

# Terms + Conditions

## 1. ORDER + ACCEPTANCE

By submitting an order for the goods described herein, the Buyer ("Buyer") shall have agreed to purchase the goods subject to all terms of Midmark ("Seller") including these TERMS AND CONDITIONS. Buyer's order is subject to and effective only upon acceptance and approval at Seller's offices in Kansas City, Kansas as evidenced by Seller's issuance of an Order Acknowledgment or Invoice. The resulting contract shall be deemed made in Kansas and shall in all respects be governed and interpreted according to the laws of the State of Kansas. Buyer also consents to the jurisdiction of Kansas courts over any dispute involving this order.

## 2. ENTIRE AGREEMENT

This order as accepted and approved by Seller constitutes the entire final agreement between the parties. Except as otherwise provided in writing by Seller, the terms set forth herein constitute the sole TERMS AND CONDITIONS for Buyer's order. Seller's acceptance of Buyer's order is expressly conditioned on Buyer's assent to these TERMS AND CONDITIONS which may not be supplemented, modified, superseded or otherwise altered except as authorized in writing by Seller. Any different, conflicting or additional terms in Buyer's purchase order or any other document of Buyer are rejected and Seller's TERMS AND CONDITIONS shall prevail.

## 3. TERMS OF PAYMENT

Midmark may, but is not obligated to, sell products to a Buyer on credit. In the event that Midmark sells products on credit, then: (a) payment in full shall be due and payable thirty (30) days from the date of invoice; (b) in the event Buyer fails to pay Midmark the purchase price within thirty (30) days of the date of invoice, Buyer shall pay Midmark interest on such delinquent payment at one and one-half percent (1.5%) per month, compounded monthly, or the highest rate permitted by law. Buyer shall pay all collection expenses, including but not limited to attorney's fees, incurred by Midmark in the collection of amounts owed by Buyer.

## 4. PRICES + QUOTES

Prices on products specified herein are F.O.B. Seller's factory unless otherwise specified in writing and are exclusive of any city, state, local or federal tax. Prices are subject to adjustment without notice and Seller reserves the right to correct errors in prices or specifications. Any quotation (whether written or oral) is not an offer to contract or acceptance of an order. Similarly, neither a price list nor a catalog constitutes an offer to sell or contract, but are provided solely for customers' convenience.

## 5. ORDER CHANGES

Any requested change to an order after the acknowledged ship date could result in an extension of the scheduled ship date. The new ship date will be rescheduled/acknowledged based on the extent of the changes requested.

## 6. CUSTOM ORDER CHANGES

All changes should occur before the release of the order. Order changes made after release of an order may incur a change fee and a shipping date change. This fee will cover materials, labor and handling costs.

## 7. CANCELLATIONS

Cancellation 48 hours from time of order placement is subject to penalty. An assessment will be made at the time of cancellation to determine the amount of penalty including material, labor and handling costs. Cancellations must be received in writing. Non-standard color and custom configuration orders may not be cancelled without penalty. Orders for equipment, cabinetry and containment/boarding of special design, construction, finish or upholstery are not subject to cancellation after Buyer's acceptance of order acknowledgement. Special design products, custom design cabinets/containment and special upholstery WILL NOT be accepted for credit.

## 8. TAXES

Any sales, use, property or other taxes or duties which Seller may be required to pay or collect (under any existing or future law) in connection with the sale, purchase, delivery, storage, processing, consumption or use of the products purchased herewith shall be for the account of Buyer and Buyer shall promptly reimburse Seller therefore.

## 9. DELIVERIES

Delivery dates are estimates only and time shall not be of the essence unless specifically provided by Seller in writing. Seller will not have any liability for loss or damage resulting from a delay in a scheduled delivery or for non-delivery resulting from labor trouble, part or material shortages, accident, fire, war, strike, natural disaster, carrier delays or any contingency whatsoever (whether of the same class of those enumerated or otherwise) beyond its reasonable control. Buyer assumes all freight, handling and installation costs and the risk of loss or delay in transit. Seller will assist Buyer with transit arrangements, but Seller shall be free of any liability in connection therewith. Title to all materials and products sold by Seller shall pass to Buyer upon delivery to the carrier and Seller's responsibility ceases at that time. Risk of loss, injury or destruction of the products shall be borne by the Buyer and any such loss, injury or destruction shall not release Buyer from payment of the purchase price. Request to reschedule or delay shipment of orders that have been built will incur storage and handling fees until shipped. If shipment of an order is delayed by the Customer beyond the estimated completion/ship date, the Customer could be subject to paying storage fees and the Customer's balance to Midmark.

## 10. INSPECTION

Buyer must inspect all materials for shortages, damages, conformity with order and defects before signing any documentation requested by the carrier. Buyer must immediately complete such inspection and shall not accept delivery of goods that are damaged or not in accordance with the bill of lading or packing slip without proper notification to the carrier and Seller. If goods are damaged, defective, shorted or appear not to conform to the order, Buyer shall discontinue their use and immediately notify the carrier and Seller of such condition and afford a reasonable opportunity to inspect the same. Buyer shall make, or provide Seller in writing with all information necessary to make, a claim against such carrier for any shortage, damage or discrepancy of the shipment within fifteen (15) days after receipt of the goods. Claims or written information thereon not so presented within fifteen (15) days after receipt of the goods will not be allowed. No products will be taken back and credited or replaced unless arrangements for their return have been made in compliance with Seller's Return Policy stated below. See Damages/Returns/Repairs section on how to file a freight claim.

## 11. LIMITED WARRANTY

Seller warrants to the initial buyer only of products manufactured by it that such products are free from defects in materials or labor for varying periods depending on the particular product and subject to the limitations and conditions set forth herein. Seller's stainless steel products are warranted to be free from such defects for one year from purchase date. Seller's mechanical and electrical products, parts, devices and components (including such parts, devices and components of stainless steel products), and other non-stainless steel products are warranted to be free from such defects for only one year. Seller disclaims any express or implied warranty for products not manufactured by Seller and the only warranty available therefore to Buyer is that offered by the products' manufacturers.

The warranty period shall run from the date of delivery to Buyer. If within the applicable warranty period a product proves to be defective as described herein, Seller will repair or replace the product, at Seller's sole discretion, conditional upon Buyer's written notice of the defect within five (5) days after its discovery. Upon receipt of Buyer's notice including substantiation of Buyer's status as the initial

buyer and details of the defect, Seller shall advise Buyer whether it plans to repair or replace the product. Seller's obligation is solely limited to repair or replacement of a defective product and in no event shall Seller be liable for transportation from or to Seller's offices or any other expense which may arise in connection with this Limited Warranty.

SELLER MAKES NO OTHER WARRANTY OR GUARANTEE OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS, AND/OR MERCHANTABILITY. THE ABOVE LIMITED WARRANTY CONSTITUTES OUR ONLY WARRANTY AND NO PERSON OR ENTITY IS AUTHORIZED, ON BEHALF OF THE SELLER, TO MODIFY OR EXPAND UPON THE PROVISIONS EXPRESSED IN THIS PARAGRAPH 11. THE SELLER'S LIABILITY UNDER THIS LIMITED WARRANTY SHALL BE LIMITED AS PROVIDED FOR ABOVE AND THE FOREGOING SHALL BE THE BUYER'S SOLE REMEDY AND RECOURSE UNDER THIS CONTRACT. There are no warranties which extend beyond the description on the face hereof and goods are sold as is. Seller's warranty is only available to the initial buyer of its products.

Buyer agrees to comply with all instructions and specifications furnished by Seller relating to installation, care and application of products sold. Buyer agrees that it will not modify, misapply, or misuse such products in any manner which would deviate from Seller's instructions. Any repairs, alterations or service provided by parties other than Seller, or its authorized representative, may void this Limited Warranty. This Limited Warranty shall not apply to normal wear and tear, damage caused by accident, negligence, improper operation or the use of corrosive materials (including without limitation bleach-sodium hypochlorite) on stainless steel surfaces. THE SELLER'S LIMITED WARRANTY MADE IN CONNECTION WITH THIS SALE SHALL NOT BE EFFECTIVE AND SHALL BE VOID UNLESS SUCH GOODS ARE APPLIED AND USED IN ACCORDANCE WITH SELLER'S INSTRUCTIONS.

#### **12. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY SPECIAL, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, DELAY, PRODUCT FAILURE, IMPAIRMENT OF GOODS OR OTHERWISE AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE, and in any case, Seller's liability for any and all losses and damages sustained by Buyer and others, rising out of or by reason of this contract, shall not exceed the original purchase price of the products upon which liability is founded.

IN NO EVENT SHALL ANY ACTION BE COMMENCED AGAINST THE SELLER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION WITH RESPECT TO WHICH THE CLAIM IS MADE HAS ACCRUED. SELLER SHALL NOT BE RESPONSIBLE FOR EXPENSES FOR REPAIRS NOT MADE BY SELLER WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER.

#### **13. RETURN POLICY**

All products being returned for any reason or delivered for repair service (whether or not pursuant to our Limited Warranty) must receive advance authorization from Seller. Buyer must contact Midmark at 1.800.MIDMARK to receive a Return Authorization Number. All products returned, except for warranty service are subject to a minimum 25% restocking charge. Buyer will be responsible for all freight charges on returns.

Note: Certain items are non-refundable: special projects/products, custom configured containment products, discontinued items or parts, custom or nonstandard colors and service parts if value is less than \$50.

#### **14. INDEMNITY**

Buyer agrees to protect, defend, indemnify and hold harmless the Seller from and against any and all direct loss suffered and any liability to third parties due to bodily injury (including death) to any person or animal, or damage to any property as a result of Buyer's misuse, misapplication or failure to inspect or maintain the Seller's products, or such loss or liability caused by the act or omission of the Buyer in the performance of any services using said products. Buyer also agrees to indemnify and hold harmless the Seller for any taxes paid as discussed in paragraph 8. This indemnity provision expressly includes attorney's fees and settlements of claims in a reasonable manner under the circumstances.

#### **15. UNLAWFUL USE**

Buyer agrees that no goods covered by this contract shall be used in any manner violative of any laws of the United States, whether state or federal, or local ordinance, and no such goods shall be distributed to any foreign country in any manner prohibited by United States law.

#### **16. REGULATIONS AND CODES**

Seller makes no representation or promise, express or implied, that goods delivered hereunder will conform to any state or local laws, regulations, codes, ordinances, or standards, except as particularly and expressly specified and agreed upon for compliance in writing as a part of the contract between Buyer and Seller.

#### **17. SELLER'S REMEDIES**

Seller hereby expressly reserves all remedies provided for by the Uniform Commercial Code and such remedies are expressly cumulative in nature and include all of the available remedies for breach and Seller need not make any election of remedy.

**18. MISCELLANEOUS** Buyer may not assign its rights or duties relative to this order without Seller's written consent, but Seller may assign its interests in such order to any affiliate or successor in interest. The waiver of any breach of these TERMS AND CONDITIONS shall not constitute a waiver as to any further breach. Any of these TERMS AND CONDITIONS found to be invalid, illegal or unenforceable, shall be considered inoperative and the remaining TERMS AND CONDITIONS shall be valid and enforceable as though such provisions are not included herein.

## **Billing Terms**

### **Shipping + Handling**

Freight is charged on all orders unless otherwise stated. Payment options, freight and tax are based on shipments within the US. Shipments outside the US will be quoted at the time of the order.

Contact 1.800.MIDMARK with questions.

## **Delivery of Product**

We use the following methods of freight for small shipments:

- Express Saver (Ground, 3-6 day service)
- Standard Overnight
- 2 Day Collect (payment is collected at the time the order is delivered)
- Pick-Up (customer may pick up their shipment at our warehouse in Kansas City, KS and save on all freight charges)

Equipment over 70 lb will be shipped by common carrier or vanline service (4-6 day service). Call Customer Experience at 1.800.MIDMARK for a freight quote. Alaska/Hawaii/Canada and international shipments require special freight quotes.

## Delivery Terms

### Delivery and Acceptance

Midmark will make reasonable efforts to notify Buyer of the anticipated delivery date of the Products. Buyer shall be on site upon delivery and shall be responsible for unloading the Products. If within five (5) days of delivery Buyer has not provided Midmark an itemized written notice of an objection to the condition of the Products, Buyer shall be deemed to have accepted the Products as satisfactory in all respects.

## Damages/Returns/Repairs

FIRST, contact our Technical Services at 1.800.MIDMARK.

### How To File A Freight Claim

1. Inspect ALL packages upon arrival. If containers show evidence of damage when delivered the packages should be opened immediately before the driver leaves. The shipment should be inventoried and inspected jointly by the Customer and the driver. The driver will then make proper notation on the delivery receipt.

Customer must inspect all materials for shortages, damages, conformity with order and defects before signing any documentation requested by the carrier. Customer must immediately complete such inspection and shall not accept delivery of goods that are damaged or not in accordance with the bill of lading or packing slip without proper notification to the carrier and Midmark. If goods are damaged, defective, shorted or appear not to conform to the order, Customer shall discontinue their use and immediately notify the carrier and Midmark of such condition and afford a reasonable opportunity to inspect the same.

Customer shall make, or provide Midmark in writing with all information necessary to make a claim against such carrier for any shortage, damage, or discrepancy of the shipment within five (5) days after receipt of the goods. Claims or written information thereon not so presented within five (5) days after receipt of the goods will not be allowed. No returned products will be accepted, credited or replaced, unless arrangements for their return have been made in compliance with Midmark's Return Policy. If containers do not show evidence of damage, there may be "concealed damage". Customer must report any concealed damage within five (5) days after receipt of the shipment. All packaging and contents must be held for this inspection.

2. Customer must check goods and contents against packing slip, weight against bill of lading, containers, etc.

3. Customer fills out "Inspection Report of Loss or Damage Discovered After Delivery" (a standard form).

4. Call Midmark's Technical Service to file a claim (1.800.MIDMARK).

5. Customer and consignee both sign the "Inspection Report of Loss or Damage Discovered After Delivery" form. A copy is left with the consignee and should be forwarded to Midmark's TECHNICAL SERVICE.

### Repairs

Repairs are handled by Technical Service at 1.800.MIDMARK. It is mandatory you contact them prior to sending in your product for repair.

**All Shor-Line products manufactured by Midmark are intended for animal use only and none of the products constitute medical equipment to be used in connection with any human medical applications.**