



Foodservice Equipment, Supplies and Design

TERMS OF SALE

These terms of sale (the “**Terms of Sale**”) govern all transactions between TriMark USA, LLC or its affiliates (each, for purposes hereof, “**TriMark**”) and its Customers (as defined below) for the sale of goods and/or services. Any purchase or transaction between Customer and any affiliate of TriMark will be subject to these Terms of Sale, but shall be deemed a two-party agreement between such entities, and Customer shall look solely to that affiliate for any claims, demands, and fulfillment of obligations hereunder. If there is an executed agreement between the parties governing services or goods contemplated hereby then the executed agreement shall govern. Any competing or conflicting terms from Customer of any kind, such as those located in a quotation, purchase order, request for proposal, request for quotation, via html link or pop-up or other format are rejected and shall be of no force or effect.

1. DEFINED TERMS.

- (a) “**Goods**” shall mean all tangible or intangible goods, including products, equipment, disposables, and any other goods described in an Order.
- (b) “**Services**” means any services described in an Order.
- (c) An “**Order**” shall mean a quote, purchase order, statement of work, any bidding documents, or other transmission from Customer requesting pricing, proposals, Goods, or Services from TriMark.
- (d) “**Customer**” is the person or entity purchasing Goods and/or Services from TriMark.

2. **ACCEPTANCE.** Any quote provided by TriMark is valid for seven (7) days from the date of issuance, unless otherwise indicated on the Order. Customer accepts these Terms of Sale through submission of an Order, award of a bid, acceptance of the Goods or Services requested, and/or the payment of an invoice. Customer agrees that no other writing shall be required to make these terms and an Order legally binding, and Customer agrees not to contest the validity or enforceability of such under the provisions of a statute of frauds or any other applicable law. If the Order is submitted as part of a bid proposal or other bid response, TriMark reserves the right to review and negotiate all related contract/project documents upon award. TriMark shall not be bound by any terms and conditions contained in any bid document, project document, or contract document until executed by an authorized agent of TriMark. TriMark reserves the right to withdraw its bid without penalty if an agreement on the terms and conditions governing TriMark’s work cannot be reached.

3. **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 and subject to any terms indicated on the credit application or agreement. TriMark reserves the right to cancel any sale due to credit concerns.

4. **TERMS OF PAYMENT.** Unless otherwise specified on the face of an Order and agreed to in writing by TriMark, upon acceptance of the Order by TriMark, Customer shall make a cash down payment equal to fifty percent (50%) of the total amount of Goods or Services (including any shipping, storage, or other costs) to be provided under the Order, and the remaining balance shall be due thirty (30) days from the date of the Order, or seven (7) days prior to the shipment, delivery, or pick up of said Goods and/or provision of Services, whichever occurs first. Any other amount due shall be paid within thirty (30) days of the date of invoice. TriMark reserves the right to issue partial invoices and to invoice Customer for any Goods received by TriMark but not ready for immediate shipment, delivery, or pickup by Customer; upon issuance of an invoice, all risk of loss of Goods shall pass to Customer and Customer shall be responsible for any storage fees or other costs incurred or charged by TriMark. A finance charge equal to the lesser of one and one-half percent (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: (i) withhold or cease further shipment of Goods or delivery of Services to Customer, (ii) cancel or reject any pending orders and/or (iii) return the Goods and charge fees as set forth in **Section 11**. All documentation required for invoicing shall be indicated on the face of the Order. Delayed invoicing does not relieve Customer of the obligation to pay. TriMark may impose a convenience fee for credit card payments no greater than TriMark’s cost of acceptance, except to the extent prohibited by applicable law.

5. **PROMPT-PAY / EARLY-PAY.** Notwithstanding anything to the contrary, in no event shall TriMark be deemed to have waived its rights under any applicable state and/or federal prompt-pay laws. In no event shall prompt-pay, early-pay, or other similar discount of any sort be applied to payments due and owing to TriMark for its completed and accepted work, absent the express written consent of a corporate officer of TriMark.

6. **SHIPMENT AND DELIVERY.** If Customer is utilizing a carrier of its choosing to deliver Goods, TriMark’s responsibility for the Goods ceases upon the delivery of the Goods in good condition to the carrier. If TriMark selects its own carriers to deliver Goods, TriMark’s responsibility for the Goods ends upon delivery to Customer’s ship-to location. If TriMark is obligated to facilitate or arrange storage for Goods, Customer accepts all risk of loss upon delivery of the Goods to the warehouse or other storage location.

7. **INSPECTION.** Customer shall inspect Goods or Services at the time of delivery and, where feasible, note on the shipping documentation any missing, visibly damaged, or non-conforming Goods. Customer shall notify TriMark in writing of any missing, damaged, or nonconforming Goods within five (5) days of delivery. 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 be determined from visual inspection at the time of delivery.

8. DELAYS AND CORRECTIONS.

8.1 TriMark shall have no liability for delays or failures to perform relating to matters outside of its reasonable control.

While TriMark will use commercially reasonable efforts to accommodate changes to the delivery schedule, TriMark shall have in its sole discretion the authority to take any of the following actions or a combination thereof:

- i. Receive payment in full for all issued invoices and for all remaining amounts due under the Order;
- ii. Should it be required to incur costs for stored materials and equipment due to schedule changes outside of its reasonable control, TriMark shall be entitled to payment in full for such storage costs; and/or
- iii. Cancel the Order when possible, in which case **Section 22** shall apply, and in the event that custom items cannot be cancelled, **Section 11** shall apply.

8.2 TriMark shall not be responsible nor liable for supply chain delays, third-party price increases, material shortages and/or other factors outside of TriMark’s control. In such event, TriMark shall work with Customer to find alternative suppliers, manufacturers, or delivery options, if available, and all price increases are the responsibility of Customer. In the event a third-party supplier or manufacturer increases the cost of Goods at any time,



Foodservice Equipment, Supplies and Design

TERMS OF SALE

TriMark shall pass that additional cost onto Customer and Customer will pay accordingly. TriMark reserves the right to cancel or refuse any Order based on incorrect pricing or availability.

9. **COST OF DELIVERY, TAXES, AND OTHER CHARGES.** Customer shall pay TriMark the applicable "Freight Charges" which include but are not limited to: delivery, storage, transportation, handling, and administrative fees. Freight Charges may not reflect any rebate, discount or other compensation received by TriMark from a carrier or transportation broker. The Freight Charges indicated on the face of an Order are estimates only; Customer is responsible for payment of all Freight Charges as indicated on TriMark's invoice to Customer. Customer shall be responsible for taxes (including sales, use, excise and similar), tariffs, import or export duties, and any other charges imposed by any governmental entity on the sale, exclusive of taxes on TriMark's net income.

10. **PICK-UP OF GOODS BY CUSTOMER.** If any Goods are to be picked up by Customer, pick-up must occur within thirty (30) days from the date Customer is informed they are available for pick-up. Goods not picked up by Customer within thirty (30) days will accrue storage fees at the rate of \$45 per pallet per month (rounded up to the nearest whole pallet). All products not picked up within ninety (90) days shall revert to TriMark for disposition. Customer waives any right to proceeds from the disposition of such products and shall remain liable for any outstanding balance owed to TriMark.

11. **RETURN OF PRODUCTS.** All returns must be made within fifteen (15) days of delivery of the Goods or Services. The Goods must be in new condition with all original packaging intact and are subject to the acceptance of TriMark and/or its suppliers. Fabricated or custom-manufactured Goods may not be returned or 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 accepted by TriMark. In the event of returned Goods, Customer shall pay a 20% restocking fee, plus all costs associated with the returns, including packaging, shipping, storage and transport costs.

12. **PRODUCT COMPLIANCE & SUITABILITY.** While TriMark strives to ensure that the Goods it sells comply with all applicable laws, TriMark is not a manufacturer and does not warrant or guarantee such compliance. Additionally, TriMark cannot 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.

13. **SERVICES.** TriMark will perform the Services in accordance with the Order. TriMark is not obligated to perform any services other than those expressly set forth in an Order that has been accepted by TriMark. Customer must provide TriMark accurate information and fully disclose all conditions that may impact the Services in order for TriMark to properly render the Services. TriMark does not provide any architectural, mechanical, electrical, HVAC, or structural engineering services and expressly disclaims any responsibility and liability therefor. Except as otherwise agreed to by the parties, Services shall not require TriMark to possess permits, architect or engineering licenses, or certificates from any local or state authority. If TriMark is required to incur premium or overtime labor expenses due to schedule changes made by Customer, TriMark shall be compensated for such additional expenses.

14. **CLEANING.** TriMark will only be responsible for the cleaning and removal of debris generated by its Services and will have no responsibility for debris generated by other parties. TriMark will not be responsible for damage to any equipment or appliances not directly caused by TriMark.

15. **NO WARRANTIES TO CONSUMERS.** Customer represents and warrants that Goods and Services 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.

16. **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.

17. **LIMITED WARRANTY.** TriMark warrants that all Goods 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 GOODS OR SERVICES SOLD BY IT, WHETHER AS TO PERFORMANCE, QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY. The only warranties applying to Goods sold hereunder are those (if any) specifically provided in writing by the manufacturer. Customer shall contact the manufacturer directly for any warranty claims, and TriMark shall have no liability for any manufacturer warranty claims.

18. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL TRIMARK BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUE, LOSS OF USE, DAMAGE TO GOODWILL OR REPUTATION, LOSS OF DATA, OR REPROCUREMENT COSTS ARISING OUT OF OR AS A RESULT OF THE SALE, USE, OR LOSS OF GOODS SOLD OR SERVICES DELIVERED, REGARDLESS OF THE THEORY OR BASIS FOR SUCH LIABILITY, EVEN IF FORSEEABLE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TRIMARK'S ENTIRE LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES, AND EXPENSES RESULTING FROM THESE TERMS OF SALE OR GOODS OR SERVICES SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO TRIMARK FOR THE APPLICABLE GOODS OR SERVICES. THIS SECTION SHALL SURVIVE INDEFINITELY.

19. **INDEMNITY.** Customer understands that TriMark is not an insurer, and that Customer is responsible for obtaining insurance coverage(s) appropriate for its business operations. Customer shall defend, indemnify, and hold harmless TriMark and its respective officers, directors, employees, subcontractors, and agents (each individually, an "**Indemnified Party**") from and against any and all claims, suits, liabilities, damages, settlements, charges, taxes, and any other losses or expenses (including reasonable attorneys' fees) (collectively "**Liabilities**") for physical injury to or illness or death of any third party regardless of status and damage to or destruction of any tangible property which the third party may sustain or incur, to the extent such Liabilities relate to Goods or Services, except for such Liabilities relating to or arising out of a final judgment of gross negligence or willful misconduct of the Indemnified

Party. In any action, suit, or proceeding brought against an Indemnified Party by reason of any such claim as specified above, Customer shall resist and defend such action, suit, or proceeding by counsel of its choice, at the sole expense of Customer.

20. **ASSIGNMENT.** Customer may not assign an Order or any of the rights and/or obligations thereunder without TriMark's written consent. TriMark may assign an Order or any agreement to any of its affiliates or subsidiaries without Customer's consent.

21. **SECURITY INTEREST.** Until payment in full is received by TriMark, Customer grants to TriMark a priority lien and security interest in those Goods 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).

22. **TERMINATION.** TriMark shall have the right to terminate any Order or agreement for any or no reason upon the provision of fifteen (15) days written notice to Customer. Customer shall be liable to TriMark for Goods and Services rendered up until the effective date of termination, as well as payment for any custom items that cannot be cancelled and any manufacturer restocking fees and shipping/handling fees incurred by TriMark for returned or cancelled materials and equipment.

23. **CONFIDENTIALITY.** With respect to the confidentiality of certain non-public, confidential, or proprietary information to be shared between the parties in order to execute the Order (the "**Permitted Purpose**") and in consideration of the parties furnishing Confidential Information to each other, the parties agree as follows:

23.1 Each party (a "**Disclosing Party**") may from time to time disclose certain Confidential Information to another party (a "**Receiving Party**"). The term "**Confidential Information**" shall mean, without limitation, any and all inventions, know-how, and data, and any and all manufacturing, pricing, marketing, financial, regulatory, personnel, and other business information, data, and plans, all whether communicated in writing, orally, or by any other means and shall be inclusive of trade secrets. Confidential Information shall not include information which (a) is already in the Receiving Party's lawful possession on the date of this agreement, (b) becomes generally available to the public through no breach of this Agreement by the Receiving Party including the Receiving Party's officers, employees, agents, or other representatives, (c) becomes available to the Receiving Party on a non-confidential lawful basis from a source other than the Disclosing Party, provided that such source is not known to the Receiving Party to be bound to confidentiality by a confidentiality agreement, or (d) is independently developed by the Receiving Party without the use of Confidential Information. For the avoidance of doubt, the consideration by the parties of a potential business relationship or transaction and all discussions relating thereto shall be deemed to be Confidential Information for purposes of these Terms of Sale.

23.2 The Receiving Party shall keep Confidential Information confidential and shall not, without the prior written consent of the Disclosing Party, use or disclose Confidential Information for any purpose other than the Permitted Purpose; provided, however, that the Receiving Party may disclose Confidential Information to its officers, directors, employees, and representatives (each, a "**Permitted Recipient**") who have a reasonable need to know the information for the purpose of assisting the Receiving Party with its evaluation of the Permitted Purpose. Notwithstanding the foregoing, the Receiving Party shall not be precluded from disclosing Confidential Information where required by applicable law, provided that, to the extent practicable and legally permissible, it provides the Disclosing Party reasonable prior notice of such request in order to permit the Disclosing Party an opportunity to take reasonable steps to protect and limit the scope of disclosure.

24. **FORCE MAJEURE.** TriMark shall not be liable for any damages resulting from delays or otherwise occasioned by (i) the actions or inactions of Customer (including Customer's failure to provide reasonable lead time on orders) or any of its subcontractors, representatives, agents, employees, independent contractors, or trade contractors, in either case for which TriMark is not responsible in whole or in part, (ii) plague, epidemic, pandemic, outbreaks of infectious disease, or any other public health crisis, including quarantine or other employee restrictions, act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, or curfew restriction, (iii) labor strikes provided TriMark is not the cause thereof, (iv) shortages in supplies or raw materials or other supply chain disruptions, or (v) fires, weather, flood, wind, lightning, storm, earthquake, rain, acts of war, or acts of God.

25. **DISPUTES.** Any controversy or claim arising out of or relating to these terms, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The arbitrator shall be selected in accordance with the AAA Commercial Arbitration Rules. TriMark, in its sole discretion, may elect to proceed under the AAA's Commercial Expedited Procedures. The place of arbitration shall be Boston, Massachusetts. These Terms of Sale and any arbitration shall be governed by the laws of the State of Delaware. The arbitrator shall award attorney fees and costs to the prevailing party. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all parties. The parties agree to arbitrate solely on an individual basis, and this agreement does not permit class arbitration, or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. Without the consent of all parties, the arbitral tribunal may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding. At any time during the resolution of a dispute between the parties, either party has the right to apply to any court of competent jurisdiction for interim relief, including pre-arbitration attachments or injunctions, necessary to preserve the parties' rights or to maintain the parties' relative positions until such time as the arbitration award is rendered or the dispute is otherwise resolved.

26. **GENERAL.** Except as set forth in **Section 8** above, any modification, amendment, or waiver of these Terms of Sale must be in writing and signed by an authorized representative of both Customer and TriMark. TriMark shall be entitled to presume that any agent of Customer signing or accepting any modification, amendment or waiver is entitled to do so, accordingly Customer agrees not to contest validity. Customer acknowledges and agrees that from time-to-time TriMark may remit allowances, rebates, or other compensation to third parties which Customer is affiliated with and TriMark shall have no liability or responsibility towards Customer in connection with said allowances, rebates or other forms of compensation paid to Customer affiliated third parties. If either Customer or TriMark fail 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 in its sole discretion and at any time. The updated or modified Terms of Sale shall be applicable to all Orders placed after such update or modification. If any provision of an Order or these Terms of Sale is found to be illegal, invalid, or



Foodservice Equipment, Supplies and Design

TERMS OF SALE

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 provision 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.

Revision Date: April 30, 2025