

JOSHUA ALMOND STUDIOS

Terms and Conditions

1. **GENERAL:** The Seller Joshua Almond Studios, LLC (“Seller”) and the Purchaser (“Buyer”) named on the order or purchasing agreement hereof agree that the following terms and conditions apply to the materials, goods and/or products (“Goods”) listed on the order or purchasing agreement (“Agreement”) or subsequently ordered pursuant to this Agreement.
 - a. “Seller” means Joshua Almond Studios, LLC, who is providing the service.
 - b. “Buyer” means the purchasing client to whom the work or service is being provided.
 - c. “Goods” means any item or items described in any quotation and/or acceptance of any purchase order or any part thereof.
 - d. “Terms and Conditions” means the terms and conditions set out in this document.

2. **ACCEPTANCE/SOLE TERMS:** This order is expressly conditioned upon Buyer’s acceptance to foregoing terms. Buyer is hereby put on notice that no terms additional to or deviating from the foregoing terms shall become part of the order, unless and until letter acceptance of such additional or deviating terms, signed by an office of Seller has been issued to Buyer. Buyer’s acceptance of any Goods supplied by or on behalf of, Seller shall, without limitation constitute acceptance of Seller’s foregoing terms. If Buyer retains possession of the Goods for a period of ten (10) days or longer after the receipt of their shipment or makes use of the Goods at any time after their receipt, Buyer shall be deemed to have expressly assented to Seller’s foregoing terms without condition or qualification.

3. **TITLE AND RISK OF LOSS:** Title to the Goods shall remain vested in the Seller and shall not pass to the Buyer until all sums due to the Seller under the Agreement have been paid in full. Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to carrier, and any claims for losses or damage shall be made by Buyer directly to carrier.

4. **QUOTES:** All quotations are subject to confirmation by the Seller upon receipt of any order and the Seller reserves the right to refuse any quotation.
 - a. Quotations provided by the Seller will only remain valid for the length of time indicated on the quotation after which the Seller reserves the rights to re-tender if requested by the Buyer to proceed further.
 - b. Price estimated is for quantity indicated on estimate. Quantity changes may affect rate per unit. Price breaks can be discussed through updated estimates.
 - c. Prices stated are subject to change without notice in the event of:
 - i. Alterations in specifications, quantities, designs, or delivery schedules.
 - ii. Increases in the cost of fuel, power, material supplied, or labor.
 - iii. Foreign or domestic legislation enacted by any level of government, including tax legislation which increases the cost of producing, warehousing, or selling the Goods purchased hereunder.
 - d. No discount will be allowed unless specifically set forth on the face side hereof.
 - e. All quotations, indication of costs and financial commitments given or made by the Seller are based upon the assumption of the validity of the information provided being fully accurate and correct in all circumstances. The Seller maintains the right at any stage to re-

negotiate any contract, cost agreement, or any other relevant commitment should any information provided by the Buyer fail to be fully valid accurate and correct.

- f. For custom work, a 60% deposit is required to begin production. Balance due upon receipt of product, unless otherwise stated. *All deposits are non-refundable once production begins.*
- 5. LEAD TIME:** Seller's quoted lead time (completion date) is only an estimation for the products completion date. Lead time is an estimate that begins once deposit is received. The Seller has the right to extend the lead time at Seller's discretion. Lead time does not include shipping or delivery time estimates. Seller is not liable for any losses incurred by buyer due to delays in completion of product. In-stock products will be ready for pickup or shipment within two (2) business days.
- 6. DRAWINGS AND SPECIFICATIONS:** In the instance that the Buyer solicits the manufacture or installation of a custom piece of their own design, the Buyer shall provide complete and accurate drawings and specifications recognized as complying with an appropriate standard required to manufacture the Goods. The Seller shall not be charged for the provision of said specifications.
- a. The Buyer shall be responsible for providing all the information required for the manufacture of the Goods including but not limited to technical drawings and 3D CAD models in a complete and accurate state.
 - b. Where both 3D CAD models and drawings are provided, the Buyer shall be responsible for confirming as to which is the governing document and shall be responsible for ensuring that the information provided is free of conflicting information or data.
 - c. In the absence of the Buyer providing confirmation as to the governing document, the Seller shall in its discretion either (i) suspend manufacturing until confirmation is given, or (ii) itself decide which is the governing document and in either event, the Seller shall incur no liability to the Buyer.
 - d. The Seller maintains the right to cease all progress and manufacturing of the Goods without liability should information provided by the Buyer be conflicting, in error, incomplete or inadequate in any way to produce the Goods.
- 7. FAILURE TO DISCLOSE INFORMATION:** If any technical, commercial, or other issue ("the Undisclosed Issue") arises during the course of the Agreement of which the Buyer was aware or should have been aware prior to entering into the Agreement but did not disclose to the Seller, the provisions of this section shall apply.
- a. The Seller shall be entitled to halt the development, manufacture or any other value-adding process until it has obtained sufficient information which in the sole discretion and judgment of the Seller enables the Seller to resume and the Seller shall incur no liability to the Buyer in connection with the resulting delay or Goods manufactured where such incorrect information has been provided including:
 - i. Concession costs
 - ii. Quality and delivery implications or penalties
 - iii. Late delivery penalties
 - b. Furthermore, where the Seller is in substance replicating a process of the Buyer, any deviation of results from the process of the Buyer will constitute a failure to supply complete and accurate information for the purposes of Clause (a.) of this section.
 - c. The Seller maintains the right to re-negotiate the costs and other terms of the Agreement to take account of the Undisclosed Issue or issues. If the Seller and the Buyer cannot reach agreement in such renegotiations, the Seller shall be entitled to terminate the Agreement

and the Buyer shall be liable for all costs and expenses incurred by the Seller to the date of such termination.

8. **SPECIAL TOOLING:** The design and manufacture of any dies, jigs or fixtures required for production of the Goods will be invoiced to and be paid for by the Buyer. The manufactured die, jig or fixture shall, along with the intellectual property rights therein, remain the property of the Seller.
9. **TERMS OF PAYMENT:** For custom made products, Seller requires a 60% deposit at acceptance of estimate. Balance shall be paid upon completion of product. For all other products, payment is to be made in full upon order.
 - a. Unless otherwise agreed in writing executed by both parties, all sums payable in respect of the Seller, must be paid in the full amount as indicated by the invoice.
 - b. All payments to the Seller shall be made in U.S. Dollars.
 - c. If payment is not made in accordance with Clause (a.) of this section, the Seller reserves the right to charge interest on the overdue balances for the period from the date of the invoice until the date of payment. Buyer agrees to pay an interest charge of 1-1/2% per month or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate on the outstanding balance not paid when due, from the date such balances were due until payment with respect thereof is made in full.
 - d. Failure to pay by the due date shall entitle the Seller to suspend delivery of all current and future orders.
 - e. The Seller may, at any time, without limiting any other rights and remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.
10. **CHANGES AND CANCELLATIONS:** Orders cannot be cancelled or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to reasonable charges for expenses incurred and work executed by Seller or its suppliers.
 - a. All modification change requests shall be lodged by the Buyer in writing and in accordance with applicable standards. The Seller will not agree to incorporate or implement any modification based solely on a "Change Proposal" provided by the Buyer or any party acting on behalf of the Buyer. No modifications or changes are binding on the Seller unless agreed to in writing executed by both parties.
 - b. Orders for custom made material may not be cancelled after Seller has been in production unless Seller agrees in writing.
 - c. Any additions or deviations to the original design will change the price agreed previously. Material and labor costs will be added according to current material and labor rates.
 - d. The Seller will not agree to incorporate or implement any modification, drawing change, revision change or other change until the Buyer has accepted in writing the Seller's calculation of the costs and time for implementing such change.
 - e. In the event of cancellation an order by the Buyer, the Buyer shall be obligated to accept any and all portion of completed Goods and all works-in-process ("WIP") Goods shipped or delivered by Seller. In addition, the Buyer shall reimburse the Seller for any loss on materials, tooling or other items purchased, for the purpose of fulfilling the order.
 - f. Where the order is cancelled prematurely or the Buyer shall fail to place orders in the quantities and in the time schedule for orders on which the Seller based the pricing in the Agreement, the Seller shall remap the matrix pricing to reflect the actual quantity of Goods delivered to the Buyer. The Buyer shall thereafter pay to the Seller such sum as shall

represent the difference between the aggregate original matrix pricing unit cost and the aggregate actual matrix pricing unit cost for all Goods delivered to the Buyer.

- 11. TERMINATION:** Should the Buyer seek to terminate the Agreement, the Buyer will be liable for paying to the Seller, the cost of settling any legally justified claims in connection with the necessary termination of subcontracts entered into in respect of the Agreement or part thereof, and any other associated cost or claim in respect of the cancelled order or contract, including but not limited to any legal fees and costs for enforcing this Agreement. Either party has the right, without prejudice to its other rights and remedies, to terminate the Agreement without liability if the other party commits any material breach of any of its obligations under the Agreement which it fails to rectify within 30 days of written notice of that breach (no notice period will apply for a breach of delivery terms) or makes a general arrangement with its creditors; or ceases or threatens to cease to carry on its business or a substantial part of it or is unable to pay its debts within the meaning of the applicable law as defined below; enters into liquidation whether compulsory or voluntary, except as a solvent company for the purposes of amalgamation or reconstruction; or has an administrator or administrative receiver of the whole or part of its assets appointed or if any equivalent proceeding under any competent jurisdiction occurs.
- 12. ACCEPTANCE OF GOODS, DELIVERY, AND TRANSPORTATION:** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim or shortages of or defects in the forty-eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked, and accepted by Buyer.
- a. If due to unforeseen circumstances the Buyer requires the delivery time or times set out in the Agreement to be altered, the Buyer must provide notice in writing not less than four weeks prior to the said delivery time or times. The Seller will use its reasonable endeavors to meet the new delivery time or times requested by the Buyer but reserves the right to charge the Buyer for any increase in cost to the Seller incurred in meeting the new delivery time or times.
 - b. Unless instructions to the contrary are stated on the order, transport arrangements will be made by the Seller on behalf of the Buyer for dispatch of the goods to the point of delivery indicated on the quotation. The Buyer will be responsible for the costs of carriage and insurance in addition to the price of the Goods.
 - c. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expenses and valuation.
 - d. If transport is arranged by the Seller, the risk in the Goods shall pass to the Buyer at the time of the delivery at the said delivery point.
 - e. If transport is arranged by the Buyer, risk in the Goods shall pass to the Buyer immediately after the Goods pass out of the control of the Seller, or its authorized agents.
 - f. To ensure safety in transit, packing cases, lifting frames, coverings and/or other protective or packing equipment may be used and an additional charge for the said items will be applied to the Buyer. In such instances where the Buyer immediately returns said items to the Seller, carriage paid and in good condition, the Seller will only charge the Buyer for the initial cost of said packaging and continue use of these items in the performance of the Agreement until they are no longer fit for purpose, at which point the Seller shall charge the Buyer for replacement items should further deliveries be required.
 - g. Where a Full Process Approval in accordance with any applicable regulations is required, the Seller will not accept any delivery schedule from the Buyer and shall not be bound by any

such delivery schedule issued by the Buyer until such Full Process Approval has been confirmed by the Buyer or a qualified party representing the Buyer.

13. WARRANTIES: The Seller warrants that the Goods shall conform to the drawings and specifications or descriptions furnished by the Buyer and accepted by the Seller, will be of satisfactory quality and free from material defects in material and workmanship for one year (1) following the date of shipment. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT EXPRESSLY HEREIN, ARE HEREBY EXCLUDED. NO AFFIRMATION OF SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANTY CLAUSE SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER BUT ARE SOLD ONLY WITH THE WARRANTIES (IF ANY) OF THE MANUFACTURERS THEREOF.

- a. Seller's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect, accident, wear and tear, water damage, wood destroying organisms (including but not limited to termites, carpenter ants, other insects, mold, mildew, or fungi), dry rot, improper installation or modification that is not completed by seller (including but not limited to use of unauthorized parts or attachments), or damage by cleaners or abrasives.
- b. If any of the goods are found by Seller to breach the above limited warranties, such goods will, at Seller's option, be replaced or repaired at Seller's cost. The parties hereto expressly agree to Buyer's sole and exclusive remedy against the Seller shall be for the repair or replacement of the defective Goods. Buyer hereby agrees that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace defective Goods in the prescribed manner.
- c. Any warranty claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by the Buyer unless submitted in writing to Seller with the earlier of (i) 30 days following the date Buyer discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty, or (ii) One year following the date of receipt. Any cause of action for breach of the foregoing warranty shall be brought within one year from the date of alleged breach was discovered or should have been discovered, whichever occurs first, or be forever barred from all claims.
- d. Seller's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity.

14. CONFORMITY: Any issues of conformity shall be lodged by the Buyer in writing within 3 days of delivery of the Goods for custom products or 30 days for line products.

- a. Should the Buyer claim that the Goods do not comply with the warranty set out in Clause (b.) in Warranties section, the Buyer shall on the request of the Seller return the Goods to the Seller for inspection.
- b. The arrangement and payment of transport for Goods returned in terms of Clause (a.) in this section in the first instance shall be as agreed between the Buyer and Seller. If the Goods are found not to comply with the warranty, the costs of transport shall be borne by the Seller. If the Goods are found to comply with the warranty, the costs of transport shall be borne by the Buyer.
- c. Should the parties arrive at contradictory views as to the compliance of the Goods with the warranty set out in Clause (b.) in the Warranties section, the Seller and the Buyer shall meet Seller within 10 days in order to reach a technical resolution or agreement. In the event of

failure to reach agreement at such meeting, the provisions of Clause b in the Dispute Resolution section shall apply.

- d. If the Goods do not comply with the warranty set out in Clause (b.) of the Warranties section, then the Seller at its sole and exclusive option shall replace or modify the Goods, or refund the purchase price of the Goods.
- e. Except as provided in Clause (f.) in this section, the Seller shall have no liability whatsoever to the Buyer in respect of the Goods failure to comply with the warranty set out in Clause (b.) in the Warranties section.
- f. Any and all repair or modification of Goods under this Clause will be undertaken and arranged by the Seller only. The Seller will only absorb the cost of such repair or modification if such repair or modification has been undertaken by the Seller or an appointed party on behalf of the Seller.

15. FREE ISSUE MATERIAL: The Seller accepts no responsibility of any kind for any materials sent to the Seller by or on behalf of the Purchaser and risk in such materials shall remain with the Buyer. The Seller furthermore does not warrant the suitability or fitness for purpose of materials so provided by the Buyer.

16. LIMITATION OF LIABILITY/DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES: To the extent not prohibited by law, in no event shall Seller be liable for personal injury, or any incidental, special, indirect or consequential damages whatsoever, including, without limitation, damages for loss of profits, loss of Data, business interruption or any other damages or losses, arising out of or related to your use or inability to use the product, however caused, regardless of the theory of liability (contract, tort for otherwise) and even if Seller has been advised of the possibility of such damages or breach of any obligation imposed on Seller hereunder or in connection herewith.

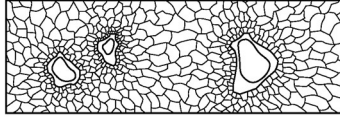
- a. In no event shall Seller provide total liability to the Buyer for all damages exceeding the amount paid by the Buyer for the specific product.
- b. The remedy under the Warranty provision is limited to repair or replacement.
- c. Consequential damages for purposes hereof shall include, without limitation, loss of use, income or profit or losses sustained as the result of injury (including death) to any person or loss of or damage to property (including without limitation, property handled or processed by the use of the goods).
- d. Buyer shall indemnify Seller against all liability, cost or expense which may be sustained by Seller on account of any such loss, damage, or injury. If during the course of manufacture or thereafter, castings, forgings or other raw material purchased from the Buyer's preferred supply chain, on behalf of the Buyer, fail for any reason not directly attributable to the Seller's manufacturing process then the Buyer will be liable for all costs and expenses incurred by the Seller as a result of such failure.
- e. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

17. SECURITY INTEREST: To secure prompt payment of the purchase price for the Goods identified on the face hereof, in addition to title not passing until payment has been made in full to the Seller, Buyer hereby grants to Seller a purchase money security interest in the Goods purchased from Seller and all proceeds thereof (the "Collateral"). Buyer agrees to execute and deliver to Seller UCC financing statements, together with all other documents, and shall take such other action, as may be required to perfect Seller's security interest in the Collateral.

- 18. COSTS OF COLLECTION:** If, at any time or times, Seller incurs legal expenses or other costs of expenses in connection with: (i) any litigation, contest, suit, dispute, proceeding or action in any way relating to this Contract: (ii) any attempt by Seller to enforce any rights of Seller against Buyer or any other person which may be obligated to seller hereunder, or (iii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Collateral; then, in any such event, the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by Buyer on demand to Seller and shall be considered additional obligations hereunder secured by the Collateral. Seller reserves the right to revoke any credit extended to Buyer at any time, because of Buyer's failure to pay for any Goods when due.
- 19. TAXES:** Any sales, use or similar taxes, export charges, fees or other levies, taxes or surcharges now or hereafter imposed in connection with the production, sale, delivery, use or proceeds of the goods herein specified (except for taxes on Seller's net income) shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by Seller, the amount thereof shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides Seller with a valid tax exemption certificate.
- 20. PACKAGING:** Product packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer. Buyer to request a separate quotation for palleting, packaging, wrapping, or boxing.
- 21. DELAYS AND FORCE MAJEUR:** Any delay or failure of either party to perform its obligations hereunder will be excused if, and to the extent that it is caused by an event or occurrence not reasonably foreseeable and beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, earthquakes, hurricanes, explosions, riots, natural disasters, wars, sabotage, pandemic, inability to obtain power, material, labor, equipment or transportation, or court injunction or order.
- a. Unless expressly specified to the contrary, Goods in stock will be shipped within two business days, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information.
- 22. RETURNED PRODUCTS:** Delivered Goods returned to Seller require prior written approval from Seller before such goods will be accepted. Handling, inspection, restocking and invoicing charges will be assessed, if applicable, plus any outgoing packing and freight expenditures paid by Seller. All returns allowed must be shipped to Seller prepaid and must be in excellent resale condition. Goods processed to Buyer's specifications are not returnable.
- 23. NO WAIVER:** Forbearance or failure of Seller to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair Seller's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of Seller's rights in case of any subsequent default of Buyer.
- 24. SEVERABILITY:** If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

- 25. ASSIGNMENT:** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller provided, however, that Buyer may not assign or transfer this Agreement, in whole or in part, except upon the prior written consent of Seller.
- 26. GOVERNING LAW:** This Agreement shall be construed in accordance with and governed by the laws of the State of California without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly therefrom shall be exclusively litigated only in the courts of the State of California or United States federal courts located therein and the parties hereby consent to the personal jurisdiction and exclusive venue of such courts.
- 27. INTELLECTUAL PROPERTY:** Intellectual Property (“IP”) includes any and all inventions whether or not patentable, utility models, trademarks, component designs or manufacturing processes and any improvements or enhancements thereto, copyrights and moral rights, database rights, trade secrets and know-how, in each case whether registered or unregistered, and also including identified technical and non-technical or business-related information such as specifications, computer programs, drawings or blueprints.
- a. All background IP is and will remain the exclusive property of the party owning it. Neither party will be entitled to any right or license to any of the other party’s background IP.
 - b. For the avoidance of doubt, any machine programs, tooling, fixturing, routing, method of manufacture and any associated data used to manufacture the goods remains the sole Intellectual Property of the Seller.
- 28. ALTERNATIVE DISPUTE RESOLUTION:** Any dispute or claim arising from or relating to this Agreement or performance under it shall be resolved amicably through discussions between Buyer and Seller attempting in good faith to negotiate a resolution thereof; provided, however, that either Buyer or Seller may seek injunctive relief from a court of proper jurisdiction where appropriate, in order to maintain the status quo while this procedure is being followed.
- a. If the parties fail to resolve any dispute arising under this Agreement, either party may seek arbitration as follows: (a) By written notice to the other party, submitting the dispute to binding arbitration, in accordance with the then-current Expedited Commercial Arbitration Rules under the American Arbitration Association (“AAA”), each party to bear equally the costs of the arbitration provided, however, that the other party may agree or refuse to participate in such arbitration. (b) If the parties are not successful in resolving the dispute through self-help or one of the parties refuses to participate in arbitration, the dispute shall be resolved by litigation.
 - b. Any claim submitted to arbitration must be governed by the Expedited Commercial Rules of the AAA: except that (i) Provision 21 must govern applicable law and construction, (ii) the locale of any arbitration will be in Santa Ana, California, or agreed to by the parties in writing, (iii) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA, (iv) the language of the arbitration must be in English, (v) any arbitration award must state the arbitrator’s material findings of fact and conclusions of law, (vi) a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, (vii) a prevailing party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover its reasonable attorney’s fees and costs. Any suit to require arbitration under this agreement, or to enforce judgment upon an arbitration award, may be brought in the state and federal courts of the State of California.

29. ENTIRE CONTRACT: Upon Seller's acceptance of Buyer's order, the terms and provision set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample, or other terms shall modify of effect terms hereof.



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