



## NEW HUDSON FACADES TERMS AND CONDITIONS

1. **Acceptance.** These terms and conditions govern the annexed purchase order and/or proposal, and together therewith, form a binding agreement between NHF and Seller upon Seller's execution of the purchase order and/or proposal or commencement of performance thereunder (the "Agreement"). No variations or additions to these terms and conditions are binding upon NHF except as expressly agreed in a separate writing signed by NHF.
2. **Scope of Work.** Supplier shall provide all goods and services in a good and workmanlike manner in accordance with (i) generally recognized industry standards, (ii) all applicable federal, state and local laws, regulations, rules, codes, ordinances and orders, and (iii) any plans, drawings, specifications and other documents prepared provided by NHF to Supplier.
3. **Inspection.** All goods and services are subject to NHF's direct or indirect inspection and initial tests within a reasonable time after delivery to NHF. If inspection reveals any damage, nonconformity, error, shortage or deficiency, NHF hereby rejects the goods and services and will notify Supplier accordingly. NHF will incur no liability for defective or nonconforming goods or services and may either return any defective or nonconforming goods to Supplier, or dispose of such goods, all at Supplier's expense. Payment prior to acceptance does not constitute acceptance.
4. **Purchase Price.** All prices shall be deemed to include all costs of and compensation for Supplier's performance, including all price escalation, together with cartage, packaging, delivery, storage, insurance, engineering and freight costs and applicable taxes, assessments and premiums under applicable law.
5. **Payment Terms.** Net 45 after NHF's receipt of Supplier's properly documented invoice. Invoices shall indicate the original price, all authorized change orders, the adjusted price, amounts paid to date, the amount of current request, all retainage, and other information required by NHF including signed delivery tickets. If requested by NHF, Supplier shall provide NHF with a waiver of lien in exchange for payment.
6. **Taxes.** Supplier will separately itemize and collect from NHF and will remit to the appropriate tax authorities all applicable taxes, or produce an appropriate exemption certificate therefore, as they relate to services performed or goods purchased hereunder in a timely manner prior to imposition of any interest or penalty. In no event will NHF be responsible for any taxes based on Supplier's net income or gross receipts, or other such taxes based on Supplier doing business in any particular jurisdiction.
7. **Deliveries.** Delivery from locations in North America will be made FOB destination, insurance included. Delivery from locations overseas will be made DAP (Incoterms 2020) at NHF's facility, insurance included. Risk of loss will not pass to NHF until goods have been actually received by NHF or its authorized representative. All items delivered must be suitably packaged so as to be protected against hazards of shipment, storage, and exposure.
8. **Time for Performance.** Time is of the essence. Supplier shall perform in an efficient and responsible manner in accordance with all deliverable dates required by NHF, and in accordance with any schedules annexed hereto. Supplier shall take all necessary actions required to remedy any delay within its control, including, without limitation, providing additional forces or working overtime, and shall be responsible for all costs and damages resulting from such delays, including without limitation, the costs of expedited shipping, acceleration of production and/or procurement of alternate goods and services.
9. **Excusable Delay.** In the event that Supplier is obstructed or delayed in its performance for any reason outside its control, Supplier may be entitled only to a reasonable extension of time to complete its obligations. If Supplier wishes to make a claim for such an extension of time, Supplier shall give written notice to NHF within five (5) days after the commencement of such delay, suspension, or rescheduling, with appropriate documentation substantiating the delay.
10. **Warranty.** Supplier warrants that (a) it has all rights and authority to accept the Agreement and to fulfill and perform all of its obligations hereunder; (b) all goods and services will be free from defects in material, design, and workmanship; will conform to applicable specifications and law; and will be suitable for the intended purpose; (c) it will pass along to NHF any and all original manufacturer warranties for the goods or services and assist in enforcement of same; (d) it will deliver title to goods free and clear of all claims, liens, charges, encumbrances or security interests, and provide any related waivers or releases; (e) the goods and services will not infringe any third party patent, copyright, trademark, trade secret or other proprietary right; (f) it has obtained all licenses required for any third party materials embedded or otherwise provided to NHF with the goods and services, and (g) services will be performed in a professional manner by qualified personnel. Without prejudice to NHF's other rights and remedies for breach, Supplier must promptly make all adjustments, repairs and replacements necessary to correct any defects in its goods or services at its expense, during the course of performance and for a period of one (1) year after final completion. In the event any goods or services are found defective within such time period, Supplier shall provide the labor and materials required to correct it at Supplier's cost and expense, promptly after written notice from NHF to do so.
11. **Termination.** NHF may terminate the Agreement, in whole or in part, without liability, by written notice if Supplier fails to perform or comply with the terms of the Agreement, and Supplier shall be liable for all damages resulting from such default. NHF may also terminate the Agreement, in whole or in part, at any time without cause upon written notice to Supplier. If the Agreement is terminated in whole or in part by NHF and Supplier is not at fault, Supplier will be compensated proportionately to the extent that NHF has accepted goods or services rendered prior to the effective date of termination, less any deductions or set-off. NHF will have no further liability, and Supplier will provide NHF with reasonable termination assistance upon request.
12. **Indemnification.** To the fullest extent permitted by law, Supplier will defend and indemnify NHF and its affiliates, officers and employees from and against any third party suit, claim, or proceeding, including all costs, damages, liabilities, losses, and expenses (including reasonable attorneys' fees and court costs), arising out of or related to any alleged breach of warranty, representation, or the Agreement, or any act of negligence, omission, error, willful misconduct, or other harm alleged to be caused directly or indirectly by Supplier or its goods, services, or performance hereunder.
13. **Insurance.** Supplier will maintain customary commercial general liability (including broad form contractual, property damage, bodily injury, personal injury, completed operations and products coverage) and employers liability insurance. NHF reserves the right to require minimum limits for the preceding coverages at any time. Supplier will also maintain workers' compensation insurance in the statutory limits and professional liability insurance if Supplier is providing professional services. Supplier's insurance will be primary over any other applicable insurance and NHF will be added as an additional insured prior to goods and services being provided. Supplier's insurance carriers will waive subrogation against NHF. Supplier will be solely responsible for all deductibles (if any) incurred under Supplier's insurance policies.
14. **IP Rights.** All proprietary information and rights, including copyrights, patents, etc., contained in the drawings, specifications and other design documents prepared by NHF shall remain the exclusive property of NHF.
15. **Non-Disclosure.** Supplier will preserve as confidential the existence of the Agreement, its performance obligations, and all information related to the business of NHF, its affiliates, and their respective employees, agents, representatives, clients, customers, or vendors that may be obtained from any source as a result of the Agreement ("Confidential Information"). Supplier will not disclose to any third party or use for its benefit any Confidential Information, including information relating to the pricing, methods, processes, financial data, lists, apparatus, statistics, programs, research, development, trade secrets, hardware, software, screens, specifications, designs, drawings, intellectual property or related information of NHF affiliate, or its or their employees, agents, representatives, clients or customers or vendors, concerning past, present or future business activities of said entities. Any data, information or materials furnished by or on behalf of NHF in connection with the Agreement will be returned to NHF upon its request. If Supplier becomes aware of any threatened or actual violation of its obligations with respect to NHF's Confidential Information, Supplier must immediately notify NHF accordingly and take, and assist NHF in taking, reasonable efforts to cure or remedy such violation.
16. **Assignment.** NHF may assign the Agreement in whole or in part to any affiliate or successor-in-interest upon notice to Supplier. Any other assignment of the Agreement or any associated interest is void. All rights and obligations under the Agreement will accrue to any assignee.
17. **Subcontracting.** Supplier may not subcontract its performance without NHF's prior written consent. Notwithstanding any consent from NHF, Supplier is fully responsible for all acts and omissions of its subcontractors. Nothing in the Agreement creates any contractual relationship between NHF and any subcontractor, nor any obligation on the part of NHF to pay any subcontractor. NHF's approval of a subcontractor by NHF does not constitute a waiver of any of NHF's rights under the Agreement.
18. **Governing Law.** The Agreement will be governed by and construed in accordance with the laws of the State of Pennsylvania.
19. **Set-Off.** NHF may set-off any amount owing at any time from Supplier to NHF against any amount payable at any time by NHF.
20. **Survival.** The provisions of the Agreement which by their sense and context are meant to survive expiration or sooner termination of the Agreement will so survive.
21. **Complete Agreement.** These terms and conditions, as incorporated in the Agreement, together with all appendices, exhibits, schedules, and attachments, is the entire agreement and expresses the complete, exclusive, and final understanding of the parties with regard to its subject matter and may not be altered, amended or modified except in a writing signed by the parties.
22. **No Waiver.** A party's failure or delay to enforce or require performance of any provision of the Agreement is not a waiver of such provision. If any provision of the Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of these terms and conditions will not be impaired thereby.