



## TERMS AND CONDITIONS

**(1) DAMAGE TO ACCUDOCK'S MATERIALS:** The Customer shall be fully responsible for the costs of any damage to ACCUDOCK's materials caused by Customer, its agents, contractors, subcontractors or third parties. Customer assumes the risk of loss or damage resulting from fire, theft, misuse, abuse, natural elements, or vandalism.

**(2) COMPLETION AND ACCEPTANCE.** Customer shall immediately inspect the material delivery from ACCUDOCK and any aspect of the material not acceptable to Customer must be specifically noticed in writing to ACCUDOCK within 2 days of ACCUDOCK's delivery. ACCUDOCK shall then be given a reasonable opportunity to address such issue. A full and complete acceptance of the material shall be presumed upon the Customer making payment. ALL SALES ARE FINAL.

**(3) PAYMENT.** Residential Customers must pay in full before ACCUDOCK ships any materials. Cancellation of purchase by credit card is subject to a 10% cancellation fee. Commercial Contractor Customers who are approved for credit must pay 30 days after ACCUDOCK renders its invoice. All Customers shall be responsible to pay interest at the rate of 1½% per month (18% per annum) on any unpaid amount and to pay all costs and expenses, including but not limited to reasonable attorney's fees and costs, incurred by ACCUDOCK in collecting any outstanding amount due under this Agreement, or enforcing its rights hereunder, including but not limited to its lien rights, with or without suit. Proper venue for any litigation stemming from this Agreement will be a court of competent jurisdiction in Broward County, Florida.

**(4) WARRANTY.** ACCUDOCK warrants to Customer only that all material furnished by it will be of standard quality, type and condition, free from defects. There is no warranty on items purchased contrary to ACCUDOCK's recommendation. There is no warranty if the total Agreement price is not paid in full or if the material supplied by ACCUDOCK is misused, abused, modified, not protected or not maintained. EXCEPT AS SPECIFICALLY PROVIDED HEREIN AND WITHIN ACCUDOCK'S PRINTED WARRANTY ATTACHED, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACCUDOCK WILL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND ANY CLAIM AGAINST ACCUDOCK OR ITS AGENTS, OFFICERS, AND EMPLOYEES SHALL BE LIMITED TO THE REPLACEMENT VALUE OF ITS MATERIAL AND ONLY IF SUCH MATERIAL IS FOUND TO BE DEFECTIVE.

**(5) INCREASES/AVAILABILITY.** If material which ACCUDOCK is required to furnish under this Agreement becomes unavailable, either temporarily or permanently, subsequent to the execution of the Agreement, through causes beyond the control and without the fault of ACCUDOCK, then in the case of temporary unavailability, the Agreement time shall be extended for such period of time as ACCUDOCK shall be delayed by such unavailability; and in the case of permanent unavailability, ACCUDOCK shall be excused from the requirement of furnishing such materials. The Customer agrees to pay ACCUDOCK any increase in cost of the material which has become permanently unavailable and the cost of the closest substitute which is then reasonably available. If any changes are made by altering, adding to or deducting from the material initially ordered, the Agreement price shall be adjusted accordingly. Lead times are beyond the control of ACCUDOCK and delivery dates are approximate.

**(6) PRIOR AGREEMENTS/AMENDMENTS.** This Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior agreements, whether oral or written. The Agreement may only be amended or modified by a written agreement executed by all parties. Oral representations may not be relied on. Failure

to enforce all or any of the terms or conditions of this Agreement shall not be interpreted as a waiver of their continuing effect thereof.

**(7) LIMITATION OF LIABILITY.** ACCUDOCK's liability in any action related to this Agreement or the material supplied hereunder, shall in no event exceed the amount of the Agreement and such liability may be fully discharged by a reimbursement of any payments received by ACCUDOCK under this Agreement. This limitation of liability is expressly intended to apply to all types of claims, including but not limited to claims for ACCUDOCK's own negligence. Notwithstanding anything else to the contrary, ACCUDOCK shall have no liability or responsibility for any damages caused by others or for damages either before, during or after said material is supplied, including but not limited to structural faults, strikes, war, Acts of God, sudden rain, wind storms, vandalism, theft or any event beyond ACCUDOCK's reasonable control. ACCUDOCK shall not be liable for any damages resulting from the incompatibility with the Customer's existing conditions. Any interruption or delay in the delivery which results in additional cost and is not the fault of ACCUDOCK, or which is beyond the reasonable control of ACCUDOCK, will be billed to the Customer as an extra cost.

### **(8) RIGHTS, RESPONSIBILITIES AND DISCLAIMERS.**

**A.** ACCUDOCK disclaims responsibility for conditions which are hidden or otherwise not specifically communicated to ACCUDOCK, and for variations in color, texture, graining and finish between samples, showroom items, webpage photos and those delivered at Customer's location. Exact matches are not guaranteed.

**B.** Customer acknowledges and agrees that its failure to make timely payments to ACCUDOCK shall constitute a material breach of this Agreement.

**C.** Customer shall be responsible for all preparations necessary and preliminary to ACCUDOCK's delivery of its materials. All materials are forwarded for curbside delivery and all customers must sign and acknowledge receipt of ACCUDOCK's delivery instruction sheet.

**D.** Customer agrees it shall not delay delivery by ACCUDOCK and Customer understands that ACCUDOCK shall not entertain requests for delayed deliveries to accommodate Customer's schedules. All materials shall be shipped by ACCUDOCK when ready. If ACCUDOCK is unable to ship when the materials are ready because of a third party delay or Customer's inability to accept delivery, the Customer understands and agrees that ACCUDOCK may assess Customer daily storage charges of \$250.00 per day.

**E.** It is understood and agreed that ACCUDOCK shall receive written notice of any breach, default or failure to perform, specifying in detail ACCUDOCK's unsatisfactory performance and providing a reasonable opportunity for ACCUDOCK to cure such unsatisfactory issue, and ACCUDOCK must fail to commence and diligently pursue a cure, before ACCUDOCK shall be considered in breach or default, and before Customer may withhold payments from ACCUDOCK.

**F.** Any controversy or claim shall be resolved by first submitting same to mediation before an impartial mediator selected by both parties (who shall equally share the mediator's fees and costs). Mediation to take place in Broward County, Florida.

**G.** The prevailing party in any action taken by a party to this Agreement to enforce or interpret the terms of this Agreement shall recover its reasonable legal fees and costs from the other party.

**H.** If Customer fails to comply with these terms and conditions or if Customer's credit becomes unsatisfactory in ACCUDOCK's sole discretion, then ACCUDOCK reserves the right to terminate or suspend its delivery upon notice to Customer.

**I.** Customer certifies it is financially solvent and it will immediately advise ACCUDOCK if it becomes insolvent or unable to promptly pay its bills.



## **Limited Warranty**

### **1. Coverage**

AccuDock (“The Company”) expressly warrants to the Customer that the products purchased from Company (“Products”) will be free from defects in materials and workmanship. The commencement date of the warranty is the date of first purchase by Customer from the Company and extends for a period of 12 years on floatation items, 7 years on aluminum assemblies, and 2 years on the basic structure of the item. Any implied warranties, to the extent they exist and are legally enforceable, for merchantability, workmanship, or fitness for intended use on any Products shall terminate on the same date as the express warranty stated above. This warranty gives you specific legal rights, and you may have other rights that vary from state to state.

### **2. Company’s Obligations**

If a covered defect occurs during the above noted warranty periods, the Company at its sole option agrees to replace or refund the Customer for the defective item. The Company’s total liability under this warranty is limited to the purchase price of the Products. The choice among replacement or payment is the Company’s. Any steps taken by the Company to correct defects shall not act to extend the term of this warranty. Costs to ship replacement Products is responsibility of Customer.

### **3. Customer’s Obligation**

The Company must be notified in writing, by the Customer, of the existence of any defect before the Company is responsible for the correction of that defect. Written notice of a defect must be received by the Company within fourteen (14) calendar days after delivery of the Products. Telephone messages, emails or faxes are not acceptable. No action at law or in equity may be brought by the Customer against the Company for failure to remedy or repair any defect about which the Company has not received timely notice in writing. The Customer must provide the Company with access to the defective Products during the Company’s normal business hours.

### **4. Exclusions**

The following items are excluded from this limited warranty:

- a. Defects in any item that was not part of the original Products as supplied by the Company or damage resulting from alteration of the Products performed other than at an AccuDock manufacturing facility.
- b. Any defect or malfunction caused by or worsened by negligence, improper maintenance, lack of maintenance, improper action or inaction, improper installation, or willful or malicious acts by any party other than the Company or its employees.
- c. Normal wear and tear.
- d. Loss or damage caused by acts of God, including but not limited to storms, hurricanes, floods, storm surges, fire, explosion, accidents, falling or floating debris, and impact with watercraft, machinery or vehicles.
- e. Any defect or damage caused by nuisance, misuse or use for something other than the Products intended purpose.
- f. Any damage to the extent it is caused or made worse by the failure of anyone other than the Company or its employees or agents to comply with the requirements of this warranty.

- g. Failure of Customer to take timely action to minimize loss or damage or failure of Customer to give the Company timely notice of the defect.
- h. Insect, animal or storage damage.
- i. Costs associated with removal of defective Products or reinstallation.
- j. Superficial rippling or superficial warping.
- k. Custom orders and designs.
- l. Accessories and added or connected items.

### **5. Exclusive Warranty**

This warranty is limited and is non-transferable. THIS LIMITED WARRANTY IS CUSTOMER’S SOLE AND EXCLUSIVE WARRANTY REGARDING THE PRODUCT AND IS IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY OF QUALITY. ALL WARRANTIES OTHER THAN THIS LIMITED WARRANTY (INCLUDING ALL IMPLIED WARRANTIES LISTED IN THE PREVIOUS SENTENCE) ARE EXPRESSLY EXCLUDED AND DISCLAIMED. TO THE EXTENT LOCAL LAW PROVIDES THAT ANY IMPLIED WARRANTIES MAY NOT BE EXCLUDED OR DISCLAIMED, THOSE WARRANTIES ARE LIMITED IN DURATION TO THE SHORTER OF (i) THE DURATION OF THE EXPRESS WARRANTY PROVIDED IN THIS LIMITED WARRANTY OR (ii) THE SHORTEST DURATION REQUIRED BY LOCAL LAW. IN NO CASE WILL COMPANY BE LIABLE TO ANY PERSON OR ENTITY FOR PROPERTY DAMAGE OR PERSONAL INJURY IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), CONTRACT, WARRANTY, OR OTHERWISE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGE FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR ANY OTHER LOSS, REGARDLESS OF THE CAUSE OF SUCH DAMAGE AND WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF COMPANY EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. COMPANY’S TOTAL LIABILITY FOR ALL CLAIMS OF ANY KIND WILL NOT EXCEED THE PURCHASE PRICE PAID TO COMPANY FOR THE PRODUCT IN QUESTION.

### **6. Dispute Resolution**

The Customer shall promptly contact the Company’s warranty department regarding any disputes and both Customer and Company shall agree on a day and time to discuss the dispute. If discussions between the parties do not resolve such dispute, either party may, upon written notice to the other party, submit such dispute to mediation before a jointly selected certified mediator at a location mutually agreed upon by the parties. The expenses of the mediator shall be shared equally, but each party shall bear its own legal fees and costs. If the mediator declares an impasse, then the parties may seek resolution of the dispute through a court of competent jurisdiction within Broward County, Florida, with the prevailing party in any such action being entitled to recover its reasonable attorney’s fees and costs from the other party.