



ALMOND PRODUCTS, INC. STANDARD TERMS AND CONDITIONS OF SALE

Effective Date: August 1, 2022

All services furnished by Almond Products, Inc. (“Almond”) are made on the following terms and conditions. In these Standard Terms and Conditions of Sale (“Terms”), any services sold by Almond are hereinafter referred to as “Services” and any goods provided by Buyer to Almond, as named in Almond’s quotation (“Buyer”), are referred to as “Goods”.

1. **Agreement.** Almond objects to and will not agree to any terms that are additional to or different from these Terms. Terms and conditions that are printed on or contained in a purchase order (“Order”) or other form prepared by Buyer which are additional to, in conflict with, or inconsistent with these Terms are inapplicable and shall have no force or effect. These Terms shall not be modified or waived except by expressed written agreement signed by an officer of Almond. Almond reserves the right to update these Terms, at any time, which will be effective immediately upon posting of the revisions to Almond’s website which can be located at www.AlmondProducts.com.
2. **Price; Payment Terms.**
 - a. Almond’s pricing for the Buyer-requested Services (“Quote”) is valid for a period of thirty (30) days. Buyer accepts the Quote, including these Terms, by issuing an Order or other written work authorization, shipping Goods to Almond, or accepting delivery of any Services from Company. This acceptance constitutes the entire agreement (“Agreement”) between the parties.
 - b. All terms of payment shall be due in full 30 days after the invoice date, or as otherwise mutually agreed upon in writing, to be paid in U.S. Dollars, not subject to set off or deduction. Unpaid balances shall bear interest from the due date at the rate of one and one-half percent (1.5%) per month, but in no event to exceed the maximum rate allowed by law. Upon Almond’s written request, Buyer agrees to promptly provide a Letter of Credit satisfactory to Almond in the amount of any disputed amounts owing that are more than 90 days past due.
 - I. If the Services are complete and the Goods are ready for shipment and cannot be shipped due to Buyer’s request for delayed shipping or for any other reason beyond Almond’s reasonable control, payment shall be made upon notification to Buyer that the Goods are ready for shipment.
 - II. Almond may invoice reasonable storage fees to Buyer for shipments delayed at Buyer’s request and Buyer shall pay same within thirty (30) days of receipt of invoice.
3. **Delivery and Risk of Loss.** Unless Almond agrees otherwise in writing, Buyer shall take delivery of the Goods EXWORKS Almond’s facility. Method and route of shipment are at Almond’s discretion, unless Buyer supplies written instructions otherwise. All expenses and risks of loss or any damages incurred in the transportation of the Goods, including any risks of loss in loading, or unloading, shall be borne solely by Buyer and Buyer must make all claims for loss, damage, or delay against the carrier. Buyer shall accept partial delivery of any Order, and any defect therein or failure to make any subsequent partial delivery shall be severable and not constitute a breach of the entire Agreement.
4. **Taxes and Duties.** Almond’s price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, or any tariffs or customs duties, and Buyer shall be liable for all such taxes and duties, whether Almond invoiced Buyer for them.
5. **Modifications.** Any Order for Almond’s Services may not be modified, in whole or in part, without Almond’s prior written approval. Upon Almond’s approval of a requested modification, the parties shall mutually agree upon any impact to time for performance or costs associated with the modification which shall be documented in a signed writing.
6. **Suspension.** If performance provided for in the Agreement is held, delayed, or rescheduled for more than thirty (30) days at the request of Buyer, such modifications will be subject to Section 5. If performance provided for in this Agreement is held, delayed, or rescheduled for more than ninety (90) days at the request of Buyer, Almond may define these as actions to terminate the applicable Order for convenience, and Almond will then be entitled to recover all costs and fees as set forth in Section 13 below. In the event of a Buyer-directed suspension, Almond shall be entitled to reasonable storage fees.
7. **Delays and Damages.** Almond shall use commercially reasonable efforts to make deliveries in accordance with the Agreement. In the event Almond reasonably believes a delivery will be delayed, Almond shall promptly notify Buyer of the known or anticipated event(s), including but not limited to Unavoidable Delays as defined below, that may prevent or delay Almond’s ability to meet the stated delivery or performance date. Upon receipt of the notice, Buyer shall adjust the delivery or performance date accordingly. Except to the extent a delay is solely and directly attributable to Almond’s action or inaction, Almond shall not be liable for any loss or damage resulting from any such failure or delay in delivery.
8. **Unavoidable Delay.** If Almond is not able to finish the Services and deliver Goods to Buyer, on time because of anything Almond cannot control, including but not limited to casualty, labor trouble, unavailability of supplies or transportation, severe market shortage, Buyer’s failure to provide approved production samples, Buyer’s action or inaction, fire, flood, governmental act or regulation, riot, terrorist act, equipment or power failure, unscheduled maintenance, accident or act of God, (“Unavoidable Delay”) then the estimated delivery or performance time shall be extended accordingly, and Almond shall not be liable to Buyer for any damages caused by the delay.
9. **Reliance Upon Buyer’s Information.** In the preparation of the Quote and the Services, Almond has relied on information supplied by Buyer. In the event such information is inaccurate, including the delivery of defective Goods, Almond shall not be liable for any claim resulting from such inaccurate information, including without limitation negligence, strict or product liability, or breach of warranty or Agreement, with respect to the Services, the performance or breach of this Agreement, or any defects of design, material, or workmanship.
10. **Inventory Supplied by Buyer.** Periodically, Almond will reconcile inventory provided by Buyer, on a consignment basis. Buyer shall have thirty (30) days from receipt of the request for inventory reconciliation to notify Almond in writing of any discrepancies. Within sixty (60) days from receipt of the inventory reconciliation, Buyer shall provide written data to support any variance from Almond’s records. Absent manifest error, Almond’s records and analysis of in-bound count variances shall be considered accurate and binding on both parties.
 - a. **Inventory Variance/Scrap Allowance.** Unless specified in writing by Almond, there shall be a minimum three percent (3%) inventory shrink factor/scrap allowance. The shrink factor/scrap allowance shall be calculated annually on a cumulative twelve (12) month period, as determined by Almond, or as mutually agreed upon by the parties. Test and sample Goods are not considered scrap parts when determining shrink factor/scrap allowance.
 - b. **Inventory Variance.** In any event, any uncontested inventory variances (shrink factor) over ninety (90) days old shall be adjusted at the sole discretion of Almond. If Almond is obligated for Buyer supplied inventory, such obligation shall be the lesser of (1) the net scrap value of the material at then current market rates or (2) Buyer’s standard material cost (excluding labor and overhead).
 - c. **Disposal of Scrap Goods:** To the extent of the shrink factor/scrap allowance, Almond has full authority to scrap and dispose of Buyer Goods at its sole discretion with no financial adjustment to the Buyer.
 - d. **Packaging.** Almond is not financially responsible for transportation of materials supplied by or used on behalf of the Buyer including but not limited to skids, returnable containers, packaging, and dunnage.
 - e. **Logistics.** Unless otherwise mutually agreed upon in writing, Almond shall take delivery of Goods (raw and returns) EXWORKS Almond’s facility.

11. **Warranty.**

- a. **Services.** Almond warrants the Services to be free from defects in material or workmanship for ninety (90) days from the date of shipment from Almond's facility. Any claim under this warranty shall be deemed waived conclusively unless the Almond is notified within thirty (30) days of the discovery of the defect and given the opportunity to inspect such defect. If necessary, the Goods which have been identified as receiving defective Services shall be returned to Almond, transportation prepaid. When a defect is solely and directly due to Almond's Services, Almond's obligation under this warranty shall be to reperform the Services. Any rejection of Services as non-conforming must be made in writing to Almond within ten (10) days after delivery at the Buyer-designated location. Such notification shall identify each alleged non-conformity of Services and describe, in sufficient detail, that portion of the shipment being rejected. If Buyer fails to give such notice or if Buyer uses the Goods that have been subject to Almond's Services in any manner inconsistent with the rights of Almond, the Services shall be deemed to conform to the terms hereof in all respects and Buyer shall be bound to accept and pay for the Services in accordance with these terms. Any deductions from outstanding invoices by the Buyer are not allowed unless authorized in writing by an officer of Almond. Almond issued Returned Material Authorization ("RMA") is not an authorization for the Buyer to debit amounts owed to Almond. The Buyer agrees not to debit Almond's account until Almond has issued the appropriate credit memo and Almond agrees to process requested credits on a timely basis. The Buyer is to execute and return to Almond any rejected debit memo acknowledgements within 10 days after being sent by Almond or Almond may stop performing the Services without liability.
- b. **Buyer-Supplied Goods.** Buyer hereby expressly acknowledges that Buyer is solely and directly responsible for providing Almond with conforming Goods to be subjected to Almond's Services and Almond shall have no liability for defects attributable to defective Goods.
- c. **Conditions and Limitations.** The warranties and remedies set forth herein are conditioned upon Buyer's receipt, handling, storage, installation, testing, and maintenance of the Goods in a normal and proper manner in accordance with the recommendations of Almond to the extent applicable, and otherwise in accordance with generally accepted industry standards and practices. Almond's warranties are only intended for the Services provided by Seller and to not apply to Buyer-provided Goods or third-party purchased or provided Goods on behalf of Buyer. This warranty shall not apply to an alleged defect that results from damage, physical abuse, accident, alteration, or misuse, including the failure to specifically follow all instructions or use in a manner other than as intended by the Agreement or nature of the Services. Also excluded from Almond's warranty is any warranty, with respect to Buyer-supplied Goods and/or third-party supplied Goods at Buyer's direction, and the Buyer shall, at Buyer's own expense (i) defend and hold harmless Almond from and against any claim, suit, or other expense which is asserted or brought against Almond by reason of its performance of the Services, and (ii) to pay Almond for any services charges on such Goods or Services. **EXCEPT AS STATED IN THIS SECTION, ALMOND DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY AS TO THE BUYER-SUPPLIED GOODS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Under no circumstances shall Almond be liable for any negligent design or manufacture of the Goods, or for the omission of any warning with respect thereto. Neither Buyer nor any other person may modify or expand this warranty, waive any of the limitations, or make any different or additional warranties with respect to the products. No statement to the contrary shall bind Almond unless made in a writing signed by an authorized officer of Almond. Except as provided herein, Buyer shall not have any right of rejection or of revocation of acceptance of the Services.

12. **Limitation of Liability.** Notwithstanding any language to the contrary, under no circumstances shall Almond be held liable for any indirect, incidental, consequential, or special types of damages, including but not limited to recall liability, loss of property or production, or lost profit, arising out of any action or inaction related to Almond's performance hereunder. Almond's liability on any claim of any kind, including negligence, strict or product liability, or breach of warranty or Agreement, for any loss or damage arising out of or connected with this Agreement, or the performance or breach thereof, or the manufacture, sale or use of the Services furnished hereunder shall in no case exceed the amount paid to Almond for the Services which gives rise to the claim.

13. **Termination.**

- a. **Termination for Convenience.** This Agreement, or any Order, may be terminated by either party for convenience by providing sixty (60) days written notice to the other party. In the event of termination for convenience by either party, Buyer shall pay: (i) quoted price for all finished goods or adjusted price based on any work in process, (ii) all costs and expenses Almond incurred in relation to the Order prior to receipt of notice of termination, including any associated material expenses, including but not limited to paint (including open containers), purchased products, Almond owned racks at book value, shipping charges or other out of pocket expenses incurred by Almond in relation to this Agreement. In the event Buyer pre-paid for Services, Almond shall repay, on a pro rata basis, all fees, expense, or other amounts paid in advance for any Services that have not been performed as of the effective date of such termination.
- b. **Termination for Cause.** If Buyer fails to pay Almond any undisputed amounts due under any Order, following a thirty (30) day cure period, Almond may at its option stop performing Services until all past due payments have been received and Buyer has posted a bond or letter of credit satisfactory to Almond for payment of all amounts that will thereafter become due to Almond under all Agreements. Remedies expressly provided for in this section shall not prevent Almond from exercising its right under the laws of Michigan or any other right that it may have at law or in equity. Buyer shall be liable to Almond for all costs, including reasonable attorney's fees, incurred by Almond with respect to recovering past due amounts.
- c. **Transition of Supply.** Upon the termination of an Order for whatever reason, at Buyer's expense, Almond agrees to take all necessary actions to ensure there is no interruption in the provision of Services and supply of Goods to Buyer. Almond agrees to take such actions as may be reasonably be required by Buyer to accomplish the transition from Almond to an alternate seller, including without limitation, the following: (i) Almond shall provide a sufficient bank of Goods covered by the Order to ensure the orderly transition to an alternative seller, and (ii) Almond shall timely provide the Buyer all tooling and any other property furnished by or belonging to Buyer or any of Buyer's customer.

14. **Indemnification.** Buyer shall defend, indemnify, and hold harmless Almond, its officers, directors, employees, and agents from any claims, damages or expenses including attorney's fees, arising, or alleged to arise from the negligent acts of omissions of Buyer, Buyer's breach of a material provision of this Agreement, or any asserted deficiencies or defects in the Goods or Services caused by any alteration thereof made by Buyer, or the improper handling, storage, or installation by Buyer.

15. **Price Adjustments.** The price of the Services shall be as set forth in the Quote. Almond reserves the right to adjust the price due to an increase in Almond's costs, a 20% or more reduction in the originally quoted annualized volume, if Buyer supplied information is inaccurate or the Quote assumptions are inaccurate. Almond's price adjustments shall reflect (a) changes in Almond's cost to purchase raw materials and labor included for the Services; (b) changes in Almond's cost of utilities used in the production of the Services; (c) changes to the specifications of the Buyer-supplied Goods or required Services; or (d) any other appropriate factors.

16. **Buyer Owned Racks/Tooling.** At Buyer' expense, racks and perishable tooling shall be replaced upon meeting their expected use. Normal repairs and maintenance are the responsibility of Almond.

17. **Discount.** If a Quote provides for a discount for prompt payment, the time allowance will begin with the date of receipt by Buyer of an invoice.

18. **Resale.** On any resale of the Goods, Buyer shall contractually limit its Buyer's rights and remedies against both Buyer and Almond to the same extent as Buyer's rights and remedies are limited under these Standard Terms of Sale. Additionally, under no circumstances shall Almond be bound by the terms of any agreement between Buyer and Buyer's customer.

19. **Severability.** If a provision of the Agreement is held to be invalid or unenforceable, the Agreement shall continue in full force and effect and shall be construed as if the invalid or unenforceable provision was omitted.
20. **Assignment.** Neither the Agreement nor any rights or benefits hereunder are assignable by Buyer without the prior written consent of Almond which shall not be unreasonably withheld. Any assignment shall be subject to the assignees agreement to be bound by the terms, conditions, and limitations of this Agreement to the same extent as and not separate from the assignor. Any assignment in violation of this provision shall be null and void.
21. **Independent Contractor.** Each party is an independent contractor and not an agent or employee of the other party. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.
22. **Seller's Rights.** Almond has all rights and remedies given to Almond by applicable law, and Almond's rights and remedies are cumulative and may be exercised from time to time. Almond's failure to exercise a right or remedy of Almond's acceptance of a partial or delinquent payment shall not operate as a waiver of any of Almond's rights or Buyer's obligations under this Agreement and shall not constitute a waiver of Almond's right to declare an immediate or a subsequent default.
23. **Time for Bringing Action.** No action may be commenced to enforce this Agreement or for any breach hereof, or for any defect or deficiency of the goods to be delivered hereunder, whether on Agreement, negligence, or strict or products liability, or other legal theory unless such action is brought within 12 months after accrual of such cause of action.
24. **Arbitration.** Any controversy or claim, legal or equitable, arising out of or relating to the Agreement, or the breach thereof, shall be settled by an arbitration procedure agreed to by the parties, or, absent such an agreed arbitration procedure, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration proceeding shall take place and the arbitration award shall be given in writing in Grand Rapids, Michigan, unless the parties agree otherwise.
25. **Choice of Law and Forum.** The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, notwithstanding any state's choice of law or rules to the contrary. Buyer consents and agrees that any judicial action brought to enforce this Agreement, or for any breach hereof, or for any defect or deficiency of the goods/Services to be delivered hereunder, whether on warranty, Agreement, negligence, or strict or products liability, shall be brought solely in a state or federal court sitting in the State of Michigan, and Buyer consents and submits to the jurisdiction of such court.
26. **Notices.** All notice demands and requests required or permitted to be given under the provisions of these Terms shall be in writing and shall be deemed given (a) when personally delivered to the party to be given such notice or other communication, fully prepaid, (b) on the business day that such notice or other communication is sent by electronic mail (email), which shall promptly be confirmed by written notice, (c) on the third business day following the day such notice or other communication is sent by reputable overnight courier, to the address set forth below.
Name: Almond Products, Inc.
Address: 17150 148th Avenue
Spring Lake, MI 49456
Attention: Executive Vice President
Phone: 616.299.4259
E-Mail: John.Somers@AlmondProducts.com
27. **Attorney's Fees.** If Almond is the prevailing party in any action, proceeding or arbitration between Buyer and Almond concerning the interpretation and/or enforcement of any of the terms or provisions of the Agreement, Buyer shall be liable to Almond for all costs, including reasonable attorney's fees, incurred by the Almond with respect to such action, proceeding or arbitration.
28. **Entire Agreement.** This Agreement, together with any affixed schedules or exhibits, constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any prior discussions, negotiations, agreements, and understandings. Any change in the Agreement must be by a signed writing.