

# True Fabrications, Inc.

## Standard Terms and Conditions of Sale

True Fabrications, Inc. is herein referred to as the Seller and the customer or person or entity purchasing goods and/or services ("Products") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale of the Products and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement (the "Agreement") governing the sale of Products by Seller to Buyer. Seller reserves the right in its sole discretion to refuse orders.

1. **Pricing.** Unless otherwise specified in writing by Seller, the price quoted or otherwise specified by Seller shall remain in effect for thirty (30) days. All prices are exclusive of taxes, transportation and insurance, which are to be paid by Buyer.

2. **Taxes.** Any current or future tax (excluding income tax on Seller) or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Products, shall be for Buyer's account and shall be added to the price.

3. **Terms of Payment.** Unless otherwise specified in writing by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller, including attorneys' fees and costs of collection, is not paid when due, it shall bear interest, at twelve percent per annum (12%) or, if this rate exceeds the maximum rate permitted by law, at the maximum legal interest rate, from the date on which it is due until paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Products theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries.

4. **Shipment and Delivery.** Shipments are made F.O.B. Seller's shipping point. Risk of loss or damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed, and Seller shall have no liability for late deliveries. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Freight estimates are available upon request. Freight charges may vary between initial estimate and the actual cost incurred at the time of shipment. Seller reserves the right to invoice actual freight charges incurred unless otherwise mutually agreed upon.

5. **Shipment Schedule.** Expected shipment times are expressed in business days. Actual shipment times may vary due to quantities ordered, seasonality and other factors. Orders with multiple items may be consolidated and shipped together.

6. **Acceptance of Product.** Buyer shall promptly inspect the Product upon receipt. Buyer shall be deemed to have accepted the Product unless Buyer notifies Seller in writing within fifteen (15) days of delivery of any non-conformance of the Product. Seller shall have the right to repair or replace, at its option, the non-conforming Product within a reasonable time without being in breach of these terms and conditions and without incurring any liability.

7. **Returns.** Returns will only be accepted for Products covered

under warranty and only with a prior return authorization. A Return Authorization (RA) number can be requested by contacting Customer Service at 206.624.3195. Please have the following information available: part number, quantity, customer PO number, and the reason for return. Returned shipments must include all original parts and paperwork. The RA number must appear on the exterior of each individual shipping container. RA numbers expire 45 days from the date of issue. Freight charges are the responsibility of the returning party unless Seller determines the Product is covered under warranty. Returns will not be allowed for Products that have been altered from their original condition.

8. **LIMITED WARRANTY.** Products are warranted to the original purchaser to be free from defects in material and workmanship under normal use and regular service and maintenance for a period of one year from the date of shipment and will be replaced or repaired by Seller at Seller's option without charge upon inspection by Seller confirming that no warranty exclusion applies. Seller will pay or reimburse shipping costs for valid warranty claims. Products repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of repair or shipment, whichever is longer. This is the extent of Seller's liability under this warranty and, upon the expiration of the applicable warranty period, all such liability shall terminate.

Manufacturers of certain Products not manufactured by Seller may provide warranties for such Products. To the extent permissible by the contract between Seller and these other manufacturers, Seller hereby assigns to Buyer any applicable manufacturer warranties. Seller makes no representation or warranty, and Buyer shall seek no recourse from Seller, regarding the warranties of other manufacturers.

THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER WITH RESPECT TO THE PRODUCTS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

**Warranty Exclusions:** Seller does not warrant Products against normal wear and tear, unauthorized modifications, alterations or repairs, improper installation or maintenance, accident, misuse, negligence, damage, natural discoloration (fading) of materials, or if the Product is used for a purpose for which it was not recommended or designed by the manufacturer. Seller is not responsible for the cost of any unauthorized inspection, disassembly or repair that is not approved in advance by Seller. Except as expressly stated in this warranty, Seller shall not be liable for direct, indirect, incidental, or other types of damages arising out of, or resulting from the use of the Product.

**Authority of the Parties:** No soliciting agent, representative or employee of Seller shall have the power to waive any of the terms or provisions of this Paragraph 8, to incur any additional obligations, or make any additional representations or warranties on behalf of Seller, unless the same is evidenced by an agreement in writing signed by Seller's president.

9. **LIMITATION OF REMEDY AND LIABILITY.** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT

UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 8.

SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Products is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

10. **Excuse Of Performance.** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or action or other unforeseen circumstances or causes beyond Seller's reasonable control.

11. **Cancellation/Rescheduling.** Buyer may cancel/reschedule orders only upon reasonable advance written notice—in no event less than ten business days before the scheduled ship date—and upon payment to Seller of Seller's cancellation/rescheduling charges, including but not limited to, all costs and expenses incurred and to cover commitments made by the Seller and a reasonable profit thereon. Seller's determination of such charges shall be conclusive.

12. **Assignment.** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

13. **Indemnity.** Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, loss or damage of any

kind whatsoever, including consequential damages, and damages from tort, negligence, strict liability, breach of warranty, breach of contract or other legal theory, along with costs including reasonable attorneys' fees connected therewith, brought by or on behalf of any person or entity arising out of or relating in any manner to the Products which are the subject hereof. Buyer's agreement to indemnify, defend and hold Seller harmless is based upon the express understanding that said obligations apply whether such injury or damage be due, or alleged to be due, in whole or in part to the negligence or other liability producing conduct on the part of the Seller.

14. **General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. If any provision of these terms and conditions shall be held to be invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining provisions of terms and conditions. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. The interpretation of the Agreement and of the rights and obligations of the parties under the Agreement, and all questions concerning the validity of the Agreement, shall be governed by the laws of the State of Washington, without regard to Washington's choice of law provisions. Any suit, action or proceeding brought by either party to enforce any term or provision of the Agreement, or to determine the validity of the Agreement, or concerning the Agreement or the subject hereof in any manner, shall be commenced and maintained solely in state or federal courts in King County, Washington. The Convention for the International Sales of Goods shall not apply to this agreement.