

# GEOTEK

## TERMS AND CONDITIONS

These Terms and Conditions ("Terms") are effective with respect to all sales by GEOTEK ("Company"), and are binding on all customers of Company ("Buyer").

### **I. Pricing and Delivery Terms**

- a. Purchase orders ("Purchase Orders") and requests for quotations must be submitted in writing to Company and are non-cancellable without the written consent of the Company. Quotations provided by Company are enforceable for sixty days, unless noted otherwise on the quote. The Company may, in its sole discretion, accept or decline purchase orders submitted by Buyer. Federal, state and local taxes and fees that are not included in quotations or Purchase Orders shall be added thereto, and if paid by Company, such taxes and fees shall be invoiced to Buyer.
- b. Pricing and Sales for all products is "F.O.B." Company facility, unless otherwise agreed upon in writing by the Company. The Buyer assumes title, control and the risk of loss for the goods the moment the carrier signs the bill of lading, and the Buyer assumes the risks of transportation and is responsible for filing claims for loss or damage. Company will make reasonable efforts to maintain shipping schedules. Company will not be responsible for delays in shipping caused by state or local agencies with regards to permits, routing, weather, detours, or other matters. All deliveries and schedules are contingent on availability of raw materials, fuel, and transportation. Company may make partial shipments and submit invoices accordingly.
- c. Company will invoice Buyer for goods upon delivery to the carrier. Should the Buyer desire to delay the shipment of goods, the Company reserves the right to invoice the Buyer on the date goods are available to be delivered to the carrier. The Company may also charge a fee for the detainment of the shipment.
- d. The Buyer shall make payments to Company in the amounts and on the terms stated on invoices submitted to Buyer from Company.
- e. For any invoices not paid when due, Company may charge interest on the outstanding balance at the rate of 2% per month or the maximum rate allowed by law calculated from the first day for which such invoice was due until payment in full is received.
- f. Designs, concepts and ideas developed by Company are the property of Company and shall not be used or copied without the express written permission of Company.

### **II. Modifications and Change Orders**

- a. These Terms herein and the terms of any Purchase Order accepted by Company may not be otherwise amended or modified except by a Change Order. To the extent that any Purchase Order is inconsistent with these Terms, these Terms shall control.
- b. Change Orders shall be in writing and signed by both Company and Buyer, shall specify any new terms, amendments or modifications, and shall reference these Terms. Buyer shall immediately remit additional costs for the Change Order upon the execution of the Change Order.

### **III. Acceptance; Cure**

- a. **ACCEPTANCE OF GOODS.** All goods delivered to the Buyer shall be deemed accepted unless Buyer notifies Company within ten (10) business days of the Buyer's receipt of products, at the "final" destination, that the goods do not meet the specifications of a Purchase Order or of a Change Order. Notice delivered under this section shall be in writing and shall be deemed given upon receipt if delivered by hand delivery, U.S. registered or certified mail, or reputable overnight courier.
- b. **CURE FOR DEFECTIVE PRODUCTS.** Subject to the terms of the GEOTEK, Limited Warranty, Company shall, at its option, and as Buyer's sole and exclusive remedy (i) deliver conforming products within a reasonable time at its expense, or (ii) refund all fees paid for the design and construction of the defective products. Buyer must contact the company for a return authorization number prior to returning product and will allow for inspection of products at Company's request. A product shall not be considered defective if it is produced according to Company specifications or Buyer specifications or directions accepted by the Company, or produced according to a custom or prototype design of which the Buyer has approved.
- c. **PRODUCT RETURNS:** No product may be returned without prior written consent of Company. Non-standard custom items (unique to buyer) are non-returnable. Standard items (items stocked with multiple active buyers), when returned, are subject to a 25% handling and restocking charge. Return transportation charges must be prepaid. Returned product must be in resalable condition and be received within 180 days from original shipment date.

### **IV. Indemnification, Warranties, and Limitations of Liability**

- a. **WARRANTY.** Terms of warranty for all PUPI products are per the PUPI Limited Warranty and terms of warranty for Common Sense Fence products

are per the Common Sense Fence Limited Warranty as applicable and attached hereto and incorporated herein or found at [www.geotekinc.com](http://www.geotekinc.com) and incorporated herein ("PUPI Limited Warranty and Common Sense Limited Warranty").

- b. **DISCLAIMER OF ALL OTHER WARRANTIES.** EXCEPT FOR THE PUPI LIMITED WARRANTY OR COMMON SENSE FENCE LIMITED WARRANTY, COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE.
- c. **LIMITATION OF LIABILITY.** COMPANY SHALL NOT BE LIABLE TO BUYER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL LOSSES OR DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR SAVINGS, LOST DATA OR RECORDS, LOSS OF USE OF FACILITIES OR EQUIPMENT, OR ANY OTHER COSTS, PENALTIES, OR LIQUIDATED DAMAGES, REGARDLESS OF WHETHER THEY ARISE FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT SHALL COMPANY BE LIABLE TO BUYER FOR MORE THAN THE TOTAL AMOUNT OF FEES IT HAS RECEIVED FROM BUYER.
- d. **INDEMNIFICATION.** Buyer agrees to indemnify and hold Company harmless against any and all liability, claims, suits, losses, costs and legal fees caused by, arising out of, or resulting from any negligence, wrongful acts, or omissions in Buyer's performance or failure to perform as specified in these Terms. Both parties understand that the Buyer may provide materials or specifications to be used in products that Company will produce and deliver to the Buyer. Buyer warrants that it has the right and authority to provide such material and to make such specifications, and shall indemnify and defend Company against any and all liability, claims, suits, losses, costs and legal fees based on alleged or actual infringement or violation of any United States or foreign intellectual property right of any third party, including patent, copyright, trademark, or trade secret rights, that arise from these materials or specifications provided to Company.

### **V. General Provisions**

- a. Any quality control test required by Buyer or Buyer's specifications must be done at Company's plant prior to packing and shipment of material from Company's plant.
- b. Any certifications as required by the Buyer to be completed by an outside group the Company may charge an additional fee for such services.
- c. **FORCE MAJEURE:** No liability shall result to Company from delay in performance or nonperformance caused by circumstances beyond the reasonable control of the party, including, but not limited to, acts of God, fire, flood, war, labor disturbances, governmental regulation, direction or request.
- d. **CONFIDENTIALITY.** Neither party may disclose, advertise or publish these Terms or information shared between the parties without the other party's prior written consent, except to the extent allowed by the Publicity provision above.
- e. **CHOICE OF LAW.** This Terms and the parties' relationship are governed by and construed in accordance with the laws of the state of Minnesota without reference to Minnesota's choice of law rules.
- f. **ARBITRATION.** Any controversy or claim arising out of or relating to these Terms, or the breach thereof, shall be resolved through binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, and shall be venued and take place in the State of Minnesota. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
- g. **LIMITATION ON ACTIONS.** No action arising out of Terms, any Purchase Order or Change Order, performance or alleged breach thereof, may be brought by Buyer against Company unless commenced within two (2) years after such cause of action has accrued.
- h. **ASSIGNMENTS.** Buyer may not assign, delegate, or otherwise transfer these Terms or any right or obligation under these Terms without the prior written consent of Company. Any assignment, delegation or transfer in violation of this provision shall be void.
- a. **TERMINATION.** Company may, in its discretion, terminate a Purchase Order in the event that Buyer fails or is unable to comply with any of these Terms, and/or the terms of the Purchase Order.