

## TERMS AND CONDITIONS OF SALE

The following terms and conditions shall apply to each order for products and services of Technomark, Inc. ("Producer") and shall constitute the entire agreement between parties. THESE TERMS AND CONDITIONS SHALL SUPERSEDE AND GOVERN.

**Acceptance (Offer and Agreement)** These terms and conditions constitute the entire and exclusive agreement between the parties. No other modification of these conditions of sale shall be effective unless agreed upon by both parties and made official, in writing.

**Assent to Terms and Conditions** Buyer agrees to have full knowledge of these conditions printed herein and shall be binding between Buyer and Purchaser. These terms shall be controlling in the event of any conflict thereof with the terms and conditions set forth on the attached form. Irrespective of the fact that one or more terms may be left open in this Agreement, the parties do intend to make a contract.

**Prior Agreements** It is understood that there are no conditions or agreements outside of this written proposal, and that all prior conversations, agreements, or representations with reference to the subject matter contained herein are hereby superseded.

**Price, Price Adjustment & Additional Charges** Prices quoted are based on material and labor cost as of the date of the estimate, and are subject to increase or decrease in accordance with any labor or material cost that may transpire before acceptance. Quoted prices do not constitute acceptance of the job. Only after review of final specifications and all pertinent information at the time of order, will the price be considered accepted by Producer. Proposal is only for work according to the original specification upon which the proposal is based. Additional work done or consumed by reason of buyer's alterations of molds, copy proofs, changes made in work or material, holding of "presses" and other delays caused by Buyer, may result in modified pricing. The quotation is subject to acceptance within 90 days. It is not subject to partial acceptance except by written mutual agreement. A quotation not accepted within 90 days is subject to review.

**Blanket Orders** Technomark will accept blanket orders on any order totaling over \$1,000, only under the following conditions. Blanket orders releases must be a minimum of \$500 each and any and all releases must be taken within 12 months of the date on a Purchase Order, unless other agreements have been made with Producer's management, and are clearly stated in writing. The Producer begins scheduling and material forecasting as soon as an order is placed.

**Schedule Changes** Technomark will allow 2 schedule changes per release/order. Additional changes are at the discretion of the producer and additional charges could apply.

**Credit** The Producer shall have the right, if necessary, to retain possession of and shall have the lien to all Buyer's property in the Producer's possession, without further notice, including work in progress and finished work. The extension of credit or acceptance of notes, trade acceptances, or guarantee of payment shall not affect such security interest and lien. The Producer has the right to change buyer's terms at any time due to non- or late payments.

**Payment Terms** A Purchase Order is a legal and binding document and upon issuance, the buyer is accepting that payment will be made within the stated terms. Seller reserves the right to charge interest on all invoices not paid at maturity. Terms shown on any invoice are from the date of the invoice and are not contingent upon delivery.

**Delivery Terms and Charges** Unless otherwise stated, the price quoted is for a single shipment (or shipments constituting an entire order) without storage, F.O.B our loading dock. Freight collect or Third Party Billing should be specified. All freight sent prepaid is subject to a reasonable charge. Title for finished work shall pass to the Buyer upon delivery to carrier at shipping point or upon mailing of invoices for finished work, whichever occurs first. Delivery dates are subject to unforeseen delays due to natural and man-made causes or events; Producer shall incur no liability for such delay. SPECIFIED DELIVERY DATES ARE ESTIMATES OF DATES OF DELIVERY AND NOT A GUARANTEE OF A PARTICULAR DATE OF DELIVERY.

**"Force Majeure"** Producer shall be excused for any delay or failure to perform hereunder due to any contingency beyond reasonable control including, without limitation, Acts of God, fire, flood, war, sabotage, accident, labor dispute, non-performance of Buyer, shortages, governmental regulations (valid or invalid), inability to obtain material, equipment or transportation and any similar or different contingency. In no event shall Producer be obligated to purchase material from others in order to enable it to deliver material to the Buyer.

**Base Price Adjustments** Prices are based on artwork as seen at the time of quotation. Where art or other specifications are changed, prices are subject to revision.

**Samples, Prototypes, Models, Pre-Production Samples, & Art Creativity** Samples of proofs submitted shall be deemed approved after Buyer authorizes the Producer in writing to proceed with production, sketches, copies, dummies, and other preparatory work, including artwork, type, screen, plates, negatives, positives and other items. When the Producer supplies these, they will remain producers exclusive property and no use of these may be made, not any idea obtained therefrom is used except upon compensation to be determined by the Producer. Producer agrees to submit proofs or prototypes prior to production. Buyer is responsible for any additional costs incurred for changes in art, screen, dies, etc. as a result of Buyer's request for changes from original art or specifications.

**Experimental Work** Experimental work performed at the Buyer's request, such as sketches, drawings, typesetting, presswork, and materials will be charged for at the current rates and may not be used without written consent of the Producer.

**Artwork, Negatives, Screens, Molds, Tools, Dies, and Proprietary Development** Negatives, positives, screens, dies, and proprietary materials furnished by the Producer remain the property of the Producer unless otherwise negotiated. We reserve the right to scrap molds, tools, and dies after a period of one year has elapsed since the last order, unless otherwise instructed by Buyer.

**Negotiated Cancellation** Orders may not be cancelled or suspended except by adjustment on terms, which will indemnify the Producer against loss. Orders accepted cannot be cancelled without a \$200.00 cancellation fee and compensation to the Producer against loss including labor and material incidental to the execution of the contract.

**Overruns and Under-runs** Shipment of 10% more or less, of quantities ordered shall constitute complete and fair delivery. Orders will be billed for quantities shipped.

**Indemnities** The Buyer shall indemnify and hold harmless the Producer from any and all loss, cost, expense and damages on account of any and all manner of claims, demands, actions, and proceedings that may be instituted against the producer on grounds alleging that the said printing violates any copyright or any proprietary right of any person, or that it contains any matter that is libelous, scandalous, or invades any person's right to privacy or any other personal rights, except to the extent that the Producer has contributed to the matter. The Buyer agrees to, at the Buyer's own expense, promptly defend and continue defense of any such claim, demand action or proceeding that may be brought against the Producer, provided that the Producer shall promptly notify the Buyer with respect thereto, and provided further that the Producer shall give the Buyer such reasonable time as the exigencies of the situation may permit in which to undertake and continue defense thereof.

**Inspection** Producer expects all parts to be inspected by the buyer upon arrival. Any cosmetic flaws in the parts (visible to eye) must be reported to Technomark within thirty (30) days from the date the parts arrived to the Buyer. Buyer must also specify the reasons for the products being rejected in order for the notice of rejection to be effective.

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Technomark, Inc., 11574 Encore Circle, Minnetonka, Minnesota, 55343, (952) 912-1700 (800) 680-5556

**Warranties** Producer warrants that the goods are described in this agreement and that the quality of Producer's goods shipped pursuant to this order is consistent. In all cases of non-functioning merchandise, the Buyer must make an appropriate claim within one (1) year of receipt of shipment. Merchandise will be returned only upon Producer's written authorization. Producer makes no other warranty of any kind, express or implied, and all implied warranties or merchantability and fitness for a particular purpose are hereby disclaimed by Producer and excluded from this warranty. No agent, employee, or representative of the Producer may make representation or warranty concerning the goods sold under this agreement, and unless an affirmation, representation, or warranty made by an agent, employee, or representative is specifically included within this written agreement, it has not formed a part of the basis of this bargain and shall not in any way be enforceable by the Buyer. Producer's liability for breach of this warranty is limited to replacing the defective goods or refunding the Buyer the purchase price for that portion of the goods which are defective, whichever remedy the Producer shall so select. The Buyer warrants and represents that, if the product(s) purchased from the producer are to be applied to equipment, machinery, or supplies for use in medical process, procedures, experimentation or care, or for application or use in storage, processing dissemination of electronically stored data, then the Buyer will join and defend any action or other proceeding to which Producer is named as a part arisen from any allegation that Producer was in any way responsible for the failure of such machine, equipment or supply.

**Litigation and Arbitration** If any litigation arises between Buyer and Producer, hereunder, Buyer shall be liable for Producer's costs, expenses, and attorney's fees, if buyer is adjudged to be at fault. Buyer shall indemnify Producer against all costs of suit, claims for damages, and liability for alleged trademark or patent infringement. Producer shall not be liable to any third party for any claim for damages, by reason of injury to such third person, from parts produced under this order, and such liability if any, shall be the sole responsibility of the Buyer. Claims, demands, disputes, differences or controversies and misunderstandings arising under, out of, or in connection with or in relation to any agreement entered into between Producer and Buyer shall be submitted to and be determined by arbitration.

**Bankruptcy** If Buyer files Bankruptcy or a petition is filed against the Buyer; or if Buyer is required to make an assignment for benefit of creditors; or if Buyer discontinues business or goes into receivership; or if Buyer fails to abide by credit terms granted by Producer, this agreement shall terminate automatically, and all sums owed Producer are immediately due and payable. But termination of the agreement shall not relieve Buyer of any obligations to Producer, which remain unfilled on the termination date.

**Applicable Law** The validity, interpretation and performance of this agreement shall be governed by the laws in the state of Minnesota, and this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors and personal representatives.

**Errors** We reserve the right to correct an obvious clerical error.

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