the Goods are destined and any breach thereof will be at Customer’s own risk.

3.5 The Customer shall (and shall procure that its sub-contractors and agents shall):
(a) observe the work rules and safety regulations of Company while on the Company premises;
(b) strictly follow all instructions and installation materials related to the Goods and not make any alteration, modification or addition to the Goods or packaging (or any alteration of the Goods, or use of products or packaging with the Goods, shall be a material breach of these Terms and void any warranties made by Company for the Goods).

4. PRICES

4.1 Title to the Goods will pass to Customer upon Company’s Delivery of the Goods.

4.2 Unless otherwise agreed between Company and Customer in writing, risk of damage to or loss of the Goods will pass to Customer upon Delivery. When Goods are transported by Company’s own vehicles, Delivery shall be deemed to have taken place when Company receives cleared funds from Customer.

4.3 No claim for Goods damaged in transit will be considered by Company unless Company uses its own transport for Delivery and unless:
(a) an appropriately authenticated copy of the Goods received damaged, (signed) is clearly made by Customer on the delivery note;
(b) Company is advised in writing or by motor carrier rules;
(c) Company is advised in writing within three days of Delivery.

4.4 No allowance for claims for short deliveries will be made unless (a) notice is provided to Company within three days of Delivery and (b) Company is given an opportunity to verify the same.

4.5 For the avoidance of doubt, where Customer collects the Goods from the Delivery Point or where a third party collects the Goods for transport to Customer, Customer shall have no liability for any Goods for any damages incurred in transit.

5. WARRANTY AND LIABILITY

5.1 Unless otherwise agreed in writing by Company, delivery shall be deemed to take place when the Goods are made available to Customer at the Delivery Point for collection by Customer or its carrier (“Delivery”).

5.2 Any and all dates and periods specified by Company for Delivery are estimates only and do not constitute a condition of the Contract. Failure to meet times specified by the essence of the Contract shall not be made of the essence by notice. Company shall have no liability for any damages, losses, costs or expenses whatsoever or in connection with the failure by Company to meet any Delivery times specified in the Order. Customer shall have no right to cancel an Order for the Goods in accordance with the Contract. Company will endeavor to comply with any reasonable request by Customer for postponement of Delivery but shall be under no obligation to do so and Customer is obliged to agree to such postponement as specified by Company. Where postponement is agreed by Company in writing Customer shall, if required, pay all costs and expenses including a reasonable charge for storage and additional labor and material costs incurred and any costs incurred by Company in relation to any insurance payments reasonably made by it. Company reserves the right to deliver the Goods to Customer in instalments. Where the Goods are delivered in instalments, each Delivery shall constitute a separate contract and no right by Company to deliver any one or more of the instalments in accordance with these Terms or any claim by Customer in respect of any one or more instalments shall not entitle Customer to treat the Contract as a whole as repudiated.

6. RESTRICTIONS

6.1 Unless otherwise agreed, Customer shall not use, sell, transfer, assign, independently reuse or manufacture or adapt the Goods or any part of the Goods for any purpose other than for the purpose for which the Goods are intended by Company.

6.2 Company used its own transport for Delivery and unless:
(a) Customer is entitled to invoice Customer for the price at any time after Company has given Customer an opportunity to verify the same.

6.3 Customer is obliged to take Delivery at such date and time as specified by Company.

6.4 Any allowance for claims for short deliveries will be made unless (a) notice is provided to Company within three days of Delivery and (b) Company is given an opportunity to verify the same.

6.5 For the avoidance of doubt, where Customer collects the Goods from the Delivery Point or where a third party collects the Goods for transport to Customer, Customer shall have no liability for any Goods for any damages incurred in transit.

7. THE FOLLOWING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY SOME LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.1 For any defects in any workmanship or materials, Company warrants that the Goods will comply in all material respects with any specifications for the Goods agreed to in writing by Company and Customer. If no specification for the Goods has been agreed to in writing between Company and Customer, Company warrants for and during the Warranty Period that the Goods will comply in all material respects with any specifications for the Goods which Company has agreed to in writing between Company and Customer in writing. Company warrants for and during the Warranty Period that the Goods will comply in all material respects with any specifications for the Goods which Company has agreed to in writing between Company and Customer. Company warrants for and during the Warranty Period that the Goods will comply in all material respects with any specifications for the Goods which Company is required to comply with by any applicable law or regulation.

7.2 Any claim for any defects in any workmanship or materials must be notified to Company in writing within ten (10) days of the Goods being delivered to the Customer. Any claim not notified in writing within ten (10) days of the Goods being delivered to the Customer will be deemed to have been waived by Customer.

7.3 Any defects not apparent on visual inspection, within twelve (12) months from the said delivery date (such 60 days or 12 months, as applicable, the “Warranty Period”). All Goods declared to be defective shall be subject to Company’s inspection in accordance with return shipping instructions that Company may provide to Customer in writing and, if the Goods are found by Company to be defective, Customer shall pay all costs and expenses incurred in connection with such return, including the return shipping costs, together with all reasonable charges for labor and materials required to repair the Goods. Customer shall, if required, pay all costs and expenses including a reasonable charge for storage and additional labor and material costs incurred and any costs incurred by Company in relation to any insurance payments reasonably made by it. Company reserves the right to deliver the Goods to Customer in instalments. Where the Goods are delivered in instalments, each Delivery shall constitute a separate contract and no right by Company to deliver any one or more of the instalments in accordance with these Terms or any claim by Customer in respect of any one or more instalments shall not entitle Customer to treat the Contract as a whole as repudiated.

7.4 Any claim with respect to defective Goods shall be made against the firm that manufactured the Goods and Company shall have no liability for any damages, losses, costs or expenses whatsoever or in connection with the failure by Company to meet any Delivery times specified in the Order. Customer shall have no right to cancel an Order for the Goods in accordance with the Contract. Company will endeavor to comply with any reasonable request by Customer for postponement of Delivery but shall be under no obligation to do so and Customer is obliged to agree to such postponement as specified by Company. Where postponement is agreed by Company in writing Customer shall, if required, pay all costs and expenses including a reasonable charge for storage and additional labor and material costs incurred and any costs incurred by Company in relation to any insurance payments reasonably made by it. Company reserves the right to deliver the Goods to Customer in instalments. Where the Goods are delivered in instalments, each Delivery shall constitute a separate contract and no right by Company to deliver any one or more of the instalments in accordance with these Terms or any claim by Customer in respect of any one or more instalments shall not entitle Customer to treat the Contract as a whole as repudiated.

7.5 The Warranty is non-transferable and does not extend to any other person or entity and is not assignable.

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7.6 This Warranty shall not apply (a) if the Goods have been subject to improper storage, accident, misuse, or unauthorized modifications, alterations, or repairs, or have not been installed, operated, and maintained in accordance with procedures approved by Company, (b) to normal wear and tear, (c) to any error, omission or defects contained in the specifications or designs specifications by Customer or (d) to any components manufactured by Customer or a third party not approved by Company.

7.7 Customer shall indemnify and keep Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and, loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by Company as a result of or in connection with any breach by Customer of any of the obligations under this Contract, including without limitation, any modification, misuse, or unapproved alteration of, or use of non-approved components with, the Goods.

7.8 To the fullest extent permitted by law, under no circumstances will Company be liable to Customer for any amount in excess of the price paid, or to be paid, for the Goods for any claims, losses, costs, liabilities, causes of action, suits, demands, judgments, obligations, fines, penalties, damages, requirements, violations, and expenses (including without limitation, attorneys’ fees, court costs, and costs of investigation) of any nature, kind, or description, whether based in contract, warranty, indemnity, or tort (including negligence and strict liability), of any person or entity, directly or indirectly, arising out of, resulting from or related to the Contract or the Goods.

8. TERMINATION

8.1 Company shall be entitled, without prejudice to Company’s other rights and remedies, either to terminate wholly or in part any or every Contract between Company and Customer and/or to suspend any further deliveries of Goods in any of the following circumstances;

(a) non-compliance by Customer with Company’s terms of payment;

(b) Customer has failed to provide a letter of credit or guarantee, bill of exchange or any other security required by the Contract or reasonably requested by Company;

(c) upon Customer’s dissolution, insolvency, filing of a voluntary or involuntary petition under any law relating to bankruptcy, appointment by a court of a temporary or permanent receiver, trustee or custodian for Customer’s business, or an assignment for the benefit of creditors, of Customer;

(d) Customer becomes unable to satisfy its debts as they fall due or ceases or otherwise defaults in the performance of the obligations under this Contract; or

(e) Customer or any connected person commits any breach of this or any other Contract whenever made between Customer and Company; or

(f) there has been, or Company suspects there has been, a breach or there has been a breach of any of the provisions of Section 13 below.

9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

9.1 All intellectual property, including without limitation, all drawings, installation instructions, documents, confidential records, computer software and other information supplied by Company or otherwise obtained by Customer, whether produced by itself or a third party, are supplied on the express understanding that all intellectual property rights are reserved to Company (or the third party) and that Customer will not, without the written consent of Company, give away, loan, exhibit or sell any such intellectual property or other information or extracts from them, or copies of them, or use them in any way except in connection with the Goods in respect of which they are issued.

9.2 All claims for alleged infringement of patents, trademarks, registered designs, design rights or copyright received by Customer relating to the Goods must be notified immediately to Company. If requested by Company, Customer must be entitled to have conduct of any proceedings relating to any such claim in such manner as Company thinks fit and Customer will provide Company such reasonable assistance as Company may require.

9.3 If any allegations shall be made against Customer to the effect that the supply of the Goods infringes the intellectual property rights of any third party, Company has reason to believe that such allegation is likely to be made, Company may at its option and expense modify or replace the Goods so as to avoid the infringement (but without adversely affecting the overall performance of the Goods), or obtain for the benefit of Customer the right to continue to use the Goods, or repurchase the Goods at the Contract Price as reduced by a reasonable provision for depreciation. If Company pursues any of such options, Customer will have no rights or remedies against Company arising directly or indirectly out of the alleged infringement.

10. FORCE MAJEURE

In the event of the performance of any obligation by Company being prevented, delayed, or interrupted in any way through unforeseen circumstances, such as war, riot, civil commotion, strikes, lock-outs, accidents, flood, fire, explosion, or by any other cause beyond its reasonable control (including the delay or failure to supply of any supplies of Company), Company may suspend or treat as impossible the performance of any obligation to Customer without liability for any loss.

11. HEALTH AND SAFETY

Customer agrees to pay due regard to any information supplied by Company relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times whereas, costs, charges, expenses, used, cleaned, serviced or maintained by any person and Customer undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as far as reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above.

12. TESTING AND INSPECTION

12.1 Testing and inspection if specified by Customer or his agent shall be at Company’s desired location (at Customer’s expense) and such testing inspection shall be final and conclusive as to the results thereof.