



**Wind Mill Slatwall Products**  
200 Balsam Rd • Sheboygan Falls WI 53085

## Terms and Conditions

Sales of products ("**Products**") or services ("**Services**") by Wind Mill to Customer are governed by these Terms and Conditions of Sale ("**Terms**"), unless the parties have entered into a mutually executed written agreement containing terms and conditions applicable to this transaction. Acceptance by Customer of delivery of any product or service from Seller indicates acceptance of these Terms. Acceptance by Wind Mill of Customer's purchase order is expressly limited to and conditioned upon Customer's acceptance of these Terms. Any additional, inconsistent or conflicting terms and conditions on or contained in Customer's purchase order or any other document issued by Customer at any time shall be inapplicable to any sale made hereunder and shall not be binding in any way on Wind Mill. These Terms may only be modified, waived, or amended by a writing signed by Wind Mill. As used herein, the term "**Customer**" shall mean the party issuing the purchase order to Wind Mill for the Products or Services (or otherwise ordering or purchasing the Products or Services from Wind Mill in the event no purchase order is issued), regardless of whether or not the Customer is the end user of the Products or Services, and the term "Wind Mill" shall mean Amerhart, Limited, d/b/a Wind Mill Slatwall Products.

### **Details of Manufacture**

General specifications and drawings are intended to solely convey the details of manufacture in use at the time of sale.

### **Ordering Information**

Terms: Net 30 days from date of invoice. All estimates, proposals and invoices are in US Dollars.

. Open account status will be made only if the Customer has an acceptable credit rating and a signed credit application. Non-credit accounts require pre-payment by MasterCard, Visa, Discover, or American Express, business check or ACH debit. Wind Mill's then-standard service charge will be applied to each returned check. Amounts not paid by Customer when due shall bear interest at the rate of 18.0% per annum, or the maximum permitted by law, whichever is less. Customer shall notify Wind Mill of any items disputed in good faith relating to an invoice within 15 days after the invoice date in writing specifying the nature of the disputed item, but in no event is Customer entitled to withhold, debit or set off any invoiced amounts without Wind Mill's express prior written approval. Wind Mill reserves the right to delay shipment pending payment of past due account balances. Wind Mill also reserves the right, as its option and without liability therefore, to divert to itself any shipment in transit in event of insolvency of the Customer or other condition which, in Wind Mill's sole discretion, provides a reasonable basis for a determination that payment will not be made for the Product or Services. Terms of payment and prices are subject to change at any time at Wind Mill's sole discretion and without notice. Terms are provided on each invoice.

### **Taxes**

All federal, state, provincial, and local taxes, tariffs, and duties (including sales, excise, and other forms of taxes) are not part of the quoted price and are the sole responsibility and obligation of the Customer. Customer acknowledges and agrees to pay all such taxes, tariffs, and duties passed through to Customer. The Customer, in the absence of proper exemption documentation, agrees to pay all such taxes, tariffs, and duties passed through to Customer.

### **Acceptance of Orders**

All orders are subject to written approval and acceptance of Wind Mill are not binding on Wind Mill until and unless so approved and accepted. The acceptance of any order will supersede all prior communications and constitute a complete and binding contract which cannot be modified or canceled without the written consent of both parties. Wind Mill reserves the right to allow or prorate shipments against all orders, whenever, in its judgment, an oversold condition exists as to any particular products manufactured or sold by it.

### **Inspection and Claims**

Customer is responsible to check each delivery of Products, specify in writing any nonconformity (including shortage or damage), and provide notice of rejection of nonconforming Products to Wind Mill no later than 15 days after the delivery of the Product. In the event inspection, notice and rejection is not performed in accordance with this Section, Customer will be deemed to have accepted the Products as delivered, and Wind Mill will have no liability whatsoever for nonconforming Products. Customer must retain nonconforming Products for inspection by Wind Mill for at least two (2) weeks after notifying Wind Mill of the nonconformity, or longer if requested by Wind Mill, and, if requested by Wind Mill, return such Products to Wind Mill. Products may not be returned to Wind Mill absent Wind Mill's written instructions to do so. Physical acceptance by Wind Mill of returned Products shall in no way be deemed an agreement by Wind Mill of any claim of nonconformity by Customer. Wind Mill shall have a reasonable time after receipt of the allegedly nonconforming Products to inspect and test the Products and, to the extent Products are determined to be nonconforming, to repair or replace the Products or refund the purchase price, with the remedy to be selected by Wind Mill in its sole discretion as the sole and exclusive remedy of Customer and liability of Wind Mill. The Customer shall have no right to deduct the amount of any claim from Wind Mill's invoice until claim is allowed by Wind Mill or adjudicated by proper authority. Wind Mill is not responsible for delays or damage in transit. If the Customer has arranged the freight, the Customer must file all freight claims or shortages with the carrier. Wind Mill will give all reasonable assistance to the Customer for these claims but is not responsible for the outcome of the claim.

### **Disclaimer of Warranty**

WITH THE EXCEPTION OF ANY LIMITED WARRANTY EXPRESSLY SET FORTH IN A WARRANTY STATEMENT DOCUMENT AUTHORIZED BY WIND MILL AND PROVIDED IN WRITING DIRECTLY TO THE CUSTOMER WITH RESPECT TO A PRODUCT DIRECTLY MANUFACTURED BY OR SERVICE DIRECTLY PROVIDED BY WIND MILL, NO WARRANTIES WHATSOEVER (INCLUDING RELATING TO PRODUCTS AND SERVICES PROVIDED OR DELIVERED BY WIND MILL) ARE MADE BY WIND MILL OR ANY PERSON ON WIND MILL'S BEHALF, AND WIND MILL DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

### **LIMITATION OF LIABILITY**

WIND MILL AND ITS AFFILIATES SHALL NOT BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES OR FOR ANY LOSS OF USE, PROFITS, REVENUE, OPPORTUNITY, CAPITAL, FINANCING, PRODUCT OR BUSINESS OPPORTUNITY, AND WIND MILL'S CUMULATIVE LIABILITY ARISING OUT OF THESE TERMS SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE PURCHASE PRICE PAID TO WIND MILL BY CUSTOMER FOR THE SPECIFIC PRODUCT OR FOR THE SERVICES GIVING RISE TO THE LIABILITY. THIS SECTION SHALL APPLY NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OR OTHERWISE AND REGARDLESS OF WHETHER LIABILITY OR REMEDIES ARISE IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT) STRICT LIABILITY, PRODUCTS LIABILITY, PROFESSIONAL LIABILITY, INDEMNITY, CONTRIBUTION, STATUTE OR ANY OTHER THEORY OR CAUSE OF ACTION.

### ***Returned Materials***

All Product returns must be pre-approved by Wind Mill and returned in accordance with Wind Mill's then current return conditions and requirements. Material must be in saleable condition, in original cartons, and will be subject to a 25% re-stocking fee. No returns will be accepted by Wind Mill after 30 days from shipping date.

### ***Custom Orders***

Any order from Customer that is to be manufactured by Wind Mill in accordance with Customer's drawings or written specifications is considered a "custom order." Any cancellation of the order by the Customer must be through written notice in advance of the production as promptly as reasonably possible. Customer will be invoiced for all materials produced up to the point of cancellation, and produced material will be shipped as per the order if requested by the Customer. Produced material is defined as all finished goods and work in progress at time of notice.

### ***Delivery and Freight***

Wind Mill reserves the right to determine the shipping point on all shipments, the carrier (full routing), and type of transportation equipment on truckload and carload shipments. Delivery to the carrier at point of origin shall constitute delivery to the Customer on such delivery (FOB Wind Mill). Wind Mill shall attempt to comply with but will not guarantee requested shipping date, loading, and routing instructions. Wind Mill shall not be liable for failure to deliver or delay in delivery of any order regardless of cause. All shipments shall be on a prepaid and add basis (exceptions to be negotiated on an account-by-account basis). Shipping charges may not reflect the actual carrier costs.

### ***Storage and Warehousing***

Orders postponed by the Customer beyond the original ship date could be subject to storage and warehousing charges at 1% per month (APR) on the value of the order beginning the 1<sup>st</sup> of the month following the originally agreed upon date of shipment. The period of storage and warehousing must be agreed upon between both Wind Mill and Customer in writing.

### ***Governing Law***

These Terms and the transaction between Customer and Wind Mill hereunder are governed by and interpreted in accordance with the laws of the State of Wisconsin without giving effect to its conflicts of law principles. Customer agrees that any action relating to or arising out of these Terms or the transaction between Customer and Wind Mill shall be litigated in the Circuit Court of Brown County, Wisconsin, or the United States District Court for the Eastern District of Wisconsin. Customer hereby consents to venue and submits to the personal jurisdiction of such courts. Any legal action against Wind Mill for breach of these terms of sale, including any warranties, must be instituted within one (1) year after delivery of the products that are part of the transaction. The United Nations Convention for the International Sales of Goods does not apply to any transaction and/or purchase of product between Wind Mill and Customer.

### ***Miscellaneous***

If any provision of these Terms is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of these Terms shall remain in full force and effect. These Terms are binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties. These Terms shall not be altered or interpreted by any course of dealing between Wind Mill and Customer or industry practice. These Terms, together with Wind Mill's final quote, order acknowledgment and invoice, constitute the entire agreement between the parties with respect to, and supersede all prior representations and agreements concerning, the subject matter hereof. No failure or delay by either party in exercising any right, power, or privilege under these Terms shall operate as a waiver or preclude the exercise of any other or further right, power, or privilege hereunder. Customer may not transfer or assign these Terms, whether by operation of law or otherwise, without the prior written consent of Wind Mill.