

TERMS OF SALE

ALL SALE TRANSACTIONS BY AND BETWEEN TRIMARK USA, LLC AND/OR ITS AFFILIATES (COLLECTIVELY, "TRIMARK") AND ITS CUSTOMERS (EACH, A "CUSTOMER") ARE GOVERNED BY THESE TERMS OF SALE (THE "TERMS OF SALE"). IN THE EVENT OF A CONFLICT BETWEEN THESE TERMS OF SALE AND THE TERMS CONTAINED IN ANY QUOTATION, ORDER OR OTHER DOCUMENT OR AGREEMENT (EACH, AN "ORDER"), THESE TERMS OF SALE SHALL CONTROL, AND ANY SUCH CONFLICTING TERMS DEEMED DISREGARDED. NO SUCH CONFLICT SHALL OPERATE AS A REJECTION OF AN ORDER.

1. **ACCEPTANCE.** TriMark's acceptance of an Order is subject to Customer's assent to all the terms and conditions contained herein, which shall be presumed from Customer's acknowledgment or submission of an Order, acceptance of goods or services requested, and/or the payment of an invoice. Customer agrees that no writing shall be required in order to make an Order legally binding, notwithstanding contrary requirements in any law, and Customer agrees not to contest the validity or enforceability of a genuine Order under the provisions of a statute of frauds or any other applicable law.
2. **CREDIT.** TriMark may, but shall not be obligated to, grant credit terms to any Customer. Acceptance of any Order is subject to final credit approval by TriMark. TriMark reserves the right to cancel any sale if TriMark determines a Customer is unable to pay for products or services.
3. **SHIPMENT AND DELIVERY.** If TriMark is utilizing Customer-specified carriers to deliver products, TriMark's responsibility for damaged products ceases upon the delivery of products in good condition to the carrier. If TriMark selects its own carriers to deliver products, TriMark's responsibility for damaged products ends upon delivery in good condition to Customer's ship-to location.
4. **INSPECTION.** Customer shall inspect products at the time of delivery and, where feasible, note on the shipping documentation any missing, visibly damaged or non-conforming products. Customer shall notify TriMark in writing of any missing, damaged or nonconforming product(s) as soon as reasonably practicable. For the avoidance of doubt, such examination shall not have any impact on the rights of Customer under manufacturer warranties for damage or defects which cannot reasonably be determined from visual inspection at the time of delivery.
5. **DELAYS AS TO SERVICES.** TriMark shall have no liability for delays or failures to perform relating to matters outside of its reasonable control. Customer shall be responsible for any storage fees incurred by TriMark attributable to delays caused or requested by Customer.
6. **COST OF DELIVERY, TAXES AND OTHER CHARGES.** Customer shall pay the costs of delivery and all sales, use, excise, or similar taxes, tariffs, or other charges which TriMark is required to pay, or to collect and remit, to any governmental entity (national, state or local) and which are imposed on or measured by the sale, other than those attributable to the income of TriMark.
7. **PICK-UP OF PRODUCTS BY CUSTOMER.** If an order is to be picked by Customer, pick up must occur within 30 days from the date Customer is informed they are available for pick-up. Products not picked up by Customer within thirty 30 days will accrue storage fees at the rate of \$100.00 per day. All products not picked up within 90 days shall revert to TriMark for disposition and Customer waives any right to proceeds from the disposition of such products and shall remain liable for any outstanding balance due and owing to TriMark.
8. **FABRICATED/CUSTOM PRODUCTS.** Fabricated or custom manufactured products may not be cancelled, and Customer shall be responsible for all costs or fees related to the fabrication or manufacture of products upon commencement of the same, which shall be due and payable in accordance with the terms outlined in the Order.
9. **PRODUCT COMPLIANCE & SUITABILITY.** While TriMark strives to ensure that products it sells comply with all applicable laws, as TriMark is not a manufacturer and does not warrant or guarantee such compliance, nor can TriMark be held responsible for how a product is used. All product pictures or drawings are for illustrative purposes only and may not be relied upon for specific measurements or configurations.
10. **NO WARRANTIES TO CONSUMERS.** Customer represents and warrants that the products it purchases are intended solely for professional and/or commercial use, and as such, TriMark makes no warranties to those defined as consumers in the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act.
11. **MANUFACTURER WARRANTIES.** TriMark will assign and/or otherwise make available to Customer all rights, if any, under applicable manufacturer warranties, and will obtain copies of manufacturer warranties and furnish them to Customer upon request.
12. **TERMS OF PAYMENT.** Payment shall be made in accordance with the terms specified on the face of an Order, or if not so specified, within 30 days of the date of invoice. TriMark may impose a convenience fee for credit card payments no greater than TriMark's cost of acceptance. A finance charge equal to the lesser of 1.5% per month or the highest rate allowed by applicable law, shall be assessed on any balance not paid when due and TriMark shall be entitled to withhold or cease further shipment of products or delivery of services to Customer.
13. **RETURN OF PRODUCTS.** All product returns must be in new condition and made within 30 days of delivery, and shall be subject to the acceptance of TriMark and/or its suppliers. Customer agrees to pay the costs of return packaging, shipping and handling, as well as any restocking fees charged by TriMark or its suppliers. Fabricated or custom manufactured products may not be returned or cancelled.
14. **LIMITED WARRANTY.** TriMark warrants that all products will be new, unless otherwise specified, and that TriMark's services, if any, will be performed in a workmanlike manner. EXCEPT AS SET FORTH IN THIS SECTION, TRIMARK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, OF ANY KIND WITH RESPECT TO ANY PRODUCTS OR SERVICES SOLD BY IT, WHETHER AS TO PERFORMANCE, QUALITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. THE ONLY WARRANTIES APPLYING TO THE PRODUCTS SOLD HEREUNDER ARE THOSE (IF ANY) SPECIFICALLY PROVIDED IN WRITING BY THE MANUFACTURER.

15. **LIMITATION OF LIABILITY.** Customer understands that TriMark is not an insurer and that Customer is responsible for obtaining insurance coverage(s) appropriate for its business operations. Customer acknowledges that amounts payable to TriMark are based upon the value of the products and services it provides and the scope of liability set forth herein are unrelated to the value of Customer's property or the property of others. No claim by Customer of any kind, including but not limited to claims for indemnification, whether as to the quality of products or services delivered, shall be greater in amount than the purchase price for the products or services in respect of which damages are claimed. **IN NO EVENT SHALL TRIMARK BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, DAMAGE TO GOODWILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, USE OR LOSS OF PRODUCTS SOLD OR SERVICES DELIVERED, REGARDLESS OF THE THEORY OR BASIS FOR SUCH LIABILITY, EVEN IF FORSEEABLE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL SURVIVE INDEFINITELY.**
16. **ASSIGNMENT.** Customer may not assign an Order or any of the rights and/or obligations thereunder, without TriMark's consent.
17. **SECURITY INTEREST.** Until payment in full is received by TriMark, Customer grants to TriMark a priority lien and security interest in those products sold to Customer and all of Customer's rights to payment therefor, including all insurance proceeds receivable thereon. Customer irrevocably authorizes TriMark to perfect the granted security interest and to file U.C.C.-1 financing statements and/or other appropriate documentation to assure and perfect the validity, priority, and enforceability of, and to exercise and enforce, such security interest(s).
18. **GOVERNING LAW.** All Orders and these Terms of Sale, and the provisions contained herein and therein, shall be construed, governed, and enforced in accordance with the internal laws of the State of Delaware, without regard to its conflicts of law provisions.
19. **ARBITRATION.** The parties agree that any dispute arising out of or relating to any Order or these Terms of Sale shall be resolved by binding arbitration under the Commercial Dispute Resolution Procedures of the American Arbitration Association. In no event shall the arbiter expand nor restrict any of the parties' respective rights or obligations beyond those provided for in an Order or these Terms of Sale. The prevailing party shall be awarded that proportion of its reasonable costs and expenses (including attorney's fees) that it actually incurred in arbitrating the matter, and judgment upon an award may be entered in any court having jurisdiction. The Parties shall cooperate in providing reasonable disclosure of relevant documents. The exclusive site of such arbitration shall be in Boston, Massachusetts.
20. **CORRECTIONS.** TriMark reserves the right to update or correct any errors or omissions in any Order, at any time and without prior notice. TriMark reserves the right to cancel or refuse any Order based on incorrect pricing or availability.
21. **GENERAL.** Except as set forth in Section 20 above, any modification, amendment or waiver of the terms of an Order must be in writing and signed by an authorized representative of both Customer and TriMark. If either Customer or TriMark fails to enforce any right or remedy available to it, such failure will not be a waiver of any other right or remedy. TriMark reserves the right to update or modify these Terms of Sale at its sole discretion and at any time. If any provision of an Order or these Terms of Sale is found to be illegal, invalid or unenforceable in a jurisdiction, such provision (or portion thereof) will be ineffective only to the extent of its illegality, invalidity or unenforceability and only in such jurisdiction, and such finding will not affect any other provisions of an Order or these Terms of Sale, with a valid provision that most closely approximates the economic effect and intent of the illegal, invalid or unenforceable provision substituted therefor.

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