



# TRIDAK

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## Conditions of Sale/Indemnity/Warranty Limitations/Exclusions

These Tridak Standard Sales Terms ("Terms") govern all Deliverables provided to you ("Purchaser") by Tridak, LLC, its affiliates, subsidiaries and successors ("Tridak"). In the event of any dispute, Purchaser's recourse shall be limited to the specific Tridak company that provided the services or Deliverables. These Terms, including each Statement of Work, Purchase Order or Order Acknowledgment entered into by the parties pursuant to these Terms, constitute the entire agreement between the parties in relation to the given project or order, and supersede all prior agreements between them in relation to that project. Tridak rejects any additional, different or inconsistent terms delivered with or contained in Purchaser's purchase orders, order acknowledgment forms, correspondence or other standard business forms, and no such terms shall alter these Terms.

Scope of Services: Tridak shall only perform those services (the "Services") and provide those related products (the "Deliverables") that are specifically described in a Statement of Work ("SOW") or Purchase Order ("Order") signed by representatives of both parties, and shall not be responsible for any services, Deliverables or any other matters not documented in a fully-executed SOW or Order, as applicable. Any descriptions, statements, comments or representations outside of the Deliverables made by an employee or agent of Tridak will reflect the opinion or observations of such employee/agent and will not be construed as representations, warranties or modifications to these Terms.

Purchaser shall be responsible for all engineering, repair, modification and use decisions. Tridak will be entitled to rely upon, and shall have no responsibility for, the accuracy and completeness of all records, information, data and specifications furnished or decisions made by Purchaser (or Purchaser's consultants and other contractors hired by Purchaser). The parties may only make modifications to the scope of the Services set forth in an SOW or Order by a written change order that is signed by authorized representatives of each party.

Term and Termination: Unless otherwise provided in an SOW or an Order, the applicable SOW or Order will remain in effect from the date such SOW or Order is fully executed by authorized representatives of each party until either party terminates it in accordance with these Terms or by providing the other party with at least 90 days' advance written notice. In the event of any such termination, Purchaser shall make prompt payment for all Services and Deliverables properly delivered prior to the effective date of termination.

In the event of a material breach of these Terms, an SOW or an Order, the non-breaching party may immediately suspend performance of its obligations. Upon further written notice, if the breaching party fails to cure the breach within 10 business days of its receipt of written notice that sets forth the breach and proposed cure, the non-breaching party may immediately terminate any outstanding SOW or Order. If Tridak terminates an SOW or Order as a result of a Purchaser's material breach, then Tridak shall provide to Purchaser a final invoice for the Services and/or Deliverables delivered prior to the effective date of termination. Purchaser shall pay such amount plus the Termination Payment. The "Termination Payment" will be equal to 10% of the difference between the price or estimate, as applicable, for such Services and/or Deliverables as set forth in the applicable SOW or Order (as amended in Tridak's progress reports or change orders) and the sum of all payments made by Purchaser, including the final invoice. Purchaser's payment obligation shall not be subject to set-off in any manner.

Either party may immediately terminate any outstanding SOW or Order upon written notice to the other party if: (i) the other party becomes insolvent and/or fails to provide written assurance to the requesting party of its ability to pay its debts as they become due; (ii) a receiver is appointed for the other party or its property; (iii) the other party makes an assignment for the benefit of its creditors; (iv) proceedings are commenced by or for the other party for relief under bankruptcy, insolvency or debtor's relief law and not discharged within 60 days; or (v) the other party commences proceedings or takes action to liquidate or dissolve its business or attempts to do so.

Pricing, Taxes and Risk of Loss: Unless otherwise specified, prices are net, FOB Torrington, Connecticut, USA, and do not include sales, use, excise, value added or similar taxes and customs duties. Any present or future sales, use, excise, value added or other

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similar taxes or custom duties applicable to the sale of the products hereunder shall be paid or promptly reimbursed to Tridak by Purchaser, or Purchaser shall provide Tridak with a tax-exemption certificate acceptable to the applicable taxing authorities. Title to and risk of loss passes to Purchaser upon shipment as per standard FOB terms. Shipments will not be insured unless specifically requested in writing by Purchaser. All shipment terms, delivery terms and the passing of risk shall be determined in accordance with Incoterms 2010 of the International Chamber of Commerce, as they may be amended from time to time.

**Payment:** Net cash in United States funds is due thirty (30) days from date of shipment, unless otherwise specified in writing. If any Deliverables sold are ready for shipment on or after the scheduled delivery date but cannot be shipped because of Purchaser's request or for any other reason beyond Tridak's control, payment shall be due within (30) days after Purchaser has been notified that same is ready for shipment. Interest at the rate of 18% per annum shall be paid by Purchaser on all amounts not paid by the due date. Tridak retains the right to file a security interest on all products until paid and Purchaser hereby grants to Tridak a power of attorney to make such filings.

**Delivery:** Deliveries specified are only Tridak's best estimate and apply only from date of receipt (as confirmed by Tridak) of all final specifications, engineering and manufacturing information. Purchaser will inspect the products upon delivery and will notify Tridak in writing of any defects within 30 days of delivery. Tridak shall not be liable for any delay contributed to by any circumstances beyond Tridak's control including, without limitation, Acts of God, acts of Purchaser, war or national emergency, terrorism, fire, flood, explosion, inability to secure material or transportation facilities, delays by vendors or carriers, acts or omissions of carriers, labor disputes or difficulties, however caused, export, import, exchange or other governmental regulations or restrictions. Purchaser may not cancel because of delays for such reasons; provided, however, that if any such delay continues for a period of more than sixty (60) calendar days, the party not claiming excusable delay shall have the option of terminating the purchase order immediately, upon written notice to the party claiming excusable delay. Any added expenses incurred by Tridak because of such delays, or delays in receipt of detailed specifications and other pertinent information, or because of changes requested by Purchaser, shall be paid by Purchaser upon receipt of Tridak's invoice. Tridak reserves the right to modify or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of the purchase order, notwithstanding any prior arrangement. Tridak may set off any amount due from Purchaser from any amounts due to Purchaser, whether or not related to the project to which these Terms are attached.

**Cancellation:** Purchaser may cancel an order, in whole or in part, only upon written notice and payment to Tridak of reasonable cancellation charges as determined by Tridak. Such charges shall include, but are not limited to, all expenses incurred by Tridak for amounts owed to Tridak, for work in process and materials up to and including the date of cancellation.

**Government Contracts:** If terms concerning delivery and materials in certain government contracts are subject to governmental priorities and restrictions, Purchaser must inform Tridak in advance, advise Tridak of the contract number, and provide Tridak with a copy of such contract.

**Purchaser-Furnished Materials and Technical Advice:** (a) When material is furnished by Purchaser, Tridak shall in all cases only be liable for amounts up to the usual billed value of work performed by Tridak, for damage to such material or to the product into which such material is incorporated. Purchaser shall fully reimburse Tridak for extra or wasted work and for all costs of replacement incurred because of defective material supplied by Purchaser.

(b) Upon request, Tridak may furnish Purchaser with materials and/or technical advice concerning the use and design of products by Purchaser. Tridak does not warrant such materials or technical advice and Tridak does not assume responsibility for test or performance results obtained by users. It is Purchaser's responsibility to determine suitability of such materials and advice for the product application and purposes and suitability for use in Purchaser's intended function. Tridak shall use all reasonable efforts to adhere to Purchaser-furnished designs, drawings and/or specifications, but Tridak shall have no responsibility for the suitability of same for the application intended. Tridak further assumes no obligation or liability for the technical advice given or obtained and Purchaser acknowledges and agrees that it will implement any technical advice provided by Tridak solely at its own risk. Purchaser should adopt such precautions and use applicable guidelines as may be reasonably advisable or necessary for the protection of property and persons. Any warranty applicable to a product, its application or use is strictly limited to the warranties contained in these terms and conditions. Nothing in these terms and conditions shall act as a representation that the product use or application will not infringe on a patent owned by someone other than the Tridak or act as a grant of license under any Tridak patent or other intellectual property.

**Indemnification:** Purchaser acknowledges that Tridak supplies Deliverables that are components used in Purchaser's manufacturing

process, and that Tridak has no knowledge of or control over the Purchaser's finished product. In the event claim of damage arising from the use of Purchaser's product(s), Purchaser shall immediately inform Tridak, and shall defend, hold harmless and indemnify Tridak and its affiliates, using counsel reasonably approved by Tridak, for any and all damages and costs, including reasonable costs and expenses of counsel and other advisors, incurred by Tridak in such defense, including, without limitation, claims for contributing to or inducing said damages.

Purchaser's indemnification obligations shall not apply where the Deliverable fails to meet Tridak specifications.

**Limited Warranty/Exclusions:** Tridak warrants to Purchaser that the Deliverables, only to the extent that they are manufactured and packaged by Tridak, shall be free from defects in material and workmanship under the normal use and service for which such products are designed or authorized, for the following time periods: (a) the warranty for adhesive products shall run from the date of shipment through the earlier of (i) the shelf life date indicated on the product data sheet related to such shipped product or (ii) the expiration date on such product's packaging label; and (b) the warranty for equipment products shall run from the date of shipment through the date specified in the product bulletins.

Unauthorized repair, modification, or improper use of such products voids their respective warranties. The warranties will be effective only if Purchaser notifies Tridak of any defects within 30 days of delivery and if Tridak's examination discloses to its satisfaction that the defect has been caused by defective workmanship or use of defective materials by Tridak.

IN NO EVENT SHALL TRIDAK BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFIT OR REVENUE, HOWEVER ARISING, FOR ANY DAMAGES OCCASIONED BY TRIDAK'S NEGLIGENCE OR OTHER ACTION OR INACTION.

Statements made in any specifications attached to the Deliverable, other technical advice or in promotional materials are descriptive and are not intended as warranties. MODIFICATION, ALTERATION OR REPACKAGING OF TRIDAK'S PRODUCTS AND/OR ANY CHANGE OR MODIFICATION TO ORIGINAL PACKAGING, LABELING OR HANDLING REQUIREMENTS SHALL VOID THIS WARRANTY. THIS WARRANTY DOES NOT COVER NORMAL WEAR AND TEAR OR INTEGRATION INTO OR USE WITH OTHER PRODUCTS, AND SHALL BE INEFFECTIVE AND SHALL NOT APPLY TO PRODUCTS THAT HAVE BEEN SUBJECTED TO MISUSE OR ABUSE, NEGLIGENCE, ACCIDENT, DAMAGE, IMPROPER INSTALLATION OR MAINTENANCE. TRIDAK'S SOLE OBLIGATION UNDER THIS WARRANTY WILL BE LIMITED, AT TRIDAK'S OPTION AND EXPENSE, TO EITHER (A) REPAIRING OR FURNISHING A REPLACEMENT FOR THE PRODUCTS WHICH TRIDAK REASONABLY DETERMINES DO NOT CONFORM WITH THIS WARRANTY OR (B) TO THE RETURN OF THE PURCHASE PRICE OF SUCH PRODUCT. PURCHASER'S EXCLUSIVE REMEDY FOR BREACH OF ANY SUCH WARRANTY WILL BE ENFORCEMENT OF SUCH OBLIGATION.

All transportation costs of products returned for warranty repair and damage in transit will be borne by Purchaser. No agent, employee or representative has any authority on Tridak's behalf, unless approved in writing by an authorized officer of Tridak, to bind Tridak to any representation, affirmation or warranty concerning the products, and any such representation, affirmation or warranty shall be unenforceable.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND WHAT IS DESCRIBED ABOVE. THESE ARE THE ONLY WARRANTIES WITH RESPECT TO THE DELIVERABLES, OR ANY MATERIALS OR COMPONENTS PURCHASED FROM OTHERS AND FURNISHED BY TRIDAK, AND PURCHASER WAIVES ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW (STATUTORY OR OTHERWISE) AND WHETHER OR NOT OCCASIONED BY TRIDAK'S NEGLIGENCE OR OTHER ACTION OR INACTION.

Any action for breach of warranty must be commenced within one (1) year after the cause of action has occurred.

**Change to and Acceptance of Terms:** These Terms, and any other written contract executed by Tridak and Purchaser, under which this sale is made, constitute the full understanding of the parties. No modification or waiver of any such terms and conditions shall be of any force or effect unless made in writing and signed by the parties claiming to be bound thereby. Prior courses of dealing and verbal agreements not reduced to a writing signed by Tridak, to the extent they attempt to modify, add to or detract from these terms and conditions, shall not be binding on Tridak. Failure by Tridak to exercise any right or remedy available to Tridak will not be deemed a waiver of such right or remedy unless in writing signed by Tridak, nor shall any waiver be implied from the acceptance of any payment. By placing an order for shipment, Purchaser agrees to all the terms and conditions set forth herein, and in all other documents confirming such order. In the event of any conflict between these terms and conditions, and those set forth in any other document, these terms and conditions shall control unless otherwise agreed by both parties in a writing expressly stating that they supersede these terms and conditions.

**Governing Law:** These Terms shall be governed by the laws of the State of Connecticut. In the event of a dispute arising from the project subject to these Terms, Purchaser agrees to submit all disputes to the exclusive jurisdiction and venue of federal or state courts in the State of Connecticut.

**Assignment; benefits:** These Terms shall be for the benefit of each of Purchaser and Tridak and not for the benefit of any other person. Purchaser may not assign these Terms without Tridak's prior written approval. Any provision of these Terms that is prohibited or unenforceable in a given jurisdiction shall, be limited or eliminated to the minimum extent required by that jurisdiction, and the remaining provisions will remain in full force and effect.

**Notices:** Any communications required by these terms shall be in writing and shall be delivered by e-mail or recognized overnight courier to the other party at the address listed on the most recent purchase order.

**Returns:** Under no circumstances shall any Deliverables be returned to Tridak nor orders cancelled or suspended by Purchaser without Tridak's prior written consent. Such consent will be granted at the sole discretion of Tridak and on terms which will indemnify Tridak against all loss suffered.

**Right to Substitute:** Tridak reserves the right to substitute materials or products of equal or better quality and specification than the products ordered by Purchaser.

**Confidentiality:** Purchaser agrees that it shall not, without the prior written consent of Tridak, use or disclose any of Tridak's confidential information or data, or material created, developed, produced or otherwise obtained in the course of the project governed by these Terms, and Purchaser shall protect same using the same standard of care as it uses to protect its own confidential information. Purchaser further agrees that it will not divulge any matter known to it, the disclosure of which would be detrimental to the interests of Tridak as determined by Tridak. The foregoing obligations of confidence shall not apply to (i) information in the public domain, (ii) information previously and lawfully known by Purchaser prior to disclosure by Tridak, (iii) information rightfully learned from a third party not under restriction of disclosure, or (iv) information disclosed pursuant to court order, judicial subpoena or requirement of government authority with reasonable prior notice given to Tridak by Purchaser.