



## **GENERAL TERMS AND CONDITIONS (V-222012)**

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**All sales are expressly limited to and made conditional upon the exact terms and conditions contained herein, as may be amended from time to time; anything that is not specifically included is excluded.**

These General Terms and Conditions supersede any prior letter of intent or agreement, whether written or oral. By signing the Quotation and General Terms and Conditions Acknowledgement, the Buyer acknowledges and agrees that the Buyer has read and understands the General Terms and Conditions as outlined below:

### **ENTIRE AGREEMENT BETWEEN PARTIES:**

The entire agreement between Monarch Conservatories Inc. (referred to as “Monarch”) and the Buyer consists collectively of : Signed Quotation; Monarch Contract Agreement; these General Terms and Conditions; the Position Drawing(s) for Material Order; the Position Drawing(s) for Fabrication; the Monarch Warranty; and may include: Signed and Accepted Shop Drawings, Signed and Accepted Change Orders, and Addendums all as hereafter defined. No other discussions, assurances, or representations are included as part of the Agreement.

### **CHANGES TO THE AGREEMENT**

The parties’ agreement may be modified or changed only in writing and signed by both parties. Monarch’s employees or agents are not authorized to make any contractual representations concerning the Products or Services of the Agreement unless confirmed by Monarch in writing.

## **ORDER PROCESS**

### **EXCLUSIONS**

Monarch is not responsible for products, drawings, services or Quotations provided which are based on clerical errors or any other inaccuracies submitted to Monarch by the Buyer or the Agents of the Buyer.

Quotations do not encompass professional engineering computations. Buyers are responsible for having consulted a Professional Engineer and or Architect before undertaking their project or placing their order. Product failure due to structural settling or structural failure is not covered within the Monarch Warranty.

Our products have been tested using the North American Fenestration Standards and/or European Standards (EN). However, due to the number of combinations possible in terms of sizes, styles and sill options etc., not all element permutations have been evaluated. Furthermore, the Buyer accepts that the numbers provided in Monarch’s literature with regards to testing may not apply precisely to the Buyer’s Product. It is the role of Buyer to choose a system that is best suited to the environment and location of the installation.



### **EXPIRATION OF QUOTATIONS**

Quotations expire after 30 days from the date the quotation is submitted. If however, the price of products, materials, shipping, labour or energy should rise substantially within this timeframe, Monarch reserves the right to amend the quotation at Monarch's sole discretion, which would render the initial quotation void. Monarch will give written notice to the Buyer if Monarch intends to amend the quotation.

### **ACCEPTANCE OF THE QUOTATION**

To accept a Quote, the Buyer must: provide a physical signature, dated, on an approved Quote/ Scope of Work Document, sign an Acknowledgement of the General Terms and Conditions, sign the Monarch Contract Agreement and provide a deposit of 50% of the total sum, as laid out in the Monarch Contract Agreement. Please note that a quotation is not considered accepted until such time as the deposit payment has been cleared by Monarch's bank.

### **ORDERING OF PRODUCTS AND FABRICATION**

Once a quotation has been accepted, the ordering of products will take place on the Thursday following Monarch's receipt of the Buyer's signature on the contract document Position Drawing(s) for Material Order. Estimated lead time of twelve (12) weeks for product availability begins on this date. Fabrication will be scheduled following Monarch's receipt of the Buyer's signature on the contract document Position Drawing(s) for Fabrication. Approximate lead time from sign off for fabrication to product availability is eight (8) weeks (plus four (4) weeks for product order). The sign off for fabrication may take place at the same time as the sign off for products order at the discretion of the buyer.

### **POSITION DRAWING(S) FOR MATERIAL ORDER**

In an effort to assist Buyers in reducing Lead Times, it is possible for Buyers to pre-order products without having final fabrication sizes pre-determined. Position Drawing(s) for Material Order consist of exterior view images of each element for ordering of products only, including colour selection, operation configuration and other hardware and technical details that are made final upon order. Sizing of the elements are shown as maximum sizes based on preliminary submissions to Monarch from the Buyer. The Buyer may choose to keep the sizing as shown on the Position Drawing(s) for Material Order, or decrease the sizing of the element within the product's range, without financial penalty. The Buyer must confirm fabrication sizing to Monarch by providing Monarch with a signed copy of the Position Drawing(s) for Fabrication.

Note: Neither the element itself nor any part within the element may increase in size without an **increase in cost and lead time**.

### **POSITION DRAWING(S) FOR FABRICATION**

Element sizing is determined when a Buyer submits to Monarch a signed copy of the Position Drawing(s) for Fabrication. Fabrication will not commence until such time that the signed copy is received by Monarch. It is the Buyer's responsibility to guarantee the intended accuracy of the fabrication sizing as well as the general operation and configuration of the elements within the Position Drawing(s) for Fabrication document. Monarch holds no liability for incorrect sizing, operation or configuration of elements or Product.



### **SHOP DRAWINGS**

Shop Drawings prepared by Monarch are Monarch's interpretation of the Buyer's requirements. It is the responsibility of the Buyer to approve the accuracy, and sign the Shop Drawings submitted by Monarch prior to fabrication.

### **LEAD TIME DELAYS**

Delays may be caused by: the Buyer's failure to promptly submit to Monarch approved Shop Drawings or signed order documents, as listed above in the Entire Agreement Between the Parties. It is the Buyer's responsibility to ensure that these documents are signed and received by Monarch.

When creating a custom product, unexpected delays may occur. Lead times may be affected by resource availability or other events or issues beyond Monarch's control. Monarch is not responsible for differences between the shipping date and date of customer installation. The Buyer has no claim for any costs, expenses, etc. incurred due to delays.

## **PAYMENTS AND FEES**

### **CANCELLATION**

Deposits are non-refundable. Furthermore, should a deposit not be paid in full, the Buyer is still required to pay the outstanding amount of the deposit, should they choose to cancel the order after acceptance.

Cancellation of the products for order cannot occur following the processing of products.

If for whatever reason, Monarch must cancel this agreement, cancellation will be made in writing and Monarch shall promptly repay to the Buyer, any sums paid in respect of the products, however, Monarch shall not be liable for any loss or damage whatever arising out of such a cancellation.

### **TAXES**

The tax amount provided on the quote is an estimate of HST for the Province of Ontario, only. The taxes shall be due at the rate ruling on the date of the invoice. The Buyer is responsible for any other taxes, fees, levies, etc. which are applicable to the purchase and agrees to take responsibility for these, unless other arrangements are made, in writing, between the Buyer and Monarch.

### **STANDARD TERMS**

Payment of 50% of the total sum, as laid out in the Monarch Contract Agreement, is due from the Buyer to Monarch Conservatories upon acceptance of the quotation (see above). Payment of 40% of the total sum, as laid out in the Monarch Contract Agreement, is due upon or prior to Delivery by means of a certified cheque, money order or bank draft. Final payment of 10% is due upon notification of Substantial Completion of the Monarch Contract Agreement.

Failure of the Buyer to provide Monarch with final payment, in full, within 30 days of the notification of Substantial Completion will render all guarantees void and will initiate collection activities.



**OVERDUE FEES:**

The maximum interest rate allowable by law will be applied to overdue fees for balances 30 days past due.

**LICENSE AND PERMIT FEES**

All licences, permits, permissions and fees for products, materials and services provided by Monarch, are the sole responsibility of the Buyer.

**EXTRA BILLING FEES**

From time to time, either at the Buyer's request or as prescribed in the General Terms and Conditions, it may be necessary for Monarch to provide "Extra" materials or services in order to facilitate or expedite delivery or installation.

Where "Extras" are required, Monarch shall immediately notify, in writing, the Buyer. Monarch's normal billing fees are as follows:

Support Crew	\$70/Hour
Lead Hand	\$80/Hour
Design Staff	\$80/Hour
Management	\$100/Hour
Additional Materials	Cost + 15%
Other Costs Incurred	Cost + 15%

**RIGHT TO LIEN**

Monarch maintains all applicable liens and can, if Monarch so chooses, decide to apply these liens to the Buyer. Should legal proceedings be required in order to ascertain owed fees, the Buyer is responsible for all legal and professional fees and expenses incurred by Monarch. Ontario law governs agreements and shall be used for any form of litigation.

**DELIVERY AND STORAGE**

**DELIVERY**

Where Monarch has agreed to provide delivery, and Monarch will contact the Buyer in advance of delivery in order to schedule a mutually agreeable date and time for delivery. 40% of the project total is due upon delivery, by certified cheque or bank-draft, as stipulated in the Monarch Contract Agreement.

Should the Buyer fail to provide the delivery driver the payment for delivery, the order will be returned to Monarch until such time as new arrangements can be made and until additional charges are determined and paid for by the Buyer. Alternatively, Monarch may, at its own discretion, allow the delivery crew to wait for payment at the point of delivery, at the request of the Buyer. Should this occur, the Buyer agrees to pay for such costs in accordance with Monarch's "Extra Billing Fees."

Monarch will, in advance of delivery, notify the Buyer of what type of delivery vehicle is scheduled for delivery. It is the responsibility of the Buyer to determine and solve any access or parking issues ahead of time with regard to delivery. Should the Buyer fail to make appropriate arrangements for delivery, the



Buyer agrees to pay Monarch any fines or costs incurred, as prescribed in Extra Billing Fees above, for the delays or rescheduling of delivery.

Delivery costs are calculated on a single delivery basis unless otherwise expressly stated in the Monarch Contract Agreement. Monarch may, at the request of the Buyer, make "Partial Deliveries." Accommodated "Partial Deliveries" do not reduce or change the 40% requirement of payment for the project, upon delivery. Additional costs for partial deliveries must be agreed to in writing and paid for in advance of subsequent deliveries.

**Delays in delivery may have an effect on the installation schedule by Monarch. Monarch holds no liability for any delays in delivery.**

### **DELIVERY BY OTHERS**

Monarch will not be liable for deliveries of the product made by any other company. Buyers who make alternate delivery arrangements assume liability for damages of product or injury to persons.

### **STORAGE BY MONARCH:**

Monarch does not have long term warehouse facilities available and as such, assumes no liability for the safety or security of product kept in storage beyond the expiration of the Agreement's normal Lead Time. If for whatever reason the Buyer is unable to take possession of the product, the formula for determining Monarch's monthly compensation is 2% of cost of product per month. Storage fees are compensation for loss of use of space in Monarch's facility only. The charging of such fees by Monarch is neither an additional service provided nor an acknowledgement of acceptance of liability by Monarch for the product. Buyers are ultimately responsible for the safe storage of their product. Should the Buyer fail to take possession of the product within 1 year of the expiration of the Agreement's Lead Time, and should compensation not be made to Monarch for loss of use of space, the product shall be deemed to be abandoned by the Buyer and the product will be disposed of by Monarch.

### **STORAGE ON SITE**

Subject to the terms Storage by Monarch, ownership of the product immediately switches to the Buyer upon delivery and it is the Buyer's responsibility to protect the product on site from damage or theft. Should the product be damaged in any way during storage, all warranties will become void.

## **INSTALLATION**

### **INSTALLATION AND DELIVERY SAFETY**

It is the responsibility of the Buyer to maintain a safe worksite in accordance with the requirements of all applicable laws and governing regulations. Monarch staff will not carry out work on a site that is dangerous or potentially dangerous to employee health and safety. Upon finding an unsafe condition, Monarch staff will identify their concerns to the Buyer or Agent of the Buyer and no work will proceed until such time as the safety concerns are rectified to the satisfaction of Monarch's staff. Wait times incurred due to unsafe site conditions are considered Extra.



### **INSTALLATIONS BY MONARCH**

Products must be installed plumb, level and square and as such, all openings provided must conform similarly to Monarch's installation standards. Should a rough opening require adjustment, the Buyer agrees to make available all labor and or materials to make the required corrections. Monarch may or may not make a proposal to the Buyer to correct openings.

It is the responsibility of the Buyer to provide all required equipment or infrastructure to facilitate installation of the product. Scaffolding systems, hoisting systems, safety tie offs, etc, are the responsibility of the Buyer unless otherwise agreed to and provided for in the Quotation.

## **WARRANTY AND LIABILITY**

### **CONSTRUCTION:**

Monarch products are **NOT TO BE USED DURING CONSTRUCTION**. It is the Buyer's responsibility to protect the product from damage or inappropriate usage at all times. Failure to do so will void the Monarch Warranty.

### **WARRANTY:**

Refer to the Monarch Warranty, which details Monarch's entire warranty/responsibility and is available on Monarch's website.

Monarch offers a 10-year warranty on insulated glass units, aluminium extrusions, rollers and defects in materials and workmanship. Locking hardware and fittings, as well as screens, have a 1-year warranty.

Any deficiency recognized in a Monarch product during the time of the warranty must be noted, in writing, and Monarch must be notified in three (3) days from initial recognition. Monarch shall examine the product and determine if the responsibility for the defect in material or installation rests with Monarch (i.e. not caused by improper use, mistake, carelessness, adaptation, adjustment, failure to follow instruction manual, etc.). Monarch will decide, at its sole discretion whether to fix, exchange or credit the Buyer for the purchase price of the product. The warranty applies only to products which have not been moved from their initial installation position. The warranty is voided for products which are sent back to Monarch prior to Monarch's approval of return.

### **PRODUCT NEGLECT**

Should the Buyer fail to ensure that the product is closed in harsh weather conditions or chooses to use the product inappropriately, Monarch will not be held responsible for any devastation which occurs to the property of the Buyer. Additionally, Monarch's warranty covers only reasonable and foreseeable use of the product.



## **RIGHTS TO PLANS, DRAWINGS, SPECIFICATIONS AND USE FOR MARKETING**

No right or licence is granted by this Contract to the Buyer under any patent, trademark, registered design or other intellectual property right, except the right to use or resell the Product. The Buyer agrees to use the drawing, plan and specification documents for this project only and will not share these documents with others, beyond essential personnel. Monarch may photograph the project for commercial purposes. Monarch may also produce other documents from the project, including renderings and drawings for commercial purposes. Should others choose to feature the project for commercial purposes, Monarch must be recognized as the project producer.

## **LIMITATIONS OF LIABILITY:**

The Monarch Warranty is the only applicable warranty for Buyer remedy. Any and all expenses for the exchange or elimination of the product or other costs incurred by the Buyer are the Buyer's sole responsibility. Monarch's aggregate liability will not under any circumstances surpass the total project value paid by the Buyer to Monarch. This qualification is additive meaning that the total of claims, regardless of the number of claims, cannot exceed the total agreed to in the Monarch Contract Agreement.

## **VENUE:**

The courts and laws of the Province of Ontario shall govern any form of litigation. Parties shall attorn to the courts in Ontario.

## **DEFINITIONS**

ADDENDUMS- additional documents added to specific projects

BUYER- an individual or company purchasing the product

BUYER'S AGENT- an authorized designate of the individual or company purchasing the product

CLIENT/ CUSTOMER- an individual or business inquiring about Monarch's products, including both Buyers and potential Buyers

CHANGE ORDER- a document submitted to Monarch requesting an alteration to the project

DELIVERY- the shipment of products to the project site, as identified in the Monarch Contract Agreement

ELEMENT- a completed product assembly

GENERAL TERMS AND CONDITIONS- the policies agreed to by both parties in an agreement entered into by a Buyer and Monarch

GENERAL TERMS AND CONDITIONS ACKNOWLEDGEMENT- signature provided by the buyer acknowledging understanding and acceptance of the General Terms and Conditions as forming part of the Monarch Contract Agreement

LEAD TIME- length of time between order and completion of a process

MATERIALS- equipment and components required to create and/or install elements

MONARCH CONTRACT AGREEMENT- the signed legal document, including the General Terms and Conditions Acknowledgement, which binds both the Buyer and Monarch to the project



MONARCH WARRANTY- a document laying out the guarantees Monarch warrants to Buyers in regards to its products and services

PRODUCT- any the physical item purchased by the Buyer

PROJECT- refers to the products, goods and services which have been purchased from Monarch by the Buyer

PROJECT SITE- location of product installation, as identified in the Monarch Contract Agreement

POSITION DRAWING(S) FOR MATERIAL ORDER- exterior view image of each element for ordering of products only, which will include colour selection, operation configuration and other hardware and technical details that are made final upon order. Sizing of the elements are shown as maximum sizes based on preliminary submissions to Monarch from the Buyer.

POSITION DRAWING(S) FOR FABRICATION- a document which takes the Position Drawing(s) for Order and confirms the accuracy of the fabrication sizing as well as the general operation and configuration of the elements.

QUOTATION- the estimated costs for the project, based on details provided to Monarch by a client

SERVICES- the actions which Monarch has agreed to perform for the Buyer

SHOP DRAWINGS- An illustrated representation of Monarch's technical interpretations of the Buyer's requirements

SUBSTANTIAL COMPLETION- when Monarch informs the Buyer that the product is ready to be used by the Buyer