

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL ACTION

STERLING MIRROR COMPANY, LLC,
a Delaware corporation,

Case: 2017-013209-CA-01

Plaintiff,

v.

THE JORDON GLASS CORPORATION,
a Florida corporation, JORDON GLASS
MACHINERY, INC., a Florida corporation,
and RICARDO DOMINGUEZ, an individual,

Defendants.

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND
INCORPORATED MEMORANDUM OF LAW**

Pursuant to Rule 1.140(b)(6), Florida Rules of Civil Procedure, the Defendants, The Jordon Glass Corporation, a Florida corporation ("JGC"), Jordon Glass Machinery, Inc., a Florida corporation ("JGM") and Mr. Ricardo Dominguez ("Mr. Dominguez") (collectively, the "Defendants"), by and through their undersigned counsel, hereby file this Motion to Dismiss Plaintiff's Complaint and Incorporated Memorandum of Law (the "Motion"). In support of the Motion, Defendants state the following:

I. INTRODUCTION

On or about June 2, 2017, Plaintiff, Sterling Mirror Company, LLC ("Plaintiff" or "Sterling") filed its Complaint against the Defendants seeking damages for Breach of Contract (Counts I, II and V); Fraud in the Inducement (Count III); Fraudulent Misrepresentation (Count IV); and Breach of Warranties Under Florida's U.C.C. (Count VI, VII and Count VIII) in connection with the purchase of manufacturing equipment.

This case concerns commercial manufacturing equipment. Plaintiff is not a consumer, it was buying industrial equipment. Plaintiff decided to get into tempered glass manufacturing for the first time in its 40 year history. Plaintiff did this not just to supply its own needs, but apparently to sell to others because it is seeking lost profits with regard to such sales. As alleged, Plaintiff wrestled with the decision for years before taking the plunge. It is also clear from the complaint that Plaintiff was ill equipped for installation, lacking even proper electrical supply. What followed was a classic case of buyer's remorse. Plaintiff refused to make the final payments. Plaintiff now complains about a host of alleged problems that range from the imaginary to the absurd. Plaintiff complains that the manufacturer on the contract was different than the one that manufactured the first machine it ever saw years prior. Plaintiff complains that the washer ought to have an internal heating unit, even though it did not purchase a washer with an internal heater. Plaintiff complains about alleged "defects" that would have been obvious at delivery, such as the size and color of the industrial equipment, yet it accepted delivery. Finally Plaintiff complains about phantom scratches on glass that it claims render the machine non-functional, yet it never rejected the machine and still complains that, because it did not make final payment, it was not given the codes to run the machine. To avoid the damages disclaimers, Plaintiff adds two grab bag fraud counts alleging the host of alleged misrepresentations set forth above that have nothing to do with the alleged harm: unsalable, scratched glass.

The Complaint ignores the contract, alleges oral statements disclaimed in writing, and ignores limitations on damages. Either the machines work or they don't. If they don't, Jordon Glass has a duty to repair. But under no circumstances can Plaintiff keep the machines, not pay for them, and collect millions in damages.

II. THE CONTRACTUAL RELATIONSHIP BETWEEN PLAINTIFF AND JGM

A. The Furnace Contract.

1. The Plaintiff alleges that a contractual agreement exists between the Plaintiff and JGM with respect to the purchase of a furnace. As reflected in Exhibit A, the contract was for the sale and purchase of a furnace manufactured by Gangxing (the “Furnace Contract”). *See* Complaint at ¶ 18, and Ex. A at pgs. 2, 4 and 11. Neither JGC nor Mr. Dominguez were parties to the Furnace Contract.

2. Notably, under the Furnace Contract, the only guarantee made by the JGM as to the quality of the tempered glass to be produced by the furnace was that it would meet the ANSI Z97.1 standard. *See* Complaint, Ex. A at pg. 5. Contrary to the allegations in the Complaint, the Furnace Contract is devoid of any term or condition that the tempered glass would be scratch-free.

3. The terms and conditions of the Furnace Contract clearly and unambiguously provide for the following warranties and limitation of warranties and liabilities:

4. **Warranties/limitation of liabilities.** Seller’s warranties and limitation of liabilities with regard to the Equipment are as follows, and are only effective upon full payment of the Purchase Price by Buyer:

(a) **Limited Material and Workmanship Warranty.** Upon completion of the installation of the Equipment, Seller warrants only to the original Buyer that Equipment will be free from defects in material and workmanship under normal use for the use intended at the installation site. . . . Seller’s obligations under this limited material and workmanship warranty, and Buyer’s exclusive remedy, shall be limited solely to the repair, exchange or replacement, at Seller’s election, of any material(s) or workmanship which may thus prove defective under normal use and service for the use intended, within one (1) year from the installation date, and which Seller’s examination shall disclose to its satisfaction to be defective. If Buyer and Seller shall not agree as to whether the Equipment is defective and/or to what extent the Equipment is defective, the parties shall mutually appoint, within

ten (10) days after Buyer receives notice of Seller's determination, an independent third party to make this determination or determinations. Such determination shall be made only with respect to whether or not the Equipment is defective. The cost of such determination shall be borne equally by Buyer and Seller. The determination of such independent party shall be final and each party shall release the other party from any liability in connection with such determination.

(b) LIMITATION OF WARRANTIES AND LIABILITIES:

- (i) THE WARRANTIES STATED IN PARAGRAPH 4(A) ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE SELLER'S PART.**
- (ii) SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITIES IN CONNECTION WITH THE SALE OF THE EQUIPMENT.**
- (iii) THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE TERMS OF PARAGRAPH 4(A) OF THIS AGREEMENT.**
- (iv) [. . .]**
- (v) SELLER ASSUMES NO LIABILITY UNDER THIS WARRANTY FOR ANY TIME FOR WHICH THE EQUIPMENT IS NOT IN USE IN THE EVENT THAT ANY REPAIRS, REPLACEMENT OF PARTS, MAINTENANCE OR SUBSEQUENT REINSTALLATION ARE REQUIRED. ADDITIONALLY, SELLER SHALL ASSUME NO LIABILITY UNDER THIS WARRANTY FOR INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST PROFITS INCURRED BY BUYER.**
- (vi) [. . .]**
- (vii) IT SHALL BE WITHIN THE SOLE DISCRETION OF SELLER WHETHER OR NOT SELLER'S TECHNICIAN SHALL BE REQUIRED TO ADDRESS ISSUES UNDER THIS WARRANTY.[. . .]**

Complaint, Ex. A. at pg. 16, ¶ 4 (emphasis in original).

4. The Furnace Contract further provides that, “[i]f Buyer or Seller brings any action at law or equity . . . no cause of action by Buyer or Seller shall include a claim, nor may recovery be had against Buyer or Seller, for any punitive, incidental or consequential damages, including but not limited to, damages to property, for loss of use, loss of time, loss of profits or income. *Id.* at pg. 18, ¶ 8(b).

5. Finally, the Furnace Contract includes an integration clause, which states: “This Agreement constitutes the complete and exclusive statement of the terms of the agreement between the parties pertaining to the sale of the Equipment, and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection with this sale.” *Id.* at pg. 18, ¶ 10(a).

B. The Washer Contract.

6. The Plaintiff further alleges that a contract exists between Plaintiff and JGM for the purchase and sale of a horizontal washer manufactured by Ganxing Glass (the “Washer Contract”). *See* Complaint at ¶ 29, and Ex. D. Neither JGC nor Mr. Dominguez were parties to the Washer Contract.

7. The Washer Contract also provides for a limited warranty, as follows: “The machine(s) you have purchased is warranted for one-year by Jordon Glass against mechanical and electrical defects” Complaint, Ex. D at pg. 4, ¶ 1.

8. Unlike the Furnace Contract, the Washer Contract does not contain any representations or warranties regarding the quality or performance of the machine under any standard.

9. Further, nowhere does the Washer Contract state the washer purchased would include a built-in heating component, a feature that Plaintiff repeatedly complains is lacking from the washer purchased. *See generally*, Complaint, Ex. D.

III. PLAINTIFF’S FACTUAL ALLEGATIONS CONTRADICTED BY CONTRACTS

10. The Plaintiff alleges that for forty years it has been in the business of selling and installing glass (including tempered glass) and mirrors. *See* Complaint at ¶ 8. For forty years, Plaintiff relied on third party companies to temper the glass. *Id.* at ¶ 9.

11. Sometime in or around 2008, Plaintiff explored the idea of purchasing a furnace to temper glass itself and discussed this idea with JGC, but in 2008, with the downturn in the economy, the idea was tabled until 2014. *Id.* at ¶¶ 10-12.

12. In July 2014, JGC arranged for Plaintiff's representative to visit one of JGC's customers in Florida to view a furnace sold by JGC so that Plaintiff could speak with the customer to gauge their level of satisfaction with the equipment. *Id.* at ¶ 13.

13. Almost a year later, in May 2015, Plaintiff executed the Furnace Contract to purchase a furnace from JGM. *Id.* at ¶ 17. Despite the clear and unambiguous language of the contract detailing the specifications of the furnace that Plaintiff contracted to purchase and that the contract expressly stated that the furnace was manufactured by Gangxin, the Plaintiff alleges that it anticipated it was purchasing the same furnace it had viewed almost a year earlier. *Id.* at ¶¶ 13-18 and Ex. A. This alleged expectation is directly contradicted by the actual contract. Plaintiff further alleges that it had signed a previous contract for the purchase of a furnace, yet Plaintiff fails to attach this alleged contract to the Complaint and all of its claims in the Complaint are based on the purported "replacement contract" attached as Exhibit A to the Complaint.¹ *Id.* at 17-18.

14. The Plaintiff complains about a series of purported issues with the furnace and washer it purchased, which issues do not constitute breaches of the contracts and were foreseeable if Plaintiff had read the terms and conditions of the contracts at issue, including the specifications of the manufacturing machines it contracted to purchase which were clearly stated in the contracts.

¹ In fact, if Plaintiff had asserted claims based on the purportedly first contract for purchase of a furnace, the claims would be insufficient under Rule 1.130 for failure to attach the contract to the complaint.

15. For example, Plaintiff repeatedly complains in the Complaint that Mr. Dominguez failed to tell him on several occasions that the furnace Plaintiff had contracted to purchase was manufactured by Gangxin—a term that was clearly and unequivocally stated in the contract. *Compare* Complaint at ¶¶ 20, 23 and 24 *with* Complaint, Ex. A (stating that the furnace was manufactured by Gangxin).

16. Similarly, the Plaintiff complains that the furnace contract states that JGM holds the patent to the furnace purchased by the Plaintiff. *See* Complaint at ¶ 35. However, contrary to the Plaintiff’s allegations, the contract actually states that the patent is pending. *See* Complaint, Ex. A at pg. 6.

17. Plaintiff further complains that representatives from JGM were to handle the installation which was to take 3-4 weeks, but left after a few days and only technicians from Gangxin remained to finish the installation. *See* Complaint at ¶ 36. Again, the Plaintiff’s allegations contradict the written agreement as the contract states that that seller would cover the cost of Jordon Machinery technicians “*necessary*” for the furnace installation and training, and does not guarantee that a JGM technician would be present during the entire installation process. *See* Complaint, Ex. A at pg. 10.

18. Next, the Plaintiff complains that “the Furnace Contract also called for two air blowers to be provided, yet, JGM provided only one blower.” *See* Complaint at ¶ 42. Plaintiff fails to recognize that pursuant to the Furnace Contract, the manufacturer “reserve[d] the right to modify, enhance, substitute, change, delete, replace, and/or add components and/or other items related to the overall or specific design, assembly, operability, functionality, and features of the Tempering unit to achieve the specification requirements” *See* Complaint, Ex. A at pg. 11. There is no allegation that the actual blower assembly is inadequate.

19. With respect to the washer purchased, the Plaintiff complains that “the washer does not have a heating component which is an item that should be included for two reasons.” *See* Complaint at ¶ 55. Interestingly, the two reasons provided by the Plaintiff do not include that it was a term of the contract. Instead, the Plaintiff alleges that the washer purchased should have had a built-in heating component because it would make it a better washer. *Id.* While a washer with a built-in heating component may be a superior machine, it was not the machine that Plaintiff contracted to purchase. *See* Complaint, Ex. D.

20. The Plaintiff further complains that, despite the fact that it never made full payment on the furnace, JGM instructed Gangxin not to assist Sterling under the limited warranty. *See* Complaint at ¶ 61. However, this is a situation that was contemplated by the Furnace Contract and should have been expected by the Plaintiff. Specifically, the Furnace Contract specifically states that “warranty service does not initiate until the full outstanding balance for the unit has been paid by the buyer.” *See* Complaint, Ex. A at pg. 13. Even taking the Plaintiff’s allegations as true, Plaintiff agreed that it would not be entitled to service under the contractual warranty until full payment for the furnace was completed.

21. In short, the Plaintiff’s allegations contradict and ignore the contractual agreement negotiated between Plaintiff and JGM, and Plaintiff seeks damages for issues which do not constitute a breach of either the Furnace Contract or the Washer Contract.

22. The Defendants seek dismissal of the Complaint because the Plaintiff’s claims fail to state any claim under Florida law. Specifically, Plaintiff’s breach of contract claims (Counts I, II and V) fail to state a cause of action because Plaintiff does not allege the ultimate facts to support the essential elements that a breach of a contractual term occurred or damages were caused by a purported breach. Next, Plaintiff’s fraud claims (Counts III and IV) fail

because they are barred by the merger doctrine and because the terms of the contracts at issue contradict the purported misrepresentations there is no reasonable reliance as a matter of law. Finally, Plaintiff's claims for breach of warranties under Florida's U.C.C. based only on the sale of the washer fail because the only factual complaint alleged is that the washer bought and delivered to the Plaintiff did not have a built-in heating component; however, the Washer Contract does not provide for the sale and purchase of a washer with a built-in heating component.

IV. MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

A. Legal Standard Governing a Motion to Dismiss.

When deciding on a motion to dismiss, the trial court is confined to the four corners of the complaint. Fla. R. Civ. P. 1.140(b)(6); *Fresh Capital Fin. Servs., Inc. v. Bridgeport Capital Servs., Inc.*, 891 So. 2d 1142 (Fla. 4th DCA 2005). The facts alleged in Plaintiff's Complaint must be accepted as true, and all reasonable inferences must be drawn in favor of the pleader. *See id.* at 1445. The test for whether the pleader has stated a cause of action is whether the pleader could prove any set of facts that would support his or her claims. *Wausau Ins. Co. v. Haynes*, 683 So. 2d 1123 (Fla. 4th DCA 1996).

Further, where the language of an exhibit to a pleading is inconsistent with the pleading, the language of the exhibit controls. *Fladell v. Palm Beach County Canvassing Boar*, 772 So. 2d 1240, 1242 (Fla. 2000); *Laganella v. Boca Grove Golf & Tennis Club, Inc.*, 690 So. 2d 705, 706 (Fla. 4th DCA 1997); *A.S.J. Drugs, Inc. v. Berkowitz*, 459 So. 2d 348, 350 (Fla. 4th DCA 1984); *Franz Tractor Co. v. J.I. Case Co.*, 566 So. 2d 524, 526 (Fla. 2d DCA 1990); *Blue Supply Corp. v. Novos Electro Mech., Inc.*, 990 So. 2d 1157, 1170 (Fla. 3d DCA 2008); *Harry Pepper & Assocs., Inc. v. Lasseter*, 247 So. 2d 736, 736-37 (Fla. 3d DCA 1971).

Moreover, pursuant to Rule 1.110(b)(2), Florida Rules of Civil Procedure, a pleading must contain, “a short plain statement of the *ultimate facts* showing that the pleader is entitled to relief.” (emphasis added). Pleadings must contain ultimate facts supporting each element of the cause of action—simple conclusions are insufficient. *Clark v. Boeing Co.*, 395 So. 2d 1226, 1229 (Fla. 3d DCA 1981). “*Mere legal conclusions are fatally defective* unless substantiated by sufficient allegations of ultimate fact; and every fact essential to the cause of action must be plead distinctly, definitely, and clearly.” *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 716 (Fla. 1st DCA 1963) (emphasis added). Furthermore, Florida is a fact-pleading jurisdiction. *See Cont’l Banking Co. v Vincent*, 634 So. 2d 242 (Fla. 5th DCA 1994). (“Florida’s pleading rules forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort.”). A party does not properly plead a cause of action by alleging conclusions of law that merely track the language of the statutes and lack factual allegations. *See Ginsberg v. Lennar Florida Holdings, Inc.*, 645 So. 2d 490, 501 (Fla. 3d DCA 1994).

B. Plaintiff Fails To Attach The Signed Contract.

The contract attached to the complaint is unsigned and is not the operative contract. In fact, Plaintiff’s contract is with JGC, not JGM. *See Ex. A.* Plaintiff was required to attach the operative contract to the complaint. *See Fla. R. Civ. P. 1.130.* In lieu of dismissal, this Court can consider the contract attached hereto. *Striton Properties, Inc. v. City of Jacksonville Beach*, 533 So. 2d 1174, 1179 (Fla. 1st DCA 1988)(court properly considered parties’ agreement on a motion to dismiss without going outside the pleadings, even though plaintiff failed to attach the agreement to the complaint).

C. Plaintiff Fails to Meet a Condition Precedent.

All counts of the Complaint related to the furnace are subject to dismissal because the Plaintiff failed to comply with a contractual condition precedent to bringing suit for an alleged defective furnace. *See Ballas v. Lake Weir Light & Water Co.*, 130 So. 421, 425 (Fla. 1930) (performance of conditions precedent must be alleged in action on contract or valid excuse for nonperformance stated); *Hamilton v. Title Ins. Agency of Tampa, Inc.*, 338 So. 2d 569, 571 (Fla. 2d DCA 1976) (performance of conditions precedent must be made to appear). The Furnace Contract provides, in relevant part:

If Buyer and Seller shall not agree as to whether the Equipment is defective and/or to what extent the Equipment is defective, the parties shall mutually appoint, within ten (10) days after Buyer receives notice of Seller's determination, an independent third party to make this determination or determinations. Such determination shall be made only with respect to whether or not the Equipment is defective. The cost of such determination shall be borne equally by Buyer and Seller. The determination of such independent party shall be final and each party shall release the other party from any liability in connection with such determination.

Complaint, Ex. A. at pg. 16, ¶ 4 (emphasis in original).

The Plaintiff did not and cannot allege that it complied with the contractual condition precedent as an independent third party was never appointed to make the determinations contemplated in the contractual agreement between the parties. Rather the plaintiff alleges that the furnace is defective and does not meet certain industry standards. These allegations are inconsistent with the condition. This should not be a disputed matter subject to litigation. Plaintiff alleges that "Sterling continued to test the furnace. . . . [and the pieces of glass] were without defect and they were not commercially acceptable." Complaint at ¶ 66. The terms of

the Furnace Contract preclude Sterling from making this determination and, instead, require an independent third party to make such a determination before any party brings suit.²

Simply put, Plaintiff cannot bring suit on the basis that the furnace is defective until an independent third party selected by the parties inspects the machine and makes a determination as to whether the furnace is defective. Because the Plaintiff failed to comply with this contractually condition precedent, all claims related to the furnace (Counts I, III, IV and V) should be dismissed.

D. Count I for Breach of the Furnace Contract Should be Dismissed for Failure to State a Cause of Action.

Count I of Plaintiff's Complaint purports to state a cause of action for Breach of the Furnace Contract. Under Florida law, in order to assert a breach of contract claim, a plaintiff must allege the existence of a contract, a breach of the contract, and damages resulting from the breach. *Friedman v. New York Life Ins. Co.*, 985 So. 2d 56, 58 (Fla. 4th DCA 2008). In support of its breach of contract claim, the Plaintiff alleges that JGM breached the Furnace Contract because: (1) the glass produced by the furnace was not of "a good temperable quality"; (2) the glass produced by the furnace had visible scratches; (3) the furnace is defective in breach of paragraph 4 of the Terms and Conditions section of the Furnace Contract; (4) the glass produced does not comply with the ANSI Z97.1 standard or the ASTM C 1048-12; (5) parts supplied by JGM were not UL compliant; and (6) two blowers were not provided to the Plaintiff. As discussed in more detail below, the Plaintiff cannot sustain a claim for breach of the Furnace Contract as alleged because either the Furnace Contract did not provide for the

² While Plaintiff generally alleges that all conditions precedent have been met waived or excused in paragraph 7, Rule 1.120 Florida Rules of Civil Procedure only allows one to allege generally that the conditions have been met, not waived or excused. That has not been pled. Moreover, the general allegation that the conditions have been met are overridden by the more specific allegations that Sterling tested the furnace and found it defective.

terms and conditions upon which Plaintiff's claim is based or the Plaintiff has failed to allege ultimate facts to sustain the essential element that damages were caused by the purported breach.

1. There was No Contractual Duty to Provide Glass of a Good Temperable Quality.

In support of Count I, Plaintiff alleges a breach of contract claim because JGM did not produce glass that was of "a good temperable quality." See Complaint at ¶¶ 72 and 73. The Furnace Contract provides as follows:

Glass Types to be Tempered:

Common plate glass, pattern glass, sandblasted glass and opaque glass, concave-convex glass (concave-convex range <2mm), reflecting glass and temperable Low-E glass

Glass Requirements:

Glass must be of good temperable quality edged and/or seamed, washed, and dry

Complaint, Ex. A at pg. 5.

Pursuant to the Furnace Contract there was no contractual agreement that the tempered glass produced by the furnace would be of "good temperable quality." Instead, there was a requirement that the *input*, the glass used to produce tempered glass, the *output*, would "be of good temperable quality." Complaint, Ex. A at pg. 5. In other words, this requirement applied to the glass that the Plaintiff would use to produce the tempered glass—not the final product produced by the furnace. Moreover, there was no contractual agreement for JGM to provide the glass to be used to produce tempered glass. Therefore, allegations regarding deficiencies in the glass used cannot sustain a cause of action for breach of the Furnace Contract.

2. There was no Contractual Agreement that the Tempered Glass Produced by the Furnace Would be Free of `es.

Plaintiff also attempts to assert a cause of action for breach of the Furnace Contract on the basis that the glass produced by the Furnace had visible scratches. However, the Plaintiff's breach of contract claim on this basis fails as a matter of law because the Furnace Contract is completely devoid of any term or condition that the glass to be produced by the furnace would be scratch-free. Therefore, even if the Furnace produced glass with visible scratches this does not constitute a breach of the Furnace Contract, which disclaimed all other warranties other than those specifically described.³ Accordingly, Plaintiff cannot sustain its breach of contract claim on this basis.

3. The Limited Warranty is Ineffective as a Result of the Plaintiff's Failure to Pay in Full the Purchase Price of the Furnace.

In further support of its claim for breach of the Furnace Contract, the Plaintiff alleges breaches of the limited warranty contained in paragraph 4 of the Furnace Contract. *See* Complaint at ¶¶ 74-76. The limited warranty, however, is ineffective as a result of the Plaintiff's failure to pay the purchase price. With regard to the limited warranty, the Furnace Contract provides, as follows: "Seller's warranties and limitation of liabilities with regard to the Equipment are as follows, *and are only effective upon full payment of the Purchase Price by Buyer . . .*" Complaint, Ex. A. at pg. 16, ¶ 4 (emphasis added).

In its Complaint, the Plaintiff alleges that it "had not yet made the final payment to JGM" of the furnace as of January 2017. *See* Complaint at ¶¶ 60 and 61. Moreover, the Plaintiff fails to allege in its Complaint that it has since paid the full purchase price in order to

³ As an aside, occasional scratches are part of the manufacturing process, and are addressed by buffing.

make the limited warranties in the Furnace Contract effective. As a result, Plaintiff's breach of contract claim based on a purported breach of the Furnace Contract limited warranty fails as a matter of law as the limited warranty is ineffective. Accordingly, Plaintiff fails to state a cause of action for breach of contract based on a breach of the Furnace Contract limited warranty.

4. Plaintiff Cannot Sustain a Breach of Furnace Contract Claim Based on Allegations that Glass Produced Did Not Meet Certain Standards.

Next, the Plaintiff alleges that JGM breached the Furnace Contract because the glass produced by the furnace does not comply with the ANSI Z97.1 safety standard or the ASTM C 1048-12 standard for tempered glass.

As an initial matter, the Furnace Contract does not make any guarantee or warranty that the glass produced will meet the ASTM C 1048-12 standard. In fact, there is no mention of the ASTM C 1048-12 standard in the Furnace Contract. Accordingly, there can be no breach of the Furnace Contract based on failure to comply with the ASTM C 1048-12 standard as that was not a term or condition of the Furnace Contract. Further any warranties under Florida's UCC were expressly waived in the Furnace Contract. *See* Complaint, Ex. A at pg. 16, ¶ 4; *see also* Fla. Stat. 672.316.

With respect to the ANSI Z97.1, which is a safety standard (and, incidentally, does allow for scratches on glass with certain restrictions), the Plaintiff fails to allege how the glass produced by the furnace failed to comply with the ANSI Z97.1 standard and fails to allege *any* requirement under the ANSI Z97.1 standard that has not been met.⁴ Plaintiff's allegation is a classic legal conclusion falling short of the necessary pleading requirements because it fails to cite to the ANSI standard and how the glass produced by the furnace fails to meet said standard.

⁴ In fact, as Plaintiff knows, it did receive ANSI Z97.1 certification, a fact not denied in the Complaint.

As a result, the Plaintiff claim for breach of contract under this factual basis is deficient and subject to dismissal. *Clark*, 395 So. 2d at 1229.

5. Providing UL Compliant Parts Was Not a Contractual Term and, Even if it Was, Plaintiff Has Failed to Allege How the Parts Are Purportedly Not UL Compliant.

Plaintiff also alleges that JGM breached the Furnace Contract because some parts supplied were not UL compliant. *See* Complaint at ¶ 78. Yet, there is no contractual agreement that UL compliant parts would be supplied. Rather, the Furnace Contract provides: The customer is advised to determine if their local Authority Having Jurisdiction (AHJ) requires special markings on the Tempering Furnace. Should the AHJ at the furnace-operating site require Underwriters Laboratory (UL) or similar third party certification markings, please advise Jordon Machinery prior to unit fabrication. The additional fee to meet special markings requirements, such as UL, is approximately 10-12% of the sale price.” Complaint, Ex. A at pg. 12, Sec. H. The Furnace Contract further provides that: “The UL (Underwriters Laboratory) parts compliance option is presented if you plan (or are required) to have a UL site evaluation by your AHJ (Authority Having Jurisdiction) or if you prefer to have all the furnace components bear the UL label. This inspection is a separate cost and is not factored in this proposal and varies by city location.”). *Id.* at pg. 1. Further, Appendix A to the Furnace Contract which includes the spare parts to be sent with the furnace did not provide that the spare parts were to be UL compliant. Here, Sterling never made full payment, and therefore never paid for this final inspection process.⁵

⁵ Under the Contract, the warranty provides that Jordon will repair or replace. So if the final inspection found a part non-compliant, Jordon could replace it. Here, Plaintiff never made final payment.

Additionally, even if Sterling had paid for the UL compliance process, the Plaintiff has failed to allege any facts as to how the furnace parts are not UL compliant. Again, such a legal conclusion is insufficient to state a cause of action under Florida law. Thus, Plaintiff's claim for breach of contract under this factual basis is subject to dismissal. Therefore, Plaintiff has failed to state a cause of action for breach of contract on the basis that JGM failed to provide UL compliant parts.

6. Plaintiff's Breach of Contract Claim Based on Failure to Deliver a Second Blower Fails.

Finally, the Plaintiff alleges that a breach of the Furnace Contract occurred as a result of the JGM's failure to deliver a second blower. The Plaintiff's breach of contract claim on this basis fails because the factual basis upon which it lies is contradicted by the express terms of the Furnace Contract and Plaintiff fails to allege how JGM's failure to provide a second blower caused it damages.

As to the first point, the Furnace Contract provides that the "[m]anufacturer reserves the right to modify, enhance, substitute, change, delete, replace, and/or add components and/or other items related to the overall or specific design, assembly, operability, functionality, and features of the Tempering unit to achieve the specification requirements" Complaint, Ex. A at pg. 11. The terms of the Furnace Contract expressly reserved the right to modify, change, and delete components—such as a second blower. Accordingly, on this basis alone Plaintiff's breach of contract claim premised on failure to deliver a second blower should be dismissed.

Moreover, the Plaintiff's breach of contract claim on this factual basis fails because the Plaintiff has failed to allege how it was injured or the damages it sustained as a result of a purportedly missing blower. In the introduction section, the Furnace Contract states that "[t]o *conserve energy and reduce power consumption*, this tempering line will consist of two blowers

. . .” *See* Complaint, Ex. A at pg. 7 (emphasis added). The Plaintiff does not allege that he has suffered damages in the form of increased power consumption as a result of not having a second blower—an essential element to its breach of contract claim.

Because the Plaintiff has failed to allege any breach of a material term of the Furnace Contract and/or how the purported breach has proximately caused it damages, the Plaintiff’s claim for breach of contract is legally deficient. Accordingly, Count I of the Plaintiff’s Complaint should be dismissed.

E. Count II for Breach of the Washer Contract Should be Dismissed for Failure to State a Cause of Action.

In support of Count II for breach of the Washer Contract, the Plaintiff alleges that JGM breached the Washer Contract because: (1) “[t]he washer delivered to Sterling was not manufactured by Gangxin . . . and does not match the height, width or color of the furnace”; and (2) “the washer does not perform its function in that it does not clean the glass that is manufactured by the furnace.” *See* Complaint at ¶¶ 83-84. The Plaintiff further alleges that “the washer does not have a heating component which is an item that should be included” and gives two reasons unrelated to the terms of the Washer Contract. *Id.* at ¶ 55.

As an initial matter, the fact that the washer purchased by the Plaintiff does not have a built-in heating component does not constitute a breach of contract as the Washer Contract does not provide that the washer Plaintiff contracted to purchase would include a built-in heating component. The same is true of the Plaintiff’s allegations that the washer does not “match” the height, width or color of the furnace. In other words, Count II is deficient because the Plaintiff fails to allege a contractual term which has been breached.

The Plaintiff also fails to assert a breach of contract claim under Florida law because it does not allege damages resulting from an alleged breach. *See Friedman*, 985 So. 2d at 58.

Specifically, the Plaintiff fails to allege how it has been damaged (*i.e.*, how the washer is defective or does not clean the glass) because it was allegedly manufactured by Foshan Techwin Glass Technology Co., Ltd. (“Techwin”) or how it has been damaged because the washer does not match the height, width or color of the furnace. Even if the Washer Contract provided that the washer was to be a specific color (which it does not) and the washer did not meet said term, the Plaintiff would have to allege how delivering a washer of the wrong color has caused it damages. Each alleged breach must stand on its own.

Accordingly, because the Plaintiff fails to allege a breach of a specific contractual term or damages flowing from an alleged breach, Count II fails as a matter of law. Thus, Count II should be dismissed.

F. Plaintiff’s Fraud Claims in Counts III and IV Should be Dismissed.

“To state a cause of action for fraud in the inducement, the Plaintiff must allege: (a) a misrepresentation of a material fact; (b) that the representor of the misrepresentation knew or should have known of the statement’s falsity; (c) that the representor intended that the representation would induce another to rely and act on it; and (d) that the plaintiff suffered injury in justifiable reliance on the representation.” *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So. 2d 489, 497 (Fla. 4th DCA 2001). Similarly, to state a cause of action for fraudulent misrepresentation, a plaintiff is required to allege: (a) a misrepresentation of material fact; (b) which the person making the misrepresentation knew to be false; (c) that the misrepresentation was made with the purpose of inducing another person to rely upon it; (d) that the person relied on the misrepresentation to his detriment; and (6) that this reliance caused damages. *Romo v. Amedex Ins. Co.*, 930 So. 2d 643, 651 (Fla. 3d DCA 2006). Here, the Plaintiff’s fraud claims in Counts III and IV fail as a matter of law because: (1) the fraud

allegations lack the specificity required to sustain a claim for fraud; (2) the fraud claims are barred by the integration clause; and (3) there was no reasonable reliance as a matter of law. Furthermore, in order for a fraud claim to withstand a motion to dismiss, “it must allege fraud with the requisite particularity required by Florida Rule of Civil Procedure 1.120(b), including who made the false statement, the substance of the false statement, the time frame in which it was made and the context in which the statement was made.” *Bankers Mut. Capital Corp. v. U.S. Fid. & Guar. Co.*, 784 So. 2d 485, 490 (Fla. 4th DCA 2001) (discussing claim for fraud in the inducement); *see also Strack v. Fred Rawn Const., Inc.*, 908 So. 2d 563, 565 (Fla. 4th DCA 2005) (discussing claim for fraudulent misrepresentation and affirming trial court’s dismissal of the count for fraudulent misrepresentation); *Blue Supply Corp. v. Novos Electro Mech. Inc.*, 990 So. 2d 1157, 1159-60 (Fla. 3d DCA 2008) (finding that the factual basis for a claim of fraud must be pled with particularity and must specifically identify misrepresentations or omissions of fact, as well as time, place or manner in which they were made).

1. Plaintiff’s Fraud Claims Must be Dismissed Because Plaintiff Comingled Separate and Distinct Fraud Claims in a Single Count.

The Plaintiff has improperly comingled separate and distinct fraud claims in a single count. *See Fla. R. Civ. P. 1.110(f)* (“Each claim founded upon a separate transaction or occurrence . . . shall be stated in a separate count . . . when a separation facilitates the clear presentation of the matter set forth.”); *K.R. Exch. Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So. 3d 889, 893 (Fla. 3d DCA 2010) (“A party should plead each distinct claim in a separate count, rather than plead the various claims against all of the defendants together.”).

First, the Plaintiff lumps the three defendants together in Counts III and IV and fails to differentiate who made what statement, when and in what context. In *Eagletech Communications, Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So. 3d 855, 862 (Fla. 4th DCA 2012),

the court concluded that the plaintiff's allegations of fraud lacked the required specificity because the defendant lumped all the defendants together and failed to identify which defendant made which statement. *Id.* There, the appellate court found that "the trial court correctly dismissed [plaintiff's fraud claim] because [plaintiff] impermissibly comingled separate and distinct fraud claims in a single count." *Id.* at 863. Similarly, the Complaint here does not specify which defendant made which statement.

The Plaintiff further comingles its fraud claims concerning the sale of the furnace and washer, which are two separate transactions. For example, in paragraphs 87 and 102, the Plaintiff alleges purported misrepresentations in connection with the sale of the furnace, which are unrelated to the transactions alleged in paragraphs 91 and 105. Moreover, Plaintiff impermissibly comingles all the alleged misrepresentations into a single count, instead of separating each alleged misrepresentation into a separate fraud claim. Most of these are not statements of fact, but future promises of what would be delivered that were the subject of a later contract. Additionally, Plaintiff does not tie damages and causation to each alleged separate misrepresentation.

For example, the Plaintiff complains about the color of the washer, but does not link how this alleged misrepresentation induced the Plaintiff to purchase the washer or how the fact that the washer is allegedly defective is caused because of the color of the machine—necessary elements to state a cause of action for fraud. In short, the Plaintiff's fraud claims are legally insufficient and fail to meet the pleading requirements because for each alleged misrepresentation the Plaintiff must also allege: (1) how the misrepresentation is material; (2) that the Plaintiff relied on said misrepresentation; and (3) the alleged injury is connected to the misrepresentation.

Accordingly, Counts III and IV should be dismissed on this basis alone.

2. Plaintiff Cannot Recover in Fraud for Alleged Misrepresentations that are Covered and Expressly Contradicted in a Later Writing.

The Furnace Contract and Washer Contract which are attached as exhibits to the Complaint, are “deemed a part of the [Complaint] and must be reviewed as such.” *Hillcrest Pac. Corp. v. Yamamura*, 727 So. 2d 1053, 1055 (Fla. 4th DCA 1999). Where the language of an exhibit to a pleading is inconsistent with the pleading, the language of the exhibit controls. *Fladell*, 772 So. 2d at 1242 (Fla. 2000).

In *Hillcrest*, the agreement contradicted the allegations of the complaint and was fatally inconsistent with the Plaintiff’s claim for fraud, and also contained an integration clause that expressly extinguished all prior negotiations. *Id.* at 1056. There, the plaintiff alleged that the defendants misrepresented the price of the property sold, but the price was clearly stated in the agreement attached as an exhibit. *Id.* The *Hillcrest* Court noted that “[a] party cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract.”

Similarly, here, the Furnace Contract contradicts the Plaintiff’s allegations in support of its fraud claims regarding the purchase of the furnace. The Plaintiff alleges that the Defendants represented that the furnace was based on JGC and/or JGM’s own patented design and omitted that the furnace Plaintiff was purchasing was manufactured by Gangxin. *See* Complaint at ¶¶ 87-89 and 102-104. The Furnace Contract, however, clearly provides that the furnace sold to the Plaintiff was manufactured by Gangxin. Indeed, the Furnace Contract reflects the furnace is a “Gangxin Glass Horizontal Tempering Furnace for Flat Glass.” *See* Complaint, Ex. A at pg. 2; *see also Id.* at pg. 6 (discussing the features of the Jordon Machinery/Gangxing series furnaces); *Id.* at pg. 11 (discussing the manufacturer responsibilities and listing Gangxing as the

manufacturer). Next, the Furnace Contract states that the “Jordon Machinery/Ganxing series furnaces come complete with our own *patent pending* convection system that reduces hearing times . . .” *Id.* at pg. 6.

Similarly, the Plaintiff complains that the Defendants misrepresented the washer manufacturer and that the washer would be the same height and width of the furnace. *See* Complaint at ¶¶ 91 and 105. Then it claims it wants \$1.5 million in lost profits. Were customers not buying glass because the machine that washed it was the wrong color? The washer contract expressly states what Plaintiff was purchasing. *See* Complaint, Ex. D. The Plaintiff does not allege that the washer does not conform to the Washer Contract.⁶ Instead, its fraud claims are based on oral misrepresentations that are covered and contradicted by the written agreement.

Because the Plaintiff cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in a later written contract, Counts III and IV should be dismissed with prejudice. *See Hillcrest*, 727 So. 2d at 1056.

3. There Can Be No Justifiable Reliance as a Matter of Law Upon Purported Misrepresentations that are Contradicted by the Written Contracts.

As an additional basis for dismissal of Plaintiff’s fraud in the inducement claim, the Plaintiff cannot, as a matter of law, plead justifiable reliance (a necessary element) because the purported misrepresentations are contradicted by the written contracts at issue. *Mac-Gray Services, Inc. v. DeGeorge*, 913 So. 2d 630, 634 (Fla. 4th DCA 2005) (“[R]eliance upon oral statements which [are] at variance with the written documents [is] not reasonable as a matter of law.”). Here, all of the alleged misrepresentations regarding the furnace are contradicted by the Furnace Contract. Again, the Furnace Contract states that the patent is pending and clearly

⁶ In fact, while plaintiff complains that the color doesn’t “match” it make no allegations about the actual color. That is because the washer, like the furnace, is stainless steel.

states that the furnace is manufactured by Gangxin. Accordingly, because the Plaintiff's fraud in the inducement claim is deficient in that it did not and cannot plead justifiable reliance.

G. Count V for Breach of Furnace Contract Limited Warranty Should Be Dismissed.

In Count V of its Complaint, the Plaintiff seeks damages for breach of the limited warranty provided in the Furnace Contract. The limited warranty, however, is ineffective as a result of the Plaintiff's failure to pay the purchase price. With regard to the limited warranty, the Furnace Contract provides, as follows: "Seller's warranties and limitation of liabilities with regard to the Equipment are as follows, *and are only effective upon full payment of the Purchase Price by Buyer . . .*" Complaint, Ex. A. at pg. 16, ¶ 4 (emphasis added). In its Complaint, the Plaintiff alleges that it "had not yet made the final payment to JGM" of the furnace as of January 2017. Complaint at ¶¶ 60 and 61. Moreover, the Plaintiff fails to allege in its Complaint that it has since paid the full purchase price in order to make the limited warranties in the Furnace Contract effective. Accordingly, because the Plaintiff's Complaint is deficient in that Plaintiff fails to allege that it has made full payment of the furnace and this deficiency cannot be remedied in an amendment because Plaintiff has not made full payment of the purchase price of the furnace, Count V for Breach of the Furnace Contract limited warranty should be dismissed, with prejudice.

H. Counts VI, VII, and VIII for Purported Breaches of Warranties Under Florida's UCC Should be Dismissed.

To state a cause of action for breach of warranties under Florida's U.C.C., the plaintiff must allege: (1) the sale of goods; (2) identify the types of warranties created; (3) breach of the warranty; (4) notice to seller of the breach; and (5) the injuries sustained by the buyer as a result

of the breach of the express warranty. *See Dunham–Bush, Inc. v. Thermo–Air Serv., Inc.*, 351 So. 2d 351, 353 (Fla. 4th DCA 1977).

In support of Count VI for breach of an express warranty, the Plaintiff alleges that JGM breached an express warranty by failing to provide a washer manufactured by Gangxin that matched the color, height and width of the furnace. *See* Complaint at ¶¶119-121. Again, the dimensions of the washer are provided in the Washer Contract, and the Plaintiff does not allege that the washer delivered does not conform to the dimensions stated in the contract. *See* Complaint, Ex. D. at pg. 2. Plaintiff’s claim for breach of an express warranties also fails because the Plaintiff does not allege any ultimate facts to support the necessary element that “the injuries sustained by the buyer [were] a result of the breach of the express warranty.” *See Dunham-Bush*, 351 So. 3d 353. Because there is no causal connection between the alleged breach (i.e., the manufacturer of the washer or the washer’s dimensions) and the alleged damages sustained (i.e, the washer does not clean glass), Count VI fails as a matter of law. Finally, in support of its claim for a breach of an express warranty, the Plaintiff alleges a breached the express warranty because the washer does not clean the glass. Other than complaining that the washer does not contain a built-in heating component (which is not a component included in the Washer Contract), the Plaintiff does not allege how the washer delivered does not clean the glass. Such a legal conclusion without ultimate facts to support its claim for breach of an express warranty renders Count VI legally insufficient and subject to dismissal.

With respect to Counts VII and VIII for breach of the implied warranties of merchantability and fitness for particular purpose both claims fail because the Plaintiff’s only complaint is that the washer does not contain a built-in heating component. Because the

Plaintiff did not contract to purchase a washer with a built-in heating component, breach of implied warranty claims raised on this basis fail to state a cause of action. *Barile Excavating & Pipeline Co., Inc. v. Vacuum Under Drain, Inc.*, 362 So. 2d 117 (Fla. 1st DCA 1978)(affirming dismissal of breach of warranty claim in direct contradiction to the provisions of the written contract).

Accordingly, Counts VII and VIII should be dismissed.

I. Plaintiff Failed to Reject the Goods

Most of Plaintiff's complaints are about matters it was aware of on delivery: the identity of the manufacturer, the color and size of the machine, the number of blowers. It had a duty to reject the goods, and upon accepting them, can no longer refuse to pay. A buyer may reject delivery that fails to conform to the contract. *See* Fla. Stat. § 672.601. At rejection, the buyer must state the basis for noncompliance or waive the alleged defect as a basis for rejection. *See* Fla. Stat. § 672.605. If the goods are accepted, the buyer must pay for them. *See* Fla. Stat. § 672.607(1). Acceptance precludes later rejection for a known alleged non-conformity. *See* Fla. Stat. § 672.607(2). The only claim that was not known at delivery was the alleged scratching. The furnace was delivered over a year ago, and was installed almost a year ago. *See* Complaint at ¶¶ 30, 32. Plaintiff has neither paid for nor rejected the goods. Instead it kept them, refused to pay, and brings this baseless action in an attempt to renegotiate.

WHEREFORE, Defendants, The Jordon Glass Corporation, Jordon Glass Machinery, Inc., and Mr. Ricardo Dominguez, respectfully request the Court to enter an Order dismissing the Plaintiff's Complaint.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2017, I electronically filed the foregoing document with the Clerk of Court using the Florida Courts E-Filing Portal. I also certify that the foregoing document is being served this day on all counsel of record and interested parties in the manner identified on the below Service List, pursuant to Rule 2.516, Florida Rules of Judicial Administration.

Respectfully submitted,

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Sterling Mirror Company
Attn : Mr. Michael Kaperst
4375 Nicole Dr.
Lanham, MD 20706
Tel: 301-346-0053
Fax: 202-248-3362

Proforma
Offer Expires: 20-days

Miami, May 21, 2015

Dear Michael:

Thank you for the continuing opportunity to meet your growing needs.

Attached please find the quote for our glass tempering furnace for bed sizes measuring 84X144". This furnace is specified for 4-19mm glass and requires 480V, 60Hz, 3ph (Wye) 5-wire (3power+neutral+ground).

In this quote, you will also note I have presented optional items in the price breakdown. These include *UL components* and *additional spare parts*. As optional items, they are not required for the operation of the furnace.

Please note that the furnace will come with some spare parts, but usually these are reserved for the installing technician should a part be damage during shipping. Whatever is not used remains with you. The additional spare parts are those you may want to have on hand to assure the uninterrupted use of your furnace. The part list presented in the appendix of this quote is not all inclusive and therefore can be changed as you see fit. We can discuss these items in more detail so that you can understand the applicability of these parts.

The UL (Underwriters Laboratory) parts compliance option is presented if you plan (or are required) to have a UL site evaluation by your AHJ (Authority Having Jurisdiction) or if you prefer to have all the furnace components bear the UL label. This inspection is a separate cost and is not factored in this proposal and varies by city location.

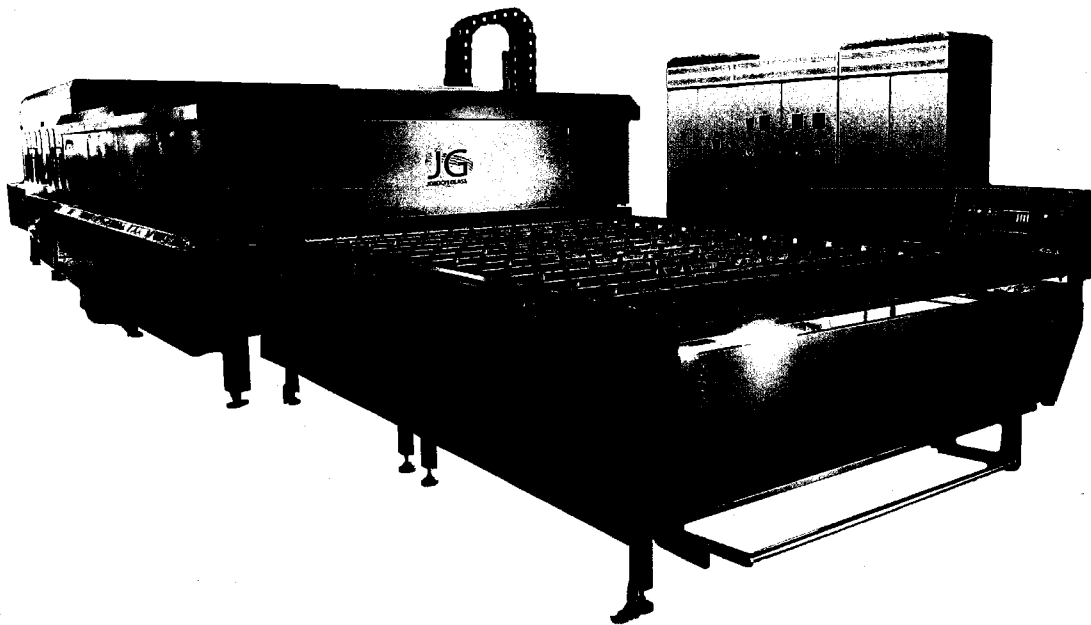
Michael, having your own tempering furnace is exciting. As I am sure you may have additional questions, please know we are here to help. Thanks again for this opportunity.

Regards,

Rick Dominguez
VP The Jordon Glass Corp.



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Gangxin Glass Horizontal Tempering Furnace for Flat Glass



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Model: **GX-QDLP2136-k (4-19mm)** Tempering Furnace for Flat Glass

TECHNICAL PARAMETERS

Power:

- Power mode: 3-phase / 4-line system, 480V, 60Hz
- Total power 773kW
 - Heating power 511 kW
 - Blower power 220kW
 - Other 42kW
- Consumption 4-4.5kwh/sq.m (based on 5mm)
- Required Compression 22kW, Volume: 0.5-0.8 m³ /min Pressure: > 0.7 MPa

Glass processing dimensions:

- Thickness range 4-19mm
- Max area 2150*3660mm
- Max. size 2150*3660mm for 5-19mm glass
2150*1500mm for 4mm glass
- Min. size 100*300mm

Exterior dimensions:

18m(L)*10m(W) *2.8m(H)

Estimated Production at 100% efficiency:

Glass Thickness	Time to Temper	Loads per Hour
5mm	180 seconds	20
6mm	220 seconds	16
8mm	300 seconds	12
10mm	380 seconds	9
12mm	460 seconds	7
15mm	630 seconds	5
19mm	800 seconds	4



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Glass Types to be Tempered:

Common plate glass, pattern glass, sandblasted glass and opaque glass, concave-convex glass (concave-convex range <2mm), reflecting glass and temperable Low-E glass

Glass Requirements:

Glass must be of good temperable quality edged and/or seamed, washed, and dry

Tempered Glass to meet ANS Z97.1 Standard



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INTRODUCTION:

The Jordon Glass/Gangxing series furnaces come complete with our own patent pending convection system that reduces heating times to 36seconds per millimeter of glass thickness vs. the industry average of 60 seconds. So for example a load of ¼" glass in our furnace will only take 210 seconds to heat whereas the same load in a traditional furnace would take up 360 seconds. This allows our customers to increase their productivity throughput and profit while providing the highest quality tempered glass.

The glass loading section comes equipped with photo sensors that gauge the size of the load and automatically determine the optimal oscillation (shake & bake) pattern for tempering. Roller movements are computer controlled and driven by dual belt pulleys to assure uninterrupted operation and precision. The load section also comes with side load EPDM rollers and scratch-free castors that rise up and assist the operator in positioning the glass.

Multiple heating zones precisely positioned throughout the upper and lower sections of the furnace as well as auxiliary elements located at the glass entrance and exit assure glass quality and flatness. These zones enable the operator to evenly control heat distribution for varying load configurations, thicknesses, and glass surface patterns while the auxiliary elements help limit fluctuations in temperature that can result from opening and closing the inlet and outlet doors. Our lower heating elements are covered by stainless steel tiles that protect them from debris or breakage occurring in the furnace and assist in uniformed heat distribution.

Our unique forced convection system enables our furnaces to evenly heat the most reflective Low-E glass. Balanced heating is imperative for achieving glass flatness. Reflective or Low-E type glass can exhibit heating disparities of up to 40-degrees between its reflective and non-reflective surfaces when heated in a non convection furnace. Our patent pending controlled *forced* convection system allows our furnaces to balance this disparity and achieve optimal glass flatness and quality. Other fabricators simply use fans to agitate the air inside the furnace but do not have a direct effect on the glass leading to distortion and in severe cases glass warping.

Furnace insulation is made up of 200mm thick ISO wool ceramic blocks, a ceramic base and temperature resistant clay; all of which result in superb heat retention so much so that one can touch the outer surface of the furnace, while at 680^oC (1256^oF), with their bare hands and only feel slight heat emanating. All this translates to a large reduction in power consumption and heat loss for our users.

Our cooling section consists of individually controlled upper and lower air knives. This allows for individual knife-to-surface distance adjustments not always possible in some



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other furnaces. The operator can control the distance of the air knives to the glass from the main control panel or an auxiliary panel located inside the quench section. Air distance and force determine the particle size breakage pattern of tempered glass.

To conserve energy and reduce power consumption, this tempering line will consist of two blowers controlled by SIEMENS frequency inverter(s) that automatically regulates the idle, ramp up, quenching, cooling, and slow down speeds. Other furnaces simply use a start/stop feature that results in the blowers operating at peak output during batch runs resulting in higher power consumption costs.

Our primary control panel has a user friendly touch screen graphical interface where the operator controls and monitors all events during furnace operation. The home screen consists of an information "Dashboard" which, at a glance, notifies the operator of individual heating zone temperatures, cycle times, load presence, average heat, and much more. This data equips the operator with the necessary tools to adjust tempering recipes as he deems fit.

Our furnaces also come equipped with an automatic start up feature which enables the operator to program the furnace so that it is ready for use when he arrives to work. The operating PLC program is currently offered in three languages – English, Spanish, and Mandarin – the buyer, however, can request a translation to his native language for a nominal fee.



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A. GENERAL FURNACE CHARACTERISTICS:

Tempering Overview:

The general working principle of a horizontal tempering-furnace requires that the glass reach approximately 630 degrees Centigrade, or about 1,165 Fahrenheit, in a uniform manner while minimizing the temperature gradients during the time the glass is heating. This is accomplished primarily through controlled radiation from the heating elements (and forced convection) as the glass oscillates back and forth over fused silica rollers. When the glass temperature has reached about 630 degrees Centigrade, the rollers quickly move the glass forward into an air intensifying-section for tempering. The immediate and sustained application of air via an array of fixed, reciprocation or rotating blast nozzles in the quench uniformly extracts heat from both surfaces and produces the temper. The result is a relatively hot glass core that is in tension against the fast cooling and compressing surfaces. Thereafter the glass moves to a cooling section to sustain the quench long enough to prevent reheating of the glass surfaces from the still-hot glass core. As the center then cools, it forces the surfaces and edges into high tension. A quenched condition becomes stable when the glass is reduced to a temperature of approximately 200-315 ° C.

There are five main sections to the tempering furnace: Loading table, Heating section, Intensifying section, Unloading table, and the Electric control system. These are explained below:

1. Loading Table

- The glass is positioned on the loading table for entry into the furnace's heating chamber. Glass entry is controlled via photoelectric cells located near the entry door of the loading table
- The driving rollers of the loading table are fully-covered EPDM color rubber rollers
- Acrylic plates are positioned on both sides of the driving rollers and serve as guides to prevent entry of glass sheets that surpass the stipulated width and risk harming the heat-preserving layers inside the furnace

2. Heating Zone (Furnace)

- Temperature may be individually controlled per chamber or uniformly set when operating in single chamber mode.
- High quality fused ceramic rollers are evenly spaced inside the heating chamber to ensure glass sheets are maintained leveled and heated evenly to avoid distortion
- Electrothermal AF wires are evenly spaced inside the furnace and are divided into two sections: primary and auxiliary
- A heat-circulation forced convection system enables the furnace to temper glass products that ordinary horizontal furnaces cannot temper. Because of its uniform heat distribution, both top and bottom, the furnace can temper soft and hard coat Low-E glass as well as odd shaped glass pieces. The convection system also aids in increasing production efficiency by 12-15% as it reduces the time necessary to heat the glass
- The operator can control temperature gradation of the electro-thermal AF wires via the



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user interface touch-screen. The degrees of graduation will self-adjust based on the difference between the current internal temperature and desired mark. As the furnace temperature approaches the desired mark, the heating system will lessen its output and gradually approach the preset temperature mark shutting off the various electrothermal wires when reached

- ❑ All electrothermal wires inside the furnace are evenly spaced and sheathed with ceramic pipes to provide for a safe operating environment
- ❑ The heat preserving chamber consists of three separate layers: (1) the main body is made up of a ceramic-fiber-hard-plate (50mm thick) (2) a heat-resistant ceramic base (3) and a high temperature resistant clay
- ❑ A computerized heat balancing system enables the furnace to control the amount of heat, intensity, displacement, and degree of convection generated inside the chamber to provide for optimal temperature gradation and conservation
- ❑ The heating chamber is divided into two parts: upper and lower. The upper part of the furnace body can be raised or lowered by use of a gear reduction box and spiral lifter. **Note: the furnace must be turned off and allowed to cool several hours before entering the chamber for maintenance**
- ❑ Once the glass sheet(s) have entered the furnace, the computer system can accurately calculate, based on the total length of the sheet(s), the revolution displacement of the inside rollers to avoid undesired impact with the furnace doors and optimize oscillation for even heat displacement over the ceramic rollers
- ❑ This machine is equipped with an emergency power back-up protection system to ensure the quartz ceramic rollers operate in case of power loss

3. Quenching Zone

- ❑ The quenching zone is primarily composed of high pressure fans, vanes an array of fixed blast nozzles, wind-box, and a drive system
- ❑ The upper and lower vanes evenly disperse cooling air to the top and bottom surfaces of the glass
- ❑ The vanes are press and shaped from an aluminum alloy. Air holes are evenly drilled on the surface of the vanes and angled based on predefined wind-pressure calculations
- ❑ The high pressure fans for our units are custom built whole-body assemblies
- ❑ The unit comes equipped with a set of high-pressure fans
- ❑ The wind pressure and the distance of the vanes to the glass is controlled via computer
- ❑ The top and lower vanes operate independently. Thus allowing for separate height adjustments necessary on Low-E and other decorative glass
- ❑ Kevlar roped rollers are used to oscillate and convey the glass
- ❑ A noise retardant room (not included) with proper clean air flow is highly recommended to house the blowers. Use of filters is suggested to control the inward air quality flow

4. Unloading table

- ❑ Tempered glass is offloaded onto the unloading table
- ❑ Heat resistant Kevlar roped or rubber rollers are used on the unloading table
- ❑ A pair of photoelectric cells, located near the end of the exiting table, monitor glass movement. As the glass approaches the end of the table, forward movement of the rollers stops to prevent undesired breakage. Forward movement can then be resumed when the operator overrides the automatic stop via a foot-operated point switch for final glass



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unloading

5. Electric control system

- The electric system controls the operating parameters of the furnace. It is used to analyze and adjust key factors such as temperature, time, heat delay, convection, etc.;
- The main elements of the system include: internationally recognized programmable controllers (i.e., PLC from Siemens, Panasonic, Omron, or Mitsubishi), a touch screen, frequency converter, coder, contactor, simulating mode for temperature control, and electrical heating mode
- The operator controls the parameters of the furnace via a user-friendly interface on a 10.4" industrial-level touch screen. The interface offers several visual depictions that monitor the components, phases, and sections of the furnace operation.
- The ambient working temperature for the Electric Control panel should be maintained at 5-15°C. A separate temperature controlled room is required to house the electric panels. The buyer is responsible for constructing this room.

B. ADDITIONAL ITEMS INCLUDED IN PRICE:

- Emergency back-up generator for ceramic roller section only
- PLC manuals
- Furnace Operating Manuals
- Spare parts (See Appendix A)
- Disseminator of SO₂ gas

C. INSTALLATION COSTS COVERED BY SELLER:

- Time for all factory technicians necessary for the furnace installation and training (Technicians' Labor time only)
- Jordon Glass technicians necessary for the furnace installation and training (Technicians' Labor only)



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D. DELIVERY ITEMS COVERED BY BUYER:

- Round-Trip airline tickets for Factory technicians from factory to Buyer site
- Ocean Freight
- Import/Custom Duties/Pier Fees
- Inland Trucking

Please note: Demurrage charges assessed by the shipping company resulting from delays in unit offloading due to lack of resources and/or other limitations at the buyer site are the sole responsibility of the buyer and to be paid directly by the buyer to the delivery/trucking company.

E. MANUFACTURER RESPONSIBILITIES (GANGXING):

- Manufacture equipment according to contract and technical specifications.
- Guarantee glass processed by this furnace will meet ANSI Z97.1 tempering standards
- Package, load, and deliver equipment to the Buyer's closest international port
- Supervise installation, training, and testing of the equipment at Buyer's site
- Provide Furnace operation and PLC manuals
- Honor the one-year warranty
- Provide on-going technical support

Manufacturer reserves the right to modify, enhance, substitute, change, delete, replace, and/or add components and/or other items related to the overall or specific design, assembly, operability, functionality, and features of the Tempering unit to achieve the specification requirements as outlined in the *Glass Processing Dimension* section hereunder the *Technical Parameter & Information* subheading found herein and to meet any Addendums agreed to hereafter.

F. BUYER RESPONSIBILITIES:

- To supply and confirm all electrical power, connections, lines, transformers, substations, compressed air, and water requirements are installed and ready prior to furnace arrival
- To assure power fluctuations do not exceed 10%
- To supply clean and dry compressed air and lines according technical specifications or as deemed necessary during furnace installation
- To secure temporary workers accident insurance for foreign factory technicians
- To supply suitable extended stay lodging, meals, and local transportation for factory technicians
- To supply access to a temporary office with internet and international phone access for factory technicians
- To supply clean washed glass of all necessary types in varying thicknesses and reflectivity to successfully and completely test the tempering furnace
- To secure the proper disposal and removal of glass waste
- To construct an appropriate enclosure for the Blower section with (1) sufficient insulation for necessary noise reduction as per OSHA or other AHJ (Authority Having Jurisdiction) and (2) ensure sufficient air flow for blower aspiration
- To allow for sufficient ventilation in the working area during furnace installation
- To construct an appropriate climate controlled enclosure for the Electric Control panels
- To ensure the flooring, where the furnace will operate, is adequately level and made of at least 4" reinforced concrete or greater
- To secure necessary tools for the cleaning of the ceramic rollers



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- To secure welding equipment, concrete drill and drill bits, saws and blades for cutting steel and ceramic, and other common tools.
- To secure all necessary Material Handling equipment such as Forklifts, Straps, Booms, Chains, or Cranes if necessary
- To secure regulator and SO₂ gas
- To provide access to company personnel for assistance during installation and/or procurement of parts as necessary
- To make payments according to payment terms outlined herein
- To reimburse Jordon Glass for installation related expenses on a timely basis. Payment should be remitted no more than 3-business days after expense related invoices are submitted by Jordon to the buyer.
- To secure maritime freight insurance for the shipment from the factory to the USA Port
- Installation delays caused by the gross negligence of the Buyer in failing to fulfill the above mentioned requirements will be charged at \$200.00 per day per technicians at the Buyer's site plus any flight adjustment costs

G. INSTALLATION RELATED EXPENSES PAID FOR BY BUYER

Our price does not cover the following:

- All related electrical installation expenses (i.e., running cables, wires, purchasing transformers, substations, breakers, switches, laying conduits, electrical labor, hook-up costs to building - furnace, - blower - compressor, etc.)
- All local permit and code compliance costs
- Cost of glass tempering certifications
- Temporary workers accident insurances
- Material Handling Equipment and personnel necessary for machine unloading and positioning
- Heavy equipment rentals (such as forklifts or the like)
- Local labor (used to assist the technicians during the furnace setup and installation)
- Rotary Air compressor
- SO₂ Gas
- Glass used for testing (several pieces varying dimensions and thicknesses for several loads)
- Suitable extended stay lodging for all our technicians
- Meals for all our technicians
- Local car transportation for the installing technicians during installation
- Sound retardant room enclosure with filter for the blower
- Temperature controlled room enclosure required for housing the electric panels and computer

H. OPTIONAL ITEMS NOT INCLUDED IN PRICE:

- Due to the vast variety of models and sizes, we cannot stock all possible spare parts for every furnace; therefore we recommend the customer increase the order of minimum on-hand spare parts, mainly in regards to the amount of **ceramic, rubber, and Kevlar rollers to guarantee a seamless operation.** A suggested list is presented in Appendix B.



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Special Markings: The customer is advised to determine if their local Authority Having Jurisdiction (AHJ) requires special markings on the Tempering Furnace. Should the AHJ at the furnace-operating site require Underwriters Laboratory (UL) or similar third party certification markings, please advise Jordon Glass prior to unit fabrication. The additional fee to meet special marking requirements, such as UL, is approximately 10-12% of the sale price.

I. LIMITED MATERIAL AND WORKMANSHIP WARRANTY

Upon completion of the installation of the unit and for one-year thereafter, Seller warrants that the machine will be free from defects in material and workmanship under normal use at the original installation site. The warranty period begins on the date the unit installation is completed and is non-transferable, however, warranty service does not initiate until the full outstanding balance for the unit has been paid by the buyer. The warranty covers non-wear and tear parts only. Excluded items include the following consumables:

- a) ceramic and/or rubber rollers
- b) Kevlar rope
- c) Rubber drive bands, bearings
- d) Drive chain/belts
- e) Air conduit lines
- f) Solid relays
- g) Castor balls
- h) Hand switches are not covered by this warranty.

The warranty does not apply to the equipment or any part thereof, which has been subject to accident, negligence, alteration, abuse, or misuse. Shipping fees for replacement parts are the buyer's responsibility. Please note: we expressly advise all Buyers to purchase additional spare parts to have on hand to avoid down time. Although Jordon Glass will make every effort to replace, under warranty, a damaged part in a timely manner, we are not responsible for lost production.

Technical visits made by a Jordon Glass representative during the one-year warranty period will be free of charge for the technician(s) time only. Airfare, lodging, meals, local transportation, and other travel related expenses are the responsibility of the customer.

J. DELIVERY TIME

- Fabrication time estimated: 60-90 days
- Shipping time estimated: 45-days
- Installation time estimated: 30-days



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K. PAYMENT TERMS:

- 30% Deposit with your Order
- 20% in 30-days
- 40% of Furnace value prior to shipping from the factory
+ Shipping, Installation expenses, and balance for UL and spare parts
- 10% After the successful installation and testing has been completed

Payment Breakdown: GX-QDLP2136 FOB Qingdao Port: \$ 302,270.00

- 1st Payment: \$ 90,681.00
- 2nd Payment: \$ 60,454.00
- 3rd Payment: \$ 120,908.00 + 66,610.00 (Estimated) = \$181,934.00
**Shipping, Installation Expenses, and balance for spare parts,
UL parts compliance (ESTIMATED @ \$66,610.00)**
- 4th Payment: \$30,227.00 (On conclusion of user training and installation)

PLEASE NOTE: Final payment is due at the conclusion of the unit's installation. The manufacturer reserves the right to suspend furnace operations if the payment terms are not met.

L. BANK INFORMATION

SUNTRUST BANK MIAMI N.A.
11700 N. Kendall Dr., Miami, Fl. 33186
ABA Num.- 06100-0104
Beneficiary: The Jordon Glass Corp.
Account Num.- 079-700-722-9413
SWIFT Code: SNTRUS3A



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May 27, 2015

Quote #- 20140723-STRLMR-004

<u>Items (B)</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>INCO TERMS</u>	<u>TOTAL USD</u>
1	GX-QDEP2136- SINGLE BAY GLASS TEMPERING FURNACE Horizontal Glass Tempering machine for 4-19mm Max Single Bay 84"X144"	1set	FOB Qingdao Port, China	<u>\$302,270.00</u>
2	Estimated Shipping: 2X40'GP + 1X40'HQ			<u>\$24,524.00</u>
	Customs / Insurance / Duties / Brokerage fees			
3	Estimated Installation Expense (Meals, Lodging, and Travel for installing Technicians)			<u>\$10,000.00</u>
4	Total D-livered and Installed (Estimated Expenses)*			<u>\$336,794.00</u>
	OPTIONS:			
5	Optional: Additional Spare Parts (Estimate calculated at approx. 5% of EXW furnace price)			<u>14,500.00</u>
6	Optional: UL Parts Compliance			<u>17,586.00</u>
	Grand Total CIF Stevensville, MD (with Estimated Options Freight and Expenses)			<u>\$368,880.00</u>

*The above mentioned furnace prices are calculated on the current quote date exchange rate of \$1 USD to 6.17 Chinese Yuan. Fluctuations in currency exchange between the USD and Chinese Yuan exceeding 3% from the quote date will automatically void this sales offer.

**Actual Shipping Rates will apply when product is dispatched from the factory. Estimated rates are provided above as a courtesy. Actual expenses will be determined at the time of installation.

***The installation labor and training is provided free of charge. The buyer is responsible for all travel related expenses for the technicians including air fare, lodging, meals, and local transportation.

TAX NOTICE:

- **SALES OUTSIDE OF FLORIDA:** The buyer (s) is responsible for reporting and submitting all monies corresponding to Sales and/or Use Tax to their corresponding municipal, provincial, state, or other taxing authority. Please note that if you neglect to self-assess and submit your tax liability; you may be subject to delinquency charges and other fines by the authorities having jurisdiction.



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TERMS AND CONDITIONS

1. **Taxes, Permits, License Fees etc.** Buyer shall pay all taxes and fees including, but not limited to, all federal, state and local sales, use, property, excise or other taxes and permit and license fees.

2. **Buyer's Default.** If Buyer shall fail to make any payment due hereunder, or, prior to final payment, be insolvent or a party to or acquiesce in any bankruptcy or receivership proceeding or any similar action affecting Buyer's affairs or property, Seller may enter upon the premises where the Equipment may be found in order to show the Equipment to potential buyers and to remove the same, without prejudice to any other remedies Seller may have. Thereupon, Seller may sell the Equipment so acquired upon commercially reasonable terms as Seller may elect and apply the proceeds thereof against the Buyer's obligations hereunder.

3. **Title.** Title to the Equipment shall pass to Buyer immediately upon payment in full of the Purchase Price, and all associated costs and charges required hereunder.

4. **Warranties/limitation of liabilities.** Seller's warranties and limitation of liabilities with regard to the Equipment are as follows, and are only effective upon full payment of the Purchase Price by Buyer:

(a) **Limited Material and Workmanship Warranty.** Upon completion of the installation of the Equipment, Seller warrants only to the original Buyer that the Equipment will be free from defects in material and workmanship under normal use for the use intended at the installation site. Upon completion of the installation of the Equipment, Seller shall have no obligation or liability to Buyer for normal wear and tear or for damage to the Equipment resulting from the repair, maintenance or subsequent reinstallation of the Equipment by any party other than Seller. Seller's obligations under this limited material and workmanship warranty, and Buyer's exclusive remedy, shall be limited solely to the repair, exchange or replacement, at Seller's election, of any material(s) or workmanship which may thus prove defective under normal use and service for the use intended, within one (1) year from the installation date, and which Seller's examination shall disclose to its satisfaction to be defective. If Buyer and Seller shall not agree as to whether the Equipment is defective and/or to what extent the Equipment is defective, the parties shall mutually appoint, within ten (10) days after Buyer receives notice of Seller's determination, an independent third party to make this determination or determinations. Such determination shall be made only with respect to whether or not the Equipment is defective. The cost of such determination shall be borne equally by Buyer and Seller. The determination of such independent party shall be final and each party shall release the other party from any liability in connection with such determination.

(b) **LIMITATION OF WARRANTIES AND LIABILITIES:**

(i) **THE WARRANTIES STATED IN PARAGRAPH 4(A) ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE SELLER'S PART.**

(ii) **SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THE EQUIPMENT.**

(iii) **THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE TERMS OF PARAGRAPH 4(A) OF THIS AGREEMENT.**

(iv) **THESE WARRANTIES SHALL NOT APPLY TO THIS EQUIPMENT OR ANY PART THEREOF WHICH HAS BEEN SUBJECT TO ACCIDENT, NEGLIGENCE, ALTERATION, ABUSE, OR MISUSE. SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ACCESSORIES OR PARTS NOT SUPPLIED BY IT.**



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- (v) SELLER ASSUMES NO LIABILITY UNDER THIS WARRANTY FOR ANY TIME FOR WHICH THE EQUIPMENT IS NOT IN USE IN THE EVENT THAT ANY REPAIRS, REPLACEMENT OF PARTS, MAINTENANCE OR SUBSEQUENT REINSTALLATION ARE REQUIRED. ADDITIONALLY, SELLER SHALL ASSUME NO LIABILITY UNDER THIS WARRANTY FOR INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST PROFITS INCURRED BY BUYER.
 - (vi) IN ADDITION TO ANY OTHER LIMITATION OF THESE WARRANTIES CONTAINED HEREIN, THESE WARRANTIES SHALL NOT APPLY TO THIS EQUIPMENT OR ANY PART THEREOF UNLESS BUYER HAS MET ALL OF THE SPECIFIC INSTALLATION REQUIREMENTS FOR THE EQUIPMENT INCLUDING, BUT NOT LIMITED TO, THE INSTALLATION OF A FILTER ROOM FOR THE BLOWER AND A CLIMATE CONTROLLED ROOM FOR THE ELECTRIC PANELS.
 - (vii) IT SHALL BE WITHIN THE SOLE DISCRETION OF SELLER WHETHER OR NOT SELLER'S TECHNICIAN SHALL BE REQUIRED TO ADDRESS ISSUES UNDER THIS WARRANTY. IN THE EVENT THAT SELLER DETERMINES THAT ITS TECHNICIAN IS REQUIRED HEREUNDER, SELLER SHALL BE RESPONSIBLE FOR SUPPLYING THE TECHNICIAN; BUYER SHALL BE RESPONSIBLE FOR PAYING FOR ALL EXPENSES INCURRED WITH RESPECT TO TRAVEL, LODGING AND MEALS OF THE TECHNICIAN DURING THE VISIT.
 - (viii) IN THE EVENT THAT BUYER UNDERTAKES ANY REPAIRS OR REPLACEMENT OF PARTS UNDER THIS WARRANTY, IT SHALL REQUIRE THE EXPRESS WRITTEN CONSENT OF SELLER.
 - (ix) IN THE EVENT THAT SELLER, IN ITS SOLE DISCRETION, DETERMINES THAT SELLER SHALL BE RESPONSIBLE FOR FREIGHT CHARGES, SELLER WILL COVER ONLY REASONABLE GROUND SHIPPING CHARGES.
 - (x) AS USED IN THESE WARRANTIES, THE TERM "ORIGINAL BUYER" SHALL MEAN THAT PERSON OR ENTITY NAMED HEREIN FOR WHOM THE EQUIPMENT IS ORIGINALLY INSTALLED.
 - (xi) NOTWITHSTANDING THE JURISDICTION IN WHICH BUYER IS LOCATED OR THE JURISDICTION IN WHICH THE EQUIPMENT IS TO BE INSTALLED, THE WARRANTIES STATED IN PARAGRAPH 4(A) SHALL BE CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA.
- (c) Assignment of Factory's warranties. Seller hereby assigns to Buyer all of its rights and interests in the warranties, if any, provided by the Factory to the extent that this assignment is not prohibited by the terms of any agreement between Seller and the Factory.

5. **Risk of Loss.** For Buyers whose location for the Equipment is within the United States, the risk of loss for the Equipment shall pass to Buyer upon delivery of the Equipment to the installation site. For all other Buyers, the risk of loss for the Equipment shall pass to Buyer upon delivery of the Equipment to the port of entry in the country where the Equipment is to be located.

6. **Security Interest.** Buyer hereby grants to Seller a security interest in the Equipment and related products described in Paragraph 1 hereof, and in the proceeds thereof, to secure payment of the Purchase Price. A copy of this Agreement may be filed by Seller at any time as a financing statement in order to perfect Seller's security interest.

7. **Permits and licenses.** Buyer shall pay for and secure all permits or licenses required by any state or local authority in connection with the performance of Seller's obligations hereunder.



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8. **Breach of Agreement.**

(a) **Limitation of action.** No action at law or in equity shall be maintained by Buyer against Seller for Seller's alleged breach of this Agreement and/or violation of any federal or state law now in effect or hereafter enacted with respect to any obligation or duty incurred hereunder by Seller, unless (i) Buyer notifies Seller in writing at the address specified in this Agreement within thirty (30) days from the date of such alleged breach or violation, and provided Seller does not remedy or correct the breach or violation within sixty (60) days from the receipt of the notice; and (ii) such action at law or in equity is commenced by Buyer within one (1) year from the finish date of the installation of the Equipment, unless extended by ninety (90) days to allow for notice to Seller and its response as provided by this Paragraph. Notwithstanding the foregoing, nothing contained in this paragraph shall be construed to abridge or limit the warranties contained in Paragraph 10 hereof.

(b) **Limitation of damages.** If Buyer or Seller brings any action at law or equity pursuant to Paragraph 14(a), no cause of action by Buyer or Seller shall include a claim, nor may recovery be had against Buyer or Seller, for any punitive, incidental or consequential damages, including but not limited to, damages to property, for loss of use, loss of time, loss of profits or income.

9. **Indemnification and Limited Covenant not to Sue.** Buyer shall hold Seller harmless and indemnify Seller against any and all debts, obligations, costs and damages, including attorney's fees, arising from any claims or causes of action whatsoever, which may be asserted against Seller by any person or entity not a party to this Agreements resulting from: (i) the subsequent sale by Buyer (including its agents and affiliates); (ii) reinstallation of the Equipment by the Buyer; (iii) use, repair, maintenance of the Equipment other than by Seller unless performed strictly with Seller's schedule and/or instructions; or (iv) the decision by Buyer to purchase the Equipment, provided, however, that this indemnity and hold harmless provision shall not apply to Seller's own acts of gross negligence or willful misconduct in the initial installation of the Equipment or in Seller's repair or replacement thereof. Buyer, its agents, employees, officers, heirs, executors, administrators and assigns, further agree not to prosecute, maintain or recover upon any rights, claims, demands, damages or causes of action that Buyer could assert against Seller, now or in the future, arising from the sale, installation, reinstallation, use, repair or maintenance of the Equipment except as provided in this Paragraph 9 hereof.

10. **Miscellaneous.**

(a) **Integration.** This Agreement constitutes the complete and exclusive statement of the terms of the agreement between the parties pertaining to the sale of the Equipment, and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection with this sale.

(b) **Assignment and Delegation.** This Agreement is not assignable nor is the performance of the duties relegable by either party without the prior written consent of the other party.

(c) **Governing law and Jurisdiction.** Buyer represents that the Equipment is being purchased hereunder for business purposes only, and agrees that under no circumstances shall this Agreement be construed as a consumer contract. Notwithstanding the jurisdiction in which Buyer is located or the jurisdiction in which the Equipment is to be installed, this Agreement shall be construed and governed by the laws of the State of Florida. Seller and Buyer agree that any legal or equitable action for claims, debts or obligations arising out of, or to enforce the terms of, this Agreement may be brought by Seller in the United States District Court for the Southern District of Florida or in the state courts located in Miami-Dade County, Florida, and that either court shall have personam jurisdiction over the parties and venue of the action shall be appropriate in each court.



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(d) *Binding Effect.* This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective next-of-kin, legatees, administrators, executors, legal representatives, nominees, successors and assigns.

(e) *Force Majeure.* Seller shall not be liable for any failure to perform as a result of its inability to obtain raw materials, parts or supplies through its usual and regular sources (or on a timely basis), interruption of transportation delays in delivery, government regulation, labor disputes, strikes, war, fire, flood, accidents, the inability to obtain visas for the Factory or Seller technicians, or other causes beyond Seller's control making it impractical for Seller to perform as provided.

(f) *Waiver of Default.* No modification, addition to or waiver of any right, obligation or default shall be effective unless in writing and signed by the party against whom the enforcement thereof is sought. One or more waivers of any right, obligation or default shall not be construed as a waiver of any subsequent or other right, obligation or default.

(g) *Enforceability of Agreement.* If any of the provisions of this Agreement, or portions thereof, are found to be invalid by any court of competent jurisdiction, the remainder of this Agreement shall nevertheless remain in full force and effect.

(h) *Notice.* Notices hereunder shall be in writing and shall be deemed to have been fully given and received when sent by certified or registered mail, return receipt requested, postage prepaid, and properly addressed to the respective parties at the addresses shown on Page 1 hereof, or at such addresses as the parties may later specify for such purpose.

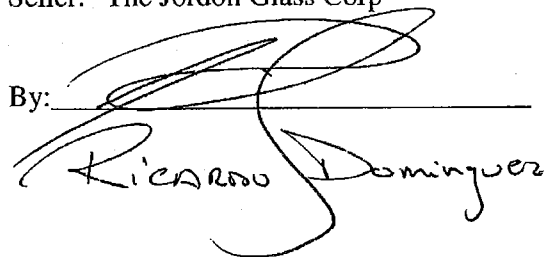
(i) *Payment of Expenses.* If Seller is required to engage in any proceedings, legal or otherwise, to enforce its rights under this Agreement, Seller shall be entitled to recover from Buyer, in addition to any other such sums due, the reasonable attorneys fees, costs and necessary disbursements involved in said proceedings.

In Witness Whereof, the parties hereto have executed this Agreement on the day and year first above written.

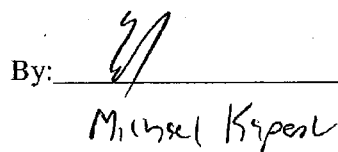
Seller: The Jordon Glass Corp

Buyer: Sterling Mirror

By: _____


Ricardo Dominguez

By: _____


Michael Kypert



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Appendix A
Sample List of Spare Parts Sent with Furnace

The spare parts presented in Appendix A consist of items sent by the factory along with the furnace to have on hand and ensure the timely installation of the unit. Those items not used during the installation, testing, and training of the furnace will remain with the customer FREE OF CHARGE. This parts list is modified at the discretion of the Manufacturer. The following is a **SAMPLE LIST (actual specifications will vary based on furnace dimensions).**

No.	Name	Specification	Material	Amount
for Mechanical Part				
1	Timing Belt	8M-50W*912L		1
2	Timing Belt	8M-50W*1040L		1
3	"O" Belt	Φ8*950L		36
4	"O" Belt	Φ8*850L		32
5	Bearing	6005-zz	UBC	5
6	Bearing	6006-zz	HRB	5
7	Bearing	6206-zz		5
9	Bearing with Support	UCP207		2
10	Bearing with Support	UCP205		1
11	Chain	RS40*1500L		2
12	Chain's Joint	RS40		2
13	Ceramic Tube	Φ32*3.5*900L		2
14	Ceramic Tube	Φ20*3*110L		2
16	Ceramic Piece-1	Φ55		10
17	Ceramic Piece-2	Φ30	ceramic	10
18	Ceramic Piece-3	Φ30	ceramic	10
19	Ceramic Piece-4	M6	ceramic	10
20	Ceramic Piece-5	Φ6	ceramic	1kg
21	Ceramic Piece-6	Φ20	ceramic	10



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Appendix A (continued)

Sample List of Spare Parts Sent with Furnace Subject to Change

No.	Name	Specification	Material	Amount
Mechanical Parts (continued)				
22	Ceramic Fiberboard	50t*600W*900L	ceramic	2pieces
23	Heat-resisting Glue	KAOSTICK		2kg
24	Heater Wire	Heater (480V)	AF	6
27	Stainless Steel Wire	Φ1.2		20m
28	Kevlar Rope	10W*3T		25m
29	Red Rubber Roller			2
30	Ceramic Roller			3
31	Plastic Wrap			3volumes
33	Expansion Bolt			some
34	Screw,Nut,Washer	many specifications		some



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Appendix A (continued)
Sample List of Spare Parts Sent with Furnace Subject to Change

No.	Name	Specification	Material	Amount
Electrical Part				
1	SSR	H480D40		4
2	Thermocouple	K-Φ10*355L	top	6
4	Thermocouple	K-Φ5*420L	Bottom	3
5	Voltmeter	500V 42L6		1
6	Ammeter	1000/5 42L6		1
7	Lock Switch			1
8	Knob Switch	2 positions		1
9	Push Button	Red, Green		1
10	Indicator Lamp	22 Green DC24V		1
11	Foot Switch			1
12	Limit Switch	M8011		1
13	Transform Relay	HH54P-DC24V		3
14	AC Contactor	CJX2-3201-380V50HZ		1
15	AC Contactor	CJX2-0910-220V50HZ		1
16	AC Contactor	CJX2-0901-220V50HZ		1
17	Thermal Relay	JRS1-2-2.5AZ		1
18	Circuit Breaker	DZ47-63/2P C32A		2
15	Coupling for Encoder	6mm		2
20	Proximity Switch	PRL 18-5 DN		2
21	Fluorescent Lamp	5W		1
22	Luminous Tube	5W		2
23	Coil for Solenoid Valve	DC24V		2



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Appendix B
Suggested Minimum Spare Parts for Purchase

No.	Name	Specification	Amount	Unit Price	Count	Extended Total
1	Ceramic Pipe	Φ10*535	6			
2	Glue for insulation		5			
3	Rubber roller		5			
4	pressure indicator	Φ60	1			
5	pressure indicator	Φ160*16kPa\10kPa	2			
6	Solenoid air valve	220V DC24V	2			
7	Solenoid air valve	210V DC24V	2			
8	magnetic valve for blowing	2W25 AC220V	3			
9	Manual valve		1			
10	Temperature controller	XTD-701K	1			
11	Cable for PLC		1			
12	PLC modules for temperature	1-7018	1			
13	PLC modules for I/O	X16D2,Y16R, Y16T, DA4	2			
14	Electrical connector	10A	2			
15	Electrical connector	30A	3			
16	Ceramic roller	Φ48*1845	8			
17	"O" Belt	Φ8	150			
18	Thermocouple	K-Φ10*380L	7			
19	Thermocouple	K-Φ5*400L	5			
20	Encoder	OVW2-01-2MHC	2			
21	Coupling for Encoder	Φ6	4			
22	Heater Wire	4kW,0.98kg	25			
23	Kevlar rope	8W *3t	300			
24	Photo switch	E3Z-T62	2			
25	Ceramic Pipe	Φ28*535	15			
26	Ceramic Pipe	Φ20*110	15			



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