



CREDIT APPLICATION AND SALES AGREEMENT containing **limited warranty and personal guaranty** for
Wilson Partitions, a division of Arcadia Products, LLC f/k/a Arcadia, Inc. ("Wilson")

CREDIT APPLICATION (VERSION 11-22-22)

COMPANY Name of Applicant ("Buyer"): _____
Street Address _____
City, State, Zip Code _____
Phone number _____ Cell Number _____
Email Address of Owner signing this Sales Agreement _____
Email Address of second Owner signing this Sales Agreement _____
Are you going to install the materials you will be buying from Arcadia _____
What is your Glazing Contractor's License Number _____
What is your Federal Tax ID Number _____

OWNERS (PRINCIPALS) of BUYER:

Owner's Name _____ Social Security # _____
Home Address of Owner _____
Name of Additional Owner _____ Social Security # _____
Email Address of Additional Owner _____
Name of President _____
Name of Vice President or Secretary _____
What year did the Owners (Officers) listed above purchase or start this Company _____

BANK: _____ City & State _____
Account Number (needed to get a Bank reference) _____
BANK'S Email _____

TRADE REFERENCES:

Your current supplier of interior doors and windows _____
Email address _____ Phone _____

Buyer, and the individuals who sign this Credit Application and Sales Agreement ("Guarantors"), authorize Wilson to obtain business and consumer credit reports on them for credit and/or collection information. Buyer and Guarantors authorize Wilson to disclose any information in this Credit Application to any supplier, bank, or lender for the purpose of obtaining personal and business financial information of any kind.

SALES AGREEMENT

1. THE PARTIES, NOTICES, USE OF BOLD FONT, ITALICS, AND SECTION NUMBERS. Wilson Partitions, a division of Arcadia, LLC., ("Wilson") manufactures and produces interior aluminum swing doors, interior aluminum door frames, interior aluminum sliding doors, interior aluminum windows, interior aluminum wall systems, frameless glass swing doors, wood swing doors, borrowed lites, transom frames (with sidelight), door frames (with sidelight) and related interior construction

materials (collectively "Products"). The business entity, identified as "Buyer" in the Credit Application above, wants to purchase Products from Wilson and, in consideration of this Agreement, Wilson may sell Products to Buyer. If Buyer purchases Products from Wilson, **all sales shall be governed exclusively by the terms and conditions contained in this Sales Agreement and Credit Application ("Agreement")**. Wilson and Buyer agree that they hold themselves out as having knowledge or skill peculiar to the Products. Notices, claims and late payments to Wilson must be sent to Wilson by traceable US mail to: Wilson Partitions, Attention: Joy Chen, 2301 East Vernon Ave, Vernon, California 90058, except that a notice given pursuant to section 3.2, 12.1, and 19 shall be given in the manner described in those sections. All references to section numbers are references to section numbers in this Agreement. Bold font, larger font, capital letters, and underlining are used to draw extra attention to some provisions and to word definitions.

2. WILSON'S COMMITMENTS TO BUYER IN EXCHANGE FOR BUYER'S WAIVERS OF CERTAIN CLAIMS.

2.1 If Buyer's customer fails to pay Buyer for Wilson's Products, Wilson will seek payment from third parties subject to reasonable conditions. If Buyer is not paid in full for Products and If Wilson has any valid statutory remedy against third parties, Wilson will pursue such rights and continue to sell Products to Buyer on credit, and abstain from pursuing legal remedies against Buyer as long as the following conditions have been and remain satisfied at all times:

- a. Each and every one of the Products purchased by Buyer from Wilson for a particular construction project ("Project") must have been installed on that Project;
- b. Buyer has not been paid for all of the Products and must have submitted timely requests to its customer for payments ("Draw(s)") that met all of the customer's requirements for a Draw. To the extent that Buyer received payment for Products, it must have promptly paid Wilson in full for all Products covered by every Draw.
- c. An installer(s) of the Products or other person, with firsthand knowledge, whether they are employees of Buyer or contractors, must truthfully, promptly and under penalty of perjury, testify (by written declaration and/or in person) that each and every one of Wilson's Products were installed on the Project, if Wilson requests such testimony;
- d. During any 24-month period, Buyer has timely paid Wilson for all Products, except for Products on no more than 2 Projects (both of which 2 Projects must meet the conditions set forth in this section 2.1);
- e. If Wilson has not recovered all amounts owed to it after the conclusion of the action to enforce statutory rights against third parties, Buyer must have promptly paid Wilson any remaining balance owed to Wilson;
- f. Buyer has, and continues to, timely pay Wilson for Products purchased on a shop account; and,
- g. The amount owed to Wilson on the Project must be more than \$25,000, but Wilson may waive, but only in writing, this or any of the preceding conditions.

2.2 Additional waivers by Wilson. If all of the conditions set forth in section 2.1 above have been satisfied, any amount recovered from a third party shall be applied by Wilson as follows: first to the principal balance owing on the Project; second to Finance Charges; third to court costs; and fourth, to Wilson's actual and reasonable attorneys' fees incurred and paid by Wilson in pursuing the payment from the third party(s). In addition, Wilson shall waive all Finance Charges on the Project in excess of 7% per year. But if all the conditions have not been satisfied at all times, Wilson shall apply the recovered amount in the reverse order and not waive any Finance Charges.

3. BUYER WAIVES CLAIMS FOR DELAY DAMAGES AND CLAIMS FOR ECONOMIC DAMAGES.

3.1 Delivery dates are estimates and delays are foreseeable. The manufacture of Wilson's Products is a complex process that requires a considerable amount of time for planning, procurement of raw materials, and fabrication. It is foreseeable that some of the Products delivered by Wilson may be incomplete, damaged, non-conforming, defective, or fewer than the number ordered (collectively, "Defective" or "Defect(s)"). It is also foreseeable that Buyer may need to make changes to its purchase order ("PO") and that its PO may contain mistakes or lack information needed to fabricate Products satisfactory to Buyer. Therefore, **all delivery dates quoted or given by Wilson are estimates only**; Wilson makes no representation or promise that Defect-free Products will be ready for

delivery by the estimated, quoted, or specified dates.

3.2 Buyer's duty to inspect Products and the time limit for claims based on patent Defects. Buyer represents and warrants that it will: (i) order Products for delivery well in advance of the anticipated installation date so that any Defects can be remedied by Wilson before the date that the Products are needed; (ii) thoroughly inspect the Products promptly after delivery; (iii) not install, or attempt to repair, any Products thought to be Defective without Wilson's prior written consent; and, (iv) give Wilson a reasonable opportunity to inspect, repair, and/or replace the Defective Products before Buyer installs them or sells them. **Buyer assumes all risk of delays. Buyer must make a written claim for patent defects, nonconforming Products, damaged Products, or for anything else other than a latent defect, within 5 business days of receipt of the Products.** Buyer must prove beyond a reasonable doubt that it gave such written notice to the salesperson, the sales manager, and the general manager of the Wilson branch selling the Products. Failure to give such notice within 5 business days shall create a presumption that the products were satisfactory in every way and Buyer shall have the burden of proving otherwise beyond a reasonable doubt.

3.3 Buyer Waives Claims For Delay Damages. **BUYER HEREBY WAIVES AND RELEASES WILSON FROM ALL CLAIMS FOR DELAY DAMAGES.** It is within the contemplation of Wilson and Buyer that delays may be caused by many conditions, including, but not limited to, Wilson's active or passive negligence in raw material procurement, planning, fabrication, delivery, or for any other active or passive conduct.

3.4 Buyer Waives Claims For Economic Damages. **BUYER HEREBY WAIVES AND RELEASES WILSON FROM ALL CLAIMS FOR ECONOMIC DAMAGES, including delay damages, even if Wilson is aware of or is advised in advance of the possibility of such damages and/or even if such damages are a result of Wilson's active or passive negligence.**

4. TERMS ON BUYER'S PURCHASE ORDER SHALL NOT APPLY TO PURCHASES FROM WILSON. Wilson's written PO confirmation ("PO Confirmation") and this Agreement shall constitute the sole, exclusive, and entire agreement between Wilson and Buyer with respect to all purchases and sales, unless, within 2 business days after the PO Confirmation is received, Buyer sends emails to the Wilson salesman, sales manager, and general manager explaining the reasons for objecting to the PO Confirmation. Regardless of any objection or other circumstances, the terms and conditions on Buyer's PO shall be disregarded and deemed null and void.

5. CREDIT TERMS, PAYMENT IN ADVANCE, INTEREST, SALES TAX.

5.1 Credit Sale Terms. If Wilson agrees to extend credit on a construction job, Buyer shall pay for Products within 30 days of being invoiced for the Products.

5.2 Interest or Finance Charges. Invoices not paid within 30 days of the date of the invoices shall incur interest or a time-price differential charge (commonly referred to as interest, finance charge, or service charge, and referred to herein as "Finance Charges") of 1.5% per month on any amount not paid when due.

5.3 Cash Sale Terms. If Wilson does not agree to extend credit, Buyer shall pay 50% of the sales price prior to manufacturing and the remaining 50% of the sales price before shipment. Payment must be made by wire transfer or cashier's check. Wilson will not intentionally ship the Products before receipt of payment in full.

5.4 Sales Tax. Buyer shall be liable for and pay all sales taxes and use taxes to Wilson. If the price on Wilson's quotations or PO Confirmations do not mention sales tax, it is agreed that the price is only for the Products and that Buyer shall also be liable to Wilson for the applicable sales/use tax and will pay the sales/use tax to Wilson.

6. CLAIMS FOR LATENT DEFECTS. Buyer hereby waives all claims for latent defects unless Buyer notifies Wilson of the claim or potential claim within the sooner of 60 days after the date Buyer first learns of a purported latent defect, or within 60 days after the date that Buyer should have known about or discovered the purported latent defect.

7. INVOICES AND STATEMENTS CREATE REBUTTABLE PRESUMPTIONS. If Buyer believes that any invoice or statement sent to it by Wilson is inaccurate, Buyer must give written notice to Wilson within forty-five (45) days of the date that Buyer receives the purported inaccurate invoice or statement. The failure to give such notice within 45 days shall create the presumptions that the information in the invoices and in the statements is an accurate and complete business record

of: (i) the actual sale and delivery of the described Products to Buyer; (ii) the actual amount of the agreed upon and fair market value of the Products delivered; and, (iii) the actual amount owed to Wilson. The presumptions can be refuted only by evidence establishing, beyond a reasonable doubt, that the presumptions are not true.

8. **LIMITATIONS OF BUYER'S REMEDIES.** To the extent allowed by law, any liability of Wilson to Buyer, whether arising out of or related in any way to any contract, negligence, warranty, or otherwise, shall be limited to Wilson's choice of: **(i) repairing and replacing Defective Products or parts; or (ii) Buyer's return of the Defective Products to Wilson and Wilson's repayment of the amount paid by Buyer to Wilson for the Defective Products. Buyer shall bear all costs of removing Defective Products, installing the replacement(s), and repairing the damage, if any, caused by such removal and installation. These remedies are exclusive; Buyer waives all other remedies.**

9. **WILSON'S LIMITED WARRANTIES AND REPRESENTATIONS.**

9.1 **Wilson's warranties.** Wilson has not made any representations or warranties with respect to Products except for merchantability.

9.2 **Conflicting terms.** In the event that Buyer is, or ever becomes, a purchaser of products produced by Arcadia, LLC, or of any division of Arcadia other than Wilson, this Agreement shall be deemed replaced and superseded by the Arcadia, LLC Sales Agreement and apply to Buyer's purchase of Products from Wilson. In the event of a conflict between any of the terms, conditions, or warranties on Wilson's websites and the provisions in this Agreement, the provisions of this Agreement shall be controlling.

9.3 **Buyer's Waiver Of Warranties.** **EXCEPT FOR THE WARRANTY OF MERCHANTABILITY, BUYER WAIVES ALL IMPLIED AND STATUTORY WARRANTIES INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

10. **BUYER IS AN INDEPENDENT CONTRACTOR. THERE ARE NO THIRD-PARTY BENEFICIARIES.** Buyer is and shall remain an independent contractor. Under no circumstances shall Buyer, or any of Buyer's employees, managers, officers, or partners hold themselves out as the agents, principals, partners, representatives, spokespersons, or employees of Wilson. Wilson and Buyer do not intend to create any third-party beneficiary rights by this Agreement or by any other agreement.

11. **ATTORNEYS' FEES AND GOVERNING LAW.** In the event of a lawsuit brought by Buyer, Guarantors, or Wilson, arising out of or related to this Agreement, the prevailing party shall be entitled to attorneys' fees. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Suit for Buyer's failure to pay Wilson may be filed and maintained in Los Angeles County.

12. **GENERAL PROVISIONS.**

12.1 **Entire Agreement.** No party has made any promises or representations to induce any other party to enter into this Agreement; no party is relying upon any promise or representation not contained in this Agreement. This Agreement constitutes the sole, exclusive, and entire agreement between or among Arcadia, Buyer, and any Guarantors, and supersedes all oral and written representations, warranties, statements, promises, or understandings not contained in this Agreement. The provisions of this Agreement may be modified, supplemented, or changed, only by a document, in writing, signed by Arcadia's Credit Manager, Buyer, and Guarantors. See section 13 for requirements of terminating the Guaranties.

12.2 **Material terms and severability.** All terms of this Agreement are material terms. But, if any risk allocating term of this Agreement is deemed unenforceable, such provision shall be severed and the party impacted by the severance shall be compensated for the reallocation of risk.

12.3 **No collateral agreements.** There are no collateral verbal agreements between or among Wilson, buyer, and/or guarantors.

13. **PERSONAL GUARANTY.** The undersigned, except for Wilson, agree and acknowledge that he/she/they/it ("Guarantor('s)") are signing this Agreement in Guarantor's individual capacity, as well as in Guarantor's capacity as a person authorized to execute this Agreement on behalf of the Buyer. Guarantor, jointly and severally, personally guaranties performance of all obligations, and payment of all indebtedness, of Buyer to Wilson, including all renewals, modifications, and extensions. **Guarantor waives the benefit of any limitations affecting Guarantor's liability hereunder or the enforcement thereof to the full extent permitted by law.** It shall be conclusively presumed that all sales by Wilson to Buyer are made in reliance upon Guarantor's personal guaranty. Guarantor shall, at all times, be conclusively deemed to have an ownership interest in Buyer and to be actively engaged in conducting the business of Buyer, unless Guarantor gives written notice that such is no longer true. This Guaranty may be terminated only by sending notice to: twilliamson@arcadiainc.com , gs8558a@gmail.com , and d.sykulski@yahoo.com . Termination of the Guaranty shall not terminate Guarantors' liability to Wilson for Products ordered by Buyer prior to 5 days following receipt of the termination notice by all of the 3 email recipients just named above . **This is an absolute and continuing Guaranty.**

Guarantor agrees that Guarantor's single signature below makes Guarantor personally responsible and liable for all of Buyer's present and future indebtedness to Wilson and for all other liabilities of Buyer to Wilson.

20. **THE TERMS OF THIS SALES AGREEMENT WERE NEGOTIABLE. BUYER ACKNOWLEDGES THAT ALL OF THE PROVISIONS OF THIS AGREEMENT WERE NEGOTIABLE AND THAT FOR A SURCHARGE, OR OTHER CONSIDERATION, BUYER COULD HAVE ELIMINATED ALL OF BUYER'S WAIVERS, INCLUDING BUT NOT LIMITED TO THE WAIVER FOR DELAY DAMAGES AND THE WAIVERS FOR ECONOMIC DAMAGES. BUYER ALSO ACKNOWLEDGES THAT ALL OF THE PROVISIONS OF THIS AGREEMENT ARE ACCEPTABLE TO BUYER EXCEPT AS OTHERWISE INDICATED HEREIN.**

Buyer & Guarantor

▶ By _____
Signature (As Guarantor & For Buyer)
Do not sign electronically

▶ _____
Print Name

▶ _____
Corporate Title

Buyer & Second Guarantor

▶ By _____
Signature (As Guarantor & For Buyer)
Do not sign electronically

▶ _____
Print Name

▶ _____
Corporate Title

Wilson Partitions, a division of Arcadia Products, LLC f/k/a Arcadia, Inc. ("**Wilson**").

▶ By _____
Tom Williamson, Wilson Credit Manager (for Wilson)

Dated: _____

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