



## Terms and Conditions

As a condition to all orders placed with Front Panel Express, LLC, the Buyer hereby accepts and agrees to comply with these terms and conditions, and any other terms and conditions of Front Panel Express, LLC's invoice, account statement, or related documents (collectively, the "Terms and Conditions"), and agrees that such Terms and Conditions supersede those contained in any purchase order or other document regarding the subject matter hereof. The Terms and Conditions apply to all orders placed by Buyer, in whatever form received by Front Panel Express, LLC, including without limitation, internet and telephone orders. Front Panel Express, LLC's acceptance of all orders placed by Buyer, however received, is limited to these Terms and Conditions. FRONT PANEL EXPRESS, LLC HEREBY OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS IN BUYER'S ORDER, OR ANY OTHER DOCUMENT OR FORM TRANSMITTED ON BEHALF OF BUYER.

### 1. Price

Prices for goods and services (hereinafter "goods") are a) generally given by the actual version of the "Front Panel Designer", a design software (hereinafter "software") which Front Panel Express, LLC (hereinafter "Seller") makes available for its customers (hereinafter "Purchaser"), or b) given with a written quote if explicitly asked for. Prices for certain additional goods and services are given on appropriate pages of Seller's website. Seller reserves the right to generate a quote with adapted prices before accepting an order, if certain limits for the volume of ordered items and/or for the order value are exceeded or certain conditions arise, which makes this necessary. If not stated otherwise the prices include all services needed to deliver the ordered product to the specified place within the specified time. The invoice total may include taxes or other values demanded by law which were not specified with the price (see 4.).

### 2. Payment

All invoices not paid with credit card or by Cash On Delivery shall be due and payable through check or wire transfer without deduction within thirty (30) days counting from the day of billing, unless otherwise indicated on Seller's applicable quotation, acknowledgment or invoice. Two (2) Percent of the total may be deducted if paid within ten (10) days. Any invoice not paid when due shall have interest added to the unpaid balance thereof, on a monthly basis, at the rate of twelve percent (12%) per annum.

### 3. Delivery and Shipment

All shipments by Seller are F.O.B. point of shipment; therefore, freight and insurance costs are the responsibility of Purchaser and delivery to the carrier at Seller's factory shall constitute delivery to Purchaser. The securing of the goods on board the carrier shall be deemed to have occurred subsequent to delivery. Risk of loss and damage shall pass to Purchaser upon delivery of the goods to the carrier, or, in the event Purchaser requests storage rather than shipment, upon receipt by Seller of Purchaser's directive to place the goods purchased hereunder in storage. A valid signed bill of lading, receipt, or proof of delivery from the carrier, shall be conclusive proof of proper delivery and shipment by Seller. Purchaser understands and agrees that Seller aims to meet the confirmed delivery date exactly but that the actual ultimate date of delivery at Purchaser's shipping destination may differ from the delivery date hereunder. Purchaser authorizes Seller to execute any shipper's or carrier's standard bill of lading or contract for

carriage of the goods purchased hereunder. Purchaser is responsible for designating the mode of shipment and the name of the carrier at the time of the order, and for procuring any desired insurance. Any additional routing instruction shall be provided in writing, not less than seven (7) days prior to the proposed shipment date, to [order@frontpanelexpress.com](mailto:order@frontpanelexpress.com). Seller shall have the right to choose an alternate mode of shipment if the mode designated is not available or feasible. If no shipping instructions are received from Purchaser, Seller will ship via a national carrier, selected in its sole discretion, which cost will be added to the invoice for the goods.

#### **4. Taxes**

Any taxes which Seller may be required to pay or collect, upon or with respect to the manufacture, sale, purchase, storage, use or consumption of the goods or any material relating thereto, including taxes upon or measured by the receipts from the sale thereof, shall be added to the purchase price and shall be paid by Purchaser.

#### **5. Performance Excused**

The fulfillment of each order is subject to Seller's ability to obtain the necessary raw materials and to applicable government regulations, orders, directives and restrictions that may be in effect from time to time. Seller shall not be liable for loss, damage or delay in manufacture, shipment or delivery of the goods or for its inability to perform any or all of its obligations hereunder due to the failure or happening of events or conditions rendering performance commercially impracticable, or to any causes beyond Seller's control, including but not limited to, any acts or omissions of Purchaser, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion, war, delays in transportation, late delivery by Seller's suppliers or subcontractors, fuel or other energy shortages or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. If any such failure of events or conditions results in a delay in performance, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay, and such extension shall be Purchaser's exclusive remedy. Acceptance of the goods by Purchaser shall constitute a waiver of all claims for loss or damage due to delay resulting from any cause. If the transmitted documents of Purchaser are not sufficient to administrate the order without further requests, Purchaser reserves the right, to extend the confirmed date of delivery by the timespan needed to get the necessary documents completed.

#### **6. Warranty**

Seller warrants to the Purchaser but not to anyone else, that the goods will conform to the specifications given within the attached data files belonging to the Purchaser's original order. Goods manufactured pursuant to extra specifications are warranted to conform to the extra specifications only insofar as the extra specifications were approved in written form by Seller. EXCEPT AS SET FORTH HEREIN, SELLER MAKES NO WARRANTIES AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES AS TO CONDITION, USE, DESIGN, QUALITY, WORKMANSHIP, LATENT DEFECTS, COMPLIANCE WITH LAWS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER QUALITIES AND CHARACTERISTICS WHATSOEVER. THE WARRANTIES EXPRESSLY PROVIDED HEREIN ARE THE ONLY WARRANTIES MADE BY SELLER, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OR USE OF ITS GOODS.

#### **7. Disclaimer**

Purchaser understands and accepts, that Seller does not review or warrant Purchaser's specifications for other criteria than those dealing directly with the processing of Purchaser's order. If Seller assists Purchaser in completing a design for Purchaser, the design specifications are approved specifications of the Purchaser, and Seller makes no representations or warranties of fitness for a particular purpose, usage or trade, which warranties are expressly disclaimed. Purchaser understands and accepts that Seller makes no warranty for design or design changes and Purchaser authorizes Seller to administrate in

Purchaser's data files, whether approved by Purchaser or not. Seller makes no warranty, express or implied, of merchantability, fitness for a particular purpose, usage or trade.

## **8. Defects**

Inspection; Notification: Purchaser must inspect the goods, at its sole expense, within ten (10) days of the receipt thereof and notify Seller of any claimed defect, shortage or inaccuracy therein within ten (10) days thereafter or Purchaser shall be held to have waived its right to seek remedy thereof or recovery thereon from Seller. If Purchaser shall have timely notified Seller of alleged defects in the goods and, if demanded by Seller, made the goods available for inspection and testing, Seller shall determine whether defects exist which are attributable to it, rather than to Purchaser's improper installation, use or maintenance and, if it determines that there are, proceed to remedy the defects under the options available to it in paragraph 9 hereof.

## **9. Exclusivity of Remedy**

Purchaser's sole and exclusive remedy for defective goods or services shall be, at Seller's option, repair, replacement or refund of purchase price.

## **10. Limitation of Damages**

SELLER'S OBLIGATIONS AND ALL REMEDIES AND THE MEASURE OF DAMAGES SHALL BE LIMITED EXCLUSIVELY TO THE REPAIR OR REPLACEMENT OF NON-CONFORMING GOODS AT THE OPTION OF SELLER. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR EXPENSES (INCLUDING WITHOUT LIMITATION, TRANSPORTATION, LOST PROFITS, LOSS OF USE OF GOODS OR SERVICES, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, OR DAMAGE TO PERSON OR PROPERTY), OR FOR ANY DAMAGES OR SUMS PAID BY PURCHASER TO THIRD PARTIES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

## **11. Patent Infringement**

Purchaser warrants to Seller that the manufacture or other processing by Seller of any products listed on the order, acknowledgment or invoice for which Purchaser has provided the design will not infringe upon the patent or other property rights of any person. Purchaser shall indemnify and hold Seller harmless from all losses, damages, costs and causes of action arising out of the breach or inaccuracy of such warranty, including as provided in paragraph 24 below.

## **12a. Dies, Tools and Patterns**

Seller's use of any die, tool or pattern in connection with the production of the goods described on the applicable quotation, acknowledgment or invoice shall not transfer to Purchaser any rights therein, and all such dies, tools and patterns, shall continue to be Seller's exclusive property.

## **12b. Material Traceability**

Front Panel Express, LLC does not provide raw material certificates or lot traceability. If either of these items are required for your order special arrangements can be made by contacting Customer Service or by providing your own material.

## **13. Cancellation**

Once an order is placed and accepted by Seller, any request to cancel all or any portion of the order, or any change in quantity or design shall not be binding on Seller unless Buyer (a) submits a written request for cancellation to the appropriate contact listed on Seller's website, and (b) remits payment of the cancellation charges provided herein. In the event that Seller has not started the manufacturing process at the moment Seller receives the written request for cancellation provided herein, a cancellation charge shall be imposed. In the event Seller commenced the manufacturing process before receiving the written

request for cancellation provided herein, a cancellation charge shall be imposed and all goods acquired for manufacture or manufactured shall be paid for by Buyer in full. The cancellation charge shall be calculated and determined by Seller in its sole and commercially reasonable discretion.

#### **14. Assignment**

Purchaser agrees that it will not assign its rights or purchases hereunder prior to payment in full without Seller's prior written consent.

#### **15. Solvency**

Purchaser warrants that it is solvent and able to pay for the goods being purchased hereunder in accordance with the payment terms. If at any time Seller believes that the financial condition of Purchaser at any time does not justify continuing performance on Seller's part, Seller may, in addition to any other remedies provided hereunder or available under state law, require full or partial payment prior to completion, accelerate payment of all sums due to Seller on account of prior shipments, suspend shipments, change Purchaser's credit or payment terms, or may terminate the order, in which case Purchaser shall be liable to Seller for the full contract price, together with any charges or expenses incidental to such termination, less (a) the fair value which Seller could readily obtain for the work and material appropriated to the contract, and (b) any costs from which Seller shall be relieved by reason of such termination. If Purchaser becomes insolvent within the meaning of the Washington Uniform Commercial Code (RCW 62A 1-201 (23)), or is the subject to a voluntary or involuntary petition in bankruptcy under the federal Bankruptcy Act or comparable state law or if a receiver, trustee or assignee is appointed for Purchaser, such event shall be deemed a material breach hereof.

#### **16. Default**

If Purchaser breaches any term or condition hereof, Seller may, in addition to exercising any other right it has hereunder or under State law, accelerate all sums due to Seller under the terms hereof, and/or terminate the contract and discontinue Seller's performance hereunder, seeking recovery of the damages it suffers as the result of such breach, both direct and consequential. If Seller retains legal counsel to enforce any term, condition or covenant herein, or to recover damages from Purchaser arising from Purchaser's alleged breach of any such term, condition or covenant, or if Purchaser commences suit against Seller for any alleged breach of this contract and is not successful in such action, then Purchaser shall pay Seller's reasonable attorney's fees together with cost of suit at both trial and appellate levels, including any fees and costs incurred in a bankruptcy proceeding.

#### **17. Waiver**

Waiver by Seller of a breach by Purchaser of any provision contained herein shall not be deemed a waiver of future compliance therewith or a waiver of any other existing default, and such provision, as well as all other terms, covenants and conditions hereof, shall remain in full force and effect.

#### **18. Limitation of Action**

Any action by Purchaser against Seller for any breach of this contract must be commenced within one (1) year following Seller's delivery of the goods or one (1) year from the date of such breach, whichever occurs first.

#### **19. Notices**

All notices required or permitted hereunder shall be in writing, sent by certified U.S. Mail, postage prepaid, return receipt requested, and addressed to Seller at the location address as given on the appropriate page of Seller's website or to Purchaser at the address appearing on the applicable quotation, acknowledgment or invoice or to such other address as either party may from time to time advise in writing. All notices shall specify their subject matter with reasonable particularity. If Purchaser is required to give Seller notice within a seasonable or reasonable time period, such notice shall be given no later than ten

(10) days following the occurrence requiring the giving of such notice.

## **20. Acceptance**

Seller's acceptance of the contract is expressly conditioned on Purchaser's assent to all of the foregoing terms and conditions of sale. Any additional or different terms or conditions which may appear in any communication from Purchaser are hereby objected to and shall not be effective or binding as provided above unless recognized and expressly assented to in writing by Seller's authorized representative, and only to the extent of Seller's express assent.

## **21. Applicable Law**

The terms, conditions and covenants contained herein shall be governed by and construed in accordance with the laws of the State of Washington, as they apply to transactions between merchants, and venue in any action herein may be laid in or transferred to King County, Washington. Purchaser hereby consents to the jurisdiction of the State of Washington and to venue in any state or federal court located in King County, Washington. If any provision or provisions hereof are void or are declared to be void, such provision or provisions shall be deemed and hereby are severed from this document which shall otherwise remain in full force and effect.

## **22. Security Interest**

Purchaser hereby grants to Seller, as secured party, a security interest in all goods sold to Purchaser, as debtor, and in all proceeds of said goods, and, until said goods are paid in full, Seller shall have the rights and remedies of a secured party under Article 9A of the Uniform Commercial Code. Seller is authorized by Purchaser to file a UCC financing statement covering said goods.

## **23. Indemnification**

Buyer shall indemnify, defend and save harmless Seller from and against any claim, cause of action, damage, loss or liability, including attorneys' fees and costs, asserted against or incurred by Seller by reason of, or arising out of or in connection with: (a) any breach or alleged breach of any of these Terms and Conditions, or the provisions of any order, order acknowledgment, or other document between Seller and Purchaser; (b) any act or omission of Purchaser, or the employees, agents or subcontractors of Purchaser, in connection with any order, order acknowledgment or other document between Seller and Purchaser; or (c) any infringement or alleged infringement of any patent, trademark, trade name, copyright and other similar right related to any name, logo, or design provided by or on behalf of Purchaser. All indemnification obligations of Purchaser hereunder shall survive termination or cancellation of any order.