

**TERMS &  
CONDITIONS  
OF SALE**



**awake**

WINDOW & DOOR CO.



## **TERMS & CONDITIONS OF SALE**

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Thank you for your interest in Awake Window & Door Co. ("Awake"). The following are the terms and conditions (the "Terms") that will apply to any quote or purchase of Awake's window and door products ("Products"). Please read these Terms carefully. By requesting a quote or placing an order with Awake Window & Door Co., you agree to be bound by these Terms.

These Terms may not be modified or amended by any oral agreement, course of performance, trade usage, or course of dealing, unless such terms are in a writing signed by a Senior Officer of the Company. In the event of any inconsistencies between the terms of the body of this SOW and the terms of the Exhibit(s) hereto, the terms of the body of this SOW shall prevail.



## **OBTAINING A QUOTE & PLACING AN ORDER**

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A Quote can be obtained using our self-serve Awake Quoting Tool or contacting a Sales Representative at (833) 292-5393x1 or [sales@awakewdc.com](mailto:sales@awakewdc.com). The pricing reflected in a written Quote is valid only for the products, sizes and configurations specified and will be valid until the expiration date noted on the Quote.

An order can be placed by submitting:

- (a) a signed quotation and shop drawings;
- (b) a signed approval relating to finish colors or other specialty items as requested by Awake; and
- (c) a 50% deposit of the full purchase price indicated on the quotation via ACH or check.

Within three (3) business days you will receive a written approval of the order (the "Order Confirmation") that lists all order details, including product type, quantity, sizes, and configurations. If you do not receive an Order Confirmation, your order has not been received or accepted by Awake. Please contact your sales representative.

Carefully review the Order Confirmation and any shop drawings for consistency with order specifications and any product warnings or limitations that may apply to your selections. Changes may only be made within twenty-four (24) hours of issuance of the Order Confirmation (the "Order Review Period"). However, even changes made within the Order Review Period may result in changes to the estimated shipment date, multiple shipments, or price changes. Any changes or cancellations made after the Order Review Period, may also result in fees up to and including the full purchase price of the originally ordered Products.

## **PRICING & SALES TAX**

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All quoted pricing is subject to change until your order is placed and an Order Confirmation is received. If you are claiming a tax exemption, you must submit a fully completed Transaction Privilege Tax Exemption Certificate annually for the State you are located in.

## **PAYMENT TERMS & INVOICES**

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A 50% deposit is due at the time of order placement.

If you elect to pick up an order from Awake's facility via your own trucks (a "Will Call Shipment") or a third-party carrier arranged by you (a "Customer Arranged Shipment"), the final invoice for the balance due will be generated at the time of order completion.

In all other circumstances, the final invoice for the balance due will be generated at the time of shipment.

Payment is due within 30 days from the invoice date. Any invoices not paid within 30 days shall be subject to interest of 1 ½ % per month. If for any reason an invoice remains unpaid for more than 45 days or other grounds for insecurity arise with respect to a due payment, Awake may, in its sole discretion: (i) demand a different form of payment or payment terms or other assurance; (ii) suspend the Dealer's ability to obtain Quotes on new orders; and/or (iii) stop production or halt shipments on any other open orders until the account is brought current. Any exceptions to the terms described in this Section must be in writing and approved by a Senior Officer.



## **PRODUCTION & LEAD TIMES**

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Product lead times and shipping dates are subject to a variety of factors that are outside Awake's control. Although Awake will provide an estimated lead time and shipping date at the time of Order Placement, such times are estimates only and are subject to change without notice, including after production begins. Even if Awake is made aware of a particular customer schedule, deadline, expectation, need or request, lead times and shipping dates cannot be guaranteed. Awake will not be liable for any costs, fees, or damages resulting from delays, including, but not limited to, loss of profits or revenue, loss of use, relocation costs, or liquidated damages.



## **FREIGHT & SHIPPING**

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Local shipments – some local shipments may be made via Awake vehicles F.O.B Dealer's facility with the risk of loss passes to Dealer at the time of delivery.

Other shipments - all other shipments will be made F.O.B. Awake's facility and are transported via a third-party freight carrier. Risk of loss passes to Dealer upon placement of the product with the third-party carrier.

Regardless of the time risk of loss passes, title does not pass on any product unless and until it is paid for in full.

Prior to shipping, all products are inspected and acknowledged to be in good condition in a signed writing.



## STORAGE FEES

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Will Call or Customer Arranged Shipments must be picked up within fourteen (14) days from the date Awake provides notice that the order is ready for pick up. Such notice may be provided orally or in writing. The following storage fees may apply to any orders that are not picked up within fourteen (14) days:

Order Size	Applicable Fee
< 10 units	\$100/day
11-30 units	\$150/day
> 31 units	\$200/day



## DELIVERY, INSTALLATION, & ACCEPTANCE

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Windows and doors containing glass are bulky, heavy, and require trained professionals and proper tools & equipment to safely offload and install. For more information and safety tips and guidelines see [www.awakewdc.com/warranties](http://www.awakewdc.com/warranties).

It is your responsibility to ensure at least two trained construction professionals are on site at the time of delivery to accept shipments with the proper equipment.

Unpack and carefully inspect the products upon delivery and prior to installation. Any delivery damage, product flaw, or nonconformity with the specifications in the Order Confirmation must be reported to your Sales Representative at (833) 292-5393x1 or [sales@awakewdc.com](mailto:sales@awakewdc.com) within 48 hours from delivery. ([www.awakewdc.com/warranties](http://www.awakewdc.com/warranties)) Any claims of nonconformity shall follow the procedures set forth in Awake's limited express warranty referenced below.

Failure to timely report a claim of delivery damage, defect, or non-conformity within the time frames described in this section will be considered a waiver of such claim and an acceptance of the products as delivered. Under no circumstances, will Awake be responsible for any shipping damage, product defects, or nonconformities that were visible at the time of delivery, once the products are installed.

Awake does not install its own products and therefore, will not be responsible for damages resulting from improper installation methods or techniques, improper materials (such as sealant, flashing or glazing materials) or resulting product damage.

## **WARRANTIES**

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Awake provides a 10-Year Limited Warranty with its products, which is available at ([www.awakewdc.com/warranties](http://www.awakewdc.com/warranties)).

AWAKE'S 10-YEAR LIMITED WARRANTY, DESCRIBED HEREIN, IS THE EXCLUSIVE WARRANTY OFFERED BY AWAKE. AWAKE EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS OF ANY KIND, EITHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, CONDITION, DURABILITY, OR SUITABILITY FOR AN INTENDED DESIGN, PROJECT, PROPERTY, APPLICATION, CLIMATE, USE OR PURPOSE.

## **SITE CONDITIONS & PRODUCT SUITABILITY**

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Awake provides customization options for a wide variety of designs and project conditions. However, not every product fits every project. Awake does not perform any analysis of your project conditions, climates, design, materials or finishes. Nor does it make any determination as to whether the particular product type, size, configuration, or customized options will be suitable for the intended application, purpose, or design, even when such facts are known to Awake personnel.

Therefore, Awake will not be responsible for any damages resulting from the suitability of the products and specifications selected, nor will it be responsible for inaccurate orders, faulty building design, Product modifications, or failure to ensure that the selected fenestrations will meet any particular law, code, or regulation.



## DEALER RELATIONSHIP & RESPONSIBILITIES

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Awake's products are sold exclusively through our network of authorized dealers. To apply to become an awake dealer visit ([www.awakewdc.com/dealers](http://www.awakewdc.com/dealers)).

The relationship between Awake and its Dealers is that of manufacturer and Dealer and is not a partnership, joint venture, or any other affiliation.

Authorized Dealers and their employees, subcontractors and agents are independent contractors and are not employees, subcontractors, representatives or agents of Awake. Therefore, Dealers are prohibited from: (i) acting as a legal representative or entering into any contract, agreement, or commitment on behalf of Awake; (ii) modifying these terms and conditions or warranties applicable to Awake's products, or (iii) making any misrepresentations about Awake's products, specifications, or performance standards.

Dealer is also responsible for ensuring or working with other construction professionals who will ensure: (i) Awake's products are installed properly by experienced construction professionals in compliance with Awake's Installation Instructions, Fenestration and Glazing Industry Alliance ("FGIA") requirements, and applicable codes and regulations; (ii) product warnings and safety information are reviewed and heeded (Please see "Safety Guide," "Care and Maintenance Guide," & "Extreme Weather Guide" at [www.awakewdc.com/warranties](http://www.awakewdc.com/warranties)); (iii) the evaluation of property conditions and applicable laws, codes, and regulations; (iv) the selected products, specifications, and configurations are suitable for the project, climate, and application; (v) contracts entered into with builders, homeowners, or end users (collectively ("Dealer's Customers") comply with all applicable laws and codes; and (vi) Dealer's Customers are provided with Awake's Care and Maintenance Guide ([www.awakewdc.com/care-maintenance](http://www.awakewdc.com/care-maintenance)).

Dealer is also responsible for ensuring that its employees, subcontractors, and agents conduct themselves in a professional and honest manner and do not engage in any conduct that is harassing, discriminatory, fraudulent, or misleading. Dealer must also maintain all insurance coverages and provide required certifications of insurance, as described in the Dealer Registration Application.



## **INDEMNIFICATION & LIMITATION OF LIABILITY**

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Dealer will defend, indemnify and hold harmless Awake and its employees, officers, directors, agents, and affiliates (collectively, "Affiliates") from and against all claims, damages, losses, costs (including attorneys' and expert fees) to the extent arising out of, resulting from, or connected with: (i) the breach of any Dealer responsibility or requirement described in this Agreement; or (ii) improper or faulty installation of Awake's products.

NO LIABILITY FOR DELAYS – AWAKE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ALLEGED TO ARISE FROM PRODUCTION OR SHIPMENT DELAYS (INCLUDING INITIAL SHIPMENTS AND ANY SUBSEQUENT REPLACEMENT SHIPMENTS), INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, RELOCATION COSTS, OR OTHER LIQUIDATED DAMAGES.

AWAKE WILL ALSO NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT OR PUNITIVE DAMAGES RESULTING FROM OR CONNECTED WITH ANY CLAIM, NO MATTER HOW CHARACTERIZED, ARISING FROM OR CONNECTED TO THE SALE, MANUFACTURE, OR PRODUCTION OF DEFECTIVE OR NON-CONFORMING GOODS. IN NO EVENT SHALL AWAKE'S LIABILITY EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS.



## **GOVERNING LAW & ARBITRATION**

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These Terms and any sale of products hereunder shall be governed and construed in accordance with the laws of the State of Arizona, without regard to conflicts of laws rules.

Any claim or dispute that may arise under this Agreement, shall be submitted to arbitration before a mutually agreed upon arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") for U.S. Sales. The arbitration need not be administered by AAA, unless the parties cannot agree on an arbitrator. The arbitration shall be conducted in Phoenix, Arizona. Except as provided herein, the arbitration shall not be brought or adjudicated on a class action, representative, or



consolidated basis. Dealer hereby expressly waives any and all rights to participate in any class action against Awake or assert any claim against Awake on any other representative or consolidated basis. Notwithstanding the foregoing, Awake shall be permitted, in its sole discretion, to join or consolidate any arbitration with Dealer with an arbitration between Awake and a third-party regarding the same claim or transaction. Any judgment on the award rendered by the arbitrator may be entered in any U.S. court having jurisdiction.

## MISCELLANEOUS

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**Severability** – In the event any provision in this Agreement is declared by any arbitrator or court of competent jurisdiction to be illegal, void, or unenforceable, such provision shall be enforced to the maximum extent enforceable and the other provisions shall not be affected but shall remain in full force and effect.

**Force Majeure** – Awake shall not be liable for delays or failures in performance hereunder arising from factors outside of its control, including, but not limited to, labor disputes, shortages, or accidents, shortages of materials, fuel, or power, pandemics or epidemics, riots, street closures, terrorism, cyber-attacks, governmental restrictions, mandates, or orders, fires, floods, or other weather conditions, or acts or omissions of Dealer or any other third-party.

**No Waiver** – In the event Awake decides, in its sole discretion, to deviate from any of the provisions in this Agreement, such exception must be in a signed writing to be valid and shall apply only to the limited circumstance and limited time for which it was granted and shall not be construed as a waiver of Awake’s right to strictly enforce any provision thereafter.

**Intellectual Property** – All intellectual property rights relating to the Products, Awake, and/or this Agreement, including but not limited to all trademarks, service marks, copyrights, patents, trade names, trade secrets, logotypes, photography, advertising and other commercial symbols, and goodwill (collectively “Intellectual Property”), whether registered or not, including, but not limited to those used on Awake’s website: ([www.awakewdc.com](http://www.awakewdc.com)) are and shall remain the sole property of Awake. Nothing in this Agreement shall be deemed to confer upon or transfer to Dealer any right, title, interest, license, or right to use Awake’s Intellectual Property.

**Confidential Information** – Dealer and Awake acknowledge that it may be necessary to share confidential information relating to each other’s products, services, pricing, employees, subcontractors, customers, financial data, plans, forecasts, policies, Intellectual Property, methodologies, procedures, algorithms, contracts, market intelligence, technical concepts, strategic analyses, internal developments, or other future plans (collectively “Confidential Information”). Both parties agree that such information shall not be disclosed to any third-party or used for any purpose other than the performance of this Agreement. In the event Confidential Information is required to be disclosed by applicable law, prompt notice of such prospective disclosure shall be provided to the disclosing party to permit the opportunity to seek appropriate relief. The Parties acknowledge that any use or disclosure of Confidential Information in a manner inconsistent with this provision may cause damage that cannot be remedied by monetary compensation alone and therefore, the damaged party may seek injunctive or other equitable relief, in addition to any other remedies available under law or this Agreement.



# GET IN TOUCH

**435 E GERMANN RD SUITE 104  
GILBERT, AZ 85297**

[www.awakewdc.com](http://www.awakewdc.com)  
(833) 292-5393