



## Terms and Conditions

**1. Payment Terms.** Payment terms are as set forth above. All amounts past due are subject to interest at the rate of 1 ½% per month compounded monthly. Buyer shall be solely responsible for the payment of any and all costs Sno Gem, Inc. incurs to collect any amounts due and owing including, but not limited to, collection agency fees, court costs and attorney's fees and costs. Buyer acknowledges that Sno Gem, Inc. may at any time and in its sole and absolute discretion, for any reason or for no reason, suspend or refuse credit to Buyer and/or require full payment prior to shipment. Sno Gem, Inc. is not obligated to fulfill any order(s) if Buyer is in default under this or any other contract with Sno Gem, Inc., or upon the insolvency or dissolution of Buyer, or in the event the Buyer is involved with litigation of any kind in which Sno Gem, Inc. is a party to that litigation.

**2. Shipping.** All shipping costs are paid by Buyer. Risk of loss shall pass to Buyer upon delivery by Sno Gem, Inc. to the carrier at the point of shipment and at the time and location the carrier first takes possession of the product. Sno Gem, Inc. shall not be liable for damage to the product during shipping, which damage shall be the sole and absolute responsibility of the Buyer. Sno Gem, Inc. shall not be obligated to provide or pay for insurance for the product insuring damage during shipping, which said obligation shall belong solely to the Buyer. The Buyer must notify Sno Gem, Inc. within 24 hours of Buyer's receipt of the product of any missing or damaged items. The Buyer is responsible for all shipping costs relating to missing or damaged items. Under no circumstance will Sno Gem, Inc. be liable to any party for damages of any nature whatsoever including, but not limited to, those resulting from the delivery of the product.

**3. Controlling Provision.** In the event of a conflict between the provisions of these Terms and Conditions and the provisions of any other oral or written understanding or agreement between the parties, Sno Gem, Inc. and Buyer hereby agree that the provisions of these Terms and Conditions shall forever prevail and dictate.

**4. Indemnification.** Buyer hereby agrees to indemnify, defend and hold harmless Sno Gem, Inc. and its officers, directors, shareholders, affiliates, employees, agents and assigns from and against any and all claims, demands, costs, liabilities and expenses (including, without limitation attorney's fees and court costs) arising in whole or in part from a third party claim involving any product purchased by Buyer from Sno Gem, Inc. Buyer further agrees to indemnify, defend and hold harmless Sno Gem, Inc. and its officers, directors, shareholders, affiliates, employees, agents and assigns from and against any and all claims, demands, costs, liabilities and expenses arising in whole or in part from the negligent act or omission of the Buyer, or any negligent act or omission of Buyer's agents employees in connection with: (i) formulating and/or preparing drawings and specifications for the product; and/or (ii) the installation of the product by the Buyer or the Buyer's agent, employee or contractor, including without limitation all materials, methods and techniques associated with installation of the product.; or (iii) Buyer's use and enjoyment of the product.

**5. Return.** Subject to the remaining conditions of this paragraph 5, Sno Gem, Inc. will accept the return of its' CLEAR POLYCARBONATE products only and will not accept the return of any other product. Any such clear polycarbonate products returned will be accepted only if deemed to be defective at the sole discretion of Sno Gem, Inc. As a condition of Sno Gem, Inc.'s acceptance of the return of any polycarbonate product, said returns must be received by Sno-Gem, Inc. within 30 days of Buyer's receipt of the order of poly carbonate product being returned. Products returned must be in the original packaging, unused by Sno Gem, Inc. at the time of return. As a condition precedent to Buyer's right to return any product pursuant to the terms of this paragraph 5, the product must be in physical production by Sno Gem, Inc. as of the date the product is shipped back to Sno Gem, Inc. by the Buyer. Buyer shall be responsible for all shipping fees to return product back to Sno Gem, Inc. All returns are subject to a restocking fee equal to 20% of the total cost of the original order. For all products other than clear polycarbonate Sno-Gems, ALL SALES ARE FINAL AND NO RETURNS WILL BE ACCEPTED.

**6. Layout.** SNO GEM, INC. DOES NOT PERFORM AN INDEPENDENT SITE INSPECTION. ALL SNO GEM, INC. LAYOUTS INCLUDING, BUT NOT LIMITED TO, NUMBER OF ROWS AND PRODUCT QUANTITIES ARE RECOMMENDATIONS ONLY BASED SOLELY ON THE INFORMATION PROVIDED BY THE BUYER, IN ADDITION TO THE PROJECT'S GEOGRAPHICAL LOCATION, ROOF PITCH, LENGTH OF RUN AND TYPE OF ROOF SYSTEM. BUYER MAKES THIS PURCHASE BASED ON PROJECT SPECIFICATIONS AND ITS OWN EVALUATION AND NOT BY REASON OF ANY STATEMENT MADE OR PURPORTED TO HAVE BEEN MADE BY OR ON BEHALF OF SNO GEM, INC. SNO GEM, INC. MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

**7. Architect/Engineer/Structural Engineer Review.** Sno Gem, Inc. is not licensed to provide design, architecture or engineering services and does not provide stamped or otherwise certified calculations or engineering drawings of any kind. Sno Gem, Inc. is not required to ascertain that any Sno Gem, Inc. recommendations or products are in compliance with applicable laws, statutes, building codes, ordinances, best industry practices or rules and regulations of any kind. All Sno Gem, Inc. recommendations are simply recommendations only which are subject to verification by the project Architect/Engineer and by the project's structural engineer to ensure that the building structure can withstand the projected snow load. If professional design services or certifications are required, such services and certification shall be specified in advance by Buyer and performed by a licensed design professional for an additional expense payable by Buyer. Sno Gem, Inc. does not assume any liability therefore. Buyer warrants that Buyer has consulted with Buyer's properly licensed structural engineer and/or properly licensed architect prior to purchasing any product from Sno Gem, Inc. Buyer warrants to Sno Gem, Inc. that Buyer has conducted all necessary due diligence with Buyer's properly licensed structural engineer and architect prior to ordering any product from Sno Gem, Inc. so as to: (a) allow Buyer to confirm the product is suitable for Buyer's use at Buyer's premises and (b) make certain that the product purchased from Sno Gem, Inc. by Buyer, once installed, will be in full compliance with all applicable building codes, ordinances, laws and regulations and can be installed in safe and proper manner.

**8. Project Specifications and Drawings.** Any review of project specifications or preparation of drawings by Sno Gem, Inc. is as a material supplier only and not as a licensed design professional. Sno Gem, Inc. is not liable for discovering errors, omissions or inconsistencies in the specifications, or for ascertaining if the specifications are in compliance with applicable laws, statutes, building codes, ordinances or rules and regulations of any kind. Drawings prepared by Sno Gem, Inc. are upon request only to illustrate Sno Gem, Inc. products only and do not constitute a representation by Sno Gem, Inc. that it has verified field measurements, field



conditions or any other construction criteria applicable to the project. Sno Gem, Inc. is not liable for coordination of drawings prepared by Sno Gem, Inc. with any other project requirements or contract documents.

**9. Installation.** As a condition precedent to Buyers use of the product, Buyer warrants to Sno Gem, Inc. and further agrees that the products will be installed by Buyer utilizing a qualified roofing contractor retained by Buyer which said roofing contractor will install the product in accordance with best industry standards and practices that these products be installed by a qualified roofing contractor who will have the knowledge and ability to properly install the product. Sno Gem, Inc. does not take any responsibility for acts, errors or omissions of the installer and cannot be held responsible in any way for product installation. Sno Gem, Inc. does not provide any warranty on the installation of any of its product. Installation using an adhesive/sealant, tape, solders, or fastener application/product should be performed in accordance with the applicable manufacturer's published instructions. Sno Gem, Inc. does not warrant against adhesive/sealant, tape, solder, fastener failure and the purchaser must rely on the applicable manufacturer's applicable warranty, if any. Sno Gem, Inc. will not be responsible for misapplication of the product, incorrect materials or defects that were obvious at the time of installation.

**10. Warranties and Limits of Liability.** Any warranty claim shall be limited to Sno Gem, Inc.'s cost of material on the product determined to have a manufacturer's defect. In no event shall Sno Gem, Inc. be liable to any party for any direct, indirect, consequential, incidental or special damages, whether in contract or tort and expressly disclaims liability for any damages of any kind arising under any theory of law whatsoever. The performance of the product depends on the Purchaser's adherence to Sno Gem Inc.'s recommended spacing and layout and an installation in conformance with Sno Gem, Inc.'s installation instructions. Sno Gem, Inc. will not be responsible to Buyer for any deviations therefrom. Sno Gem, Inc. makes no warranty of any kind, express or implied, including but not limited to, any warranty of merchantability or warranty of fitness for a particular purpose. Subject to all other provisions and limitations set forth in these Terms and Conditions, Buyer and Sno Gem, Inc. further agree that in no event shall Sno Gem, Inc. have liability to Buyer in an amount in excess of the purchase price of product purchased by Buyer in the calendar year in which a claim is made by Buyer, and only to the extent such damage claim is paid through a policy of insurance held by Sno Gem, Inc. (the "Damage Limitation"). Additionally as part of the Damage Limitation, Sno Gem, Inc. shall have no liability arising in whole or in part out of the sale of any product by Sno Gem, Inc. to Buyer, whether sounding in contract or tort, or otherwise, for any amount in excess of that sum paid by an insurance company through a policy of insurance held by Sno Gem, Inc.

**11. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of Illinois. Any and all disputes arising hereunder shall be heard and resolved in the appropriate court of McHenry County, Illinois and Buyer submits to personal jurisdiction in Illinois and agrees that such court shall have exclusive jurisdiction over the subject matter. Buyer waives any objection to such jurisdiction including, but not limited to, forum non conveniens. In the event of a dispute between the parties, the prevailing party shall be entitled to collect legal fees from the non-prevailing party.

**12. Severability Provision.** If any phrase, clause or provision of these Terms and Conditions is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause or provision shall be deemed severed from this Agreement, but will not affect any other provisions of this Agreement, which shall otherwise remain in full force and effect. If any restriction or limitation of these Term and Conditions is deemed to be unreasonable, onerous and unduly restrictive by a court of competent jurisdiction, it shall not be stricken, in its entirety and held totally void and unenforceable, but shall be deemed rewritten and shall remain effective to the maximum extent permissible under applicable law within reasonable bounds.

**13. Entire Agreement and Acceptance.** These terms and conditions constitute the entire agreement of the parties and any and all modifications hereto are to be in writing signed by both parties. Execution of this Agreement, the Buyer's placement of an order and/or payment of any amount to Sno Gem, Inc. shall constitute a binding acceptance of this Agreement and the aforesaid terms and conditions and shall bind Buyer to Sno Gem, Inc. for all amounts due and owing.