

# Terms and Conditions of Sale

Last Modified: 7<sup>th</sup> January 2020

**When purchasing products on Wagonway Website, you agree to these conditions.**

**Please read them carefully.**

Wagonway, LLC (“Company”, “we” or “us”) provides this Terms and Condition of Sales (“Agreement”). The Agreement is applicable to any order placed with the Company, including on [www.wagonway.com](http://www.wagonway.com), and all related and affiliated websites (the “Website”):

## 1. Scope of this Agreement

Company, upon receipt of a Client order will supply the Goods specified in the order to the Client, pursuant to the terms and conditions of this Agreement and Company Terms of Use. Company’s acceptance of such order is expressly limited to the terms and conditions of this Agreement and the Company’s Terms of Use and Company’s Privacy Policy. Where there is contradiction between the terms and conditions of this Agreement and the Terms of Use Agreement, the Terms of Use agreement will take precedence. The details of the Goods (e.g. quantity, price, and product specifications) shall be set forth in the relevant order.

## 2. Price and Terms

(a) The prices payable by Client for Goods to be supplied by Company under this Agreement will be specified in the applicable order. Unless otherwise expressly stated in an Order, all prices include taxes and shipping. (b) Payment terms are; (i) 50% of the Order total, including taxes when placed; (ii) 50% of the Order prior to shipment. Invoices will be issued accordingly. If for any reason, Client does not pay an invoiced amount within terms, Client will in addition pay finance charges of one and one-half percent (1.5%) per month on the late balance and Company reserves the right to (1) withhold further Order shipments until full payment is made; and/or (2) revoke any credit extended to Client. In the event that Client’s account is more than ninety (90) days in arrears, Client shall reimburse Company for the reasonable costs, including attorney’s fees, of collecting such amounts from Client. In the event of any dispute regarding an invoice, no finance charges will apply in the event that Client provides written notice of the dispute prior to the due date for such payment. (c) Client shall review and approve product samples provided by the Company prior to order placement. (d) Upon reasonable request by the Company, Client shall provide copies of its most recent audited financial statements or other reasonable evidence of its financial capacity and such other information as Company reasonable requests to determine credit status or credits limits. (e) Client shall provide notice within five (5) business days of the occurrence of any event which materially affects Client’s ability to perform its obligations under this Agreement including but not limited to: (i) the material default of any supplier or sub-contractor; (ii) labor strike or dispute; or (iii) material uncured default with respect to any debt obligations of Client. (f) Pricing schedules (whether attached to this Agreement or a Order) are subject to change upon a change in the price of applicable raw materials (as reflected on a

recognized trade or commodity pricing tracker) in excess of five percent (5%) from the date of such schedule. (g) Pricing schedules (whether attached to this Agreement or a Order) are subject to change upon a change in the price of shipping (as reflected on a recognized trade or commodity pricing tracker) in excess of five percent (5%) from the date of such schedule. (h) Pricing schedules (whether attached to this Agreement or a Order) are subject to change upon a change in the duty and tariffs (as reflected on a recognized publication by the United States International Trade Commission, the Office of the United States Trade Representative) in excess of five percent (5%) from the date of such schedule. (i) Unless otherwise specified in the Order, Goods will be delivered FOB from Company's manufacturing facility and will be shipped to Buyer via carriers selected by Company.

### **3. Client Materials and Data**

(a) Client represents and warrants that any matter it furnishes for performance of services by Company (i) does not infringe any copyright or trademark or other Intellectual Property Rights of any third party; (ii) is not libelous or obscene; (iii) does not invade any persons right to privacy; and (iv) does not otherwise violate any laws or infringe the rights of any third party. (b) Client warrants that it has the right to use and to have Company use on behalf of Client any data provided to Company or its Affiliates by Client including specifically client names, identifying information, addresses and other contact information and related personal information ("Data"). Client further warrants that it will designate on the applicable Order if Data provided pursuant to that Order is subject to enhanced data protection or requiring enhanced data security procedures.

### **4. Inventory**

In the event any inventory is maintained by the Company on behalf of Client, the applicable Addendum (Addendum 1) incorporated herein shall apply.

### **5. Intellectual Property**

Any and all inventions, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, trade secrets, work product and information embodying proprietary data existing and owned by Company as of the date of the Order or made or conceived by employees, consultants, representatives or agents of Company during the term of this Agreement shall be and remain the sole and exclusive property of Company.

### **6. Confidential Information**

Any information that parties receive or otherwise have access to incidental to or in connection with this Agreement (collectively, the "Confidential Information"), shall be and remain the property of the disclosing party. Confidential Information shall not include information which: (i) was in the possession of the Receiving Party at the time it was first disclosed by the Disclosing Party; (ii) was in the public domain at the time it was disclosed to the Receiving Party; (iii) enters the public domain through sources independent of the Receiving Party and through no breach of this provision by the Receiving Party; (iv) is made available by the Disclosing Party to a third party on an unrestricted, non-confidential basis; (v) was lawfully obtained by the Receiving Party from a third party not known by the Receiving Party to be under an obligation of confidentiality to the Disclosing Party; or (vi) was at any time developed by the Receiving Party independently of any disclosure by the Disclosing Party. Confidential Information may be used to the extent necessary

to perform this Agreement and the parties shall not disclose Confidential Information to any third party, except to its agents (who have executed confidentiality agreements containing terms substantially similar to the terms) as necessary to provide the Work hereunder. In no event shall Client acquire any right, title or interest in and to any product or process information, including related know how, either existing or developed during the course of the business relationship with Company and Client, and in no event shall Company acquire and right, title, or interest in and to any materials or information provided to it by Client.

## 7. Indemnification

You will indemnify, defend, and hold harmless the Company, our affiliates, and our respective directors, officers, employees, representatives, and agents for any and all claims, damages, liabilities, costs, losses, and expenses (including reasonable attorneys' fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by you or a third party or other User relating to or arising out of: (a) the use of Wagonway by you or your agents, including any payment obligations or default incurred through use of Wagonway; (b) your purchase of Goods from Wagonway; (c) negligence, willful misconduct, or fraud by you or your agents; and (d) defamation, libel, violation of privacy rights, unfair competition, or infringement of Intellectual Property Rights or allegations thereof to the extent caused by you or your agents. For purposes of this Agreement, your agents include any Person who has apparent authority to access or use your Account.

## 8. Representation and Warranties

You represent and warrant that you will conduct business with Wagonway in compliance with Applicable Law. By placing an Order, you represent and warrant that you are authorized to do so and are at least eighteen (18) years of age. You represent and warrant that you have read all applicable Terms of Sale. You agree not to rely on Wagonway, any information from Wagonway, or the continuation of Wagonway. Wagonway and related services are provided "as is" and on an "as available" basis. We make no warranties or representations with regard to Wagonway, its related services, or any activities or items related to the Terms of Sale. To the maximum extent permitted by Applicable Law, the Company disclaims all express and implied conditions, representations, and warranties including, but not limited to, the warranties of merchantability, accuracy, fitness for a particular purpose, title, and non-infringement. Some jurisdictions may not allow for all of the foregoing limitations on warranties, so to the extent some or all of the above limitations may not apply to you, Section 9 states your sole and exclusive remedy against the Company with respect to any non-conformances or dissatisfaction.

## 9. Disputes

**You should review this section carefully.** To the maximum extent permitted by applicable law, you are GIVING UP YOUR RIGHT TO GO TO COURT to assert or defend your rights EXCEPT for matters that you file in small claims court as permitted by this Agreement and Applicable Law. For any and all Disputes between Company and Client, including the interpretation and scope of this section and the arbitrability of such a Dispute, relating to the Terms and Conditions of Sale, Company and Buyer agree to resolve any such Dispute exclusively through binding and confidential arbitration. In the event of any such Dispute, the complaining party must notify the other party in writing. Within thirty (30) days of such notice, you and we agree to use reasonable efforts to attempt to resolve the Dispute in good faith. If you and we do not resolve the dispute within thirty (30) days after such notice, the complaining party may seek remedies exclusively

through arbitration. Except as otherwise expressly provided by Applicable Law, the demand for arbitration must be made within a reasonable time after the Dispute in question arose, and in any event within two years after the complaining party knew or should have known of the Dispute. The arbitration will take place in Houston, Texas, USA. As used in this section, “we” and “us” mean: the Company, its subsidiaries, affiliates, predecessors, successors, and assigns, and all of its and their respective employees, officers, directors, agents, and representatives in any Dispute subject to this Section. The arbitration will be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration will be conducted before one commercial arbitrator from the American Arbitration Association (“AAA”) with substantial experience in resolving commercial contract disputes. As modified by the terms of this section, and unless otherwise agreed upon by you and us in writing, the arbitration will be governed by the AAA’s Commercial Arbitration Rules and, if the arbitrator deems them applicable, the Supplementary Procedures for Consumer Related Disputes (collectively, the “Rules and Procedures”). Notwithstanding the agreement to arbitrate provided in this section, you and we may seek emergency equitable relief in federal court if it has jurisdiction or, if it does not, in a state court located in Houston, Texas, USA in order to maintain the status quo pending arbitration, and you and we hereby agree to submit to the exclusive personal jurisdiction of such courts for such purpose. A request for interim measures will not be deemed a waiver of the obligation to arbitrate. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. You are entitled to a FAIR HEARING, BUT the arbitration procedures may be SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. Arbitrators’ decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT. You and we must abide by the following rules: (A) ANY CLAIMS BROUGHT BY YOU OR US MUST BE BROUGHT IN ONLY THAT PARTY’S CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; (B) THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS; MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING; AND MAY NOT AWARD CLASS-WIDE RELIEF; (c) we will pay as much of your filing and hearing fees in connection with the arbitration as required by the Rules and Procedures and/or as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation; (d) we also reserve the right, in our sole and exclusive discretion, to assume responsibility for any or all of the costs of the arbitration; (e) the arbitrator will honor claims of privilege and privacy recognized at law; (f) the arbitration will be confidential, and neither you nor we may disclose the existence, content, or results of any arbitration, except as may be required by Applicable Law or for purposes of enforcement of the arbitration award; (g) subject to the limitation of liability provisions of this Agreement, the arbitrator may award any individual relief or individual remedies that are expressly permitted by Applicable Law; and (h) each party will pay its own attorneys’ fees and expenses, unless there is a statutory provision that requires the prevailing party to be paid its fees and litigation expenses and the arbitrator awards such attorneys’ fees and expenses to the prevailing party, and, in such instance, the fees and costs awarded will be determined by the Applicable Law. This section will survive termination of this Agreement as well as any voluntary payment of any debt in full by you or any bankruptcy by you or us. With the exception of subparts (a) and (b) of the preceding paragraph (prohibiting arbitration on a class or collective basis), if any part of this section is deemed to be invalid, unenforceable, or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this section will remain in effect and will be construed in accordance with its terms as if the invalid, unenforceable, illegal, or conflicting part was not contained herein. If, however, either subpart (a) or (b) of the preceding paragraph is found to be invalid, unenforceable, or illegal, then the entirety of this section will be null and void, and neither you nor we will be entitled to arbitration. If for any reason a Dispute proceeds in court rather than in arbitration, the Dispute will be exclusively brought in federal court if it has jurisdiction or, if it does not, in a state court located in the city where the Company is located. For more information on the AAA, the Rules and Procedures, and the process for filing an arbitration claim, you may call the AAA at 800-778-7879 or visit the AAA website at <http://www.adr.org>.

## 10. Warranty

Company provides a warranty on Wagonway products only ("Wagonway Product Warranty"). Please refer to Wagonway Product Warranty for detailed information. The Company does not provide a warranty on Other Businesses or third-party products sold on the Company Website. The company does not assume any responsibility or liability for the actions, product, and content of all these and any other third parties. You should carefully review all third party privacy statements, product warranties and other conditions of use.

## 11. Limitation of Liability

We are not liable, and you agree not to hold us responsible, for any damages or losses arising out of or in connection with the Terms and Condition of Sale, including, but not limited to:

- your use of or your inability to use Wagonway;
- delays in the delivery of any Goods, including project delays caused by such delays in the delivery of Goods;
- delays or disruptions in Wagonway or related services;
- a suspension or other action taken with respect to your Account;
- loss of power, loss of business operation, building damage, personal injury, or fire or flood damage caused by use of Goods sold by us;
- work quality or damages caused by any recommended subcontractor(s).

ADDITIONALLY, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, OUR LICENSORS, OR OUR AFFILIATES BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT COSTS OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, OR LOSS OF DATA, PRODUCTION, PROFIT, OR BUSINESS OPPORTUNITIES. THE LIABILITY OF THE COMPANY, OR OUR AFFILIATES, OUR LICENSORS, TO ANY CLIENT FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TERMS OF SERVICE WILL NOT EXCEED THE LESSER OF: (A) \$2,500; OR (B) ANY FEES RETAINED BY US WITH RESPECT TO THIS AGREEMENT. THESE LIMITATIONS WILL APPLY TO ANY LIABILITY IN CONNECTION WITH ANY CAUSE OF ACTION WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TERMS OF SERVICE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

## 12. Notice

Any notice sent pursuant to the Order or this Agreement shall be sent by certified mail, return receipt requested, or by overnight mail to the address:

675 Bering Drive  
Houston, TX  
77057

A copy of any notice to Company shall be also sent to Company General Counsel, together with a copy of this Agreement. Notices shall be effective upon receipt.

## **13. No Waiver**

The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and will in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative of that party.

## **14. Assignment**

You may not assign the Order or Agreement, or any of your rights or obligations hereunder, without our prior written consent in the form of a written instrument signed by a duly authorized representative of the Company. For the purposes of this provision, a written instrument will expressly exclude electronic communications such as email and electronic notices but will include facsimiles. The Company may freely assign this Agreement. Any attempted assignment or transfer in violation of this subsection will be null and void. Subject to the foregoing restrictions, the Order and Agreement is binding upon and will inure to the benefit of the successors and permitted assigns of the parties.

## **15. Status**

Company and Client are separate entities. Nothing in the Order or this Agreement shall be construed as creating an employer-employee or joint venture relationship.

## **16. Compliance with Law**

Each party shall comply with all state, federal and local laws and regulations applicable to its performance hereunder.

## **17. Governing Law**

The Order and this Agreement shall be governed by and construed in accordance with the laws of the state of Texas, without regard to its conflict of law provisions. However, notwithstanding this provision, the arbitration terms provided in Section 9 are governed by the Federal Arbitration Act.

## **18. Force Majeure**

The parties to this Agreement will not be responsible for the failure to perform or any delay in performance of any obligation hereunder due to labor disturbances, accidents, fires, floods, telecommunications or Internet failures, strikes, wars, riots, rebellions, blockades, acts of government, governmental requirements and regulations or restrictions imposed by law or any other similar conditions beyond the reasonable control of such party (collectively, "Force Majeure Events"). The time for performance of such party will be extended by the period of such delay. Irrespective of any extension of time, if a Force Majeure Event occurs and its effect continues for a period of sixty (60) days, either party may give to the other a thirty (30) day notice of termination. If, at the end of the thirty (30) day period, the effect of the Force Majeure Event continues, this Agreement will terminate.

## **19. Survival**

In the event any provision of the Order or this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of the Order or this Agreement will remain in full force and effect. All sections herein relating to payment, ownership, confidentiality, indemnification and duties of defense, representations and warranties, waiver, waiver of jury trial and provisions which by their terms extend beyond the Term shall survive the termination of the Purchase Order and this Agreement.

## **20. Entire Agreement**

The Order, together with this Agreement and Company Terms of Use and Privacy Policy sets forth the entire agreement and understanding among the parties as to the subject matter hereof and thereof and cancels and supersedes any prior or contemporaneous discussions, agreements, representations, warranties, and other communications between Client and Company, whether written or oral, to the extent they relate in any way to the subject matter hereof and thereof. No proposal, purchase order, order confirmation, acceptance, or any other document provided by either Party to the other, nor any electronic click-wrap, terms of use or similar online consent or acceptance language accompanying or set forth as a prerequisite to any electronic interface or utility associated with any Work, shall be deemed to amend the terms hereof and any such contradictory or additional terms shall be ineffective. No party shall be bound by any condition, definition, warranty, or representations, other than as expressly set forth or provided for in the Order or this Agreement, or as may be, on or subsequent to the date hereof set forth in writing and signed by the party to be bound thereby. In the event of any ambiguity or conflict between any of the terms and conditions contained in this Agreement and the terms and conditions contained in an Order, the terms and conditions of this Agreement shall control, unless the Parties have expressly provided in such Order that a specific provision in this Agreement is amended, in which case this Agreement shall be so amended, but only with respect to such Order. The Order or this Agreement may not be amended, supplemented, changed, or modified, except by agreement in writing signed by the parties to be bound thereby. Without limiting our other rights or remedies, we may, but are not obligated to, deny or refuse your registration or temporarily or indefinitely revoke access to use Wagonway, deny your registration, or permanently revoke your ability to purchase goods from Wagonway if: (i) you breach the spirit of any terms and conditions of this Agreement or any other provisions of the Order; or (ii) we suspect or become aware that you have provided false or misleading information to us. If your Account is temporarily or permanently closed, you may not use Wagonway under the same Account or a different Account or reregister under a new Account without our prior written consent.

## **21. Addendum 1 – Company Managed Inventory**

Company may, from time to time, purchase materials and/or inventory on Client's behalf ("Company-Managed Inventory") and such Company-Managed Inventory shall be stored at Company's facility or third-party facility ("Warehouse Facility") in order for Company to perform services for Client. Client and Company desire to agree to the terms and conditions upon which Company will warehouse and store such Company-Managed Inventory. Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Client agrees to pay the fees associated with Company's handling and storage of the Company-Managed Inventory ("Warehouse Storage Fees") for the duration of the applicable term.
2. Client agrees to pay for associated fees for delivering Client's Company-Managed Inventory from Company's facility to Client's specified location ("Local Delivery Fees") for the duration of the applicable term. All delivered inventory shall remain palletized or crated.
3. This Addendum shall remain in effect until such time as Company is no longer in possession or control of any Company-Managed Inventory.
4. This Addendum constitutes and contains the entire agreement between the parties with respect to the handling, storage, and delivery of the Company-Managed Inventory. The parties acknowledge and agree that to the extent there is a conflict between any terms in this Addendum and any terms contained in the storage, warehousing and inventory provisions related to the Company-Managed Inventory contained in any other agreement executed by the parties, the terms related to such handling, storage, and delivery of the Company-Managed Inventory contained therein, shall be governed by this Addendum and the Company Terms of Use and Privacy Policy and the terms contained in the Company Terms of Use shall prevail.