

**Silent Gliss Inc. – Terms & Conditions**

**1. Parties:**

Silent Gliss, Inc. is herein referred to as “Seller” and the person, company, or other entity purchasing as indicated on the associated invoice is referred to herein as “Buyer”. All materials, goods, or merchandise described on the front hereof, regardless of type, are referred to herein as “Products.”

**2. Acceptance / Contract Formation:**

All orders are subject to Seller’s written approval and acceptance at their offices in the Bronx, NY, and shall not become binding obligations of Seller unless and until Seller has issued a written Order Confirmation and said order confirmation have been executed by both Buyer and Seller. In conjunction with the invoice provided, the sale of Products hereunder are subject to and include the Terms and Conditions of Sale herein, and the execution and return of the invoice by the Buyer indicates acceptance of the Sellers terms and conditions. Without limiting the generality of the foregoing, no acknowledgment, reference, or performance by Seller under any purchase order submitted by Buyer shall be deemed to be an acceptance by Seller, if any terms or conditions contained on such purchase order are additional to, different, or contrary, to the Terms and Condition contained herein.

**3. Prices**

Prices in this listing are quoted net Free On Board (“FOB”), our Bronx, NY facility. All prices in this price list are effective on January 1 of the current calendar year. All prices are subject to change without notice. No order is valid until acknowledged by the factory by writing. Terms require 50% deposit for all orders with balance due before shipment. No orders will be shipped Cash On Delivery (“COD”). Orders are accepted only subject to these terms.

Note: All quotes are valid to the greater of: The end of the calendar year or 30 days from the date the quote is written. (If a modification was made based on previous calendar years pricing because it was within the 30 day period, then the pricing will be valid no further than February 15 of the current calendar year.)

- (a) A price for what is quoted is locked in once the 50% deposit is received. Any additions will be priced according to the current calendar year pricing.
- (b) Any amounts payable to Seller hereunder which are not paid when due shall thereafter bear interest at the rate of one and one-half

percent (1.5%) per month or the maximum amount permitted by applicable law, whichever is less. Time is of the essence of all payments due under advice therefrom, or through a collection agency, Buyer agrees to pay all costs of collection, including (but not by way of limitation) all court costs and reasonable attorney’s fees.

- (c) Upon failure of Buyer to make any payment when due hereunder, or in the event of any default, potential default, breach or repudiation by Buyer of any obligation to Seller, whether contained herein or otherwise, or in the event Buyer becomes insolvent, calls a meeting of its creditors, or makes an assignment for the benefit of their creditors, or if any bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or against Buyer, Seller shall have (in addition to any and all other rights or remedies Seller may have at law or in equity ) the option to (i) cancel this and any other transaction with Buyer ( Buyer remaining liable to Seller for damages); (ii) defer any deliveries hereunder; (iii) declare the full purchase price of all Products sold hereunder immediately due and payable; and/or (iv) sell all or any portion of undelivered Products, without notice, at a public or private sale ( Buyer shall be responsible for the costs and expenses of such sale and for such deficiency).
- (d) The Parties agree that if Seller, with respect to any sales to Buyer, agree to vary or relax the method or terms of payment, or otherwise accommodate the Buyer to ease any obligations, such variation or relaxation shall not affect in any manner whatsoever Seller’s rights thereafter to require payment in accordance with terms specified herein. The option to accommodate alternative terms of payment is at the sole discretion of the Seller, and the Seller reserves the right to deny any special accommodations at will.
- (e) Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness or obligation owing by Buyer to Seller, without prejudice to and without discharging the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying such check or remittance

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**4. Security Interest:**

To secure the performance of Buyer's obligations hereunder, Seller reserves, and Buyer grants to Seller, a security interest in all Products sold hereunder, together with all proceeds hereof. Buyer hereby agrees upon request by Seller to execute and deliver such financing and payment scheduling statements, notices and other documents, and to do such other acts and things as may be necessary from time to time for Seller to perfect and maintain the security interest reserved herein. Buyer hereby constitutes and irrevocably appoints Seller its agent and attorney-at-fact for the purpose of executing any and all financing statements, notices and other documents that may be necessary from time to time for Seller to perfect and maintain the security interest reserved herein.

**5. Freight and Shipping**

- (a) All delivery and lead times are estimates and may have reasonable delays out of Sellers control.
- (b) Prices do not include packing. There is a packing charge, usually about 10% of the net price shown per track for cartoning. All common carrier shipments will be cartoned. Partial shipments will only be made with written authorization by Seller.
- (c) A minimum charge of \$100 net per shipment will apply. If you choose to use your own shipping methods then the greater of \$50 or 20% of total net shipping price will be charged for handling.
- (d) Charges will be for dock delivery only, no inside delivery.
- (e) Product is shipped FOB origin Bronx, NY freight prepaid and added to the Buyers invoice.
- (f) Title of goods changes when merchandise leaves Sellers dock. Any subsequent damage on it leaves Sellers dock, and all freight claims, are the responsibility of the purchaser. Buyer shall bear all risks of loss or damage to Products after they leave Sellers warehouse. If special arrangements are made for the Buyer concerning the insurance of Products, all expenses are to be covered by the Buyer. If the Seller incurs any expenses or costs associated with carriage or insurance of particular Products, Buyer expressly agrees to reimburse the Seller.
- (g) **Collect Shipment.** Trucking Company will collect from receiver on delivery.
- (h) **Third Party Shipment.** The freight company will bill a 3<sup>rd</sup> party other than Seller or receiver (usually the purchaser). This option is not available with all carriers.

**6. Partial deliveries**

Seller may deliver Products in partial shipments and reserves the right to invoice for partial deliveries. Payments for partial deliveries shall be made in accordance with the payment terms set forth in paragraph 3 above.

**7. Deferred Deliveries**

Seller will not defer deliveries at Buyer's request unless Buyer agrees to indemnify Seller against all loss and additional expenses incurred by Seller in connection with such deferred deliveries, including, but not limited to handling, storage, insurance and similar charges. In the event of a transfer to storage, such transfer shall be considered delivery for all purposes hereunder, and be subject to the provisions contained in paragraph 5 and paragraph 3 herein.

**8. Warranty**

- (a) **General.** Seller warrants to Buyer that Products ordered pursuant to the invoice shall conform within ¼ inch of the written specifications and under the normal use and service, shall be free from defects in materials, and workmanship pursuant to the following;
- (b) **Product.** Seller warrants its *fabric* for 1 year and *systems* for 5 years from date of invoice subject to normal use, including, but not limited to, storage and use within temperate zone of 58-88 degrees f. and humidity varying from 50-70 percent.
- (c) **Services.** Errors in any custom orders or specific sizes provided by the Buyer, received by Seller, are not covered under the Sellers Warranty. Specifically, Seller expressly prohibits any warranty to Products in which the Buyer takes their own measurements and provides such details to the Seller. Additionally, Seller does not offer any warranty to Buyer for any improper installations by third parties.
- (d) Damage to the Product or the services during installation resulting from accident, alteration, misuse, tampering, negligence and/or abuse by Buyer are not covered under warranty. Fabrics sold without a system do not fall under our warranty and are all considered a final sale.
- (e) Cancellations of acknowledged orders are not accepted. No charge back, returns, allowances or credit accepted without written approval by Seller.
- (f) **Notice.** Should any Products covered by this warranty provide defective during the warranty period herein, Buyer shall notify Seller in writing no later than (30) thirty days after discovery of the defect.

**8. Warranty (Continued)**

(g) **Voiding The Warranty.** The following will void the product warranty: (i) Cleaning the product in a way that is not in accordance with the products cleaning instructions; (ii) Misusing the product, this includes but is not limited to: using a product that is meant for indoor use outdoors; (iii) Using a Customer’s Own Material (“COM”) fabric on a Sellers system; (iv) Other details mentioned in this document, such as fabrics sold without a system, improper installation, etc.

**9. Remedies.**

Sellers sole obligation, and Buyers exclusive remedy under this warranty shall be limited to repair or replacement of the Product, at the Seller’s option, of any Product or component thereof covered by this warranty which proves defective in materials, pursuant to the provisions of Section 8 above. Seller shall have no obligation with respect to any such defect unless Seller is given written notice of the defect in the manner contained in Section 8. If any defective Product or component thereof covered by this warranty requires repair or replacement, Buyer shall obtain a written return authorization from Seller and thereafter deliver the defective Product or component to the Seller’s warehouse as indicated on the invoice, or to such other destinations as Seller may specify. No claim against Seller shall be allowed for Products returned hereunder without Seller’s written authorization. All transportation costs and charges incurred in connection with the repair or replacement of any Products or components covered by this warranty shall be for the account of the Buyer, unless expressly accommodated by the Seller. The repair or replacement of any Product or component pursuant to the foregoing warranty shall not extend the term of such warranty beyond the warranty period set forth in Section 8.

**EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 8 AND 9 HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE OR DESCRIPTION, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY PRODUCTS FOR ANY PARTICULAR PURPOSE, AND HEREBY DISCLAIMS THE SAME.**

Except as otherwise provided herein, any rights or remedies granted hereunder to either Buyer or Seller shall be in addition to and not in lieu of any rights or remedies Buyer or Seller may have at law or in equity

**10. Claims / Inspections**

All items are inspected prior to shipping. When the product is accepted by the carrier, all risk reverts to the purchaser. Seller is not responsible for any damage that occurs in transit, concealed or otherwise. All Products should be unpacked and inspected for damage by the Buyer promptly, immediately upon receipt and any damages should be noted on the bill of lading. Buyer shall visibly inspect the Products for damage and check the products for correct length and proper fit in accordance with Seller’s installation instructions.

If damage is claimed, then the Buyer agrees to permit the carrier to inspect for damage. If the Buyer fails to do so, then the Buyer agrees that the Seller has no obligation to recognize or inspect the alleged claim. All Products shall be deemed to be free of such defects, shortages or nonconformities, unless buyer notifies Seller of such defects, shortages, or nonconformities in writing prior to the installation of the units and not more than thirty (30) days after the date of delivery. If the Buyer, upon prompt inspection after delivery, gives the carrier a clear receipt for goods received that have been damaged or lost in transit, the Buyer does so at their own risk and expense. The claim is with the carrier, not the Seller.

Anything herein to the contrary notwithstanding, Seller shall not be liable for any loss, damage or expense resulting from the installation of damaged Products or products of incorrect length or improper fit.

No action, regardless of form, arising out of or in connection with the sale of Products hereunder (other than action by Seller for any amount due to Seller from Buyer) may be brought more than one (1) year after the cause of the action has arisen.

**11. Installation:**

The Buyer is solely responsible for ensuring that the site is adequate, provides safe access, and is otherwise ready for the installation of the goods. Buyer is solely responsible for the costs of any modification to its site or to the location where the Products are to be installed, which is required to enable the Products to be properly installed. In addition, the Buyer is solely responsible for any additional work or services which may be required in connection with the installation of the Products, including but not limited to any electrical work (wiring, new lines, etc.), scaffolding, access, decorating, or any other modifications necessary for installation. Seller is not responsible for any damages to any structure, surface or service which may occur outside of any hidden obstructions that may be encountered during the ...

**11. Installation (Cont.):**

... installation of the Products. Buyer is required to advise the Seller of any hidden obstructions that may be encountered during installation. Buyer agrees that they will indemnify, or otherwise reimburse, the Seller for any costs or damages incurred by the Seller as a result of any issues with hidden obstructions, or otherwise unprepared sites, during the installation of the Products. Both Parties agree that they will comply with all applicable regulations associated with the installation of the Products, and in the event that the Buyer required the Seller to preform acts that would be in violation of applicable regulations, the Seller will have the option to refuse to carry out the Installation, and such act by the Buyer will be treated as a breach of the Contract

**12. Limits of Liability**

- (a) In no event shall Seller be liable to Buyer, whether in contract or in tort or under any other legal theory, for loss of profits or revenues, loss of use or similar economic loss, or for any indirect, special, incidental, consequential or similar damages arising out of or in connection with the sale, non-delivery, servicing, use, installations, maintenance, condition or possession of any Product sold hereunder, or any claim made against Buyer by any other party, even if Seller has been advised of the possibility of such claim.
- (b) In no event shall Seller's liability under any claim made by Buyer exceed the purchase price actually paid by Buyer for the Products in respect of which such claim is made.

**13. Indemnification**

Buyer agrees to defend, indemnify, and hold Seller harmless from and against any and all claims, demands, liabilities, losses, costs and expenses (including, without limitation, reasonable attorney's fees and costs of investigation), irrespective of the theory upon which based (including, without limitation, negligence and strict liability), Seller may suffer or incur as a result of any claims, demands, or actions against Seller by third parties arising out of the sale, delivery, installation or servicing of Products sold or delivered to Buyer hereunder or in connection with the use, condition, possession, installation, ownership, selection, transportation, loading unloading, maintenance or return of any Product sold or delivered to Buyer hereunder, including, without limitation, claims for injury to person or property (including death); provided, however, that Buyer shall have no liability to Seller hereunder for damages, losses or expenses resulting solely from Seller's negligence.

**14. Rejection of Delivery / Storage.**

- (a) **Rejection.** Where Buyer has declared, expressly or implied, an intention not to accept delivery in accordance with the provisions hereof, no tender or delivery shall be necessary, but Seller may, at its own option, give notice in writing to Buyer that Seller is ready and willing to deliver in accordance with the provisions hereof and such notice shall constitute a valid tender of delivery.
- (b) **Storage.** Seller has made no provision for storage for Buyers Products. If the Buyer is unable to accept delivery as scheduled, the Buyer must provide new shipping instructions. All costs related to the delay are responsibility of the Buyer. If payment is not received within 30 days of notice to you that your order is "ready for shipment" a storage charge will be added to your invoice in the sum of 5% per order monthly.

**15. Customers Own Materials ("COM")**

- (a) Buyer is to ship all COM prepaid and tagged with the Buyer's name, purchase order number, model number, and system of the shade and send to:  
  
SILENT GLISS INC.  
755 EAST 134<sup>TH</sup> STREET – 3<sup>RD</sup> FLOOR  
BRONX, NY 10454  
ATTN: FABRIC RECEIPT DEPARTMENT
- (b) Buyer must provide Seller with a swatch of the COM when placing their order, in order to facilitate the identification of Buyers COM when it arrives at the Sellers distribution center, with the correct side up and facing the direction required.
- (c) Yardage requirements are based on 11/8" width material, additional charges may apply for 54" width fabric. Additional yardage may be required if a pattern required matching plaids and stripes. If the Buyer has specific requirements as to correct side and/or top or bottom of fabrics, they must be stated upon placing the Buyers order: otherwise this will be established using Sellers best judgement. Seller is not responsible for flaws, damage, defects or color variation in COM provided.
- (d) Buyer is required to obtain a CFA prior to shipment of COM.

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**16. Priority Express Program**

When available, Seller will ship finished orders within 15-20 working days (raw tracks within 3 working days) from receipt of payment in full, order and COM materials for an upcharge of 25% above net listed prices. Also when available Seller can ship finished orders within 6-8 weeks from receipt of COM materials for an upcharge of 10% above net listed prices.

**17. Assignment**

Buyer may not assign all or any portion of its rights hereunder, or delegate or subcontract all or any portion of its obligation hereunder, without the prior written consent of the Seller.

**18. Force Majeure**

Seller shall not be liable for any default or delay in the performance of any of its obligations hereunder if such fault or delay is caused, directly or indirectly, by fire, flood, earthquake, the elements, acts of God; accidents or unavoidable casualties; wars, rebellions or revolutions in any country; riots or civil disorders; strikes, lockouts, or labor difficulties; acts, rulings, decisions, or requirements of any tribunal or government agency, board or official; interruptions of transportation facilities or delays in transit; supply shortages or the failure of any party, (including, without limitation, affiliates of Seller) to perform any commitment to the Seller relative to the production or delivery of Products or any part thereof; litigation to which the Seller may be a party relating to any rights of Seller in any patents, licenses, trademarks, service marks, or trade names; or any other cause, whether similar or dissimilar to the causes enumerated herein, beyond the reasonable control of Seller. Seller shall notify Buyer of the happening of any such contingency within a reasonable period of time. If due to an excusable delay, performance cannot be completed within the original period of performance, the period of performance shall be extended for a reasonable period of time to allow for completion of performance.

**19. Waiver**

Buyer hereby waives demand, presentment, dishonor, protest, notice of nonpayment, notice of default and any and all other demands or notices whatsoever. Except as otherwise expressly provided hereunder, no failure on the part of Seller to exercise, and no delay by Seller in exercising any right, power or remedy. No express waiver or assent by Seller to any breach of or default in any term or condition hereof shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition.

**20. Notice**

All notices, order confirmations, invoices, and other communications made or given hereunder shall be deemed sufficiently made if given upon delivery in person, submitted via facsimile with confirmation, submitted via email and confirmation of receipt is provided by the recipient of such communication, or upon the expiration of three (3) days after the date of posting if mailed by U.S. airmail, postage prepaid, to the parties at the address appearing in the front hereof.

**21. Choice of Law / Forum**

Regardless of the place of contracting, place of performance or otherwise, this document and all amendments, modifications, alterations or supplements hereto, and the rights of the parties hereunder shall be construed and enforced in accordance with the laws of the State of New York. If any controversy or claim between the parties arises under or relating to the transactions contemplated herein, only the courts in the State of New York shall have jurisdiction to hear and decide such matter. Buyer hereby irrevocably (a) consents to the jurisdiction and venue of the courts of the State of New York, including federal courts located therein, in any action arising under or relating to the transactions contemplated herein, and (b) waives any and all jurisdictional defenses Buyer may have to the institution of any such action in any such court.

**22. Severability.**

All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so they will not render any terms or conditions contained herein illegal, invalid or unenforceable. If any term or condition contained herein shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms hereof shall constitute their agreement with respect to the subject matter hereof and all such remaining terms and conditions shall remain in full force and effect

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**23. Entire Agreement**

The invoice confirmation, in conjunction with the terms and conditions herein, supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof, and the invoice confirmation, in conjunction with the terms and conditions herein, contains the sole and entire agreement between the parties with respect to the matters covered hereby. By way of illustration, and not by way of limitation, all purchase orders, invoices, delivery schedules and other documents submitted by Buyer hereunder or in connection herewith shall be deemed to incorporate without exception all of the Terms and Conditions of Sale contained herein notwithstanding any additional or contrary terms or conditions contained herein. Unless Seller shall expressly advise Buyer to the contrary in writing apart from the provisions of any purchase order, invoice, delivery schedule, or other document submitted by the Buyer hereunder or in connection herewith, no acknowledgment by Seller of or reference by Seller to or performance by Seller under any such purchase order, invoice, delivery schedule, or other document shall be deemed to be an acceptance by Seller of any terms or conditions contained therein which are additional to or contrary to the Terms and Conditions of Sale contained herein, which may not be modified or amended except by an instrument in writing signed by one of the Seller's duty authorized officers.