

# STANDARD CONDITIONS OF SALE

(of Quik-Pak a DBA of Delphon Industries, LLC) “the Company”

## 1. GENERAL

The Standard Conditions of Sale contained herein (“**Terms**”) shall constitute the entire agreement between Company and you and the entity you represent (“**Purchaser**”) and supercedes all purchase orders and related prior communications and agreements. Company’s acceptance of Purchaser’s order is expressly conditioned upon Purchaser’s acceptance of these Terms. No waiver, alteration, or modification, no matter how slight, of any of the provisions hereof shall be binding unless in writing, signed by a duly authorized representative of Company and any purported waiver, alteration or modification without Company’s written consent is hereby rejected. If Purchaser’s documentation contains provisions different from or inconsistent with the provisions hereof, these Terms shall prevail. Purchaser’s acceptance of delivery of or payment for any products or services provided hereunder shall constitute Purchaser’s acceptance of all terms and conditions herein.

## 2. VALIDITY OF QUOTATIONS

Quotations are valid for 30 days unless otherwise stated. The Company reserves the right to refuse the Purchaser’s acceptance of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn in such period.

## 3. CHARGES FOR SERVICES AND CHANGE ORDERS

All charges for services are based upon the Purchaser’s specifications. The Company must be notified of any changes in those specifications, “change orders.” Notification of Purchaser change orders must be in writing and be accompanied by the pertinent revised documentation and the revised purchase order. All charges and currency transactions are in US dollars. Charges for services do not include any freight, handling, insurance or other similar charges; payment of which will be the sole responsibility of Purchaser. Charges for services do not include any tax, duties or other governmental charge or assessment on the sale, shipment, production or use of any Products sold to or services rendered to Buyer hereunder (collectively “**Taxes**”). Such Taxes, when applicable, may appear as separate additional charges on Company’s invoice. Purchaser shall be solely responsible for, and shall pay to Company upon demand, any such Tax, unless Purchaser has furnished to Company a valid certificate issued by or acceptable to the tax authority in question. Purchaser agrees to indemnify and hold Company harmless from and against any liability for such Tax, as well as the collection or withholding thereof, including penalties and interest thereon.

## 4. PAYMENT

Unless otherwise agreed by the Company in writing, the services rendered shall be paid for in cash within 30 days following the date of the relevant invoice. The Purchaser hereby agrees to grant the Company a scrap factor allowance of up to 10% of the processed parts. In the event of a delay in payment, the Company shall be entitled to claim, without any notice of default being required and without prejudice to any further rights it may have, interest at the lesser of a rate of one and a half percent (1 ½%) per month or the maximum rate permitted by applicable law. Without limiting Company’s rights and remedies at law or in equity, Purchaser shall be responsible for all costs of collection.

## 5. CREDIT

Where a credit account is desired, a bank and as many as five trade references may be required. The Company reserves the right not to grant credit to any Purchaser for any reason whatsoever. The Company reserves the right to

modify credit terms prior to shipment, or require payment in advance for any shipment by reason of Purchaser’s creditworthiness or should Purchaser fail to fulfill any obligation when due.

## 6. FREIGHT CHARGES

Unless otherwise agreed by the parties, goods are delivered by the Company FOB San Diego, California, U.S.A. to the Purchaser’s shipping address exclusive of duty, insurance, taxes, and VAT. When U.S. customer specifies “Best Way,” order will be shipped “Federal Express standard.” When special delivery arrangements are requested, special rates will be charged. All delivery times shall be approximate, except if the Company has specifically agreed to a fixed time of delivery in writing.

## 7. MINIMUM ORDER

The Company reserves the right to refuse orders of less than \$1,000. Normally single orders of under \$1,000 will be by credit card or pre-payment only unless special arrangements are made.

## 8. CANCELLATION PRIOR TO SHIPMENT

If an order is terminated for any reason, Purchaser shall be liable for all material and labor costs incurred by the Company, including but not limited to, cancellation costs to suppliers for special materials, tooling, work in progress, and finished Goods, if any, together with any identifiable incidental and consequential expenses incurred in fulfilling the order.

## 9. LOSS OR DAMAGE IN TRANSIT

Purchaser shall inspect the Products delivered hereunder immediately upon their arrival and shall within two (2) days of their arrival give written notice to Company of any claim of non-conforming goods or shipments. Clear receipts should be given only if goods have been examined, as an unqualified signature may react to the disadvantage of the Purchaser if the consignment should become the subject of a claim. In the event of short delivery or damage in transit, it is essential that the Company’s customer service department be advised within two days of receipt of goods. The following details should be sent in writing to the Company: (a) Bill of Lading, (b) Carrier’s name, (c) Condition of package, (d) Date of consignment received and (e) Extent of damage or shortage. In the event of non-delivery, the Company’s customer service department should be advised within seven (7) days of the date of invoice. The Company will not be responsible for goods lost or damaged in transit unless the above conditions are observed.

## 10. DELIVERY

The Purchaser shall be obliged to cooperate in the delivery of the Products and to take receipt of same. The Company may keep any goods refused or not accepted by the Purchaser at the latter party’s disposal for account and at the risk of the Purchaser.

## 11. DEFAULT

The Company shall have the right to discontinue delivery and also at its discretion to terminate any agreement in respect of any undelivered goods if the Purchaser defaults in payment as stated under clause 4 of this document or in respect of its other obligations to the Company.

## 12. DEFECTS AFTER DELIVERY

For a period of ninety (90) days after the goods have been delivered (“**Warranty Period**”), the Company will at the Company’s option, repair or replace Defective Products (as defined below), provided that Purchaser notifies Company of such defective Products within ten (10) days of discovery thereof and complies with the RMA process described in Section 15. As used herein the term “Defective Products”

means Products which are defective solely as a result of the materials or workmanship of Company and not other causes including without limitation improper use, defective design, mishandling, modification, abuse or neglect of Purchaser or its agents. THE FOREGOING REMEDY CONSTITUTES PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR DEFECTIVE PRODUCTS.

### **13. WARRANTY DISCLAIMER**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 12 AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, COMPANY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FURTHER, COMPANY DOES NOT WARRANT THE USE, OR THE RESULTS OF THE USE, OF THE PRODUCTS OR SERVICES AND PURCHASER SHALL BE SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY AND/OR QUALITY OF SUCH GOODS AND SERVICES. WITHOUT LIMITING THE GENERAL APPLICABILITY OF THE FOREGOING, COMPANY SPECIFICALLY NOTIFIES PURCHASER THAT THE PRODUCTS AND THE SERVICES (A) HAVE NOT BEEN EVALUATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION (FDA), AND (B) ARE NOT TESTED OR APPROVED FOR HUMAN USE. PURCHASER ACCEPTS SOLE RESPONSIBILITY FOR DETERMINING THE APPROPRIATE USE OF THE PRODUCTS AND/OR SERVICES, INCLUDING WITHOUT LIMITATION THE SELECTION OF INKS AND MATERIALS UTILIZED IN SUCH PRODUCT AND SERVICES. PURCHASER ASSUMES ALL RISK AND LIABILITY FOR LOSS OR DAMAGE RESULTING FROM USE OF THE COMPANY'S PRODUCTS WHETHER USED SINGLY OR IN COMBINATION WITH OTHER MATERIALS.

### **14. TOOLING AND NON-REOCCURRING ENGINEERING**

All tooling and engineering plans created for the Purchaser's job including CAD drawings, artwork, special fixtures, printing media, photographic plates, engineering specifications, or other process related specifications are unique to the Company's manufacturing process. All tooling and engineering plans are considered valuable intellectual property and solely owned by the Company. Tooling and engineering plans specific to Purchaser's jobs will be destroyed 90 days after the conclusion of that job without a written request from the Purchaser. Charges for non-reoccurring engineering, tooling or other set-up charges specified in the job quote are considered earned at the acceptance of the quote by the Purchaser and are non-refundable.

### **15. RETURN OF GOODS**

All returns of Defective Product must be authorized in advance. Unauthorized returns will be refused. In no circumstance may goods supplied against a firm order be returned without the Purchaser having first applied for and obtained both written consent and a Returned Materials Authorization (RMA) number from the Company. The Company reserves the right to refuse the return of any Product that has been used with infectious, microbiological, or radioactive substances or other materials that may be deemed hazardous to the employees of the Company. Product returned that are not determined by Company to be Defective Products, shall be returned to Purchaser at Purchaser's expense (including without limitation the two way cost of shipment) and Purchaser shall pay the full invoice

price for such Product in accordance with these Terms. Product approved for return must be received by the Company within 30 (thirty) days of the Company's issuance of an RMA.

**16. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY (I) THIRD PARTY DAMAGE CLAIMS, (II) COST OF SUBSTITUTE PROCUREMENT, OR (III) INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROPERTY, LOSS OF PROFITS, OR LOSS OF USE, WHETHER A CLAIM FOR SUCH DAMAGE IS BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, COMPANY'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS, LOSS OR DAMAGE CONCERNING THESE TERMS AND ALL RELATED SALES CONTRACTS SHALL IN NO EVENT EXCEED THE CHARGES FOR SERVICES RENDERED TO PURCHASER BY THE COMPANY FOR SUCH SERVICES INVOLVED IN SUCH CLAIM. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO DAMAGES ARISING FROM DEATH OR PERSONAL INJURY TO PERSONS OR TANGIBLE PROPERTY WHERE SUCH LIMITATION IS PROHIBITED BY APPLICABLE LAW INCAPABLE OF EXCLUSION BY CONTRACT.

### **17. MISCELLANEOUS**

These Terms and all sale contracts to which the same apply shall be construed in accordance with the laws of the State of California, U.S.A. without regard to its conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement. The authoritative text of these Terms shall be that in the English language set out herein. Any disputes arising in connection with these Terms and all sale contracts to which the same apply shall be finally settled by binding arbitration in held in the City of San Diego, California, U.S.A. under the commercial rules then in effect for the American Arbitration Association. Judgment upon any award resulting from such arbitration is final and binding on the parties, and may be entered and enforced in a court having proper jurisdiction. The arbitration proceeding shall be conducted in English. The award rendered by the arbitrator will include costs of arbitration, reasonable attorneys' fees, and reasonable costs for expert and other witnesses. Nothing herein is intended to limit or preclude Company from seeking injunctive relief or any other provisional remedy in order to protect its intellectual property rights. If any provision of this Agreement is held invalid, illegal, unenforceable, or in conflict with any law having jurisdiction over this Agreement, the validity, legality, and enforceability of the remaining portions or provisions hereof will not be affected or impaired.