



All transactions by and between TriMark USA, LLC ("TriMark") and each of its Clients for design services are governed by these Terms and Conditions of Design (the "**Terms of Design**"). Any purchase or transaction between customer and any affiliate of TriMark will be pursuant to these terms of sale, but shall be deemed a two-party agreement between such entities, and customer shall look solely to that affiliate for any claims, demands, and fulfillment of obligations hereunder. If there is an executed agreement between the parties governing the design services contemplated then the executed agreement shall govern. Any competing or conflicting terms from Client of any kind, such as those located in a quotation, purchase order, request for proposal, request for quotation, via html link, pop-up or other format are rejected and shall be of no force or effect.

1. Acceptance. Anyone engaging TriMark or an affiliate of TriMark for design services is a "**Client**." All design services are subject to, and shall be conditioned upon, Client's assent to these Terms of Design, which shall be presumed from Client's acknowledgment of an agreement, quote, proposal or other document specifying the design services to be provided (the "**Design Services Proposal**"), performance of the design services, and/or issuance of payment. The applicable Design Services Proposal along with these Terms of Design are referred to collectively as "the Agreement."

1. Scope of Work. Subject to these Terms of Design, TriMark will perform the specified consulting, project management, drawing, documentation preparation and related design services (the "**Design Services**") as identified in the Design Services Proposal for Client in connection with its future restaurants and/or other foodservice concepts (the "**Project**").

2. Fees and Expenses.

TriMark shall provide the Design Services for the prices or rates as set forth in the Design Services Proposal (the "**Fees**"), and Client shall pay the Fees as set forth in the Design Services Proposal, or in full within thirty (30) days following TriMark's performance of the applicable portion of the Design Services. Unless otherwise set forth in the Design Services Proposal, Client agrees to reimburse TriMark for all travel, out-of-pocket costs and expenses incurred by TriMark in the performance of the Design Services within thirty (30) days following receipt of invoice. A finance charge equal to the lesser of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law shall be assessed on any balance not paid when due, and TriMark shall be entitled to: (i) withhold or cease further shipment of goods or provision of services to Client and (ii) cancel or reject any pending orders or proposals with Client.

3. Limitations of Service. Client acknowledges and agrees that:

(a) TriMark's Design Services are solely design-oriented and do not include any architectural, mechanical, electrical, HVAC or structural engineering services. TriMark is not licensed or certified to provide any architectural, mechanical, electrical, HVAC or structural engineering services and expressly disclaims any responsibility and liability therefor.

(b) Client shall be responsible for obtaining all building permits that may be required under federal, state or local laws or codes.

(c) Client will engage a licensed contractor, architect, engineer or other specialist, as needed, to provide installation recommendations and execute any such work required in connection with the Project.

4. Term and Termination; Survival. The Agreement will begin on the effective date of the Design Services Proposal or upon initiation of the Design Services and will continue until completion of the Design Services and payment of all Fees. Either Party may terminate the Agreement for material breach upon thirty (30) days' notice to the other party. Additionally, TriMark may terminate this Agreement or any Design Services Proposal for any or no reason upon fifteen (15) days written notice to the Client. Upon the expiration or termination of the Agreement, Client will immediately remit full payment for all Design Services rendered and expenses incurred by TriMark. Any provision of the Terms of Design which by its nature would continue beyond the expiration or termination of the Terms of Design shall survive, including, without limitation, Sections 2 and 4-10.

5. Ownership of Documents. TriMark and Client agree that all drawings (including, without limitation, CAD files, schematics, estimates, specifications, and field notes) and any other work product furnished by TriMark to Client for a Project pursuant to the Terms of Design (the "**Documents**") are Confidential Information and Instruments of Service for use solely with respect to such Project. Upon payment in full for the Design Services, Client receives a license to use the Documents solely and exclusively for constructing, using, maintaining, altering and adding to the Project. This license will terminate if TriMark rightfully terminates the Agreement for breach by Client.

6. Confidentiality. TriMark and Client agree that any Confidential Information exchanged shall be kept in strict confidence and to not use or disclose such Confidential Information, except (i) as expressly permitted in the Agreement, (ii) as necessary to fulfill its obligations or exercise its rights under the Agreement, (iii) as reasonably necessary to complete the Project or (iii) upon the prior written consent of the other Party. "Confidential Information" is information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated, or otherwise identified as "confidential." In the event of a disclosure under section (iii), each party will ensure a confidentiality obligation is in place with the intended recipient of Confidential Information.

7. Disclaimer and Limitation of Liability. TRIMARK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE DESIGN SERVICES, THE DOCUMENTS, OR THE CONTENT THEREOF AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. Client acknowledges that the Documentation and Design Services provided by TriMark are only a suggestion, and implementation of such is taken solely at Client's own risk. Client is obligated to ensure the structural integrity and safety of the Project, and that the equipment fulfills Client's intended usage and compliance with all applicable codes, regulations and standards. Except for Client's obligations in Section 8, in no event shall either Party be liable to the other for any indirect, special, incidental, or consequential damages arising out of or related to the Agreement. Except for claims arising from TriMark's gross negligence or willful misconduct, TriMark's entire liability for all claims, losses, damages, and expenses resulting from the performance of the Design Services shall not exceed the total amount paid by Client to TriMark for the applicable Design Services.

8. Indemnity. Client agrees to indemnify, defend and hold TriMark and its affiliates, officers, directors, employees, agents, representatives, stockholders and equity holders harmless from any and all damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising

from or related to: (i) Client's modification of the Documents or its use of the Documents in connection with any other project without TriMark's prior written consent;(ii) the negligent acts, errors or omissions of Client or Client's employees, other contractors and Client without regard to the alleged negligence of TriMark.

9. DISPUTES. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The arbitrator shall be selected in accordance with the AAA Commercial Arbitration Rules. TriMark, in its sole discretion, may elect to proceed under the AAA's Commercial Expedited Procedures. The place of arbitration shall be Boston, Massachusetts. These Terms of Sale and the arbitration shall be governed by the laws of the State of Delaware. The arbitrator shall award attorney fees and costs to the prevailing party. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all parties. The parties agree to arbitrate solely on an individual basis, and this agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. Without the consent of all parties, the arbitral tribunal may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding. At any time during the resolution of a dispute between the parties, either party has the right to apply to any court of competent jurisdiction for interim relief, including pre-arbitration attachments or injunctions, necessary to preserve the parties' rights or to maintain the parties' relative positions until such time as the arbitration award is rendered or the dispute is otherwise resolved.

10. Miscellaneous. This Agreement constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and understandings between the parties, with respect to the subject matter thereof. Neither party shall assign this Agreement without the prior written consent of the other except that TriMark may assign this Agreement to an affiliate. This Agreement is binding upon each party, its successors, assigns, and legal representatives. Any notice or consent under this Agreement will be in writing to such address that may be designated in writing by the receiving party from time to time. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. This Agreement may be amended only by written instrument signed by both Parties. The parties are independent contractors and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture or agency. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

11. Images. Client hereby authorizes, without any further need for compensation or notice, TriMark to take photographs and visual and audio images of the premises, including digital images, drawings, renderings, and video recordings (collectively, "Images"). Client further irrevocably grants to TriMark permission to use, reproduce, distribute, exploit, and display any and all of the Images in any manner or media, including composite and modified representations, in any form now known or later developed, throughout the world, and in perpetuity, except with respect to any images to which Client objects on the grounds that the images may reveal trade or business secrets, or any proprietary design or arrangement of Client. Client may request the right to inspect or to approve the Images or any materials that use or incorporate the Images. TriMark also is permitted, but not obligated, to include Client's name in connection with the Images. Client hereby agrees and acknowledges that TriMark owns the Images, all rights, title and interest in and to the Images, and all commercial, advertising or promotional materials that incorporate or use the Images. Client also agrees and acknowledges that the Images are and will remain the property of TriMark Client hereby fully releases TriMark, and its officers, directors, agents, employees, representatives, divisions, subsidiaries, affiliates, successor and assigns from any and all claims, liabilities, causes of action and/or damages of any and every kind in connection with the taking and/or use of the Images.