



# **FIBER PAD, INC.**



## **TERMS & CONDITIONS OF PURCHASE**

### **Formation, Entire Agreement, Termination, and Modification.**

- 1. Formation.** These terms and conditions of purchase apply to and are an integral and necessary part of any and all purchase orders, acceptances, or confirmations issued by Fiber Pad, Inc. (“Buyer”) and acceptance of said purchase order or confirmation by Seller is limited to the acceptance of all of the terms and conditions of said purchase order, acceptance or confirmation, together with all technical data, standards, specifications, drawings, and designs attached to, referred to or later incorporated into this order by Buyer (“Buyer’s Data”) and these Terms and Conditions of Purchase, and the inclusion of no other terms and conditions. Acceptance shall be by a written quote or confirmation of sale signed by Seller and by no other means. Any terms or conditions of Seller’s contained in any quote or confirmation of sale or other document, which are either different from or additional to the Terms and Conditions of Purchase stated herein, acceptance, or confirmation, and Buyer’s Data are hereby objected to; are excluded from the terms of sales unless expressly and specifically agreed to in writing by Buyer prior to acceptance of the order; shall not be binding on Buyer under any circumstances unless so accepted by Buyer in writing; and Seller agrees to strike from Seller’s terms and conditions all of its terms and conditions that are different from or additions to the Terms and Conditions of Purchase stated herein, If Seller proceeds without requesting resolution of any conflict in the terms and conditions of sale, then Buyer’s decision as to the governing requirement shall be final and all costs incurred in correcting Seller’s erroneous interpretations shall be borne by Seller.
- 2. Entire Agreement.** These Terms and Conditions of Purchase along with Buyer’s purchase order, acceptance, or confirmation, Buyer’s Data, and the acceptance of the same, as limited above, shall constitute the entire Agreement between Buyer and Seller and includes all prior oral and written negotiations and agreements, and all rights, duties, and obligations of the parties shall be determined under Buyer’s purchase order, acceptance, or confirmation, Buyer’s Data, and these Terms and Conditions of Purchase.
- 3. Termination.** Seller shall not terminate or cancel any order, for any reason whatsoever, after acceptance under these Terms and Conditions of Purchase without the express written permission of Buyer. Any proposed cancellation by Seller shall be subject only to such terms and conditions to which Buyer agrees in writing. If an agreement is not reached regarding a cancellation proposed by Seller, then Seller shall deliver the goods to Buyer in the manner specified. Buyer may at its option, at any time, terminate the contract between the parties (the “Contract”) in whole or in part by giving ten (10) days prior notice to the Seller in writing. Upon receipt of such a notice, the Seller shall promptly discontinue any further performance of the work under the Contract. Upon such termination, the Seller shall, upon the Buyer’s request, turn over to the Buyer all of the drawings, specifications, data sheets, and other matters that the Seller may have prepared for the goods and all material, supplies and equipment paid for by the Buyer either directly or indirectly, and the Buyer shall have the right to make use of the same for such purposes as the Buyer may desire. In the event of termination of the Contract, the Buyer’s only liability will be to pay the Seller for the work actually performed based upon an equitable percentage, to be agreed upon by the parties, of the Contract price, less the amount already paid, if any, it being understood that in determining the aforesaid payment, any loss of anticipated profits to the Seller in respect of work not yet performed shall not be compensated. From the total payment agreed as aforesaid, there shall be deducted all claims of the Buyer against the Seller including, but not limited to, claims on account of defects in engineering, procurement, construction, materials, and/or workmanship. In addition, without prejudice to any other rights the Buyer may have, in the event of any failure of the Seller to fulfill any of its obligations under the

4. **Modification.** Seller may not in any way modify an order or substitute any materials specified by Buyer in any way without the express written consent of Buyer. Any modification proposed by Seller which is accepted by Buyer may be subject to modification charges or changes in the price, specifications, or delivery time of the goods as determined in Buyer's sole discretion, which shall be binding on Seller when communicated to Seller. Seller may not suspend work during the pendency of any modifications or adjustments without the written permission of Buyer. Buyer may make such changes, additions or deletions to this order as Buyer deems appropriate upon written notice to the Seller. If any such changes, additions or deletions initiated by the Buyer affect the cost of manufacture or the time of delivery, the Seller shall give the Buyer written notice thereof within two weeks from the date of Buyer's notice, and the Buyer shall give an instruction, within a period of two weeks from the date of the Buyer's receipt of the Seller's notice, whether to accept the changes in cost or delivery time or to withdraw such changes. In case of withdrawal of changes during the above period, the original Contract price shall remain unchanged. If the Seller gives the Buyer no such notice, the specifications shall be deemed amended and the purchase price and time of delivery shall be deemed unchanged. The Seller agrees to inform Buyer of any (i) change in product and/or change in process, (ii) change in supplier, (iii) change of manufacturing factory location, or (iv) any nonconforming products (collectively "Changes") prior to production or manufacturing. Seller will inform Buyer sufficiently far in advance of any such proposed Changes for Buyer to approve or disapprove in writing any such proposed Changes, and sufficiently far in advance for Buyer to consult with and obtain the approval or disapproval of Buyer's customers. Seller also agrees to obtain Buyer's written approval before disposition of non-conforming materials or product. The Seller agrees to flow down to all parts of its supply chain the applicable requirements of the Contract, including but not limited to all applicable requirements of Buyer's customers.

**General Rights and Obligations of the Parties.**

5. **Materials.** Seller shall disclose the source of all materials used in the manufacturer of the goods, including the country of origin, manufacturer, and supplier, and in such detail as Buyer may require.
6. **Change of Design.** Seller may not change or modify the design and construction of any of Seller's goods being delivered under the Contract without Buyer's written permission.
7. **Expediting.** When deemed necessary by the Buyer, the Contract shall be subject to expediting by the Buyer or its agents who shall be granted access to any and all parts of Seller's, offices and/or shops engaged in the manufacturing or supplying of the goods, and the offices and/or shops of subcontractors and supplied or involved in the manufacture or supply of the goods. Said expediting by Buyer in no way relieves the Seller of its obligations as to the time of shipment specified by Buyer.
8. **Inspection and Testing.** Prior to the delivery of the goods, Buyer shall have the right to test and inspect the goods during manufacture and any and all documents and information relating thereto. Seller shall cooperate in providing access to its premises and said documents and information to enable Buyer to inspect and test said goods. Buyer inspection or testing shall not relieve Seller of any of its duties or obligations under this Contract. Buyer reserves the right of access to all facilities, plants, and records involved in the creation of this order for Fiber Pad, Inc., its customers, and as requested by applicable regulatory authorities.
9. **Prices.**
- A. Unless otherwise agreed in writing signed by Buyer, the prices in Buyer's purchase order or confirmation are firm prices and shall not be increased without the prior written permission of Buyer. Said prices are represented by Seller as the lowest or best price to any buyer.
  - B. Unless otherwise agreed in a writing signed by Buyer, all certificates, reports, certified drawings and additional documentation will be provided by Seller at no extra charge.
  - C. All goods sold, unless otherwise expressly agreed in writing by Buyer, will be supplied to Buyer's standards for testing, tagging, shipping, preparation, and warranty.

10. Freight Charges. All orders will be shipped prepaid unless otherwise agreed by Buyer in writing. There will be no additional charge payable to Seller for handling, shipping or related charges unless agreed in advance in writing by Buyer.
11. Taxes. Any tax, public charge, tariff or duty assessed or imposed upon Buyer by reason of the manufacture, sale or delivery of any goods ordered by Buyer shall be paid by Seller.
12. Packing. Except as otherwise agreed by Buyer in writing, Seller shall pack and prepare each order as directed by Buyer at Seller's expense, but in any event, in a manner sufficient to insure that no damage is done to the goods in transit. Seller shall be responsible for any subsequent failure of said packing.
13. Delivery. Except as otherwise agreed by Buyer in writing, all shipments by Seller are F.O.B. Buyer's designated plant or warehouse and all risk of loss with respect to any goods shall pass to Buyer only when such goods are actually delivered by a carrier to Buyer's designated plant or warehouse, and title shall vest in Buyer at that time, without any reservation or security interest of Seller, and without claim by Seller of lost or damaged products in transit.
14. Documentation. Seller shall ship and invoice each order with the documentation required, in Buyer's sole discretion, by Buyer.
  - A. All drawings or design documentation prepared by Seller and supplied to Buyer pursuant to the Contract shall become the property of Buyer, and Buyer may subsequently use the same as Buyer wishes, including but not limited to providing any or all of such documentation with key characteristics to Buyer's sub-tier suppliers and subcontractors. Seller shall document the costs or such other aspects of this sale as Buyer shall request. Seller shall retain a copy of all such documentation, and provide the same to Buyer as Buyer may request. All records related to the Contract and the materials, services, and products provided under it will be retained by Seller until written authorization has been received from Buyer to dispose of such records, which authorization may be withheld by Buyer for any reason in Buyer's sole absolute discretion. Buyer may audit said documentation and applicable retained records at any time.
  - B. When permission or instruction is given by Buyer, Seller must timely provide to all of Seller's permitted sub-tier suppliers and subcontractors applicable requirements (as determined in Buyer's sole discretion) in the Buyer's documents, including key characteristics where required.
  - C. Seller hereby grants reasonable access to Buyer, Buyer's customers, and all applicable regulatory and governmental authorities, to applicable areas of all facilities at all levels of the Seller's supply chain for materials, services or products provided by Seller to or for the benefit of Buyer, and to all applicable records, and Seller agrees to facilitate and provide for all such access at no cost to Buyer or its customers. Seller agrees to require each company in its supply chain to provide, at no cost to Buyer or its customers, and obtain from others in their respective supply chains, the same right of access in favor of Buyer, its customers, and applicable regulatory and governmental authorities.
15. Time of Delivery. Seller guarantees that the goods will be shipped or delivered at the time specified in Buyer's purchase order, acceptance, or confirmation. Seller specifically acknowledges that SUCH SHIPMENT OR DELIVERY TIME IS CRITICAL TO BUYER AND OF THE ESSENCE OF ANY AGREEMENT BETWEEN SELLER AND BUYER, AND SUCH SHIPMENT OR DELIVERY TIME IS AN INTERGRAL PART OF THESE TERMS AND CONDITIONS OF PURCHASE. Accordingly, Seller shall be liable for failing to ship or deliver the goods at said time, regardless of the reason of the delay, and shall compensate Buyer for any and all damages Buyer incurs because of said delay.
16. Contingencies. Seller shall be liable for any delay or failure to manufacture, ship, or deliver any or all of the goods ordered by Buyer for any reason whatsoever.
17. Buyer's Acceptance. Buyer shall conduct a reasonable inspection of the goods delivered hereunder after Buyer's actual receipt of the goods. If Buyer rejects all or part of a shipment, Buyer must notify Seller of such rejection by a written notice within 30 days after Buyer's receipt of the goods. The cost of packing and returning any rejected goods shall be borne by Seller.
18. Cure. If all or part of a shipment of goods is rejected by Buyer, Seller shall cure in the manner specified by Buyer.

19. Return of Goods. Upon return of any rejected goods, Seller shall give Buyer immediate credit for the full purchase price, without any restocking or other charge, whether said goods are non-conforming or defective or otherwise.
20. Payment Terms. Payment shall be net 30 days or as specifically negotiated on terms acceptable to the Buyer. Buyer may withhold payment after delivery and acceptance of the goods, as provided herein, for any valid reason, and shall have the right of set-off against the amount owed Seller for the goods because of any other claim of Buyer against Seller. Any payments of Buyer received by Seller prior to actual delivery of the goods are trust funds for the benefit of subcontractors, workmen, or material providers of the goods who can legally file a lien against the goods if not paid, and shall be used only for that purpose.
21. Liens. The Seller agrees to deliver the goods free and clear of all liens, encumbrances, claims or security interests of any nature whatsoever, and shall hold the Buyer harmless with respect thereto. Buyer may withhold payment pending receipt of evidence satisfactory to Buyer that any and all such liens have been released.
22. Publicity. Any press release or other publicity concerning the subject matter of the Contract shall have the written approval of Buyer prior to release or publication.
23. Infringement on Patent and Other Rights. To the extent that the design of the goods has not been furnished by the Buyer, the Seller shall fully indemnify the Buyer against any action, claim, or demand, costs and expense arising from, or incurred by reason of, any infringement or alleged infringement of any patent or any other protected rights in respect of any goods supplied by the Seller.
24. Confidentiality. Any specification or other information provided to the Seller by the Buyer shall be treated as confidential, shall be used only for the purpose of the performance of the Contract and shall not be reproduced in whole or in part for any other purposes. All such information shall remain the property of Buyer and shall be returnable upon demand of the Buyer. The Seller shall ensure that such information is not divulged to any third party except where necessary for the performance of the Seller's obligations under the Contract and, in such case, subject to the third parties in question undertaking a similar obligation of confidentiality.
25. Compliance with Laws; Permits and Certificates. The Seller warrants that it is in compliance with all applicable federal, state, and local laws, regulations and ordinances. The Seller shall procure, at its expense, all necessary permits, certificates, and licenses required by all applicable laws, regulations, ordinances, and other rules in effect at the place where any of the work is to be performed. Seller further agrees to indemnify Buyer and hold the Buyer harmless from all liability or penalty which might be imposed by reason of any asserted or established violations of such laws, regulations, ordinances, or other rules.
26. Guaranty. Seller guarantees that the goods supplied by the Seller conform to Buyer's specifications are new and of the best quality of their respective kinds, are free from faulty design, workmanship and material and are of sufficient size and capacity and/or proper materials so as to be suitable and fit for the use and operating conditions specified by Buyer. If any defect originating with the design, materials, workmanship, operating characteristics or any breach of the above guaranty arises at any time within 18 months from the date when the goods are put in commercial operation but not later than 24 months from the date of receipt by Buyer, Seller shall, at Buyer's direction but at Seller's own expense, make repair, replacements or alteration as may be necessary to permit the goods to function in accordance with Buyer's specifications. Should the goods or any parts thereof be repaired, replaced or altered to fulfill the foregoing guarantee, Seller shall provide a new guarantee of the same conditions for such material being repaired, replaced or altered for a period of 12 months from the date of completion of such remedial work. Should Seller fail to undertake such remedial work as soon as possible, then Buyer may, at its option, take remedial action at Seller's expense or elect to accept the goods not meeting the specifications contained herein with an equitable adjustment in the purchase price.  
**Liability and Indemnification.**
27. General Limitation of Liability. Any liability of the Buyer to Seller or any third party (the "persons") shall be limited by the provisions of this Section.

- A. IN NO EVENT, SHALL SAID PERSONS BE ENTITLED TO RECOVER ANY CONSEQUENTIAL, CONTINGENT, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS FOR ANY PERSONAL INJURY OR DEATH OR FOR ANY COMMERCIAL LOSS, WHETHER OR NOT SAID DAMAGES ARE CAUSED, IN WHOLE OR IN PART BY ANY FAULT OF BUYER, OR ANY BREACH BY BUYER OF ANY OF THE TERMS AND CONDITIONS OF THIS CONTRACT OR THESE TERMS AND CONDITIONS OF PURCHASE.
  - B. In the event that Buyer asserts a negligence or other cause of action against Seller alleging fault, Seller shall be held to a “strict” or “high” standard of care.
  - C. Any and all liability of Seller shall not be conditioned on any conditions precedent of any nature.
  - D. Seller shall be responsible to Buyer for any liability of any nature whatsoever, arising under or related to these Terms and Conditions of Purchase.
28. **Indemnification.** Seller shall indemnify and hold Buyer harmless against all liabilities and causes of action asserted against Buyer by reason of the sale or use of said goods, including any subsequent use by third parties, for any negligence or tort of Seller, or any violation of the Contract or any other contract by Seller, or any violation by Seller of any laws, that results in harm or damages to Buyer. BUYER SHALL NOT INDEMNIFY SELLER IN ANY MANNER OR IN ANY CIRCUMSTANCES WHATSOEVER.

**Disputes and Remedies.**

29. **Governing Law.** Both parties agree that the Contract and any agreement based on these Terms and Conditions of Purchase was entered into in Rogers County, Oklahoma, and shall be governed by the laws of the State of Oklahoma.
30. **Disputes.** Should any dispute arise under or related to these Terms and Conditions of Purchase, then the parties agree that the sole, mandatory forum for the litigation of said dispute shall be a federal or state court of competent jurisdiction in Rogers County, Oklahoma; provided however, that if Buyer is plaintiff and cannot obtain proper jurisdiction or service over Seller for any reason, then Buyer may litigate said dispute in any forum or court that Buyer chooses. Seller shall pay all costs and expenses incurred by Buyer in enforcing its rights hereunder, including, without limitation, reasonable attorney’s fees and court costs.
31. **Remedies.** Buyer shall have all rights and remedies specified herein in addition to those specified in the Uniform Commercial Code as adopted in the State of Oklahoma. All such rights and remedies are cumulative.
32. **Limitations.** Any cause of action for breach of the Contract asserted against Buyer must be commenced within one year of the accrual of said cause of action, unless a shorter period is authorized or required herein; when said shorter period is authorized or required herein, then said shorter period shall control. Buyer’s rights and causes of action and Seller’s representations, warranties, and obligations under these Terms and Conditions of Purchase shall survive to the maximum extent allowed by law.

**Miscellaneous.**

33. **Waiver.** No right or remedy of Buyer shall be deemed to have been waived or renounced, in whole or in part, unless such waiver or renunciation is supported by consideration and is in writing signed by Buyer. Any such waiver or renunciation shall be effective only to the extent expressed in such writing.
34. **Severability.** Should any provision of this Contract or the documents executed in connection with its implementation be held unenforceable, illegal or invalid under the laws of the United States of America or the State of Oklahoma or under any other applicable laws of any other jurisdiction, then the parties hereto agree that such provision shall be deemed modified for purposes of performance of this Contract in such jurisdiction to the extent necessary to render it lawful and enforceable; or if such a modification is not possible without materially altering the intention of the parties hereto, then such provision shall be severed herefrom for purposes of performance of this Contract in such jurisdiction. The validity of the remaining provisions of this Contract shall not be affected by any such modification or severance. .
35. **Assignability and Subcontracting.** Buyer reserves the right to assign all or any part of the Contract to any party. None of the rights, duties, and obligations of Seller may be assigned or transferred to any other party without the express written consent of Buyer. Seller may not subcontract or otherwise use any third parties to manufacture, procure, or supply any or all of the work for the goods except on Buyer’s written permission.

36. Notice. Any notice appropriate or required pursuant to the Contract shall be in writing, and delivered by certified mail or fax and shall be effective upon the receipt thereof. Said notice shall be sent as follows:
- A. If to Buyer, to Fiber Pad, Inc., 17260 E. Young Street, Tulsa, OK 74116. Fax 918-438-4513.
  - B. If to Seller, at the address shown in Seller's quote or confirmation of sale or other written document, or to the main domestic office of Seller, or any other place held out by Seller for the receipt of said notice.

Fiber Pad, Inc. Purchase Order Terms and Conditions may be accessed under [www.fiberpad.com](http://www.fiberpad.com).