

TERMS AND CONDITIONS OF SALE FOR JET BOARD™ AND TRITON PRODUCTS

- 1. ENTIRE AGREEMENT.** Sales by MiTek Inc. and its subsidiaries and affiliates (“Seller”) are governed by these terms and conditions. This is an offer conditioned on Buyer’s acceptance of all, and only these, terms. Seller objects to any different or additional terms. This is the final and complete expression of all terms and conditions of the agreement. Any representations, promises, warranties, or statements that are not contained here are void. These terms and conditions can be modified, waived, or amended only in a writing signed by both Buyer and Seller. Buyer’s acceptance of the Products from Seller shall conclusively be deemed as assent to all of Seller’s terms in connection with the sale of the Products. Notwithstanding that Buyer may use purchase orders or other documents that contain preprinted terms and conditions of sale and purchase, any such terms or conditions which modify or contradict or are in addition to the terms contained here in shall be disregarded.
- 2. PAYMENT.** Payment is due according to the terms set forth on the invoice. If Buyer fails to pay any sum owed when due, a late payment charge of 1.5% per month will be made on all past due amounts. In no event will this charge exceed the maximum amount allowed by law. Buyer also agrees to pay actual attorney’s fees and other costs incurred by Seller to collect sums owed.
- 3. PRICING.** Unless otherwise agreed to in writing by the parties, Seller reserves the right to adjust the price upon prior written notice to Buyer at least thirty days prior to delivery. If delivery is subject to fuel charges, such surcharges are subject to change at any time prior and up to the time of delivery.
- 4. LIMITED WARRANTY.** Seller warrants that the products delivered hereunder (hereafter, “Products”) meet Seller’s published specifications for the Products. Seller shall convey good title to the Products and the Products shall be delivered free from any lawful security interest, lien, or encumbrance. The warranties contained in this paragraph, and in any written warranty by Seller applicable for specific Products, if any, are Seller’s sole warranties with respect to the Products and are made expressly in lieu of and exclude any other warranties, express or implied. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 5. REMEDY LIMITATIONS.** Buyer’s exclusive remedy and Seller’s total liability to Buyer for claims is expressly limited as follows: Seller has the option of replacement of, or repayment of the purchase price paid for, the Products supplied hereunder with respect to which damages are claimed. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR AMOUNTS IN EXCESS OF THE PURCHASE PRICE PAID FOR THE PRODUCTS WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, AND EXEMPLARY OR PUNITIVE DAMAGES. As used in these terms and conditions, “claims” mean all assertions of any legal or equitable cause of action, including, but not limited to, contract, express or implied warranty, indemnity, contribution, or subrogation, negligence, strict liability, or other tort, arising out of, or related to, the performance or non-performance of the agreement between Buyer and Seller, or the Products delivered or supplied hereunder.
- 6. CLAIMS.** All claims by Buyer shall be deemed waived unless made by Buyer within thirty days of receipt of the Products; provided that for any claim which is not readily discoverable within thirty days, such claim will be deemed waived unless made by Buyer within ninety days after receipt of the Products or within thirty days after Buyer learns or should have been reasonably aware of facts giving rise to such claim whichever first occurs. Notwithstanding the foregoing, no claim may be made by Buyer after the sale by Buyer of its goods incorporating the Products. At no time is Buyer entitled to set off the amount of any claim it asserts against Seller from the price invoiced to it by Seller, unless the offset is defined and allowed in writing by Seller.
- 7. DELAYS.** No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the reasonable control of the party affected, including, but not limited to, Act of God, fire, explosion, flood, war, act of or authorized by an government, accident, labor disputes, a suppliers allocation of material due to force majeure, or inability to obtain material, equipment or transportation. Quantities so affected may be eliminated from the agreement between the parties without liability, but the agreement shall remain otherwise unaffected. Seller shall have no obligation to provide substitute products in the event the Products specified herein are unavailable or delayed.
- 8. DEFAULT OF BUYER.** Buyer will be in default if (a) Buyer fails to pay to Seller any amount when due under this agreement, (b) Buyer fails for a period of five days after receiving written notice from Seller to fulfill or perform any provisions of this agreement (other than the prior provision relating to due date of payments), (c) Buyer becomes insolvent or bankrupt, or a petition is filed voluntarily or involuntarily and not dismissed within thirty days from filing, or (d) Buyer makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of Buyer’s assets are attached or seized under legal process and not released within thirty days thereafter. Upon Buyer’s default, Seller may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (a) make shipments subject to receipt of cash in advance, (b) terminate this agreement and declare immediately due and payable the obligations of Buyer for Products previously shipped, notwithstanding any other provision in these terms and conditions, (c) demand reclamation, and/or (d) suspend any further deliveries until the default is corrected, without releasing Buyer from its obligations under this agreement.

9. **TAXES.** The Buyer shall reimburse the Seller for all taxes (excluding income taxes), excise or other charges which Seller may be required to pay to any government (national, state or local) upon the sale, production or transportation of the Products sold here under.
10. **TITLE AND RISK.** Unless otherwise specified by Seller , delivery terms are ex works (F.O.B. Seller's manufacturing plant) and title and risk of loss or damage shall pass to Buyer upon delivery of goods to any carrier at Seller's plant or other point of origin. Seller reserves the right to route all shipments, and may assist Buyer in processing claims against carriers without incurring liability for those claims. Seller may increase or decrease the quantity shipped by no more than 10% over the ordered amount to avoid waste, to avoid breaking customary shipping units, to meet minimum tariff requirements, or to comply with government regulations.
11. **GOVERNING LAW.** These terms shall be governed by, and interpreted in accordance with, the laws of the State of Texas. Any dispute between the parties shall be brought exclusively in state or federal courts located in the Houston, Texas.