

# **SALE OF WINDOW AND/OR BI-FOLD DOOR FRAMES ONLY**

This contract for the sale of goods is between Origin USA, Inc. (“**Seller**”) and \_\_\_\_\_ (“**Buyer**”) (collectively, the “**Parties**”). This contract and all terms and conditions set forth herein, including Exhibit A attached hereto, shall be effective upon the date this agreement is signed by both Parties (“**Effective Date**”) and shall be referred to herein as the “**Agreement**.”

The Parties agree as follows:

**1. Sale of Goods.** Seller shall sell to Buyer and Buyer shall purchase from Seller the window and/or bi-fold door frames specifically identified in Exhibit A attached hereto in the quantities and at the prices stated in Exhibit A (hereinafter the “**Goods**”). All Prices are exclusive of sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer.

**2. Payment Terms.**

(a) Unless otherwise agreed, Buyer shall pay 50% of the total invoice price on the Effective Date and the remaining balance before the Goods will be shipped.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any services in relation thereto if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

**3. Title, Delivery, Shipping Terms and Risk of Loss.**

(a) Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods to the delivery point specified in Exhibit A (“**Delivery Point**”) using Seller's standard methods for packaging and shipping. Delivery of the Goods shall be made FOB Delivery Point. If the Delivery Point is anywhere other than Seller’s Plant, Buyer shall be responsible for all loading costs and provide equipment and labor reasonably required to take receipt of the Goods at the Delivery Point.

(b) If appropriate, Seller may, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment shall constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(c) Title to the Goods transfers to Buyer upon delivery of the Goods by Seller to a carrier. Delivery to a carrier constitutes delivery to the Buyer, and regardless of whether or not Seller pays the freight, all risk of loss or damage in transit will pass to the Buyer upon delivery to such carrier. The Buyer may be charged for any warehousing fees, demurrage fees, trucking and other expenses occasioned by or incident to any delays requested or made for the convenience of the Buyer beyond the scheduled shipping date. Claims for shortage or other errors must be made in writing to Seller within ten (10) days after receipt of a shipment. Failure to make such a claim within such ten (10) day period will constitute a waiver of all such claims by Buyer and such failure will constitute acceptance of the Goods. Methods and route of shipment will be at the discretion of Seller unless the Buyer specifies otherwise in writing and Seller agrees. Any additional expense associated with the method or route of shipment specified by the Buyer will be borne by the Buyer.

#### **4. Non-Delivery.**

(a) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the Goods would or should have been received in the ordinary course of events.

(b) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(c) Buyer acknowledges and agrees that the remedies set forth in this Section 6 are Buyer's exclusive remedies for the Non-Delivery of Goods. Except as provided under Section 4(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

#### **5. Inspection and Rejection of Nonconforming Goods.**

(a) Buyer shall inspect the Goods within five (5) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than that which is identified in Exhibit A hereto; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall at its sole option either (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its

expense and risk of loss, the Nonconforming Goods to Seller's facility located at 700 Commerce Drive, Venice, FL 34292. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 5(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 5(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

## **6. Limited Express Warranty**

(a) For a period of one (1) year from the date of delivery to the Delivery Point ("Limited Warranty Period"), Seller warrants to Buyer that the Goods shall conform to the product descriptions/specifications set forth in Exhibit A and will be free from defect in manufacturing, materials, and workmanship ("Seller's Limited Warranty").

(b) If corrosion-resistant hardware, including lock mechanisms for inswing and outswing patio doors and outswing patio door corrosion-resistant hinges, is included in the Goods specified in Exhibit A, during the Limited Warranty Period, such corrosion-resistant hardware will be free from mechanical failure due to corrosion caused by an electrolytic chemical reaction involving atmospheric salts, such as what may occur in coastal applications and its finish will not tarnish, peel, pit, flake, discolor, or corrode; however, aesthetic discoloration or pitting that may occur due to environmental conditions is not warranted. (Note: Minimum maintenance such as cleaning with a mild detergent on a regular basis may be necessary to maintain the original hardware appearance.)

## **7. Limitations and Exclusions from Seller's Limited Warranty:**

The following are NOT covered by Seller's Limited Warranty:

- Seller makes no warranty respecting any glass used with the Goods;
- Seller makes no warranty that the Goods will operate or function properly or as designed after glass is installed in the Goods.
- Seller makes no warranty that the Goods with glass installed will be safe for any end-use.
- Seller makes no warranty that the Goods with glass installed will meet any building, construction or energy code by the jurisdiction(s) or authorities of end-use.
- Seller makes no warranty or representation regarding the installation of the Goods into a building or structure.
- Seller does not warrant against any damage caused by: (i) improper installation or use; (ii) exposure to conditions beyond published performance specifications; (iii) water infiltration (other than as a result of a defect in manufacturing, materials or workmanship); (iv) condensation; (v) improper maintenance; (vi) chemicals or

airborne pollutants; (vii) damage due to delivery by others; (viii) accidents; (ix) misuse; (x) abuse; (xi) building settlement or structural defects; (xii) acts of God; (xiii) normal wear and tear; or (xiv) any other cause or occurrence beyond Seller's control.

- Seller makes no warranty or representation that condensation will not occur or will be eliminated by the Goods.
- Seller does not warrant against any adjustments or corrections due to improper installation of the Goods.
- Seller does not warrant against any failures due to product modifications (for example, but not limited to, security systems, improper painting or staining, or insulated coverings).
- Seller does not warrant against improper assembly or units improperly mulled by others.
- Seller does not warrant against any failure due to the application of non-Seller hardware (e.g. locksets, trim sets, hinges, panic hardware, closers, etc.).
- Seller does not warrant against any failure to properly install Seller's hardware and/or exterior trim.
- Seller does not warrant against any products not manufactured or sold by Seller in this Agreement.
- Seller does not warrant against rattling of grille bars within an air space.
- Seller does not warrant against tarnish or corrosion to hardware finishes, except on outswing patio door corrosion-resistant hinges.
- Seller does not warrant service trips to provide instruction on product use.

Buyer acknowledges that while every attempt is made to match paint colors on the Goods, slight variations may occur during the Limited Warranty Period. Paint finishes may dull due to weathering. Seller shall not be responsible or liable for any such dulling to the paint finishes.

Buyer acknowledges that installation instructions are provided with delivery of the Goods and show the correct installation method and usage. An operational guide is also supplied with the Goods which must be passed to and followed by the End-User of the Goods. It is the responsibility of the Buyer to ensure that the End-User receives and follows all instructions in these documents.

Buyer agrees to maintain the Goods with regular cleaning and careful handling. Failure to do so will void the Seller's Limited Warranty. Use of low concentrations of soapy water followed by a rinse of fresh water is permitted, as is periodic usage of glass cleaners.

The Seller's Limited Warranty is void if the Goods are painted, varnished or coated with any substance by anyone other than Seller.

## **8. DISCLAIMER OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED:**

(a) Seller's Limited Warranty as set forth in this document is the only express warranty (whether written or oral) applicable to the Goods and no one is authorized to modify or expand Seller's Limited Warranty.

(b) **EXCEPT FOR SELLER'S LIMITED WARRANTY SET FORTH HEREIN, THE GOODS ARE SOLD "AS IS" AND WITH ALL FAULTS. SELLER DISCLAIMS ALL OTHER WARRANTIES OF QUALITY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

## **9. Sole and Exclusive Remedies.**

(a) In the event that the Goods fail due to a defect in manufacturing, materials, or workmanship, within the Limited Warranty Period, Seller will, at its option (i) provide replacement part(s) (labor not included); (ii) repair the defective component at no cost to Buyer; or (iii) credit or refund the price paid for such defective Non-Glass Component at the pro rata contract rate, provided that, if Seller so requests, Buyer shall, at Seller's expense, return such defective component to Seller. Such replacement parts or repairs are warranted for the remainder of the original Limited Warranty Period.

(b) Seller shall not be liable for a breach of Seller's Limited Warranty unless: (i) Buyer provides Seller with written notice of defective Goods that reasonably describes such defect(s) within two (2) days of the time Buyer discovers or should reasonably have discovered the defect(s); (ii) Seller is given a reasonable opportunity after receiving such notice to examine such Goods; (iii) Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iv) Seller reasonably verifies Buyer's claim that the Goods are defective.

(c) Seller shall not be liable for breach of Seller's Limited Warranty if: (i) Buyer makes any further use of such Goods after giving the notice described in the immediately preceding subparagraph (b) above; (ii) the defect results from Buyer's failure to follow Seller's instructions; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(e) **THE REMEDIES SET FORTH HEREIN SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SHALL CONSTITUTE SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF SELLER'S LIMITED WARRANTY.**

(f) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT,**

**INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(g) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED TEN TIMES THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**

**10. Product Suitability and Compliance with Law.**

Building, fire, energy, and construction codes and regulations, specifically including, but not limited to the Americans with Disability Act and architectural designs and specifications (collectively "Codes"), vary by building, product application and jurisdiction/location. Some product applications require site specific engineering analysis ("Engineering Analysis") to determine the proper use of particular construction materials and products. The determination whether an Engineering Analysis is required, the cost of obtaining it, if required, and compliance with Engineering Analyses and Codes are solely the responsibility of Buyer and Seller assumes no responsibility or liability whatsoever for such determinations or compliance.

In order to be considered safe or lawful, the installation and end-use of the Goods must comply with all applicable Codes and Buyer expressly assumes sole responsibility for such Code compliance. Buyer also agrees to comply with all applicable laws, rules, regulations, ordinances, including, but not limited to, Codes and Engineering Analyses and to maintain in effect all the licenses, permissions, authorizations, consents, and permits needed for installation and end-use of the Goods.

Buyer is solely responsible for determining whether the Goods are suitable for Buyer's needs or intended applications. Although Seller may make information or opinions available to Buyer, Seller assumes no responsibility for the suitability or design of the Goods required for the Buyer's intended uses or application(s). Buyer assumes sole responsibility for the selection of the Goods and that they will be safe, acceptable and suitable for use under end-use conditions and applications.

**11. Termination.** In addition to any remedies that may be provided herein, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

**12. Applicability; Entire Agreement.** This Agreement shall comprise the entire agreement of the Parties with respect to the goods and shall supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties, and communications, both written and oral. Further, the Terms shall be the only terms and conditions which govern the sale of the Goods and shall prevail over any proposed or submitted terms and conditions of Buyer, regardless whether or when Buyer submitted its purchase order or such proposed terms, all of which Seller hereby rejects. Fulfillment of Buyer's order does not constitute acceptance of any proposed or submitted terms and conditions of Buyer and shall not serve to modify or amend these Terms.

**13. Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**14. Force Majeure.** The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of thirty (30) days, Buyer shall be entitled to give notice in writing to Seller to terminate this Agreement].

**15. Assignment; Delegation.** Buyer shall neither assign any of its rights nor delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**16. Relationship of the Parties.** The relationship between the Parties is that of Seller and Buyer. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither of the Parties shall have authority to contract for or bind the other in any manner whatsoever.

**17. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

**18. Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Florida.

**19. Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Florida in each case located in or nearest to the City of Venice, Florida and County of Sarasota County, Florida, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

**20. Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Sales Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**21. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**22. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Governing Law, Submission to Jurisdiction and Survival.

**23. Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of both Parties.

**24. Counterparts; Facsimile Signatures.** This Agreement may be signed in one or more counterparts, which together shall form a single document. This agreement may be signed electronically and a facsimile signature should be deemed an original.

BUYER:

SELLER: ORIGIN USA, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT A

This is a sale of frames only, and no glass or other materials are sold with these frames. These frames are NOT listed or labeled and no representation or warranty is made respecting their ability to comply with any building or construction code requirements or any testing required by such codes. Buyer is solely responsible for all glass or other materials used with or incorporated into the se frames and for assuring that the assembled product, including the frames, meets all required testing, construction and safety requirements.

Origin has a 10-year limited warranty on non-glass portions of Origin windows and doors (including non-electric operators, locks, lifts, balance systems, hinges, handles, weather stripping, exterior trim, sash and frame members) are warranted to be free from defects in manufacturing, materials and workmanship from the date of purchase. This limited warranty does not apply to Origin electric window operators, retractable insect screens or finishes on bright brass and satin nickel door hardware.

In the event a frame component fails as a result of a defect in manufacturing, materials or workmanship within the limited warranty period, Origin, at its option, will (a) provide replacement parts to the Origin retailer/dealer you specify –labor not included; (b) provide a factory-authorized repair to the existing component at no cost to the Customer; or (c) refund the original purchase price or Origin retailer/dealer’s price at the time of the original purchase, whichever is less. Such replacement parts or repairs are warranted for the remainder of the original limited warranty period.

Corrosion-resistant hardware (includes lock mechanisms for inswing and outswing patio doors and outswing patio door corrosion-resistant hinges) is warranted to be free from mechanical failure due to corrosion cause by an electrolytic chemical reaction involving atmospheric salts, such as what may occur in coastal applications for a period of ten (10) years from the date of purchase from Origin.

What is not covered by this corrosion-resistant hardware warranty: any and all aesthetic discoloration or pitting that may occur due to environmental conditions. Minimum maintenance such as cleaning with a mild detergent on a regular basis may be necessary to maintain the original hardware appearance.

The finish on corrosion-resistant outswing patio door frame hinges is warranted to be free from defects in manufacturing, materials and workmanship and warranted not to tarnish, peel, pit, flake, discolor, or corrode for a period of ten (10) years from the date of purchase from Origin.

In the event there is a mechanical failure of the lock mechanism for inswing or outswing patio door frames or the exterior hinges of an outswing hinged patio door frame or there is a defect in the finish on corrosion-resistant hinges or the finish on corrosion-resistant hardware within the

limited warranty period, Origin, at its option, will: (a) provide replacement parts to the Origin retailer/dealer you specify –labor not included; or (b) refund the original purchase price or Origin retailer/dealer’s price at the time of the original purchase, whichever is less. Such replacement parts or frame repairs are warranted for the remainder of the original limited warranty period.

The Customer acknowledges that while every attempt is made to match paint colors on the Goods, slight variations may occur and during the Warranty Period such paint finishes may dull due to weathering. Origin shall not be responsible or liable for any such dulling to the paint finishes.

**“PLEASE SEE ALL OTHER LIMITATIONS ON AND EXCLUSIONS OF WARRANTIES AND REMEDIES IN THE ATTACHED SALES ORDER”**

