

# ANTHONY, INC.

## TERMS AND CONDITIONS OF SALE

The following terms and conditions shall apply to all transactions and agreements between Anthony, Inc., ("Anthony") and the other party to such transaction or agreement ("Buyer") with respect to the purchase of any goods from Anthony and/or the extension of credit by Anthony to Buyer for such purchase.

1. **PRICE.** Prices shown on the face of the sales invoice are F.O.B. the place of shipment as designated by Anthony, packaged for shipment and subject to change without notice.
2. **TERMS OF CREDIT.** All credit terms are net 30 days from date of invoice. Any deductions from the net invoice amount must be approved by a representative of Anthony authorized to make such changes. If credit is extended to Buyer, Anthony reserves the right to revoke such credit if Buyer fails to make timely payment for any goods delivered. Anthony reserves the right to require payment or other assurances which it deems necessary prior to the shipment of any goods, if, in Anthony's opinion, exercised in Anthony's subjective, good faith judgment, the Buyer's financial condition has deteriorated or the risk of non-payment has otherwise increased. Credit is subject to approval upon receipt of completed credit application. Any goods shipped prior to credit approval shall be shipped C.O.D., "Cashier's Check", or pre-payment. A \$25.00 charge will be applied for each returned check. Goods may not be returned for credit unless Anthony has granted prior authorization and an authorization number. A 1% per month charge will be assessed on past due amounts.
3. **SHIPMENT OF GOODS / RETURN OF GOODS.** Every effort will be made to ship the goods on the scheduled shipment date and to maintain production schedules consistent therewith provided however, Anthony shall not be liable for any claims or consequential damages arising from the failure to meet any scheduled shipping dates. If Buyer refuses shipment of any standard catalog products under an acknowledged order and those products are consistent with that order and are not delivered damaged or defective, then Buyer will be responsible for (i) return shipment of the products to Anthony in original shipping containers; (ii) return freight to Anthony prepaid by Buyer; and (iii) a restocking charge to be determined by Buyer of not less than 25% of the sales price. Buyer assumes the risk of any return shipment damage or loss, the cost of which will be assessed by Anthony and added to the restocking charge. No custom products or custom sizes of catalog items may be returned to Anthony for credit unless those products are not consistent with an acknowledged order or they are defective. If they are defective, Anthony reserves the right to cure the defect at the ship-to location.

Costs for special packaging and/or handling requested by Buyer will be billed to Buyer. Shipping terms are specified on the face of Anthony's quotation and/or price list, as applicable. Unless otherwise specified by Buyer in writing, Anthony shall select the method of shipment and direct shipment of materials to the specified delivery address of Buyer. In the event of any general freight increase or any governmental ruling or regulation that results in increased freight costs, Anthony may, without any advance notice, invoice Buyer for such additional costs. Acceptance and rejections of glass sheets, assembled sealed glass units, and finished doors shall be in accordance with the defect criteria set forth in Industry Specification ASTM C1036 -06 Standards, level Q3.

4. **RISK OF LOSS.** Subject to security interests retained by Anthony until payment for the goods is received in full, the title to such goods and risk of loss or damages thereto pass to Buyer upon completion of loading of goods on carrier at Anthony's factory. Buyer will unload shipments promptly and Buyer will be liable for any additional charges such as demurrage, storage, and labor incurred by its failure to do so. Any claims by Buyer for damages to the goods incurred during shipping shall be made to the carrier.

5. **WARRANTIES.** The products which Anthony manufactures and offers for sale are warranted to: (i) be free from defects in materials and workmanship; and (ii) perform in accordance with applicable refrigeration standards as of the date of manufacture for a period of 12 months from the date and place of shipment, provided that the installation and maintenance of such products have been performed strictly in accordance with Anthony's designated specifications (the "Warranty"). Anthony shall provide all necessary parts and labor at its cost to fulfill said Warranty. All parts will be shipped standard ground freight. The extent of Anthony's liability under the Warranty is limited to the repair or replacement, at Anthony's option, of any non-conforming products without charge, at Anthony's Sylmar manufacturing plant. Additionally, for a period of 10 years from the shipment date, Anthony will replace sealed glass units that are part of an original Anthony-manufactured door if the seal breaks and internal condensation results. Notwithstanding the foregoing, (i) with respect to Anthony-manufactured LED lighting products, the Warranty shall remain in effect for 5 years from the date of shipment with respect to components, and for 12 months from the date of shipment with respect to labor; (ii) with respect to Anthony-manufactured LifePlus Gaskets, the Warranty shall remain in effect for 3 years from the date of shipment with respect to components, and 12 months from the date of shipment with respect to labor; and (iii) with respect to Anthony-manufactured anti-fog coating, the Warranty shall remain in effect for a period of 12 months from the date of shipment. Anthony reserves the right to change the terms of the Warranty at its sole discretion at any time with or without prior notification of such change. The warranty applicable to the Products is located at <https://www.anthonymfg.com/docs/default-source/service-support-documents/anthony-limited-and-general-warranty-terms.pdf> and is incorporated herein by reference.

### No Warranty for Non-Standard Products.

A "Non-Standard Product" is any product that is different in any manner from any Anthony product that has been previously designed and manufactured by Anthony in accordance with its standard specifications. A Non-Standard Product also includes any standard Anthony product that has been specially designed or modified to meet a particular Buyer specification, or that contains any additional or substituted product, part, accessory, equipment, fixture, component or material, or that has been assembled, manufactured, produced, or installed by any method or process, which is different from Anthony's standard specifications for such product. Anthony expressly disclaims and makes no warranties, express or implied, as to the condition, design, utility, quality, adequacy, or capacity with respect to any standard or Non-Standard Product, including, without limitation, any warranty of merchantability or fitness of such product for a particular purpose or intended use, whether or not such product has been designated by Anthony as a Non-Standard Product.

All Non-Standard Products, whether sold separately, or incorporated and/or attached to standard Anthony products, and all services relating to such products, are sold to and accepted by Buyer "as is" and "with all faults". Without limiting any other provision of this purchase order, Anthony shall have no liability to Buyer for any claim, loss, damage, consequential damages or expenses associated with any Non-Standard Product and/or its use or operation, or any other equipment or property of Buyer caused by or alleged by to be caused by any such product or its use or operation, whether directly, indirectly, incidentally or consequentially, or by any inadequacy thereof or deficiency or defect therein.

The foregoing exclusion of warranty cannot be modified or waived except as expressly set forth in a writing signed by an officer of Anthony authorized to make such modification or waiver.

**THE ABOVE WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANTHONY SHALL NOT BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO INJURY TO PERSONS OR PROPERTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, ANTHONY'S ENTIRE LIABILITY, AND BUYER'S EXCLUSIVE REMEDY, IN LAW AND EQUITY OR OTHERWISE, WITH RESPECT TO ANY PRODUCTS PROVIDED BY ANTHONY IS SOLELY LIMITED TO THE AMOUNT PAID BY BUYER FOR THE PRODUCTS TO WHICH THE APPLICABLE CLAIM RELATES.**

6. **ACCEPTANCE OF PRODUCTS BY BUYER/CLAIMS:** Upon delivery, shipments must be inspected for damage, loss or shortage prior to acceptance from the carrier. If damage or shortage exists with respect to any shipment and it is not concealed, Buyer shall secure a notation of such damage or shortage from the delivering agent on the freight bill or delivery receipt. If damage is concealed, Buyer must notify Anthony within 5 days of its delivery and hold the merchandise for its inspection. Any claims for visible loss or damage should be filed by Buyer with Anthony in writing immediately upon receipt of the materials.

Buyer shall be deemed to have accepted the shipments on the terms contained herein upon the earlier of (i) full or partial payment for such shipments, (ii) verbal or written acceptance of Buyer, or (iii) failure of Buyer to make a claim within the time period set forth above. All claims of Buyer that materials delivered do not conform to the accepted order shall be handled as claims for breach of warranty and Buyer shall be limited to those remedies available for breach of warranty.

7. **CLAIMS BY BUYER.** Anthony shall thereupon be afforded a reasonable opportunity to inspect the goods. All claims not made in the time period and manner specified above shall be deemed waived. All actions, claims or defenses by Buyer shall be deemed waived unless commenced or asserted within 6 months of receipt of the goods. No claims for visible, external damage or shortage will be allowed unless they are accompanied by an inspection report or signed delivery receipt noting such loss or damage signed by a representative of the carrier and forwarded to the Anthony Vice President, Marketing & Sales within 30 days of the invoice date.

8. **CANCELLATION.** Orders may not be canceled after receipt by Anthony unless Anthony consents in writing to such cancellation. Cancellation will be granted only on terms indemnifying Anthony against any loss resulting from such action. At minimum, Buyer will be liable for all cost incurred on the order through the cancellation date.

9. **CHANGES BY ANTHONY.** Anthony reserves the right to change design, colors and specifications of any goods without notice to Buyer.

10. **PRICE ADJUSTMENTS.** The price of services or product(s) provided under this Agreement is subject to change within the discretion of Anthony due to increases in material costs related to tariffs, import duties, trade policy, pandemics/epidemics, commodity or material costs, supplier costs, labor costs or related impacts or market conditions. Such changes shall come into effect with reasonable prior written notice from Anthony to Customer. Such price change notification(s) to Customer shall also apply to prior orders or acknowledgments not yet fulfilled or in process, if indicated by Anthony.

11. **DEFAULT.** If Buyer defaults or fails to pay on the purchase of any goods or if a petition in bankruptcy is filed by or against Buyer, Anthony, in addition to other remedies, may repossess any goods which were previously delivered and for which payment has not been received, and may refuse to make further shipment of goods. Buyer agrees to pay Anthony's attorneys' fees, costs and expenses incurred as a result of Buyer's default or failure to pay, including but not limited to any collection or repossession expenses.

12. **ENTIRE AGREEMENT AND AMENDMENT.** The terms specified herein constitute the entire agreement between Anthony and Buyer with respect to the sale and purchase of the goods and any extension of credit. If Anthony and Buyer agree to amend or modify any terms and conditions specified herein, such amendment or modification must be expressly stated on the face of the sales invoice or by a written agreement duly executed by an officer of Anthony and the Buyer. Each sales offer or sales invoice is expressly limited to the terms herein and on such offer or invoice. Such terms shall control in the event of any variance between the terms offered by Anthony and any terms contained in Buyer's purchase orders or other documentation. Any additional or differing terms or conditions of the Buyer are deemed not to become a part of the transaction, even if such are known to Anthony, and even if such are not expressly objected to.

13. **INDEMNIFICATION.** Buyer shall defend, indemnify and hold harmless Anthony and its officers, directors, employees, agents and shareholders from and against any and all Losses arising out of the use, operation or possession of the Products by Buyer or its affiliates, directors, employees, agents or representatives; the negligent or willful act or negligent or willful omission of Buyer or its affiliates, officers, directors, employees, agents or representatives; or the alteration or modification of the Products or the use or combination of the Products with other products, devices or services by Buyer or its affiliates, directors, employees, agents or representatives. b. By Anthony. Anthony agrees to defend, indemnify, and hold harmless Buyer and its officers, directors, employees, agents and shareholders from and against any and all Losses arising out of the negligent or willful act or negligent or willful omission of Anthony or its affiliates, officers, directors, employees, agents or representatives; and any and all lien notices, lien claims, liens, encumbrances, security interests, or other lien rights of any kind filed by any party including without limitation, any subcontractor, which in whole or in part are based in Products or Services provided to Buyer.

14. **LIMITATION OF LIABILITY.** ANTHONY'S LIABILITY WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE AMOUNT RECEIVED BY ANTHONY

FOR THE PRODUCTS OR SERVICES GIVING RISE TO ANY CLAIM HEREUNDER. ANTHONY SHALL NOT BE SUBJECT TO AND EXPRESSLY DISCLAIMS ALL INDIRECT, SPECIAL, EXEMPLARY PUNITIVE, INCIDENTAL CONSEQUENTIAL, AND CONTINGENT DAMAGES WHATSOEVER RESULTING FROM ANTHONY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THE CONTRACT OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS SOLD OR SERVICES RENDERED PURSUANT HERETO, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, THE NEGLIGENCE OF ANTHONY OR OTHERWISE, AND WHETHER OR NOT SUCH LOSS WAS FORESEEABLE OR WHETHER ANTHONY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANTHONY SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY OR PERSONAL INJURY DAMAGES, PENALTIES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, SHUT DOWN OR SLOW DOWN COSTS, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, AND FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES. THE DAMAGE LIMITATIONS PROVIDED IN THESE TERMS AND CONDITIONS AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE BUYER'S SOLE REMEDY (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN). THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE.

15. **INSURANCE.** Anthony represents that it has in place, and covenants to maintain in place for one year after completion of all obligations specified in any order by Buyer, insurance at its own cost and expense, in amounts and of the types customarily accepted in the industry in which Anthony operates.

16. **CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of Anthony, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Anthony to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the Contract is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by Anthony in writing. Upon Anthony's request, Buyer shall promptly return all documents and other materials received from Anthony. Anthony shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. The parties agree that the provisions set forth in the NDA (if executed by the Parties), shall supplement and be in addition to the obligations of this Section. In the event of any conflict between this Contract and the NDA, the parties agree that the NDA shall control with respect to the obligations of confidentiality of information between the parties, and this Contract shall control with respect to the sale of any Products or Services.

17. **FORCE MAJEURE.** Anthony shall not be liable for any loss, delay or failure to perform resulting from any circumstance, direct or indirect, reasonably beyond its control including, without limitation, fire, pandemic/epidemic, flood, accident, explosion, mechanical breakdown, strike or other labor trouble, plant shutdown, unavailability of or interference with the usual means of transporting the Products or any law, regulation, order, recommendation or request of any governmental authority having or claiming to have jurisdiction over Anthony, its subcontractors and/or its suppliers. In addition, Anthony shall be so excused in the event it is unable to acquire from its usual sources and on terms it deems to be reasonable, any labor or material necessary for manufacturing the Products or performing the Services. In the event that there should be a shortage of any Product, Anthony may apportion its available Product among itself, its affiliates and all its customers in such equitable manner as it deems fair and reasonable. Upon giving prompt written notice to Buyer of any such causes of a delay or failure in its performance of any obligation under the Contract, the time of performance by Anthony shall be extended, at Anthony's option, to the extent of any delay resulting from any force majeure event.

18. **DATA SECURITY.** Buyer shall comply with the data protection and privacy legislation in all relevant countries and shall ensure that its employees, agents and contractors observe the provisions of that legislation. Buyer represents that it has developed and implemented and covenants that it will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to (a) ensure the confidentiality, security, integrity and availability of Anthony's Confidential Information provided hereunder; (b) protect against anticipated threats or hazards to the confidentiality, security, integrity and availability of such information; (c) protect against unauthorized access or use of such information; and (d) ensure the proper disposal of such information. Buyer shall promptly notify Anthony of any breach of confidentiality by Buyer or any of its agents, disclosure of Anthony's Confidential Information by Buyer or one of its agents or a breach of Buyer's information security policies or procedures. Notice shall be provided to Anthony no later than 24 hours upon discovery of breach.

19. **SECURITY INTEREST.** Buyer hereby grants to Anthony, its successors and assigns, a lien on and purchase money security interest in and to all of the right, title and interest of Buyer in, to and under the Products sold hereunder, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing, to secure payment of the purchase price of the Products. Default in payment of such price or any part of the price when due shall permit Anthony, in its sole discretion, to declare all obligations of Buyer immediately due and payable, and in such event, Anthony shall have all the rights and remedies of a secured party under applicable law. In connection with the security interest granted herein, Anthony is expressly authorized, at its discretion, to file one or more financing statements or other notices under applicable law naming Buyer as debtor and Anthony as secured party. Buyer will execute such documents requested by Anthony to record and otherwise perfect this security interest.

20. **INTELLECTUAL PROPERTY RIGHTS.** All intellectual property rights in, or relating to, the Products, Spares or Services, including but not limited to all technical data, processes, designs, drawings, engineering data, U.S. and foreign patents, patent applications, patent rights, trademarks and service marks (including common law rights, applications and registrations thereof), copyrightable and un-copyrightable works (including those in computer programs, drawings, designs, documentation and specifications), copyright registrations, trade secrets, proprietary rights in information (including in data, inventions, discoveries, know-how, formulas, processes, technical information and business information), license rights under the intellectual property rights of third parties and all other intellectual property rights whether or not subject to statutory registration or protection (collectively, "Intellectual Property Rights"), are owned by or licensed to Anthony. The sale of any Products, Spares or Services to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property ownership or license whatsoever, except as may be granted by the Anthony in the materials which accompany the Products, Spares or Services upon delivery. Anthony expressly reserves its ownership rights in and to its Products, Spares and Services, and asserts that additional restrictions may apply to the use of the Products, Spares or Services, as set forth in the applicable Products, Spares or Services documentation and other materials which

accompany the Products, Spares or Services.

- **Infringement Claims – Indemnification by Anthony.** Anthony will defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents and shareholders from any liabilities, losses, costs and expenses (including without limitation reasonable out of pocket expenses for attorneys' fees and costs of litigation) (collectively "Losses") arising out of a claim made against Buyer by a third party (but excluding claims described in Section 20 (b) for alleged infringement of any U.S. patent, trademark or copyright existing as of the effective date of any Contract and relating to Buyer's lawful use of the Products purchased under such Contract in Buyer's business. Anthony's obligations hereunder are contingent upon Buyer having made all payments to Anthony then due at the time the claim arises and not otherwise being in breach of any provision of the Contract as well as Buyer's complying with the Indemnification Procedures outlined below. Anthony may also, at any time, at its option: (i) procure for Buyer the right to continue to use the Products in question, free of any liability for such infringement; or (ii) direct Buyer to cease use of and not market or sell such Products and (1) modify the Products in question so that they become non-infringing; (2) substitute the Products in question with functionally equivalent non-infringing Products; or (3) in accordance with Section 3 above, accept the return of the Products against payment of the Products' then-depreciated value, computed on a three (3) year straight-line depreciation schedule commencing as of the date of delivery. The obligations set forth in this Section 14(a) shall be Buyer's sole and exclusive remedy and Anthony's entire liability for any infringement of third party intellectual property rights as described in this Section 20(a).
- **Infringement Claims – Indemnification by Buyer.** Buyer shall indemnify, defend and hold harmless Anthony and its officers, directors, employees, agents and shareholders from and against any Losses arising out of a claim made against Anthony or its suppliers by a third party to the effect that any Products manufactured for or sold to Buyer infringe upon any patent, trademark, copyright or other intellectual property right, if such Products were manufactured pursuant to Buyer's designs, specifications, processes and/or formulas.

21. **GOVERNING LAW.** This purchase order, any agreements between Anthony and Buyer and all other claims that arise between the parties, whether sounding in contract or tort, shall be governed by, construed and enforced in accordance with the law of the State of California. By entering into this purchase order and any other agreement with Anthony, Buyer consents to the jurisdiction of the courts of the State of California to determine all claims between the parties, regardless of whether said claims are contract claims, tort claims, patent claims, trademark claims or copyright claims. Venue of any law suit (State or Federal) against Anthony must be filed in Los Angeles County, California. Service of process on Buyer may be made by registered mail addressed to the Buyer. The UN Convention for the international sale of goods is hereby expressly excluded.

22. **SEVERABILITY.** If any provision of the terms and conditions specified herein shall be deemed invalid or unenforceable, the remaining terms and conditions shall be construed as though such provision does not appear herein and shall be otherwise fully enforceable.

23. **HEADINGS.** The section headings contained herein have been inserted for convenient reference and shall not be considered in any questions of interpretation or construction of any agreements between Anthony and Buyer.

24. **STORAGE POLICY.** Any of the Products whose manufacture, installation, or shipment is delayed by (a) the acts or omissions of Buyer or (b) at Buyer's request, may be placed in storage by Seller (at Seller's sole option) at Buyer's risk and at Buyer's expense. Storage fees will be assessed from the original shipment date until the actual equipment shipment date. The storage fee rate for finished Products that are prevented from shipping will be provided to Buyer. The storage fee will be added along with the actual freight and handling and applicable taxes to the final invoice for the Products. All charges for storage are per Product and may vary based on the type of Product stored.

Anthony products are covered by one or more of the following United States Patents: RE035392, 5301092, 5720540, 5879070, 5895111, 5910083, 5902034, 5959816, 6010227, 6298615, 6302036, 6302557, 6389993, 6343405, 5116274, 5244273, 5255473, 5333355, 5471372, 5645330, 6632100, 6637093, 6638088, 6773130, 6641419, 6490983, 6606832, 6606833, 5884361, D600529, 7603882, 7273299, 7674019, D404935, D395968, D612517, 5622244, 7731395, 8250873 B2.

Anthony products are covered by one or more of the following Foreign Patents: Canada: 2233401, Mexico: 185899, 186644, 202491, 238593, 227313, 236090. Other United States and Foreign Patents Pending 4828 -6462 -1640.2 99 -18396 -W001\_E (01/10/2022 )

4828-6462-1640.

