

ALL TRANSACTIONS BY AND BETWEEN TRIMARK USA LLC, OR ANY OF ITS AFFILIATES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS (COLLECTIVELY, "TRIMARK"), ON THE ONE HAND, AND ITS VENDORS, ON THE OTHER HAND, ARE GOVERNED BY THESE TERMS AND CONDITIONS OF PURCHASE (THE "TERMS OF PURCHASE"). IN THE EVENT THAT THERE IS AN EXECUTED AGREEMENT BETWEEN THE PARTIES GOVERNING THE GOODS, SERVICES OR PRODUCTS CONTEMPLATED BY THE ORDER GOVERNED BY THESE TERMS OF PURCHASE, THEN THE EXECUTED AGREEMENT SHALL GOVERN. ANY PROPOSAL OR DOCUMENT FROM A VENDOR THAT INCLUDES COMPETING TERMS OF PURCHASE ARE OBJECTED TO AND SHALL BE OF NO FORCE OR EFFECT.

1. DEFINED TERMS.

- (a) "Goods" shall mean all tangible or intangible goods, products, programs, systems, technology infrastructure (including computers and computer programs, software, hardware, databases, electronic systems (including database management systems), and network designs), internet and cloud-based services, plans, proposals, drawings, fabrications, and any other goods described in an Order.
- (b) "Services" means any services described in an Order.
- (c) An "Order" shall mean a purchase order or other authorized ordering document from TriMark requesting Goods or Services from Vendor.
- (d) "Vendor" is the entity providing the Goods and/or Services to TriMark.

2. ACCEPTANCE. Vendor may provide Goods and/or Services to TriMark only in accordance with a written Order received by Vendor from TriMark. No contract exists until an Order is issued, and issuance of an Order constitutes TriMark's acceptance of Vendor's offer to sell and creates a binding contract. Any projections, past purchasing history, or any representations about quantities to be purchased, whether written or oral, are not binding on TriMark and TriMark is not liable for any act, reliance, forbearance, or expenditure (including, expenditures for equipment, labor, materials, or packaging) by Vendor in reliance on them. Any Goods and/or Services provided to TriMark by Vendor without a valid Order may, in TriMark's sole discretion, be rejected without any further liability or costs to TriMark. All Orders shall be subject to, and shall be conditioned upon, Vendor's assent to these Terms of Purchase, the TriMark Supplier Code of Conduct (available at <https://www.trimarkusa.com/SiteMedia/SiteResources/Supplier-Code-of-Conduct.pdf>), and, if applicable, the TriMark Subcontract General Terms and Conditions (available at <https://www.trimarkusa.com/SiteMedia/SiteResources/Terms/Subcontractor-General-Terms-and-Conditions.pdf>) which shall be presumed from Vendor's acknowledgment of an Order, shipment of Goods or performance of Services, and/or acceptance of payment. In the event of a conflict between the Supplier Code of Conduct and these Terms of Purchase, the Supplier Code of Conduct shall govern. In the event of a conflict between the Subcontract General Terms and Conditions and these Terms of Purchase, the Subcontract General Terms shall govern. Any terms or conditions or .html links on any quote, order form or other documents provided by Vendor that conflict with these Terms of Purchase shall be null and void.

3. PRICES. All prices are firm for the term of an Order, and no additional charges will be allowed unless specifically provided for on the face thereof. Any shipping, freight, storage, or transportation costs must be consistent with freight terms specified on the Order. No extra charges of any kind, including charges for boxing, packing, storage, or cartage, will be allowed unless specifically agreed to in writing by TriMark. Notwithstanding the prices set forth therein, Vendor agrees that if Vendor sells those Goods and/or Services ordered by TriMark in like quantities (in the case of Goods) or substantially similar form, function and/or scope (in the case of Services) to any third parties at a price less than that offered to TriMark, Vendor shall make the same price available to TriMark.

4. TAXES. Vendor's prices shall be exclusive of any sales or use taxes. Such taxes, if applicable, shall be added separately in Vendor's invoice, and TriMark shall remit such taxes to Vendor in accordance with the terms of Vendor's invoice. Vendor is responsible for properly remitting the taxes to the applicable taxing authority. Vendor will not invoice or otherwise attempt to collect from TriMark any taxes with respect to which TriMark has provided Vendor with (a) a valid resale or exemption certificate, (b) evidence of direct payment to the taxing authority, or (c) other evidence that such taxes do not apply.

5. INVOICES; PAYMENT. A separate invoice shall be rendered for each shipment of Goods made or delivery of Services on any Order. All invoices, shipping memoranda and bills of lading shall identify the purchase order number referenced in the Order and shall be dated and mailed on the day of actual shipment of the Goods or delivery of the Services. Vendor shall not deliver invoices directly to any employee of TriMark; all invoices shall be mailed to TriMark at the originating location. Unless otherwise specified in another written agreement signed by the parties, TriMark will pay proper invoices for Goods shipped or provided and/or Services delivered to TriMark or its designee within sixty (60) days of receipt of a valid and approved invoice and subject to Section 19. In addition to and no way limited by the rights and obligations described in Section 19, TriMark may withhold payment further and until Goods and/or Services have been accepted in accordance with Section 7 or until the parties can agree on any disputed amounts in an invoice. Vendor shall not reserve a security interest in any Goods shipped or Services provided to TriMark.

6. DELIVERY; ANTICIPATION. Time is of the essence for each Order. Vendor shall deliver Goods and Services within the time, in the quantities and manner, and at the prices specified in the Order or in any document attached thereto or referenced therein, in accordance with TriMark's specifications (as well as any sample approved by TriMark). If Vendor fails to comply with such requirements, TriMark may, in addition to any other rights or remedies, cancel an Order and be relieved of all liability for any undelivered portion and for any non-confirming Goods and/or Services. Failure by TriMark to insist upon strict performance shall not constitute a waiver of any of the provisions of an Order or waiver of any default. Delivery of Goods shall be Free on Board (F.O.B.) Destination at the address specified on the Order. Delivery of Services shall be as specified in the applicable Order.

7. **INSPECTION AND REJECTION.** Goods and Services delivered by Vendor are subject to inspection, test, and acceptance by TriMark and the ultimate purchaser. TriMark shall have a reasonable number of days from the date of delivery to inspect the Goods and/or functionality of Services and notify Vendor of any non-conformity, defect, and/or failure to meet specifications. TriMark reserves the right to reject any Goods and Services, even after delivery and inspection, which do not fulfill the specifications of an Order or time of delivery and (a) return rejected Goods and Services to Vendor at Vendor's risk and expense for full credit at the Order price without prejudice to any right to other damages for such breach, (b) to require Vendor at Vendor's expense to replace rejected Goods and Services at the unit price of the Order, or (c) consider an Order breached as to the rejected quantity and cancelled as to any unfulfilled portion of such Order, and to hold Vendor liable for such breach and cancellation. Vendor is not relieved of the responsibility imposed by this clause, either as to proper packaging, quantity of materials, specifications or functional requirements, by reason of acceptance by TriMark or TriMark's customer.

8. **TRIMARK'S INSPECTION OF VENDOR'S PROPOSALS.** If an Order includes the design, construction, fabrication or implementation of Goods and/or Services by Vendor, the review or approval of Vendor's plans, proposals, drawings or other materials by TriMark shall not relieve Vendor of responsibility for errors in design, construction, fabrication, implementation or performance, nor constitute a waiver of Vendor's responsibility for complying with the specifications, warranties, and other conditions of such Order.

9. **WARRANTIES.** Vendor represents and warrants that all Goods and Services provided or delivered to TriMark, including without limitation, Goods and Services furnished as replacement or corrective Goods and Services, will be: (a) new (unless otherwise agreed in writing by TriMark), (b) free from defects in design, materials, and workmanship (including damage due to unsatisfactory packaging by Vendor); (c) merchantable as defined in Section 2-314 of the Uniform Commercial Code and fit for the use and purpose intended by the user; (d) in full and strict compliance with the Order and any other description of the Goods and Services by Vendor; (e) in full and strict compliance with TriMark's specifications, drawings, and data, if any and of the quality, size, dimensions, scope and functionality ordered; (f) does not and will not infringe, or constitute an infringement or misappropriation of, any copyright, trademark, trade secret, patent or other intellectual property right of a third party; (g) that any Services will be performed in a professional and workmanlike manner consistent with applicable industry standards and (h) free and clear of all liens and encumbrances. Vendor agrees that the warranties herein contained shall be in addition to any warranties either implied by law, made by the manufacturer or original seller of the Goods or Services, or expressly made by Vendor, and shall survive any inspection, delivery, acceptance, payment, expiration, or earlier termination of an Order, and any such warranties shall run to TriMark, its successors, assigns, employees, customers and users of the Goods. Vendor further warrants that (i) it complies with all federal, state, and local laws, ordinances, rules, regulations and codes governing itself and the Goods and Services referenced in an Order, including, but not limited to, the accuracy of Vendor's representations and certifications required for Goods and Services provided to TriMark in connection to a government procurement..

10. **REMEDIES.** In addition to any other rights and remedies TriMark or its customers may be entitled to, including but not limited to Section 19 herein, upon receiving written notice from TriMark or a TriMark customer that any Goods or Services Ordered are non-conforming or defective, all costs of handling and freight charges (if applicable) incurred for such return shall be paid by Vendor. If the non-conformity or defect is discovered after installation, Vendor shall pay the cost of removal and replacement with proper Goods and/or Services plus the cost of making good all work or other Services damaged or destroyed by or as a result of the non-conforming or defective Goods and/or Services or the removal or replacement of same. Cost of replacement, rework, inspection, repackaging, and transportation of such corrected Goods and Services shall be at Vendor's expense. Nothing herein shall limit TriMark's or its customers' rights in law or equity for damages resulting from delivery of defective Goods and Services or damage caused during the delivery of Goods or provision of Services.

11. **CHANGES.** TriMark shall have the right at any time, by written notice to make any changes it deems necessary to an Order. If such changes cause an increase or decrease in the amount due under an Order or in the time required for its performance, an equitable adjustment shall be made and such Order shall be modified in writing accordingly. Any claim for adjustment shall be deemed waived unless asserted by Vendor in writing within two (2) days from receipt by Vendor of a change request. Price increases, extensions of time for delivery, and change in quantity or scope shall not be deemed accepted by TriMark unless issued in writing and signed by TriMark. Nothing contained in this clause shall relieve Vendor from proceeding immediately in the performance of an Order as changed.

12. **INDEMNIFICATION.** Vendor shall protect, defend, indemnify, and hold harmless TriMark, its officers, directors, employees, and agents, and their respective successors and assigns (each, an "Indemnified Party") from and against any and all suits, claims, actions, debts, damages, costs, charges, and expenses, including all court costs and reasonable attorneys' fees, and against all liabilities, losses, and damages of any nature whatsoever that an Indemnified Party shall or may at any time sustain or be put to by reason of or arising, directly or indirectly, from or in connection with (i) Vendor's performance or failure to perform as required by an Order, (ii) Vendor's breach of its obligations, representations, certifications, warranties or these Terms of Purchase (including the TriMark Supplier Code of Conduct) or an Order, (iii) the act or failure to act of Vendor or its employees, agents, or independent contractors, (iv) any defect or failure in the Goods or Services provided by Vendor, (v) any allegation by a third party that any portion of the Goods or Services (including TriMark's use thereof) or the manufacture (including any manufacturing method), use, importation, sale or offer for sale of the Goods or Services infringes, misappropriates or otherwise violates such third party's proprietary, intellectual property rights or other rights, and (vi) any tax liability resulting from Vendor's failure to pay, deduct or withhold any taxes.

13. **INSURANCE.** Vendor shall maintain at its own expense at all times, with a reputable and financially responsible carrier: (i) Worker's Compensation and Occupational Disease Insurance in accordance with applicable law; (ii) Employer's Liability Insurance with coverage of not less than One Million (\$1,000,000) Dollars; (iii) Occurrence-based liability insurance and Product Liability Insurance with coverage of not less than One Million \$1,000,000 Dollars per occurrence, Two Million (\$2,000,000) Dollars in aggregate, and (iv) all other insurance required by applicable law. Vendors providing Services relating to the handling, transmission or storage of sensitive data shall maintain Cyber Liability Insurance with limits of Ten Million (\$10,000,000) Dollars.

14. **CANCELLATION.** TriMark reserves the right to cancel an Order in whole or in part at any time, in which case TriMark's sole liability shall be for the payment for Goods and Services accepted or for a reasonable payment for Goods in the process of manufacture prior to cancellation or Services performed prior to cancellation. Any Goods or Services paid for shall become TriMark's property. The foregoing notwithstanding, if any good or service is a standard good or service not made exclusively to fill an Order, such Order or the applicable portion thereof is subject to cancellation by notice from TriMark prior to shipment or delivery, in which event TriMark shall have no liability to Vendor whatsoever.

15. PROPRIETARY AND CONFIDENTIAL INFORMATION. All information obtained by, communicated to or provided to Vendor from TriMark in connection with an Order or the Goods or Services, including but not limited to any specifications, drawings, blueprints, and software programs, shall be treated as confidential information, shall be used by Vendor only to the extent necessary for performance of an Order, and shall remain the property of TriMark. Vendor shall not use any confidential or proprietary information for any purpose other than the fulfillment of its obligations under any Order.

16. MODIFICATION; WAIVER. Each Order, including exhibits, attachments, technical specifications, statements of work, drawings, notes, instructions, or information referenced in or related to such Order, is intended by the parties as a complete and exclusive statement of the terms of such Order. No course of prior dealings between the parties nor any trade usage shall be relevant to supplement or explain any term used therein. No alteration or modification of the provisions thereof nor any waiver or renunciation of any right or any claim accruing to TriMark shall be binding unless it is in writing and signed by an authorized representative of TriMark. No failure or delay in exercising any right or remedy hereunder shall constitute a waiver thereof. No waiver of any performance required under an Order shall be deemed a waiver of future compliance with the terms thereof.

17. DOCUMENTATION; PACKING AND SHIPPING. Each package, bill of lading, shipping memorandum, and invoice must be marked conspicuously with TriMark's purchase Order number. One itemized delivery ticket bearing TriMark's purchase Order number must be left with the Goods. All Goods shall be suitably packed and shipped in accordance with shipping instructions specified herein and otherwise in accordance with the requirements of common carriers. TriMark shall have the right to route all shipments. Additional expenses, charges or claims incurred as a result of a deviation from the specified route, non-compliance with other shipping instructions or improper description of the shipment in shipping documents shall be Vendor's responsibility. The risk that Goods may be lost, damaged, or delayed in transit shall be borne by Vendor until actual receipt of them by TriMark in conformity with the terms of the Order.

18. NON-ASSIGNABILITY. Vendor shall not assign nor subcontract any Services to be performed without the prior written consent of TriMark; provided, however, this provision shall not restrict Vendor in the procurement of component parts or materials.

19. REFUNDS; OFFSETS/RECOUPMENTS. TriMark may offset or recoup against amounts TriMark owes or will owe to Vendor any costs associated with any non-conformity, defect, and/or failure to fulfill or to meet the specifications of an Order or time of delivery, monies owed for regulatory fines or penalties (including attorneys' fees and other litigation costs), the cost of processing third-party subpoenas, and any other amounts Vendor owes or will owe to TriMark. TriMark may, at any time, hold back a reasonable reserve in an amount determined in TriMark's sole discretion for future claims, offsets, and recoupments against amounts owed to Vendor, including anticipated arbitration or litigation expenses. Upon request from TriMark, Vendor shall immediately pay any outstanding balance it owes to TriMark or allow an immediate deduction from payment against any amounts owed by TriMark to Vendor. Further, upon request from TriMark, Vendor shall obtain a bond, letter of credit, or other financial security sufficient, in TriMark's sole discretion, to satisfy Vendor's obligations and potential obligations to TriMark.

20. DEFAULT; TERMINATION. If Vendor fails to perform or breaches any provisions of an Order or any other agreement with TriMark, TriMark may terminate such Order in whole or in part, unless Vendor cures the breach within three (3) business days or a period of time reasonably acceptable to TriMark following receipt by Vendor of TriMark's notice of breach. The term "breach" shall include, without limitation, any: (a) proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Vendor; (b) appointment, with or without TriMark's consent, of a receiver or an assignee for the benefit of creditors; (c) failure to provide TriMark with reasonable assurances of performance on TriMark's request; or (d) other failure to comply with the terms of an Order. Vendor shall reimburse TriMark upon demand for all costs incurred by TriMark relating to any such breach. TriMark shall be entitled at all times to set off any amount owing at any time from TriMark to Vendor.

21. FORCE MAJEURE. If the manufacture, transfer or receipt or use by either party of any materials covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party, upon prompt notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference but, at TriMark's option, deliveries so omitted shall be made upon notice thereof to Vendor, upon cessation of such contingency.

22. GOVERNING LAW. This Order and the provisions contained herein shall be construed, governed, and enforced under laws of the State of Delaware, without regard to conflicts of law. Vendor consents to the forum and the jurisdiction of the state and federal courts of the Commonwealth of Massachusetts and Vendor waives and agrees not to raise nor assert any defenses based upon venue, inconvenience, or lack of personal jurisdiction in any action or suit pertaining to an Order.

23. ARBITRATION. Any controversy or claim arising out of or relating to these Terms of Purchase, any Order or any Goods or Services provided by Vendor to TriMark, 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. The 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.

24. GENERAL. Any supplement, modification, amendment, or waiver of the terms of an Order must be in writing and signed by an authorized representative of both TriMark and Vendor. 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 available to it. TriMark reserves the right to update these Terms of Purchase at its sole discretion. If any provision of these Terms of Purchase is found to be illegal or unenforceable, such finding will not affect the validity of the remaining provisions of these Terms of Purchase and a valid provision that most closely approximates the economic effect and intent of the illegal or unenforceable provision will be substituted for it.