

Terms and Conditions

EXCEPT AS OTHERWISE AGREED IN WRITING, THESE TERMS AND CONDITIONS GOVERN ALL TRANSACTIONS TO THE EXCLUSION OF OTHER TERMS AND CONDITIONS. SELLER'S QUOTATIONS AND ESTIMATES ARE NOT OFFERS CAPABLE OF ACCEPTANCE BY YOU, AND ANY ORDER PLACED BY YOU WILL ONLY BE ACCEPTED BY OUR WRITTEN ACKNOWLEDGEMENT OF SUCH ORDER.

1. **DEFINITIONS.** The definition of terms used, interpretation of this agreement and rights of parties hereto shall be construed under and governed by the law of the State of South Carolina. "Seller" when used herein means Safe Rack LLC "Purchaser" when used herein means the person, firm or corporation to whom this quotation is addressed. And "Equipment" or "Products" means those articles, supplies, drawings, data or other property or services described herein
 2. **FORMATION OF CONTRACT.** All quotations are for immediate acceptance and subject to change or withdrawal without notice before an order is acknowledged by Seller. A quotation shall not become effective until accepted by an authorized employee of the Seller. A quotation cannot be changed or varied by any verbal agreement. If a quotation is deemed to constitute an offer, it may be accepted only on terms set forth in this proposal, including, without limitation, these Terms and Conditions. If a quotation constitutes an acceptance of an offer, such acceptance is expressly conditioned on Purchaser's assent solely to the terms of the quotation, including, without limitation, these Terms and Conditions. An acceptance of any part of the Equipment or services covered hereunder shall be deemed to constitute such assent to these terms herein. Any additional and/or different terms and conditions proposed by Purchaser and/or any attempt by Purchaser to vary any of these terms and conditions shall be deemed a material alteration and is hereby objected to and rejected
 3. **PRICE.** Unless otherwise agreed by Seller in writing, Seller's prices are subject to change without advance notice at any time prior to order acknowledgment. Seller reserves the right to adjust the invoice price, after the price is quoted to take account of any material variation in Seller's costs beyond Seller's reasonable control since the date of the quotation or (if no quotation is issued) the order acknowledgement, and the invoice so adjusted shall be payable as if the price set out therein were the original contract price. All sales are subject to increase without notification by the amount of any sales or excise tax levied or charged by any governmental agency and are subject to any price adjustment necessitated by Seller's compliance with any government action.
 4. **COMPLIANCE.** Purchaser and Seller shall comply with all applicable international, national, state and local laws and regulations with respect to their performance of this Agreement. Purchaser agrees to adhere and be responsible for all US Export laws and regulations with respect to the Equipment.
 5. **SELLER'S RIGHT TO MODIFY.** The Seller reserves the right to change, discontinue or modify the design and construction of any product or to substitute material equal to or superior to that originally specified, without notice to the Purchaser.
 6. **INSPECTION.** Purchaser shall inspect the Equipment promptly upon receipt for non-conformity (including but not limited to non-conformity for quantity, quality, and/or defects). All claims by Purchaser for shortages in a shipment of Equipment or Equipment damaged in transit must be made against the carrier. All claims by Purchaser against Seller for nonconforming Equipment and claims for shortages in a shipment or damaged Equipment (other than claims to be made against the carrier) must be made in writing to Seller within ten (10) days after receipt of shipment or thirty (30) days after date of shipment, whichever occurs first (the "Inspection Period"), or they are waived. If Purchaser provides Seller of notice of non-conforming goods within the Inspection Period, Seller may, at its option and as Purchaser's sole remedy, (a) repair or replace the non-conforming goods or (b) refund or credit Purchaser for any non-conforming goods.
 7. **CANCELLATION.** Purchaser cannot cancel orders under any circumstances without Purchaser first reaching an agreement in writing with Seller covering all Seller's damages. At a minimum, such an agreement must reimburse the Seller for all expenses incurred (including but not limited to costs of purchased materials), engineering costs, and a reasonable mark-up to cover overhead and profit. Cancellation charges shall be, at a minimum, at least 15% of the purchase price of the goods covered by the cancelled orders.
 8. **PURCHASER'S RESPONSIBILITIES.** Purchaser shall be solely responsible for the following: (a) Providing all the information reasonably necessary to enable Seller to (ia) evaluate the requirements for performing and (ii) perform the Contract, and that all such information is full and accurate; (b) Ensuring that all premises, structures, supports, connected equipment and machinery required to provide for the design, engineering, installation, testing and use of the Products are fit for their purpose and capable of supporting Seller's Products (c) Fully to co-operate with Seller in the design, engineering, installation, testing and use of the Products; (d) To use the Products for the intended purpose only and in accordance with the Product literature; (e) not under any circumstances, to use any unapproved spare part, connected machinery, service or repair or use the Products in any manner as may render the Products dangerous and agrees that any breach of these negative criteria will negate all specific and implied conditions and obligations on the part of Seller relating to the quality of the Products. (f) Purchaser further agrees that it will be liable to Seller for any costs, expenses and losses it suffers by reason of any breach of these undertakings.
- UNLESS OTHERWISE AGREED UPON, PURCHASER SHALL HAVE SOLE RESPONSIBILITY AND ASSUMES ALL RISKS FOR THE OPERATION OF THE EQUIPMENT BY PURCHASER'S OR OTHER'S EMPLOYEES, AGENTS OR CONTRACTORS INCLUDING, BUT NOT LIMITED TO, ALIGNMENT OF TRUCKS, RAILCARS OR OTHER VESSELS, OR OPERATION IN COMBINATION WITH OTHER EQUIPMENT NOT PURCHASED FROM SELLER.
9. **DESIGNS APPROXIMATE.** 1. All of Seller's specifications, designs, drawings, indications of physical, chemical and electronic properties and loads and reactions ("the Designs") are made in good faith and are approximate indications only and are not binding in detail unless Purchaser has specified in writing a particular indication upon which he is relying and Seller shall be entitled to vary the same and/or to correct errors and omissions provided the Products remain in substantial conformity with the contractual requirements.
 10. **INTELLECTUAL PROPERTY.** Purchaser acknowledges that Seller and its affiliates are the owners or licensors of brands, trademarks, designs, patents, copyrights and other intellectual property relating to Seller's Products, and that no right or license is conveyed by Seller to Purchaser to manufacture, have manufactured, modify, import or copy such Products and that Purchaser is not entitled to make any use of the Designs other than for the purpose of this Contract. Any inventions, modifications, improvements, techniques or know-how affecting the Products made or gained in the course of performing this Contract, shall belong to Seller absolutely.
 11. **CONFIDENTIALITY.** Neither party shall make use of the other's Confidential Information (as hereinafter defined) for purposes other than the

performance of its obligations under this Agreement. Each party shall protect the other party's Confidential Information by using the same degree of care as it uses to protect its own information of a like nature, but no less than a reasonable degree of care. The receiving party shall only disclose the Confidential Information to its employees [consultants and subcontractors] who have a need to know such Confidential Information in order to perform its obligations under this Agreement. "Confidential Information" shall mean all information of either party not generally available to the public which is provided to the receiving party by the disclosing party or which the receiving party has access to or discovers in the performance of this Agreement, including but without limitation, all information relating to a Party's products, business and operations including, but not limited to, business plans, financial records, customers, suppliers, vendors, products, costs, sources, strategies, inventions, procedures, forecasts, sales materials and data, technical advice or knowledge, contractual agreements, pricing, product specifications, trade secrets, procedures, distribution methods, inventories, marketing strategies, algorithms, designs, drawings, work sheets, blueprints, manufacturing processes, computer programs and systems and know-how or other intellectual property of a Party and its affiliates that may be at any time furnished, communicated or delivered by a Party to the other Party, whether in oral, tangible, electronic or other form. All Confidential Information shall remain the property of the disclosing Party. Confidential Information shall not include any information that: (a) was rightfully known to a party prior to disclosure by the other party; (b) is rightfully obtained by a party from a third party; (c) is made available by the disclosing party to the public without restrictions; (d) is disclosed by a party with prior written permission of the other party; (e) is independently developed or learned by the recipient party through legitimate means; (f) is disclosed by the disclosing party to a third party without a duty of confidentiality on the third party; or (g) is disclosed pursuant to any applicable laws, regulations, or order of a court of competent jurisdiction, or by the recipient in defense of a claim against the recipient. Each party will provide reasonable prior notice to the other, unless prohibited by applicable law, if it is required to disclose any of the other party's Confidential Information under operation of law, and such disclosure shall not constitute a breach of this Agreement.

12. PAYMENT AND CREDIT (a). Credit Terms of Payment: (i). Domestic – Net thirty (30) days from date of invoice. SafeRack requires deposits on orders \$100,000 and over with drawings as follows: 1/3 deposit on receipt of order – due upon receipt; 1/3 deposit upon receipt of signed drawings back from customer – due upon receipt; 1/3 at shipment – net 30. SafeRack requires deposits on orders \$100,000 and over without drawings as follows: ½ deposit on receipt of order – due upon receipt; ½ at shipment – Net 30. Delinquent accounts shall bear interest at 18% per annum thereafter, until paid. Said interest rate shall be reduced to the maximum permissible rate in any state having laws which so require. (ii). International – SafeRack requires payment before shipment on International orders. Unless otherwise agreed to by the Seller's Manager of Credit and Collection, payment shall be in U.S. Funds by wire transfer or irrevocable Letter of Credit, confirmed by a major U.S. Bank. In addition to such late payment charges, Seller may add to the amount past due any costs associated with collection thereof, including reasonable attorneys' fees. (b). Seller may, in its sole discretion, accept payment for Products by cash in advance or by money-down with scheduled progress payments. (c). Shipments and deliveries shall be subject to approval of Seller's Credit Department. If Purchaser fails to fulfil the terms of payment, or if at any time before payment in full is made (whether or not payment is yet due) a petition is presented or resolution passed for the winding up or bankruptcy of Purchaser, or in the event of the appointment of a receiver or administrator of Purchaser's business, Seller may defer further shipment or at its option, cancel the unshipped balance. Seller reserves the right previous to making any shipments, to require from Purchaser satisfactory security for performance of Purchaser's obligation. No failure of Seller to exercise any right accruing from any default of Purchase shall impair Seller's right in case of any shipment default of Purchaser.

13. SHIPMENT. (a) For domestic sales, freight terms are F.O.B. (as defined by the Uniform Commercial Code) Seller's plant unless otherwise expressly stipulated. Seller may, in its discretion, select the carrier unless specified in advance by Purchaser. For international sales, freight terms are Ex Works (EXW, Incoterms 2010) Seller's plant unpacked and are subject to VAT or other taxes unless otherwise expressly stipulated. All applicable local taxes in the destination country are the responsibility of the Purchaser unless otherwise expressly stipulated. (b) While expected dates of delivery of goods are given in good faith, the same are not of the essence of or in any way terms of the contract or representations of fact. All shipping dates given are approximate, and while effort is made to maintain schedules, Seller will not be liable for damages on account of delay. In case of delay by Purchaser in furnishing complete schedules or information, delivery dates may be extended for a reasonable time depending on factory conditions. (c) The Seller shall not be responsible for reasonable or excusable delays nor shall the Purchaser refuse to accept delivery because of any such delays. Excusable delays include, without limitation, delays resulting from accidents, fires, floods, severe weather or other acts of God, strike, lockout or other labor difficulties, embargoes, government controls or other forms of intervention, inability to obtain labor, materials or services and other causes beyond Seller's control. If there is a scarcity in any of its products or goods, Seller will allocate its available supply in its sole discretion.

14. TITLE AND RISK OF LOSS. Title to the Equipment shall transfer to the Purchaser on the earlier of full payment and delivery; provided, however, that in the event delivery is prior to full payment, Seller shall retain a security interest in the Equipment until Seller receives payment in full. The risk of loss, including, but not limited to the risk of loss, theft, damage or destruction of the products, transfers to Purchaser F.O.B. Seller's factory. If Purchaser fails to accept delivery of any of the Products on the delivery date provided by Seller, or if Seller is unable to deliver the Products because Purchaser failed to provide adequate instructions, then (a) the Products will be deemed to have been delivered to Purchaser; and Seller may, at its option, (i) store the goods at Purchaser's expense until delivery or (ii) deliver the goods to Purchaser at Purchaser's expense.

15. INDEMNITY Purchaser will indemnify, defend and hold Seller, its affiliated companies and their respective directors, officers, employees and agents harmless from any loss, claim, cost, expense or damage (including payment of reasonable attorneys' fees) suffered or incurred by any of them and/or for which any of them may be liable to any third party due to, arising from or in connection with, directly or indirectly:

- (i) any act, omission, negligence, intentional misconduct or violation of law on the part of the Purchaser, its servants, agents or employees;
- (ii) Purchaser's statements or representations;
- (iii) Purchaser's failure or delay in taking delivery;
- (iv) the breach of any provision of this Agreement by Purchaser; or
- (v) any infringement or alleged infringement of patents, trademarks, copyright, design, right or other intellectual property right occasioned by the importation, manufacture or sale of the Equipment if made to the specification or special requirement of Purchaser;
- (vi) any breach of the Confidentiality portion of this Agreement or misuse of Seller's Intellectual Property; or,
- (vii) Purchaser's misuse or modification of the Equipment.

16. LIMITATION OF LIABILITY. Seller's total liability for any and all claims, damages, losses and injuries arising out of or relating to Seller's performance or breach of any term herein shall not exceed the purchase price of the Equipment. IN NO EVENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL SELLER BE LIABLE FOR LIQUIDATED, INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EXPENSES OR COSTS, INCLUDING BUT NOT LIMITED TO: (1) LOSS OF PROFITS, BUSINESS OR GOODWILL; (2) LOSS OF USE OF EQUIPMENT OR FACILITIES; OR (3) LOSS RESULTING FROM UNUSABLE MACHINERY OR FACILITY DOWNTIME, HOWSOEVER CAUSED AND EVEN IF THE POTENTIAL FOR SUCH DAMAGES WAS DISCLOSED AND/OR KNOWN. **17. DISCLAIMER OF WARRANTY.** SELLER DOES NOT WARRANT THE MERCHANTABILITY OF ITS PRODUCTS AND DOES NOT WARRANT THE FITNESS OF THE PRODUCTS FOR A PARTICULAR PURPOSE.

SELLER DOES NOT MAKE, AND HEREBY DISCLAIMS AND EXCLUDES, ANY WARRANTY, EXPRESS OR IMPLIED, OTHER THAN THE WARRANTY CONTAINED HEREIN. THERE ARE NO WARRANTIES EXPRESS OR IMPLIED BEYOND THAT WHICH IS DESCRIBED BELOW.

18. WARRANTY OF GOODS MANUFACTURED BY SELLER 1. Except to the extent Seller specifies another warranty period in writing, Seller warrants products and parts manufactured by it and sold hereunder to be free from material defect in material and workmanship for a period of twenty-four (24) months from date of shipment (the "Warranty Period") provided, however, that Seller's sole responsibility under this warranty shall be to either repair or replace at Seller's option, any part which fails during the Warranty Period because of a defect in workmanship and material. Such replacement parts shall be provided at no cost to Purchaser. 2. Seller shall be under no liability for breach of the warranty set forth herein: (i) unless the Equipment has been properly installed, used, maintained and serviced; (ii) unless Purchaser has promptly informed Seller in writing of the defect alleged within the Warranty Period and within 7 days of the discovery thereof; (iii) with respect to wearing and consumable parts; (iv) if Purchaser places Products in long-term storage and fails to perform proper long-term storage preparations per Seller's instructions; and/or (v) to Equipment or component parts or accessories thereof not manufactured by Seller. 3. Other than those set forth expressly in writing, Seller makes no representation regarding compliance with any state, provincial, or local law, rules, regulations, building code or ordinance relating to the installation or operation of the Equipment. 4. There are no third-party beneficiaries of the Warranty granted by Seller herein.

19. WARRANTY OF OTHER MANUFACTURER'S PRODUCTS. Seller makes no warranties or representations of any kind whatsoever, either expressed, implied or statutory on any component parts or accessories sold hereunder which are not manufactured by Seller. Seller hereby extends the manufacturer's warranty or guaranties, if any, given to Seller by the manufacturer of said component parts and accessories, but only to the extent Seller is able to enforce such warranty or guaranties. Seller does not guaranty warranties of other manufacturers' products. Claims under any manufacturer's warranty shall be made in accordance with the manufacturer's requirements regarding the return, repair or replacement of the goods. Seller agrees to use its best efforts and will cooperate with Purchaser in enforcing any claims against manufacturer(s) for defects that may occur.

20. DISPUTE RESOLUTION. All disputes arising under or in connection with this Contract shall be resolved by (a) good-faith negotiations by knowledgeable, responsible representatives of each party who are fully authorized to settle any such dispute, or (b) in the event such negotiations do not resolve such dispute, binding arbitration held in South Carolina, by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Each party shall bear its own costs of these procedures; the parties shall equally split the fees of the arbitration and the arbitrator. Notwithstanding the above, either party shall have the right to seek a temporary restraining order or an injunction related to the purposes of this Contract, to compel compliance with confidentiality obligations, or to file suit to compel compliance with this dispute resolution process.

21. NO ASSIGNMENT. Purchaser may not assign, novate or otherwise transfer its rights or obligations under this contract without Seller's prior written consent, and any attempt to do so shall be null and void and of no effect.

22. GOVERNING LAW. This Agreement shall be construed, and the respective rights and duties of Purchaser and Seller shall be determined, according to the laws of the State of South Carolina, without giving effect to its principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

23. MISCELLANEOUS. These Seller's Terms and Conditions of Sale are the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by this sale, notwithstanding any other terms that might be contained in any purchase order or other document received from Purchaser or submitted to Seller. These Terms and Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and can only be modified or changed in writing and signed by authorized representatives of both parties. No waiver by Seller of any of Seller's Terms and Conditions of Sale or any breach hereof shall constitute or be deemed to be a waiver of any such term or any such breach in any other case. No waiver shall be deemed to occur as a result of the failure to enforce any term or condition of these Seller's Terms and Conditions of Sale. If any clause or portion hereof shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses or portions shall remain in full force and effect. The paragraph headings are for convenience only and shall not be used in interpreting or construing these Seller's Terms and Conditions of Sale.