

TERMS OF SALE

ALL TRANSACTIONS OR POTENTIAL 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 THAT THERE IS AN EXECUTED AGREEMENT BETWEEN THE PARTIES GOVERNING THE SERVICES OR GOODS CONTEMPLATED BY THE APPLICABLE ORDER, THEN THE EXECUTED AGREEMENT SHALL GOVERN. ANY QUOTATION, PURCHASE ORDER, REQUEST FOR PROPOSAL, REQUEST FOR QUOTATION, OTHER BID DOCUMENT OR OTHER DOCUMENT FROM A CUSTOMER THAT INCLUDES COMPETING TERMS OF ANY KIND ARE OBJECTED TO AND SHALL BE OF NO FORCE OR EFFECT. NO SUCH CONFLICT SHALL OPERATE AS A REJECTION OF AN ORDER.

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 the Goods and/or Services from TriMark.

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, 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 an Order legally binding and Customer agrees not to contest the validity or enforceability of an 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 the Goods or Services.

3. **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 thirty (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 Goods or delivery of Services to Customer.

4. **SHIPMENT AND DELIVERY.** If TriMark is utilizing a carrier of its choosing to deliver the 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 the Goods, TriMark's responsibility for the Goods ends upon delivery to Customer's ship-to location.

5. **INSPECTION.** Customer shall inspect the 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 reasonably be determined from visual inspection at the time of delivery.

6. **DELAYS.** TriMark shall have no liability for delays or failure 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.

7. **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.

8. **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. Customer assumes all risk of loss or damage to the Goods for failure to pick up the goods in a timely manner. Goods not picked up by Customer within thirty (30) days will accrue storage fees at the rate of one-hundred dollars (\$100.00) per day. All products not picked up within ninety (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.

9. **FABRICATED/CUSTOM GOODS.** Fabricated or custom manufactured Goods 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.

10. **RETURN OF PRODUCTS.** All returns must be made within thirty (30) days of delivery of the Goods or Services. The Goods must be in new condition 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.

11. **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.
12. **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 and agreed to by TriMark. Customer must provide TriMark accurate information and fully disclose any 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 by the parties, the Services shall not require TriMark to possess permits, architect or engineering license or certificate from any local or state authority.
13. **NO WARRANTIES TO CONSUMERS.** Customer represents and warrants that the 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.
14. **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.
15. **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 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. Customer shall contact the manufacturer directly for any warranty claims, and TriMark shall have no liability for any manufacturer warranty claims.
16. **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. 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, OR LOSS OF DATA, 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. THIS SECTION SHALL SURVIVE INDEFINITELY. TRIMARK'S ENTIRE LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES, AND EXPENSES RESULTING FROM THESE TERMS OF SALE, OR THE GOODS OR SERVICES, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO TRIMARK FOR THE APPLICABLE GOODS OR SERVICES.**
17. **ASSIGNMENT.** Customer may not assign an Order or any of the rights and/or obligations thereunder without TriMark's consent.
18. **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).
19. **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.
20. **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 the metropolitan area nearest to the site of the work.
21. **CORRECTIONS.** TriMark reserves the right to make any corrections or adjustments due to prices quoted due to errors, market fluctuation, supply chain disruption tariffs, third party supplier changes in cost, or other factors outside of TriMark's control. TriMark will notify Customer promptly of such corrections or adjustments. TriMark reserves the right to cancel or refuse any Order based on incorrect pricing or availability.
22. **GENERAL.** Except as set forth in Section 21 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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