

Terms and Conditions of Sale

These Terms and Conditions are a material part of the agreement between Liquidpulse LLC (“Seller”) and the buyer identified in the Quote, Purchase Order, Sales Order or otherwise (“Buyer”), concerning the sale of the products and services offered by Seller (the “Goods”). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

1. Effectiveness: These terms will be deemed accepted by Buyer by signature on the Purchase Order, agreeing to the shipment of the Goods, or acceptance of the Goods, whichever occurs first. Seller accepts the Buyer’s offer to purchase contained in the Purchase Order and the terms of the sale of the Goods by issuing the Sales Order. These Terms and Conditions of Sale are expressly made part of the Sales Order.
2. Description of Goods; Sale and Delivery: Seller sells, transfers, and delivers to Buyer the Goods on or before the date listed in Sales Order, in exchange for the Price and under the other conditions described herein. The Goods are specified and described in the latter of the Quote, the Sales Order, or other writing acknowledged by the Seller. Unless otherwise expressly specified in writing, the Goods are delivered to Buyer *Ex Works* (Incoterms EXW) Seller’s factory in Dallas, Texas.
3. Delivery of the Goods: The Seller delivers to the Buyer the Goods when the Buyer is notified that the Goods are “Ready to Ship” consistent with the *Ex Works* (Incoterms EXW) standards, unless otherwise agreed in writing. If the Buyer is not ready to receive the Goods, or the Buyer is responsible of arranging freight to the final destination and does not retrieve the Goods within a week after the receipt of the “Ready to Ship” notice, the Goods will be subject to the Holding Goods terms as indicated below.
4. Shipping or delivery dates: The parties acknowledge and agree that any ship dates or delivery dates provided are estimates only and are not guaranteed. The Seller shall not be held liable for any delays in shipment or delivery, and the Buyer expressly waives any claims for damages arising from such delays. The manufacturing of custom packages involves various factors, including but not limited to the availability of incoming materials, equipment, labor, and other resources. As such, the Seller disclaims any responsibility for delays caused by factors beyond its reasonable control, including but not limited to shortages of materials, equipment, or labor, changes in production schedules, acts of nature, or any other unforeseen circumstances. The Buyer acknowledges that the nature of custom manufacturing inherently carries risks of potential delays, and the Seller shall not be held liable for any consequential, indirect, or incidental damages arising from delays in the manufacturing process. The parties further agree that time is not of the essence in the performance of this contract, and the Buyer accepts the inherent uncertainties associated with the manufacturing of custom packages, recognizing that estimated ship dates or delivery dates are provided for planning purposes only.
5. Liquidated Damages: Unless expressly agreed by the Seller in an executed writing, the Seller shall not be held liable for any liquidated damages arising from or relating to the sale of the Goods, the Purchase Order, or otherwise.
6. Title to the Goods: The risk of loss to the Goods shall pass to the Buyer on delivery. Title to the Goods shall pass to the Buyer when the Seller receives payment in full (in cash or cleared funds). Until title to the Goods has passed to the Buyer, the Buyer shall not remove, deface or obscure any identifying mark labelling on or relating to the Goods, and maintain the Goods in satisfactory condition.
7. Right of Inspection: Buyer shall inspect the Goods when delivered to ensure that they are in conformity with the Sales Order. Within five (5) business days after delivery, Buyer must notify Seller in writing of any claim that the Goods do not conform to the Sales Order, and/or that there are any material defects in the Goods (a “Notification of Rejection”). Buyer must specify in detail the basis of any such claim. Buyer’s failure to comply with these conditions will constitute acceptance of the Goods by Buyer, and any Goods not so rejected are deemed to be accepted.



8. Procedure as to Rejected Goods: On receipt of a Notification of Rejection, Seller will immediately arrange to investigate the claims of the Buyer and cure any agreed up deficiencies within a commercially reasonable amount of time.
9. IMPORTANT SAFETY NOTICE: The Goods require a high level of care when using and the Buyer agrees and understands that it must follow any safety instructions or handling instructions delivered with or relating to the Goods at all times, in addition to normal and customary safety procedures. The Buyer shall always follow best health and safety practice when dealing with or handling the Goods.
10. Payment and price: Buyer will pay for the Goods in the amount indicated in the Sales Order, plus all applicable taxes and extra charges noted therein (the "Price"). Unless agreed otherwise by Seller in writing, the Price is due in full upon receipt of the invoice. The Price may be adjusted based on any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, type of delivery, or any delay caused by any instructions or actions of the Buyer. If the Buyer fails to make any payment due to the Seller by the due date for payment, then the Buyer shall pay interest on the past due amount at the rate of 18% per annum, or the maximum legal rate allowed (whichever is lower). The Buyer shall pay all amounts due under the Purchase Order or otherwise in full without any deduction or withholding, and the Buyer shall not be entitled to withhold any payment based on the assertion of any credit, set-off or counterclaim against the Seller.
11. Hold-for-approval orders: When the buyer issues a Hold-for-Approval (HFA) purchase order a progress payment of 30% of the total price shall be due at the time of receipt of the order to lock in the sales price. If no payment is made, the HFA will be treated as a good-will request for submittals and price will be subject to change at the time of order release.
12. Holding Goods; Project Holds; Storage Fees: If work has begun on the Goods but they have not yet been delivered to Buyer, and Buyer requests that the project be put on hold, Seller will pause the project and store the Goods for up to 14 days without additional charge to Buyer. If the hold last more than 14 days, or is requested for more than 14 days, at least 80% of the Price must be paid in advance, in addition to storage fees.
 - a) For Goods that are delivered, or ready to be delivered, but Buyer has not accepted them or arranged for their transportation, or requests a hold, 100% of the Price must be paid immediately, in addition to storage fees. Storage fees shall be calculated in accordance with the Seller's "Job Storage Fees" policy in effect at the time and shall not be less than \$500.00 per week.
12. CANCELLATION FEES: If the Buyer cancels the order, or any portion of an order, at any time, the following fees will be immediately due and owing:
 - a) Standard or stocked equipment after receipt of order: 30% of sales price
 - b) After approved submittals: 45% of sales price
 - c) After fabrication has begun: 70% of sales price
 - d) If fabrication is 50% or more as determined by the Seller: 100% of sales priceThe parties agree that the fees and damages stated in this section are liquidated damages, agreed to because actual damages to Seller would be difficult to ascertain at the time of contracting, and that the fees described herein are reasonable. These fees are not intended to be cumulative, and in the event of any breach of these Terms and Conditions or the Purchase Order, Seller shall be entitled to any and all other damages in equity and law.
14. Warranty Against Encumbrances: Seller warrants that at the time of delivery the Goods will be free from any security interest or other lien or encumbrance.
15. Warranty of Title: Upon delivery of the Goods to Buyer, they will be free from any claims of ownership by any third-party, and Seller will deliver sole and exclusive, good and marketable, title in them to the Buyer.
16. Standard Warranty: Seller warrant the Goods will be free of material defects due to materials or workmanship for 24 months after delivery. Buyer may purchase an extended warranty at an additional cost.

17. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER DISCLAIMS ANY OTHER WARRANTIES, OF ANY KIND, EXPRESS OR IMPLIED.
18. Limitation of Liability: In the case of any breach of this Agreement by Seller, or any other liability of Seller to Buyer arising from this Agreement, Seller's liability shall not exceed the Price. If the Seller fails to deliver the Goods (and such failure is not excused), its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by force majeure or the Buyer's failure to provide adequate delivery instructions or access to the delivery location. Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, any indirect damages, any consequential damages, or any punitive damages.
19. Governing Law: The parties acknowledge that the transaction which is the subject matter of this contract bears a reasonable relation to the State of Texas and agree that the internal laws of the State of Texas will govern their rights and duties with respect to this agreement and the subject matter hereof. The parties specifically intend that the provisions of Article 2 of the Uniform Commercial Code (as adopted by Texas) will control as to all aspects of this contract and its interpretation, and that all the definitions contained in that code will be applicable to this contract except where this contract expressly provides a different meaning.
20. Arbitration: Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and this section, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The time frames and limits described herein are essential terms of this Agreement. **THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY ARE GIVING UP THEIR RIGHT TO TRIAL, JURY TRIAL, AND APPEAL.**
 - a) 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 the other parties.
 - b) Any party may initiate arbitration by providing written notice to the other parties. Such notice shall describe the dispute with reasonable detail so as to put the other parties on notice of the legal and factual nature of the claims.
 - c) The parties to the dispute shall choose one arbitrator by mutual agreement. If an arbitrator cannot be agreed to by the parties within 30 days of the notice of arbitration, then each party shall choose one arbitrator, and the chosen arbitrators shall choose one additional arbitrator (or two additional arbitrators, if necessary to have an odd number of arbitrators). In the event of a deadlock and inability of the arbitrators to choose additional arbitrators under this section within 30 days, the parties shall submit the entire controversy to administration by the American Arbitration Association and the arbitrator shall be chosen according to its procedures.
 - d) The arbitration shall take place in Dallas County, Texas (or such other location as is agreed to by all the parties). The substantive law of Texas shall be applied.
 - e) Within 30 days after the arbitrator(s) is/are chosen, all parties shall submit concise written statements of their positions and the controversy to the arbitrator(s) and to each other. Included in these statements shall be the party's position on the necessity for, extent, and forms of discovery. Within five business days after these statements are received by the arbitrator(s), he/they shall issue an order setting out what, if any, discovery shall be allowed, and shall set a final hearing date (together with the time to be allowed for each side to present its case thereat). Further, the arbitrator(s) shall set out the amount that each party will be required to tender in advance in order to cover estimated arbitration expenses and costs.
 - f) Under no circumstances shall the discovery period last more than 60 days. Any discovery disputes shall be promptly taken up with the arbitrator(s) via a telephonic hearing. The

arbitrator(s) must award attorney's fees and costs, and allocate the costs of the discovery hearing, to the prevailing party in any discovery dispute.

- g) The arbitrator(s) shall strictly control the final arbitration hearing in order to ensure the orderly presentation of evidence in a timely manner.
 - h) A final standard arbitration award shall be issued by the arbitrator(s) within 30 days of the conclusion of the hearing and may include both equitable relief and monetary damages. The arbitrator(s) may award attorney's fees and costs to the prevailing party and shall take into account the parties' timely compliance with this section in doing so.
21. Waiver: A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under this Agreement shall constitute a waiver of the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
 22. No partnership or agency: Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
 23. Third party rights: A person who is not a party to Agreement shall not have any rights to enforce its terms, or any third-party benefits whatsoever.
 24. Integrated Agreement: These Terms and Conditions and the agreement of the parties (including the terms of the Sales Order) (the "Agreement") are intended by the parties as a final expression of their agreement with respect to the subject matter hereof, and no prior agreements or representations shall survive it. The terms of this Agreement may only be modified by a written document signed by both parties. Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues, brochures, or websites are produced for the sole purpose of giving an approximate idea of the goods described in them, and they shall not form part of this Agreement or have any contractual force.
 25. Attorneys' Fees and Costs: In the event of any dispute arising from or relating to the Agreement the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs, in addition to other damages.