

En-Fold Warranty

Seller warrants to Buyer only, that all materials and equipment furnished by Seller under this Agreement will be new, unless otherwise specified, and that Seller's work when completed (a) will conform to the Scope of Work, and (b) will be free from defects in material or workmanship. The duration of this warranty shall be one (1) year from the earlier of the date of substantial completion of Seller's work or the date the System is first used for its intended purpose (the "Warranty Period"). If Buyer discovers during the Warranty Period a failure of Seller's work to conform in any material respects to the Scope of Work or a defect in material or workmanship, it must promptly notify Seller in writing. Within a reasonable time after receiving such notification, Seller shall, at its option, either repair or replace the defective work at no charge to Buyer for materials or labor. Notwithstanding any provision of this Agreement to the contrary, this obligation imposed upon Seller to repair or replace defective work shall be the exclusive remedy of Buyer in the event of the breach of a warranty contained in this Agreement or in the event any defective work is discovered following substantial completion. Notwithstanding the foregoing, Seller does not provide any warranty for the fabric or motors included in the System. Rather, Seller shall assign to Buyer the warranties provided on the fabric and motors by the manufacturers thereof.

Notwithstanding any provision of this Agreement to the contrary, Seller shall not have any liability whatsoever to Buyer and/or to any other person or entity for defective work, the breach of the express warranties contained in this Agreement or otherwise caused by, resulting from or arising out of (a) improper repairs to and/or maintenance of the materials or equipment included in Seller's work, including the equipment and/or systems incorporated therein by any person or entity other than Seller (provided, however, that the performance of maintenance and repairs in strict compliance with the instructions of Seller shall not be deemed improper for this purpose); (b) the failure of Buyer to properly perform normal and routine maintenance, including preventative maintenance; (c) misuse, abuse, neglect and/or mishandling of the materials or equipment included in Seller's work, including the equipment and/or systems incorporated therein; (d) lightning strikes and other acts of God or conditions beyond Seller's reasonable control; (e) power failures, interruptions, fluctuations or surges; (f) worn, broken or defective parts or components which are consumable such as light bulbs and fuses; (g) alterations, additions and/or modifications to the materials and equipment included in Seller's work without Seller's prior written consent; (h) any of the matters, items, decisions, directives, selections, labor, materials, data and/or information specified, determined, supplied and/or selected by Buyer, Buyer's separate contractors, the design professional, and/or any of their respective subcontractors, consultants, subconsultants or suppliers of any tier being incomplete, inaccurate, defective and/or improper in any material respect; (i) the use or operations of the System other than in strict compliance with the design and operating parameters set forth in the Scope of Work or any operation and maintenance manual provided by Seller; (j) the failure of Buyer to adequately train and/or supervise the operation and/or maintenance personnel for the project, including the materials and equipment included in Seller's work; (k) the operation of the equipment and/or systems incorporated into the Seller's work outside of the manufacturer's recommended ranges; (l) any work performed by Buyer, Buyer's separate contractors, the design professional, and/or any of their respective subcontractors, consultants, subconsultants or suppliers of any tier; (m) the use or operation of any materials and equipment included in Seller's work after the Buyer, Buyer's separate contractors, the design professional, or any of their respective agents or employees first recognize a defect in such materials and equipment; (n) wind, snow or ice loads in excess of that contemplated by the design parameters set forth in the Scope of Work or any operation and maintenance manual; (o) the failure to properly secure and protect the System during a hurricane or named storm; (p) abrasions, tears and punctures of the fabric caused by foot traffic, snow shoveling, debris or falling or flying objects; (q) failure to retract and protect the System in wind speeds greater than the limits described in the design and operating parameters; and (r) the operation of the System against obstructions or from debris captured on the fabric during the opening or closing operations.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE FOREGOING WARRANTIES SHALL BE NULL AND VOID IF (I) SELLER DOES NOT RECEIVE FULL PAYMENT OF THE PURCHASE PRICE WITHIN SIXTY DAYS OF THE DATE OF SUBSTANTIAL COMPLETION OF SELLER'S WORK, OR (II) SELLER RECEIVES NOTICE OF THE BREACH OF THE FOREGOING WARRANTIES MORE THAN TWO (2) MONTHS AFTER THE EXPIRATION OF THE WARRANTY PERIOD.

THE EXPRESS WARRANTIES CONTAINED IN THIS PARAGRAPH 10 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, THE EXPRESS WARRANTIES CONTAINED IN THIS PARAGRAPH 10 ARE IN LIEU OF ANY WARRANTIES GIVEN BY BUYER OR ANY OF BUYER'S SEPARATE CONTRACTORS, OR ANY OF THEIR SUBCONTRACTORS, CONSULTANT'S SUBCONSULTANTS OR SUPPLIERS OF ANY TIER, WHICH WARRANTIES ARE HEREBY DISCLAIMED BY SELLER.

EXCEPT TO THE EXTENT CAUSED BY THE WILLFUL MISCONDUCT OF SELLER OR THOSE FOR WHOM IT IS RESPONSIBLE, IN NO EVENT SHALL SELLER HAVE ANY LIABILITY TO BUYER, BUYER'S SEPARATE

CONTRACTORS, THE DESIGN PROFESSIONAL AND/OR TO ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, DELAY OR PUNITIVE DAMAGES WHATSOEVER WHETHER BASED UPON OR CAUSED BY BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHER TORTIOUS CONDUCT, ERRORS, OMISSIONS, STRICT LIABILITY OR ANY OTHER CAUSE OR LEGAL THEORY. Such damages include, but are not limited to, loss of profits, loss of savings or revenue, loss of use of the project or any associated equipment, cost of capital, cost of any substitute equipment, facilities or services, and cost of downtime. In addition, it is the intention of Buyer and Seller that recovery against any insurance applicable to this project or otherwise maintained by Seller shall not be limited by this waiver of damages provision.

NOTWITHSTANDING ANY PROVISION OF ANY OF THIS AGREEMENT TO THE CONTRARY, IT IS HEREBY AGREED THAT TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER'S AGGREGATE LIABILITY TO BUYER, AND TO ALL OTHER PERSONS AND ENTITIES FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO NEGLIGENCE OR OTHER ERRORS OR OMISSIONS BY SELLER OR ITS LOWER-TIER SUBCONTRACTORS WITH RESPECT TO THE PROVISION OF DESIGN AND OTHER PROFESSIONAL SERVICES, WITH RESPECT TO THE PROJECT SHALL NOT EXCEED THE TOTAL SUM PAID ON BEHALF OF OR TO SELLER BY SELLER'S INSURERS IN SETTLEMENT OR SATISFACTION OF THE CLAIMS OF BUYER AND SUCH OTHER PERSONS AND ENTITIES UNDER THE TERMS AND CONDITIONS OF SELLER'S INSURANCE POLICIES APPLICABLE THERETO.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, SELLER'S CUMULATIVE LIABILITY TO BUYER AND TO ALL OTHER PERSONS AND ENTITIES FOR DELAY, BACK CHARGES, INSURANCE DEDUCTIBLES, INDEMNIFICATION PAYMENTS AND OTHER AMOUNTS PAYABLE TO BUYER PURSUANT TO THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO AND CAPPED AT A TOTAL AGGREGATE AMOUNT NOT TO EXCEED FIFTY PERCENT OF THE PURCHASE PRICE (THE "SELLER'S LIABILITY LIMITATION"); PROVIDED, HOWEVER, THAT THE SELLER'S LIABILITY LIMITATION SHALL NOT LIMIT OR APPLY TO SELLER'S OBLIGATIONS SET FORTH HEREIN TO REPAIR AND/OR REPLACE DEFECTIVE WORK AT NO CHARGE TO BUYER; AND PROVIDED FURTHER, HOWEVER, THAT THE SELLER'S LIABILITY LIMITATION DOES NOT LIMIT NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERABLE DAMAGES UNDER THIS AGREEMENT FOR WHICH THERE IS COVERAGE UNDER APPLICABLE POLICIES OF INSURANCE AND THIS LIMITATION DOES NOT BENEFIT NOR SHALL IT BE CONSTRUED TO BENEFIT ANY INSURER.