

# TRINITY UTILITY STRUCTURES, LLC

## Standard Terms and Conditions of Sale

The following terms and conditions of sale (collectively the "Terms") shall be the exclusive Terms incorporated into all quotations or proposals by Trinity Utility Structures, LLC ("Seller") for the sale of Seller's goods or services (collectively the "Products"), and the exclusive Terms incorporated into any contract or order between Seller and Customer for Products. These Terms may only be modified or supplemented by agreement in writing between Seller and Customer that expressly provides for such modification or supplementation.

1. **PRODUCT PRICE AND TERMS OF PAYMENT** - The Product prices agreed between Seller and Customer are based on Customer's acceptance of these Terms as the exclusive Terms and Seller's cost for Appliances (as defined in section 6.C. below) used by Seller in its quote or proposal. Seller reserves the right, upon notice to Customer, to adjust the Product prices to pass through to Customer any additional costs or surcharges incurred by Seller directly or indirectly due to (i) Appliance cost changes after Seller's quote or proposal, (ii) applicability of any terms other than these Terms, (iii) mutually agreed changes to the Products. Product prices do not include any international, federal, state or local sales, use or related taxes that are or may become applicable to the sale or use of the Products, all such taxes being for Customer's account. Customer shall pay the full amount of any Product invoice within thirty (30) days of the invoice date. If Customer fails to pay timely, Seller may, in addition to any rights at law or equity (i) charge interest on unpaid balances at the highest lawful rate, (ii) suspend or reschedule Product manufacture (in which case Customer shall be obligated to Seller for costs and expenses incurred for such suspension or rescheduling), (iii) cancel or withhold Delivery of any Products related to the late or deficient payment or otherwise on order by Customer, or (iv) sue for specific performance.

2. **SPECIFICATIONS AND CHANGES** - If Seller is unable to secure any Appliance required for building the Products to the specifications due to legal orders or circumstances or events beyond the reasonable control of Seller, Seller may acquire replacement Appliances and make changes in the specifications that do not materially affect the strength or efficiency of the Products, and Customer consents to each such change. Any changes in the mutually agreed specifications desired by Customer must be requested in writing and Seller shall use reasonable efforts to comply with such requests subject to Customer's agreement to the change and any Product price adjustment.

3. **INSPECTION AND ACCEPTANCE** - Customer may inspect the Products during business hours at Seller's facility on reasonable notice to Seller provided such inspection does not unreasonably interfere with Seller's operations. Upon completion of Customer's inspection, Customer may reject the Products on the good faith basis that such Products are not manufactured in accordance with the specifications, or Customer shall execute and tender to Seller a certificate of acceptance covering the Products inspected evidencing that the Products were manufactured in accordance with such specifications. If Customer chooses not to inspect the Products prior to Delivery, Customer shall be deemed to have accepted the Products and Seller is authorized to execute a certificate of acceptance on Customer's behalf. Each acceptance certificate shall be final and conclusive evidence that the Products set out therein conform in all respects to these Terms and any applicable quotation, proposal, purchase order, or contract.

4. **DELIVERY AND EVENTS OF DELAY** - Delivery of Products shall be ex works Seller's manufacturing facility. The term "Delivery" as used herein shall be the earlier of the execution of a certificate of acceptance pursuant to Paragraph 3 above or the date appearing on the bill of lading for Product shipment by Seller to Customer. The time of Delivery of the Products is conditioned upon the date of Customer's acceptance of Seller's proposal, Seller's ability to secure Appliances enabling Seller to commence and prosecute manufacture of the Products as well as other products preceding the Products in Seller's production line. Seller shall not be liable for any delay or failure to perform or Deliver, in whole or in part, due to (i) conditions, circumstances, or events beyond Seller's reasonable control, (ii) events of force majeure such as, but not limited to, legal order; acts of war, terrorism, God, or the elements; (iii) limitations on fuel supplies, or (iv) Seller's inability to obtain Appliances from Seller's usual sources at customary pricing [each of (i) through (iv) being an "Event of Delay"]. In each Event of Delay the parties agree the date of Delivery or performance shall be extended for a period equal to the time lost by reason of the Event of Delay, provided, however, that if such period exceeds ninety (90) days, Seller will have thirty (30) days thereafter within which to demonstrate its ability to re-establish Delivery. Customer shall not cancel any delivery of Products subject to an Event of Delay unless (y) Seller is unable to Deliver such Products within one hundred eighty (180) days of the original scheduled Delivery date and (z) Customer provides Seller with sixty (60) days advance written notice of such cancellation. If Delivery delay results from Customer's or its suppliers' or contractors' action or inaction, Customer cannot cancel the Delivery of any Products affected by such delay and Seller may adjust the purchase price payable to reflect the direct damages Seller incurs due to such delay. Seller shall not be obligated to arrange for shipment and acceptance of any required Appliance in advance of Seller's actual needs.

5. **TITLE, RISK OF LOSS, AND SECURITY INTEREST** - Title to the Products and risk of loss thereto shall vest in Customer at Delivery. Seller retains, and Customer grants to Seller, a continuing security interest in each Product sold hereunder for the payment of the entire purchase price of all Products and any other amounts payable to Seller. Customer agrees to execute such instruments and take such other action as shall be reasonably requested by Seller to perfect such security interest. Seller reserves all legal and equitable rights to collect amounts owing Seller by Customer, including the right to take possession of Products prior to or after Delivery and to dispose of the Products or rights therein in any manner in partial satisfaction thereof.

## 6. **WARRANTIES AND LIMITATION OF LIABILITY**

A. Subject to the requirements, exceptions and limitations in this section 6, Seller warrants solely to Customer for a period ending 1 year from and after Delivery of each Product, (the "Warranty Period"), that the Products will be manufactured free of (i) deviations from the specifications mutually agreed to in writing by Customer and Seller ("Deviation") and (ii) defects in workmanship under normal use and service ("Defect"). The warranties above shall not apply under any circumstances to normal wear and tear or to any Product that is misused, negligently operated or stored, altered, damaged, miss-loaded, overloaded,

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mishandled, improperly or deficiently maintained, tampered with, or physically abused, and Seller specifically disclaims any and all warranties, express or implied, in connection therewith and Customer shall have no recourse to Seller therefor.

B. Seller's sole obligation to Customer under the warranties expressed in section 6.A above, shall be to repair or replace, at Seller's exclusive option, all or any part of any Deviation or Defect that manifests during the Warranty Period, provided that Seller's obligations under such warranties shall be waived by Customer if Customer fails to (i) provide Seller written notice of Customer's specific warranty claim and the Product(s) affected, and (ii) provide Seller with reasonable opportunity to inspect the Product(s) that are the subject of Customer's warranty claim to confirm a warranted Defect or Deviation manifesting during the Warranty Period. Following Seller's inspection and confirmation, Seller agrees to perform its warranty obligations within a reasonable period of time, provided Customer has satisfied its warranty claim obligations in this section B during the Warranty Period. Any repair or replacement by Seller shall not extend the Warranty Period.

C. Seller's warranties expressed in section 6.A. above shall not apply under any circumstances to any engineering, designs, plans, workmanship, parts, raw materials, assemblies or components (collectively "Appliance") provided by Customer or any third party suppliers or manufacturers and used for manufacture or installed in or on the Products and Customer agrees its sole recourse for defective Appliances shall be the warranty, if any, given by the supplier or manufacturer of such Appliance. Seller agrees to cooperate with Customer to enforce any such supplier or manufacturer's warranty, provided that Seller shall not be obligated to prepare or file litigation or other legal process, or to incur legal fees, costs or expenses in such regard. To the extent permitted by a supplier or manufacturer, Seller agrees to transfer and assign to Customer, without recourse to Seller, such supplier's or manufacturer's Appliance warranty. As to Seller's installation of any such Appliance, if the manufacturer or supplier has a representative at Seller's facility during such installation, and if the installation is completed to the satisfaction of such representative, it shall be conclusively presumed that Seller's installation has been completed by Seller in accordance with the supplier's or manufacturer's specifications and recommendations.

D. THE WARRANTIES HEREIN ARE EXCLUSIVE, ARE MADE BY SELLER SOLELY TO CUSTOMER, AND ARE EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES AND REMEDIES (1) EXPRESS OR IMPLIED, (2) WRITTEN OR ORAL, (3) AT LAW, IN EQUITY, OR UNDER CONTRACT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND (4) NOTWITHSTANDING ANY COURSE OF DEALING BETWEEN THE PARTIES OR CUSTOM AND USAGE IN THE TRADE TO THE CONTRARY. THE FOREGOING EXCLUSIONS AND LIMITATIONS ON REMEDIES AND DAMAGES ARE APPLICABLE NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

7. **INFRINGEMENT** - Seller shall defend Customer against any claim that the Products infringe a United States patent issued as of the date of the quotation or proposal, provided (i) Seller is notified promptly in writing and is given authority, information, and assistance, at Seller's expense, for the defense of same and (ii) Seller's obligation hereunder shall not cover or apply to any Appliance that is not manufactured by Seller. Seller shall pay all damages and costs awarded therein against Customer. If use of the Products is enjoined, Seller, at its option, shall procure for Customer the right to continue using said Product, replace same with a non-infringing Product, modify said Product so that it becomes non-infringing, or refund the purchase price thereof. The foregoing states the entire liability of Seller for patent infringement by the Products. Seller assumes no liability whatsoever for patent infringement for products or Appliances manufactured or supplied to Customer's design and Customer agrees to indemnify, defend, and hold harmless Seller from any claim, loss, liability, or damage (including, without limitation, liability for patent infringement and reasonable attorneys' fees) arising out of or in connection with Seller's compliance with designs or specifications provided by others.

## 8. MISCELLANEOUS

A. Customer shall not disclose to any third party these Terms, the Product price, or any data, information, or designs ("Information") used in manufacturing and delivering the Products, which obligation shall survive Delivery of any Products. The obligations of this provision shall not apply to any Information which Customer can show it possessed prior to disclosure thereof by Seller, was or has become generally publicly known through no breach hereof by Customer or its suppliers or contractors, or is subsequently provided to Customer by another party having the right to possess and disclose the Information. Breach of this provision by Customer shall authorize Seller, at its discretion and on ten (10) days written notice to Customer, to cancel further Product Delivery or to terminate Seller's warranty obligations for then Delivered Products.

B. Seller's prior written consent (which may be withheld), is required for (i) cancellation of Product Delivery, in whole or in part (except as expressly provided in section 4 above) and (ii) any assignment, in whole or in part, by operation or law or otherwise, of any agreement in which these Terms are incorporated.

C. These Terms and all rights and obligations hereunder shall be governed by the laws of the State of Texas, without regard to its conflicts of law provisions. Any action or dispute arising out of or in connection with the Products or these Terms shall be filed and resolved exclusively in the State or Federal District Courts of Dallas County. The waiver by Seller of any term, provision or condition hereunder must be in writing and shall not be construed to be a waiver of any other term, condition or provision hereof, nor shall such waiver be deemed a waiver of any breach of the same condition or provision at any other time.

D. These Terms shall survive any termination or cancellation under, or termination of, any agreement to which they are attached. If any provision or portion of these Terms shall be adjudged invalid or unenforceable for any reason by a court of competent jurisdiction or by operation of any applicable law, this invalidity or unenforceability shall not affect the other provisions of these Terms, all of which shall remain in full force and effect.

**TRINITY UTILITY STRUCTURES, LLC**

IN WITNESS WHEREOF the parties hereto have caused these Terms to be executed by a duly authorized officer and appended to Seller's quotation or proposal or Customer's purchase order, or any contract between Customer and Seller, for the Products,

**CUSTOMER:** \_\_\_\_\_

**TRINITY UTILITY STRUCTURES, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_