

TERMS AND CONDITIONS OF SALE

1. **CONTRACT FOR SALE.** A Contract for sale is formed when (1) the Order Agreement is signed by NanaWall and the Buyer. NanaWall may revoke any offer before a contract for sale is formed. As products are made to order, Buyer may not cancel or change an order once a contract is formed. In the event of Buyer's repudiation of this contract (hereinafter referred to as "Order Agreement"). NanaWall is entitled to the full purchase price of the Order Agreement.

2. **PRICES & TAXES.** Prices are quoted in U.S. Dollars as set forth in the Order Agreement. The quoted price is valid only for the product details listed and only for 30 days from the date of the Order Agreement. Prices are subject to change if any changes or revisions are made, or if an order is not placed within 30 days from the date of the Order Agreement. All prices expire 30 days after the date printed on the Order Agreement and remain fixed as long as the delivery date, including any change orders, is within six (6) months of the date from which Buyer places an order hereunder. NanaWall must have a project tax exemption certificate, or in the case of a reseller a resale certificate, on file to be exempt from sales tax collection by NanaWall.

Unless specifically shown as a separate line item in the Purchase Price Summary in the Order Agreement, all prices quoted are exclusive of all taxes (except taxes levied against NanaWall's income), including any national, foreign, state and local use, sales, property, value-added taxes, duties, customs, or import/export fees. The purchase price includes U.S. and Canadian custom duties and clearance fees, but does not include duties and fees for shipments to Mexico, the Caribbean or any other country. Buyer agrees to pay all taxes and fees unless Buyer has provided NanaWall with a valid exemption resale certificate in the appropriate form for the jurisdiction of Buyer's place of business and any jurisdiction to which the product is to be directly shipped hereunder, or unless such sale is otherwise exempt from such taxes. NanaWall may identify such taxes as a separate item on NanaWall's invoice, but is not required to do so.

3. **PAYMENT & SECURITY TERMS.** Buyer will make all payments in U.S. Dollars. Initial payment of 20% is due on order. An additional 30% is due at the time of approval of the Custom Product Drawing. Half (50%) of the purchase price must be received before NanaWall will process an order for production.

The balance of payment for all products shipped Standard Delivery is (1) wire transfer to NanaWall's bank account to be received by NanaWall before delivery or (2) personal, business or cashier's check on delivery to be tendered to the common carrier driver as a condition to delivery. Buyer will make all payments in U.S. Dollar.

Any unpaid balance due will bear interest at the rate of 18% per annum or the highest rate allowed by the applicable law from the day after the due date until paid. NanaWall may, in its sole discretion discontinue all performance hereunder 10 calendar days after sending Buyer a written request for payments due and Buyer fails to pay all delinquent sums due on or before the 10th day. NanaWall may also place a lien on the real property and improvements on which Buyer installs or intends to install NanaWall products or take other legal action, for amounts owing and other damages and costs allowed by law.

Buyer grants, and NanaWall reserves, a purchase money security interest in each product purchased, and in any proceeds, for the amount of its purchase price. Buyer agrees to sign any document required to perfect such security interest. Payment of all outstanding amounts will release the security interest on that product. The parties agree that this Order Agreement shall constitute a security agreement to the extent required by the Uniform Commercial Code or other applicable law.

4. **SHIPPING, DELIVERY & RISK OF LOSS.** Unless otherwise specified in the Order Agreement by Buyer, NanaWall will arrange to transport products to the U.S. by ship and in the U.S. by truck. All products will be packed for shipment in accordance with NanaWall's then-current practices. Risk of loss passes to Buyer upon delivery.

Standard Delivery. The quoted freight amount is based on shipping to Buyer via NanaWall's standard shipping methods to tailgate/curbside only. Buyer is responsible for unloading the product from the delivery truck, and must plan to have sufficient manpower present for unloading. If the location is not readily accessible by common carrier, shipment will be made to the nearest freight terminal. Alternative shipping methods requested by Buyer may result in additional charges. Buyer can make its own transport arrangements from NanaWall production sites within the U.S., and in the case of international production sites Buyer can make its own transport arrangements from the domestic port of entry.

All delivery dates are estimates and are dependent in part upon prompt receipt of all necessary information to fill an order as well as factory production schedules and capacity. NanaWall will make a reasonable effort to meet any delivery date quoted or acknowledged, however, NanaWall may unilaterally alter delivery dates by providing Buyer notice of such change. NanaWall will not be liable for its failure to meet any such date including, without limitation, costs of delay and any premium transportation or other costs or losses of any nature incurred or suffered by Buyer as a result of delivery later than the estimated delivery date.

NanaWall reserves the right to make delivery in advance of the scheduled delivery date, unless the Order Agreement specifically provides that delivery not be made prior to the scheduled date. Storage charges at the rate of \$50 per unit per day will be charged for any order ready for delivery and postponed by Buyer beyond the original date of estimated delivery. If delivery is postponed past the estimated delivery date or refused upon delivery, any unpaid balance shall immediately be due and payable.

Buyer shall promptly inspect all crates for external damage upon delivery. On delivery, Buyer shall document any visible shipping damage with the delivery truck driver and note it on the delivery receipt. Within three (3) days of delivery, Buyer shall report to NanaWall in writing of any product damage or nonconformity and provide supporting photographs. NanaWall will provide replacement parts or products for damaged or nonconforming product in a timely manner. Failure to provide written notice with proper documentation shall constitute a waiver of all claims by Buyer regarding delivery and shall be deemed final acceptance of Products.

5. PRODUCTS SPECIFICATIONS, SELECTION & INSTALLATION. The applicable specifications for products ordered are listed in the Product Details. These specifications may not conform to the architectural specifications and drawings for Buyer's project.

NanaWall shall not be responsible for, and disclaims any liability with respect to, product selection or for confirming suitability of its products for a particular application, specific project site conditions or with applicable codes, zoning laws, or regulations. NanaWall shall not be responsible for any aspect of installation of its products and disclaims any and all liability with respect to installation of the products.

Product installation instructions are available from NanaWall. Buyer hereby agrees to understand and follow the instructions and provide them to its installers. Upon request, NanaWall will provide to Buyer contact information for NanaWall Certified Installers. Certified Installers have received training from NanaWall on installation of its products. Products installed by a Certified Installer receive an additional five (5) year coverage period under NanaWall's Limited Warranty for wood and certain other components. Buyer acknowledges that these installers are independent entities, and NanaWall is not responsible for their work.

6. TESTING. NanaWall will not be responsible for any costs associated with field testing of NanaWall product. Any testing of newly installed product must be performed in compliance with AAMA 502, including water penetration testing at 2/3 tested laboratory performance. NanaWall must receive adequate notice of testing and opportunity to attend. Failure of tested product does not equate to a failure of other products. Testing of product installed longer than six (6) months must be tested in compliance with AAMA 511 and be directed at recreation of an existing in-service condition.

Buyer acknowledges that NanaWall has not tested each product for air leakage, water resistance and structural loading capabilities, and that testing results available from NanaWall are only applicable for the specific units and configurations tested in laboratory conditions. Test results will depend on variables such as the system, sill, locking mechanism, size and configuration. Buyer understands that a water rating is relative and even the highest rated product might leak under severe, unusual, or unforeseen climatic conditions. Buyer also acknowledges that performance of NanaWall products depends on proper installation and use of the products, as well as selection of the proper system for Buyer's site conditions.

7. PROPRIETARY MATERIALS. NanaWall copyrights its drawings and related specifications. NanaWall will retain complete ownership of all drawings, tools, designs and intellectual property rights, even if related charges appear in a quotation or an invoice. In no event shall Buyer disclose, copy or use any of the product drawings prepared by NanaWall for any purpose other than in relation to the purchase or installation of NanaWall product. Any other use of the product drawings is expressly prohibited without the prior written consent of NanaWall and constitutes a breach of contract. NanaWall is entitled to liquidated damages in the amount of 20% of the purchase price of the Order Agreement for each violation.

8. DISCLAIMERS & LIMITATION OF LIABILITY. The NanaWall Limited Warranty ("Warranty") applies to all products sold to Buyer and is the sole warranty for NanaWall products. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. NANAWALL SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHICH INCLUDE PROPERTY DAMAGE, LOSS OF PROFITS OR OTHER ECONOMIC LOSS ARISING OUT OF THE SALE OF NANAWALL PRODUCTS, OR INDIRECT, SPECIAL, OR PUNITIVE DAMAGES. Where disclaimer of implied warranties is prohibited by law, the duration of any implied warranties is limited to the duration of this Warranty. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Buyer. This Warranty gives the Buyer specific legal rights, and the Buyer may also have other rights which vary from state to state. No one is authorized to make any different or additional warranties. The Warranty shall be made available for review upon request by the Buyer.

To the extent NanaWall is held legally liable to Buyer, whether based on contract, tort, or any other legal theory, NanaWall's total liability is limited to the amount actually paid by Buyer for the product giving rise to such liability.

9. GOVERNING LAW & JURISDICTION. This Order Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its rules of conflicts of law. The parties exclude the application on the 1980 U.N. Convention on the International Sale of Goods. Any dispute or other legal action concerning this Agreement be conducted in Marin County, California.

10. FORCE MAJEURE. All orders are subject to postponement or cancellation by NanaWall for any cause beyond the reasonable control of NanaWall, including without limitation, the inability to obtain necessary materials and components; strikes, labor disturbances, or other unavailability of workers; fire, flood, or other acts of God; war, domestic or international terrorism, riot, civil insurrection, or other disturbances; production or engineering difficulties; and governmental regulation, orders, directives, or restriction.

11. MISCELLANEOUS. Except as may be prohibited by U.S. bankruptcy law, in the event of any insolvency or any inability to pay debts as they become due by Buyer, voluntary or involuntary bankruptcy proceeding by or against Buyer, or appointment of a receiver or assignee for the benefit of creditors, NanaWall may cancel any unfulfilled obligations hereunder, except for payments due.

Any required notices will be given in writing at the address of each party set forth on the Order Agreement, or to such other address as either party may substitute by written notice to the other.

Buyer may not assign or transfer any of the rights, duties, or obligations herein without the prior written consent of NanaWall, and any purported attempt to do so will be null and void.

A waiver of any right under this Order Agreement by a party on any occasion will not in any way constitute a waiver of such right or any other right on any other occasion. In the event any provision of this Order Agreement is determined to be invalid, such invalidity will not affect the validity of the remaining portions of this Order Agreement.

In the event a claim is made to enforce the provisions of this Order Agreement, the prevailing party shall be entitled to the reasonable attorney fees, expenses, and costs incurred, including any and all appeals or petitions therefrom.

Should any provision of this Order Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall not be deemed to be a part of this Order Agreement.

The parties acknowledge that this Order Agreement is executed by parties who enjoy equal bargaining power with respect to the sale of Product pursuant to the Order Agreement, and shall be construed fairly as to both Parties and not in favor or against either party.

12. ENTIRE AGREEMENT. Buyer's purchase of NanaWall products represents acceptance of the Order Agreement, Product Details and any Product Drawings which, together, constitute the entire understanding between the parties with regard to the purchase of NanaWall products by Buyer and supersede any previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of this Order Agreement will be valid or binding unless in writing and signed by an authorized representative of each party.

From time to time Buyer may issue purchase orders regarding Buyer's purchase of the product from NanaWall. The parties agree and confirm that any such purchase orders are informational only, that any terms or conditions set forth in such purchase orders shall not be binding upon NanaWall, and that the terms of this Order Agreement shall supersede any provisions of any such purchase orders.

[Remainder of page intentionally left blank]

Copyright 2020 Nana Wall Systems, Inc