

TERMS AND CONDITIONS OF DESIGN

ALL TRANSACTIONS BY AND BETWEEN TRIMARK USA LLC, AND ITS AFFILIATES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS (COLLECTIVELY, "TRIMARK") AND EACH OF ITS CLIENTS FOR DESIGN SERVICES ARE GOVERNED BY THESE TERMS AND CONDITIONS OF DESIGN (THE "TERMS OF DESIGN"). IN THE EVENT THAT THERE IS AN EXECUTED AGREEMENT BETWEEN THE PARTIES GOVERNING THE DESIGN SERVICES CONTEMPLATED THEN THE EXECUTED AGREEMENT SHALL GOVERN. ANY PROPOSAL OR DOCUMENT FROM A CLIENT THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT VARY FROM THESE TERMS OF DESIGN ARE OBJECTED TO AND DISALLOWED.

1. Acceptance. All Design Services Proposals shall be subject to, and shall be conditioned upon, Client's assent to these Terms of Design, which shall be presumed from Client's acknowledgment of the Design Services Proposal, performance of Services, and/or acceptance of payment. Any terms or conditions or .html links on any quote, order form or other documents provided by Client that conflict with these Terms of Design shall be null and void. The applicable Design Services Proposal along with this Terms of Design are referred to collectively as "the Agreement."

2. Scope of Work. Subject to the Terms of Design, TriMark will perform the specified consultation, drawings and documentation identified in the Design Services Proposal (the "**Services**") for Client in connection with its future restaurants and/or other foodservice concepts (the "**Project**").

3. Fees and Expenses. TriMark shall provide the Services for a fixed price equal to the price set forth in the Design Services Proposal (the "**Fee**") and Client shall pay each applicable Fee as set forth in the Design Services Proposal, or in full within thirty (30) days following TriMark's delivery of all deliverables. Unless otherwise set forth in the Design Services Proposal, Client agrees to reimburse TriMark for all out-of-pocket costs and expenses incurred by TriMark in the performance of the Design Services within thirty (30) days following receipt of invoice.

4. Limitations of Service. Client acknowledges and agrees that:

- (a) TriMark's Services are solely design-oriented and do not include any architectural, mechanical, electrical, HVAC or structural engineering services. TriMark is not licensed or certified to provide any architectural, mechanical, electrical, HVAC or structural engineering services and expressly disclaims any responsibility and liability therefor.
- (b) Client shall be responsible for obtaining all building permits that may be required under federal, state or local laws or codes.
- (c) Client will engage a licensed contractor, architect, engineer or other specialist, as needed, to provide installation recommendations and execute any such work required in connection with the Project.

5. Term and Termination: Survival. This Agreement will begin on the Effective Date of the Design Services Proposal and continue until completion of the Project and payment of all Fees or upon thirty (30) days advance written termination notice by either Party. Upon the expiration or termination of the Terms of Design, Client will immediately remit full payment for all Services rendered and expenses incurred by TriMark. Any provision of the Terms of Design which by its nature would continue beyond the expiration or termination of the Terms of Design shall survive, including, without limitation, Sections 4-10.

6. Ownership of Documents. TriMark and Client agree that all drawings (including, without limitation, CAD files, schematics, estimates, specifications, and field notes) and any other work product furnished by TriMark to Client for a Project pursuant to the Terms of Design (the "**Documents**") are Confidential Information and instruments of the Services for use solely with respect to such Project. Upon payment in full for the Services, Client shall become the owner of all intellectual property represented in or by the Documents, provided, that TriMark shall have an irrevocable license to use and reproduce the Documents and the ideas and designs contained therein for the completion of the Project.

7. Confidentiality. TriMark and Client agree that any Confidential Information exchanged ("Confidential Information" is information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated, or otherwise identified as "confidential") shall be kept in strict confidence and not to use or disclose such Confidential Information, except (i) as expressly permitted in the Agreement, (ii) as necessary to fulfill its obligations or exercise its rights under the Agreement (iii) as reasonably necessary to complete the Project or (iii) upon the prior written consent of the other Party.

8. Disclaimer and Limitation of Liability. TRIMARK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE SERVICES, THE DOCUMENTS OR THE CONTENT THEREOF AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. Client acknowledges that the deliverables, drawings, documentation, and Services provided by TriMark are only a suggestion, and implementation of such is taken solely at Client's own risk. Client is obligated to ensure the structural integrity and safety of the Project, that the equipment fulfills Client's intended usage and compliance with all applicable codes, regulations and standards. Except for Client's obligations in Section 9, in no event shall either Party be liable to the other for any indirect, special, incidental, or consequential damages arising out of or related to the Terms of Design. Except for claims arising from TriMark's gross negligence or willful misconduct, TriMark's entire liability for all claims, losses, damages, and expenses resulting from the performance of the Services shall not exceed the total amount paid by Client to TriMark for the applicable Services.

9. Indemnity. Client agrees to indemnify, defend and hold TriMark and its affiliates, officers, directors, employees, agents, representatives, stockholders and equity holders harmless from any and all damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising from or related to: (i) Client's modification of the Documents or its use of the Documents in connection with any other project without TriMark's prior written consent;(ii) the negligent acts, errors or omissions of Client or Client's employees, other contractors and Client without regard to the alleged negligence of TriMark.

10. Arbitration/Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State where the TriMark entity providing the Services is located, without giving effect to conflict of laws principles. The Parties agree that if unable to resolve any dispute after good faith attempts between the Parties, then any dispute arising out of or relating to this Agreement shall be resolved by binding arbitration under the Commercial Dispute Resolution Procedures of the American Arbitration Association. The arbitration award shall be a speaking award setting out the reasons for the same in writing, but in no event shall the arbiter expand nor restrict any of the Parties' respective rights or obligations beyond those as provided for in this Agreement. 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. Judgment upon the 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.

11. Miscellaneous. This Agreement constitutes the entire agreement between the Parties and supersedes all prior written and oral agreements and understandings between the Parties, with respect to the subject matter thereof. Neither Party shall assign this Agreement without the prior written consent of the other except that TriMark may assign this Agreement to an affiliate. This Agreement is binding upon each Party, its successors, assigns, and legal representatives. Any notice or consent under this Agreement will be in writing to such address that may be designated in writing by the receiving Party from time to time). If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. This Agreement may be amended only by written instrument signed by both Parties. The parties are independent contractors and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture or agency. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

12. Images. Client hereby authorizes, without any further need for compensation or notice, TriMark to take photographs and visual and audio images of the premises, including digital images, drawings, renderings, and video recordings (collectively, "Images"). Client further irrevocably grants to TriMark permission to use, reproduce, distribute, exploit, and display any and all of the Images in any manner or media, including composite and modified representations, in any form now known or later developed, throughout the world, and in perpetuity, except with respect to any images to which Client objects on the grounds that the images may reveal trade or business secrets, or any proprietary design or arrangement of Client. Client may request the right to inspect or to approve the Images or any materials that use or incorporate the Images. TriMark also is permitted, but not obligated, to include Client's name in connection with the Images. Client hereby agrees and acknowledges that TriMark owns the Images, all rights, title and interest in and to the Images, and all commercial, advertising or promotional materials that incorporate or use the Images. Client also agrees and acknowledges that the Images are and will remain the property of TriMark Client hereby fully releases TriMark, and its officers, directors, agents, employees, representatives, divisions, subsidiaries, affiliates, successor and assigns from any and all claims, liabilities, causes of action and/or damages of any and every kind in connection with the taking and/or use of the Images.