



## Terms and Conditions for Order Confirmations

### TERMS AND CONDITIONS - ORDER CONFIRMATION

#### 1. DEFINITIONS.

(a) "Products" means the products and materials manufactured, sold and/or distributed by Strata-Tac, Inc. ("Strata-Tac") and/or listed or described in Strata-Tac's quotation or Buyer's Purchase Order (each as defined below), subject to these terms and conditions attached to Strata-Tac's order confirmation (these "Terms").

(b) "Purchase Order" means any written order for purchase of any of the Products pursuant to a price quote or otherwise, issued to Strata-Tac by the buyer of the Products ("Buyer").

#### 2. PURCHASE ORDERS, PRICES, PAYMENT AND TITLE.

##### 2.1 Purchase Orders.

(a) Strata-Tac may reject in whole or in part, any Purchase Order from Buyer for any reason. Purchase Orders that are accepted will be deemed accepted by Strata-Tac as of the date of the earlier of Strata-Tac's (i) issuance of an order confirmation with respect to such Purchase Order or (ii) shipment of the Products.

(b) These Terms shall constitute written notice signed by Strata-Tac. Any modifications to a Purchase Order by these Terms will be the final agreement between Strata-Tac and Buyer unless promptly objected to in writing by Buyer and delivered to Strata-Tac.

(c) STRATA-TAC WILL NOT ACCEPT AND OBJECTS TO ANY WRITING CONTAINED IN OR ADDED TO THE PURCHASE ORDER, OR OTHERWISE WHICH IS DIFFERENT FROM OR IN ADDITION TO STRATA-TAC'S PRICE QUOTE, ORDER CONFIRMATION OR THESE TERMS, EXPRESSLY INCLUDING ANY WRITING WHICH WOULD NEGATE ANY OF THESE TERMS. NO MODIFICATION OR WAIVER OF THESE TERMS SHALL BIND STRATA-TAC UNLESS SPECIFIED IN WRITING AND SIGNED AND ACCEPTED BY AN OFFICER OF STRATA-TAC. THESE TERMS CONSTITUTE WRITTEN NOTICE OF STRATA-TAC'S OBJECTION TO AND REJECTION OF ANY WRITING INCONSISTENT WITH THESE TERMS, WHETHER ISSUED OR DELIVERED TO STRATA-TAC PRIOR OR SUBSEQUENT TO THE DATE OF THE PURCHASE ORDER.

2.2 Prices. Prices for the Products will be those specified in Strata-Tac's quotation or price list and specification sheets and will be valid for 30 days from date of quotation unless otherwise stated therein. Unless otherwise stated in an applicable price quote, prices do not include, and Buyer is responsible for (i) all applicable federal, state or local sales, use or other taxes (except taxes on Strata-Tac's net income), (ii) shipping or packing charges, (iii) insurance, and (iv) any other expenses associated with the sale and transportation of the Products or tariffs and any similar charges imposed upon or in connection with the Products. Buyer will be responsible for all expenses associated with shipping, storage, and packing of the Products unless otherwise agreed upon by the

parties in writing signed by the party against whom enforcement is sought.

2.3 Payment. Payment for Products is due 30 days from the date of shipment or as otherwise specified in a particular price quote or the attached order confirmation. Strata-Tac may require payment to be made through an irrevocable letter of credit in favor of and acceptable to Strata-Tac and established by Buyer at its expense or may require prepayment in immediately available funds. Payment is made when Strata-Tac receives payment from Buyer. Strata-Tac may require prepayment. Strata-Tac may charge Buyer interest on all amounts unpaid after thirty (30) days at the rate of one and one-half percent (1.5%) per month from the date of shipment of the Products or the highest interest rate permitted by law, whichever is lower. If any invoice is not paid when due, payment shall be considered late, and Strata-Tac may, at any time, suspend delivery or other performance with respect to any Products without liability or penalty and take all other action permitted under the Uniform Commercial Code available to it.

2.4 Title and Security Interest.

(a) As payment for any sum due or to become due, Strata-Tac shall have a lien on all Buyer property in Strata-Tac's possession, if any, including work in progress and finished work.

(b) Title to and risk of loss for the Products sold hereunder will pass to Buyer upon delivery by Strata-Tac to the carrier transporting the Products at Strata-Tac's facilities, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder.

(c) Strata-Tac reserves, and Buyer hereby grants to Strata-Tac, a purchase money security interest in the Products, and all proceeds from the sale thereof, until full payment is received for all amounts due and payable by Buyer. Buyer hereby agrees to sign, upon request, any documents necessary to perfect Strata-Tac's security interest in said Products.

### 3. SHIPPING, RESCHEDULING, CANCELLATION, INSPECTION AND RETURNS.

3.1 Shipment.

(a) Products will be shipped F.O.B. Strata-Tac's facilities unless otherwise stated in a particular price quote. Method of shipment and carrier will be selected by Strata-Tac unless Buyer has specified in writing a method and carrier satisfactory to Strata-Tac. Buyer shall be liable for all costs for insurance and transportation, packing, storage, taxes and any other expenses incurred or licenses or clearance required.

(b) Buyer shall make all claims for damage to or loss of Products while in transit directly to the carrier; Strata-Tac shall have no liability whatsoever for such damage or loss and Buyer shall hold Strata-Tac harmless from and against all claims or liability resulting from any such damage or loss, if the carrier was identified by Buyer.

3.2 Shipment Dates. Requested shipment dates are subject to acceptance by Strata-Tac and shall only constitute approximate dates. At Strata-Tac's sole option, Strata-Tac may deliver the purchased Products in advance of the approximate delivery date.

3.3 Rescheduling. Prior to shipment, Strata-Tac will make reasonable efforts to accommodate shipping delays required by Buyer. If Buyer delays shipment of any Products when ready for shipment, Strata-Tac may hold or place such Products in storage, and all risks of loss will pass to Buyer at the time the Products are held or placed in storage. Buyer shall be responsible for any and all expenses incurred by Strata-Tac for delay in shipment/delivery. Strata-Tac also may, at its sole option, submit its invoice for said rescheduled, delayed, held or stored Products to Buyer and Buyer will pay as set forth in Paragraph 2.3 and reimburse Strata-Tac for all such expenses.

3.4 Force Majeure. Strata-Tac shall not be in default in the performance of its obligations hereunder, or be liable in damages or otherwise, for any failure or delay in performance which is due to

circumstances beyond Strata-Tac's reasonable control, including but not limited to, strike, lockout, concerted act of workers or other industrial disturbance, fire, explosion, flood, or other natural catastrophe, civil disturbance, riot, act of war or terrorism, or armed conflict, whether declared or undeclared, curtailment, shortage, rationing or allocation of normal sources of supply of labor, materials, transportation, energy, or utilities, mechanical breakdown, equipment failure, accident, Act of God, delay of subcontractors or vendors, sufferance of or voluntary compliance with acts of government or government regulations (whether valid or not), embargo, or due to any other cause whether similar or dissimilar to any of the causes or categories of causes described above.

3.5 Cancellation. Buyer shall have no right to cancel the Purchase Order once received by Strata-Tac, for any reason whatsoever, including by reason of a delay in delivery, subject to any provisions of Buyer's local law to the contrary. Buyer shall be liable for payment of Strata-Tac's costs and expenses incurred in connection with the purchase of, and labor associated with, any materials that have been produced by Strata-Tac that are not readily reusable or otherwise salvageable; provided, however, that Buyer shall also be responsible for the amount of the difference between the salvage value of any such materials and the costs incurred by Strata-Tac to purchase and otherwise produce such materials. Any conduct constituting a breach or repudiation of these Terms, including but not limited to failure to obtain a timely letter of credit or prepay the Purchase Order as required, will be deemed to be a cancellation by Buyer.

3.6 Shortage Claims and Inspection. Buyer shall have the right to inspect the Products within twenty-four (24) hours of receipt (or Buyer pick up, as applicable). Any quantities delivered by Strata-Tac to Buyer which do not exceed a 10% variation in increase or decrease of the Purchase Order shall constitute compliance with the Purchase Order. Any defects, shortages or other claims in connection with the Purchase Order must be made in writing and delivered to Strata-Tac within the 24-hour time period. Thereafter, Strata-Tac will be given reasonable opportunity to investigate and cure. In the event Strata-Tac's delivery is not in compliance with the Purchase Order, no deduction from the payment of any invoice will be binding upon Strata-Tac unless (i) Strata-Tac has been notified of shortages as specified herein, (ii) the parties agree to such a deduction, and (iii) a credit memo has been issued to Buyer by Strata-Tac. Any amount paid less than the full amount due under any invoiced amount will be considered a late payment as set forth in Paragraph 2.3 and Strata-Tac may suspend delivery or other performance with respect to the Products without liability.

3.7 Returns. Buyer acknowledges that Strata-Tac has no obligation to accept returns of any non-defective Products sold to Buyer. Strata-Tac, at its sole discretion, may authorize the return of unused Products. Such returns cannot be made without a return authorization in writing issued by Strata-Tac. Any such return of Products shall be freight prepaid by the Buyer, and shall be subject to re-inspection by Strata-Tac and credit for Products will be made only on the Products deemed suitable by Strata-Tac for resale (which may be less than the quantity of the Products returned by the Buyer) and all such returns shall be credited to the Buyer at the purchase price paid by Buyer less a thirty (30%) percent inspection, handling and restocking charge deducted by Strata-Tac.

#### 4. WARRANTIES AND REMEDIES.

4.1 Warranty. Strata-Tac warrants to the Buyer that the Products will substantially conform to the specifications in Strata-Tac's quotation or product catalog.

4.2 Warranty Limitation. EXCEPT AS SET FORTH IN PARAGRAPH 4.1 HEREOF, STRATA-TAC HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES TO THE BUYER WITH RESPECT TO THE PRODUCTS, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE OR

OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THE WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. BUYER ACCEPTS FULL RESPONSIBILITY FOR THE SELECTION AND USE OF THE PRODUCTS TO ACHIEVE INTENDED RESULTS. No representation or warranty concerning the Products shall be binding unless confirmed by Strata-Tac in writing. Acceptance of the Purchase Order is made only upon these Terms. Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations and warranties which are not so confirmed. Any advice or recommendation given by Strata-Tac to Buyer as to the storage, application or use of the Products which is not confirmed in writing by Strata-Tac shall be followed or acted upon entirely at Buyer's own risk. Except as provided by Strata-Tac in advance in writing, Buyer shall make no warranty or guaranty, orally or in writing, concerning the Products.

4.3 Buyer's Remedy. Subject to the provisions contained in Paragraphs 5.1 and 5.3 herein, Strata-Tac's entire liability and Buyer's exclusive remedies under the warranties described in this Paragraph 4 shall be for Strata-Tac, at its option, and as the case may be, (i) to use reasonable efforts to remedy such defects within a reasonable period of time; or (ii) to replace the affected Product(s); or (iii) to refund to Buyer the amount paid for the affected Products, upon the return thereof to Strata-Tac.

4.4 Trademarks and Patents. Buyer covenants and agrees to indemnify and hold Strata-Tac harmless from and against any and all liability and damages, losses, costs or expenses, including attorneys' fees and court costs, which Strata-Tac hereinafter may incur, suffer or be required to pay to third parties relating to, arising out of, or occurring in connection with the use or misuse of trademarks, designs, or patents reproduced by Strata-Tac on any Products for and at the direction of the Buyer; Strata-Tac having no knowledge of agreements between Buyer and others, or knowledge of Buyer's right to use such trademark, designs or patents, if any.

## 5. LIMITATION OF LIABILITY

5.1 Limitation of Liability. The total liability of Strata-Tac to Buyer from any cause whatsoever, whether arising under contract, warranty, tort (including negligence), strict liability, products liability or any other theory of liability will be limited to the lesser of (i) Buyer's actual damages or (ii) the purchase price paid to Strata-Tac for the Products that are the subject of Buyer's claim. Strata-Tac is not and will not be liable for SPECIAL, PUNITIVE, INDIRECT, COLLATERAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES including but not limited to loss of profits or revenues, damage to or loss of the use of the Products, loss of work in process, downtime, damage to property, claims of third parties, including personal injury or death suffered as a result of provision or use of the Products or failure of Strata-Tac to instruct or warn, or to adequately instruct or warn, about the safe and proper use of the Products, whether or not Strata-Tac has been advised of the potential or risk for such liability and damages. Buyer's limitation of liability and remedies provided herein shall be Buyer's sole and exclusive remedy and no other course of action may be maintained. Buyer further covenants and agrees to indemnify and hold Strata-Tac harmless from and against any and all liability and damages, losses, costs or expenses, including attorneys' fees and court costs, which Strata-Tac hereinafter may incur, suffer or be required to pay to third parties relating to, arising out of, or occurring in connection with the use of any of Buyer's products which may incorporate the Products.

5.2 Advice. No charge has been made for advice furnished and Strata-Tac makes no representation or warranty regarding any advice and assumes no obligation or liability for the use of or the results

obtained, or conclusions reached from such advice and Buyer expressly accepts all such advice at Buyer's own risk. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING AND SHALL NOT RELY UP ON ANY ORAL STATEMENTS MADE BY ANY STRATA-TAC PERSONNEL REGARDING THE PRODUCTS. BUYER FURTHER ACKNOWLEDGES THAT ORAL STATEMENTS MADE BY STRATA-TAC PERSONNEL ARE NOT AND WILL NOT BE CONSTRUED AS, CONSTITUTE OR CREATE ANY WARRANTY FOR A PARTICULAR PURPOSE; AND THAT ALL SUCH WARRANTIES ARE DISCLAIMED (AS SET FORTH IN PARAGRAPH 4.2 HEREOF).

5.3 Time for Claims. All claims hereunder against Strata-Tac must be brought within 1 year after the cause of action arises and Buyer expressly agrees to this 1-year period and waives any other statute of limitations which might apply by operation of law or otherwise including under the Uniform Commercial Code.

5.4 Storage and Transportation. Strata-Tac shall, after delivery, have no liability in respect of any changes in quality of the Products arising from storage or transportation of the Products or from willful damages, negligence, abnormal working conditions, failure to follow Strata-Tac's instructions (whether oral or in writing), misuse, or alteration of the Products.

## 6. GENERAL TERMS

6.1 Choice of Law. All disputes arising in connection with these Terms will be construed and governed under the laws of the State of Illinois without regard to its conflict of law provision. All disputes will be resolved in Cook County, Illinois or at Strata-Tac's sole option, by arbitration or in a court of competent jurisdiction, and Buyer hereby irrevocably consents to the jurisdiction and exclusive venue of the state and federal courts in Cook County, Illinois whether suit or legal action is pursued by Buyer or Strata-Tac and Buyer agrees to appear in any action so brought by Strata-Tac upon written notice thereof.

6.2 Severability. The invalidity or unenforceability, in whole or in part, of any provision in these Terms shall not affect in any way the remainder of the provisions herein which shall be revised in full force and effect.

6.3 No Assignment. No rights or obligations arising under these Terms may be assigned or delegated by Buyer unless expressly agreed to in writing by Strata-Tac. Any assignment contrary to this provision will be in breach of these Terms, void and of no force or effect. No sale of any Products subject of these Terms by Buyer to a third party will be effective to transfer the rights or obligations of these Terms to the third party unless expressly agreed to in writing by Strata-Tac.

6.4 Entire Agreement. These Terms, together with Strata-Tac's quotation, price list and specification sheets, product catalog and any other materials referenced in or expressly made a part of these Terms, constitute the final, complete and entire agreement between Strata-Tac and Buyer and supersede all prior and contemporary agreements, oral or written or contained in Buyer's purchase order or release, with respect to the sale of the Products.

6.5 Confidentiality. Buyer shall keep confidential and not disclose to any persons, or use, any and all confidential and proprietary knowledge, information or materials, with respect to Strata-Tac's business, including, without limitation, Strata-Tac's supplied information, pricing, quantities, business and marketing plans and strategy, processes and trade secrets for so long as permitted by applicable law. Additionally, the use of Strata-Tac's name or logo or other proprietary marks or those of Strata-Tac's customers in any advertisement or other publication of Strata-Tac must be pre-approved in writing by Strata-Tac.