



# Sales Order Terms & Conditions

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## 1. As used herein

- a) "Seller" means Pileworks, LLC.
- b) "Buyer" means the entity or person stated in the Quotation, Sales Order Acknowledgement, Invoice, or other similar document, to which these terms and conditions are attached.
- c) "EDI" means "Electronic Data Interchange" and shall refer to any interchange of data through any digital or electronic means which is intended to effectuate binding purchase and sale transactions and to facilitate the processing of any Quotation, Sales Order Acknowledgement, Invoice, or other similar document, to which these terms and conditions are attached.

## 2. **Governing Terms:** By accepting this Quotation, Sales Order Acknowledgement, Invoice, or other similar document, to which these terms and conditions of sale and agrees they shall supersede those of Buyer, if any, annually instances where conflict exists. Any additional, consistent or different terms and conditions contained in Buyer's Purchase Order or other documents submitted by Buyer to Seller at any time, whether before or after the date hereof, are hereby expressly rejected by Seller. Buyer acknowledges that, notwithstanding anything to the contrary contained in its Purchase Order or other documents, receipt and acceptance by Buyer of Seller's goods shall constitute acceptance by Buyer of these terms and conditions. To the extent Buyer and Seller have a binding, executed MSA or other similar agreement, the terms of the MSA shall apply, to the extent they conflict with the terms and conditions stated herein.

## 3. **Prices:** Buyer agrees to pay the price as set out in the final invoice to Buyer unless otherwise stated in writing signed by Seller. All prices quoted by Seller are subject to change as any time and to any addition which may be necessary to cover any tax or charge now existing or hereafter imposed by Federal, State or Municipal Authorities upon equipment, materials or services sold by Seller for the production, sale, distribution or delivery thereof, or upon any feature of this transaction. Shipping fees that are shown in the Quotation, Sales Order Acknowledgement, Invoice, or other similar document, are just an estimate. Actual shipping fees may vary.

## 4. **Acceptance of Orders:** An order shall not be binding on Seller until Seller has provided a Sales Order Confirmation confirming acceptance of the order. All orders placed by Buyer with Seller are accepted conditional upon Seller's receipt of a Purchase Order, and acceptance of these terms and conditions, as well as any advanced payment requirements. No agreement or understanding, oral or written, in any way purporting to these terms and conditions, whether contained in Buyer's purchase or shipping release forms, or elsewhere, will be binding upon Seller unless hereafter made in writing and/or via EDI and signed by its authorized representative. All proposals, negotiations and representations made prior, and with reference, hereto are merged herein and any representation not included herein is intentionally omitted and not part of the agreement.

## 5. **Payment and Credit:** Each invoice shall be a separate transaction and payment shall be made accordingly. Unless otherwise specified, payment shall be made on the basis of net cash, thirty (30) days from the date of invoice or may vary depending on the discretion of the Seller. Buyer agrees to all charges if no objection is received by Seller in writing within twenty (20) days from date of invoice. A deposit may be required depending on the Seller's business decision. All deposits will be defined within the Sales Order, and required prior to beginning an manufacturing activities. A two percent (2%) discount will be applied to all orders that are paid in full prior to shipment of order from Seller's location. A finance charge of two percent (2%) per month shall be assessed on past due accounts over thirty (30) days. Delinquent accounts are subject to liens and may be sent to collections. Account statement must be current, up to date with balance prior to shipping goods. Buyer shall pay all fees associated with collection of past due accounts. If, in the exclusion judgment of Seller, the financial condition of Buyer at any time does not justify the commencement or continuance of production or shipment on the terms specified herein, Seller

may, in addition to all other remedies it may have at law or in equity, make a written demand for full or partial payment in advance, suspend its performance until such payment is made and cancel the Buyer's order if such payment is not received by Seller within thirty (30) days after delivery in person or mailing or EDI of such demand by Seller.

6. **Security Interest:** Seller shall have, and Buyer does hereby grant a purchase money security interest in all the goods sold hereunder, together with all proceeds and replacements until all charges have been paid in full. Seller may file or record this or any other applicable document necessary to protect the interests of Seller in the goods. Buyer shall execute and deliver any document reasonably requested by Seller for such purpose.
7. **Shipment:** Shipment is FOB shipping point unless specifically provided by Seller. The shipping date is estimated upon the basis of immediate receipt by Seller of all information required to be furnished by Buyer. Seller shall, in good faith, endeavor to ship the estimated shipping date, but reserves the right to vary such date free of any liability to Buyer, Buyer may explicitly state the method of shipment preferred. In the absence of shipping information, Seller will use its discretion in employing the method of shipment for the goods ordered.
8. **Deliveries:** Seller will not assume any responsibility for any damage resulting from any delivery delays caused by third party carriers.
9. **Returns:** The return of goods for credit will not be accepted, all sales are final.
10. **Cancellation by Seller:** Seller may, by written notice to Buyer and without any liability, cancel Buyer's order if Buyer (i) fails to perform any of the terms and conditions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from Seller specifying such failure; (ii) in Seller's opinion has not established or maintained credit to meet promptly the payment terms imposed by Seller in Section 5 herein; (iii) becomes insolvent, makes an assignment in favor of creditors, or becomes subject to any bankruptcy, dissolution, or similar proceedings; (iv) is merged into, or all or a substantial part of its assets are sold to, another company. As a nonexclusive alternative to cancellation, Seller may, by written notice to Buyer and with any liability, suspend any of its obligation hereunder for any reason referenced in subsections (i)-(iv) of this Section 10. Furthermore, without prejudice to any other remedies available at law or in equity, if any of the conditions in this Section 10 are met, Seller may re-sell any completed but undelivered goods to a third party without penalty and, in the event Seller cannot obtain the price Buyer agreed, Buyer shall be liable to cover the difference.
11. **Cancellation by Buyer:** Cancellation of order after confirmed by Seller will not be accepted. In the event Seller makes an exception, a restocking fee will be determined by Seller and charged to the Buyer.
12. **Taxes:** Any sales tax applicable to the sale and any tax, impost, levy, duty or other charge hereafter imposed by any government or other authority upon the production, use or sale of any goods or upon the materials, methods or machines for producing the same and any increase in cost to Seller in manufacturing, processing or delivering any goods resulting directly from government supervision, regulation, or control, now or hereafter prescribed by law or in force, and affecting Seller's performance of its obligations, will be added to the purchase price as herein noted or any revisions thereof, will be paid by Buyer.
13. **Warranties:** SELLER WARRANTS ONLY THAT THE GOODS SOLD TO BUYER WILL CONFORM TO SPECIFICATIONS PROVIDED BY THE BUYER AND AGREED TO BY THE SELLER. IN THE EVENT THE GOODS FAIL TO CONFORM TO SUCH SPECIFICATIONS, SELLER SHALL REPAIR OR REPLACE THE NONCONFORMING GOODS AND BUYER ACKNOWLEDGES AND AGREES THAT IT'S REMEDY IS

LIMITED TO THE REPAIR OR REPLACEMENT OF THE GOODS. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND MAKES NO OTHER WARRANTIES, REPRESENTATIONS OR COVENANTS AS TO THE WORKMANSHIP, QUALITY, CONDITION, OR MERCHANTABLE OR FITNESS FOR ANY PARTICULAR PURPOSE OF GOODS.

- 14. Limit of Seller's Liability Buyer's Remedy:** IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR INJURY TO PERSON OR PROPERTY, LOST PROFITS OR REVENUE, LOST SALES, DAMAGE TO THIRD PARTY PROPERTY, LOST TIME, ENVIRONMENTAL DAMAGE OR LOSS, OR LOSS OF USE OF ANY OTHER PRODUCTS. BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER SHALL BE THE REPLACEMENT OF NONCONFORMING GOODS AS PROVIDED HEREIN. SELLER'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, OR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH BUYER'S ORDER, SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE ORDER. THE SOLE PURPOSE OF THE STIPULATION OF THE EXCLUSIVE REMEDY PROVIDED FOR HEREIN SHALL BE TO PROVIDE BUYER WITH REPLACEMENT OF NONCONFORMING GOODS IN THE MANNER PROVIDED HEREIN. SUCH REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS SELLER IS WILLING AND ABLE TO REPLACE NONCONFORMING GOODS IN THE PRESCRIBED MANNER.
- 15. Force Majeure:** Delays in the performance of this contract by the Seller shall be excused whenever the Seller is prevented from producing or delivering by strikes, differences with workmen, fires, accidents, delays or difficulties in transportation, delays or difficulties in raw material deliveries, acts of God or the public enemy, or other causes beyond the reasonable control of the Seller, as well as acts or demands of the government in times of war or national emergency. Delays in the performance of this contract by the Buyer shall be excused whenever the Buyer is prevented from receiving the order because of strikes, differences with workmen, fires, accidents, acts of God or the public enemy, or other causes beyond the reasonable control of the Buyer, as well as acts or demands of the government in times of war or national emergency. Buyer also shall be temporarily excused for late payment whenever any of the above instances cause temporary closure of either Buyer's or Seller's financial institution. Any such delayed performance, however, shall not in any way invalidate this contract or any part thereof.
- 16. Indemnification:** The Buyer will indemnify against and hold Seller harmless from any and all claims, actions, proceedings, expenses, damages, liabilities, penalties, liens, costs and expenses, including attorney's fees (including any of the foregoing arising or imposed without Seller's fault or negligence or under the doctrine of strict liability) arising in connection with the goods. Buyer agrees that upon written notice by Seller of the assertion of any of the foregoing against Seller, Buyer will assume full responsibility for the defense thereof. All claims by Buyer against Seller must be made in writing to Seller within ten (10) days after the receipt of the goods and prior utilization of the goods by Buyer. Failure to give such notice within such time will constitute a waiver by Buyer of all claims with respect to such goods.
- 17. Nonwaiver:** No covenant or condition herein can be waived except by the written consent of Seller. Forbearance or inaction by Seller in any regard whatsoever will not constitute a waiver of the covenant or condition to be performed by Buyer to which the same may apply. Forbearance or inaction by Seller of any breach of these provisions shall not be construed as a waiver of any future breach. Until complete performance by Buyer of said covenant or condition, Seller shall

be entitled to invoke any remedy available to Seller as provided herein or by law in equity despite said forbearance or indulgence.

18. **Serviceability:** No provision of these terms and conditions which may be deemed invalid or enforceable against the parties or their successors or assigns, will in any way invalidate or make enforceable any other provisions of these terms and conditions, all of which will remain in full force and effect.
19. **Assignment:** These terms and conditions shall not be assigned, subcontracted or delegated, in whole or in part, without Seller's prior written consent. The provisions of these terms and conditions shall be binding upon and inure to the benefit of the parties and their successors and assigns.
20. **Governing Law, Venue and Jurisdiction:** The terms and conditions shall be governed by and interpreted in accordance with the law of the State of Texas. Any legal action or proceeding arising from or in connection with the terms and conditions of this Agreement shall be brought exclusively in the Courts of the State of Texas or in the U.S. District Court of the Southern District of Texas. Buyer hereby irrevocably consents to exclusive venue of all claims arising out of or related to this Agreement as being in Houston, Harris County, Texas, in a court of competent jurisdiction.
21. **Attorney Fees:** For all claims arising out of or related to enforcement or construction of this Agreement, the prevailing party shall recover all reasonable attorney fees and any costs of court from the non-prevailing party.