

# Terms and Conditions of Sale

*Reference to Inscape shall include all Inscape products except as noted.*

## **APPLICABILITY**

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These terms and conditions of sale (these “Terms”) are the only terms which govern the sale of the products (“Products”) by Inscape Corporation (together with its affiliates, “Inscape”) to the buyer (“Buyer”). No other terms and conditions shall apply to the purchase and sale of the Products contemplated hereunder unless specifically agreed to in writing by an authorized officer of Inscape and the Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The accompanying Purchase Order (as defined below), Order Acknowledgment (as defined below), corresponding invoice and these Terms (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its Purchase Order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

## **ORDER PLACEMENT & ORDER CONFIRMATION**

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All orders with Inscape must be placed in writing or sent electronically by the Buyer and contain the information listed below (each a “Purchase Order”). Verbal orders are not accepted. All Purchase Orders must be accepted and confirmed by Inscape in writing to be valid (an “Order Acknowledgment”). The following information is required for a valid Purchase Order:

1. Sold to and ship to information
2. Contact name and phone number
3. Required ship date
4. Accurate list and net pricing including purchase order total
5. Product information and finishes
6. Special product identified including providing Special Product Approval Form (SPA)
7. Signed approval drawings and field dimensions when applicable

Inscape manufactures, delivers and invoices based on the information in the Order Acknowledgment. Inscape provides an Order Acknowledgment sent through email. It is the Buyer’s responsibility to check their Order Acknowledgments for accuracy and advise Inscape within five (5) working days of receipt of discrepancies. If Inscape does not receive any notice of discrepancies within such five (5) working days, the Order Acknowledgment shall be deemed to be correct. The Order Acknowledgment, together with these Conditions of Sale, are intended and agreed by the Buyer to be the complete, exclusive and final statement of all terms and conditions of agreement between Inscape and the Buyer with respect to the purchase and final sale of any Inscape product.

## **PRICES**

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Buyer shall purchase the Products from Inscape at the price(s) set forth in the Order Acknowledgment (the "Price(s)"). Subject to the remainder of this section, all Price(s) are for product only and are subject to change without notice. Without limiting the generality of the foregoing, Prices do not include storage, insurance, taxes, local delivery or installation, all of which Buyer shall be responsible for.

## **FREIGHT POLICY**

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Orders of \$15,000 net or more will incur a 3% freight charge and orders under \$15,000 net will incur a 9% freight charge (or a freight minimum of \$150). Please inquire with your Customer Experience Specialist for further details.

## **ORDERS INVOLVING CUSTOMER'S OWN MATERIAL ("COM")**

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Use of any COM must be approved by Inscape in writing, based on an Application Test prior to Order Acknowledgment. Inscape requires sample fabric to assess whether the material is suitable for manufacturing on Inscape product. Panel fabrics that have stain retardant or do not meet UL requirements will not be approved nor accepted by Inscape and their adhesion will not be warranted. Inscape does not warranty any COM and assumes no responsibility for the appearance, durability, colorfastness or performance. Workmanship of the application is covered under Inscape's standard warranty as detailed below. Additional charges for certain COM may apply. All COM supplied to Inscape must be and is assumed to be accurately manufactured, free of defects, production ready and identical to the sample fabric. Color, style and quantity of COM supplied to Inscape are assumed to be correct. In no event will Inscape be held responsible or liable in any way for any inaccuracy or defect in the COM. Any delay in production due to an inaccuracy or defect and any additional costs which may result are the full responsibility of the customer. All COM must be shipped prepaid to Inscape with the following information clearly marked on the shipment:

- Name of upholstery, design and color
- Total yardage provided for each material
- Customer's name
- Purchase order number
- COM approval number

Orders involving COM will only be released and scheduled for production once all COM is on hand and in sufficient quantity. Inscape is not liable for, and will dispose of, any excess COM yardage not used in the production of the Products.

## **PAYMENT**

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Inscape invoices all orders in the currency indicated on the Order Acknowledgment. Payment must be made in this same currency and may be made by ACH, wire transfer, cheque or credit card in accordance with the instructions set out in the invoice. Subject to credit approval, Buyer must pay all invoiced amounts due to Inscape within 30 days from the invoice date. In some cases a deposit will be required before the order will be scheduled for production. Delinquent accounts are subject to a 1.5% per month charge or the largest amount permitted by law. Inscape reserves the right to delay or cancel any shipment where an account is delinquent. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Inscape.

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## TITLE AND FREIGHT

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All Product shipped F.O.B. Inscape's factory in Holland Landing, Ontario or Jamestown, New York, depending on where the Products are manufactured. Title to any Product ordered and any risk of loss shall pass to the Buyer once delivered by Inscape to the carrier. Subject to the Section titled Prices and the various other requirements and terms for shipping contained herein, standard freight costs to all points within Canada and the contiguous United States are included in the Price(s). Outside Canada and the contiguous United States, freight is not included.

## CHANGE AND/OR CANCELLATION OF ORDER

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Inscape Products are made to order whereby the procurement and production processes begin well in advance of shipment. Once an order goes into the production process, cancellation and other charges may apply. If a request is approved, the delivery date may be adjusted. The fee will be determined by Customer Service and will be a percentage of the total order value. Changes and cancellation fees are based on the below guidelines:

- 50% of the net total of applicable product if changed or cancelled within four (4) working days prior to production
- 100% of the net total of applicable product if changed or cancelled three (3) or less working days prior to production

Some order changes or cancellations may not be approved including the following examples:

- Specials (not standard product)
- Special finishes including non-standard paints
- Long lead time finishes such as Veneers
- Orders requesting less than standard lead times

When order changes or cancellations are not approved, 100% of the acknowledged order value will be charged. All requests must be in writing by completing the Change Order Form, available on Insite, and sent back to the Customer Experience Specialist. Inscape will review the request and if approved, will email back the completed form, indicating applicable charges. The requester is required to sign the form and return it to Inscape to acknowledge their acceptance. Note that any change will be rescheduled and a new ship date will be determined.

## SPECIFICATIONS

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Specifications are subject to change without notice. Inscape reserves the right to modify Products at any time.

## SHIPPING POLICY

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**Dates:** All Order Confirmations contain an estimated shipping date(s). This date(s) is approximate only and not guaranteed. Inscape shall in no way be liable to the Buyer or end user for any delays in meeting the estimated shipping date(s). Requests to change the delivery date where the Products have already become a work in progress, or at a time when Inscape is about to ship the products, must be approved by Inscape and may be subject to additional charges.

**Method and Carrier:** Inscape reserves the right to select the method of transportation and carrier of choice for any shipment. Standard freight costs are based on dock to dock deliveries utilizing 53' trailers with deliveries being completed during regular local business hours (8am to 5pm). Additional charges will apply when alternative trailer sizes and/or services are required to complete deliveries

**Deferral and Storage Terms:** The Buyer shall have 2 hours to off load a standard full truck load (FTL) and 1 hour for a load that is less than a full truckload (LTL). Waiting time charges shall apply afterwards. Where Buyer is unwilling or unable to accept delivery of any Product that is permitted to be shipped by Inscape under these Terms, (i) risk of loss to such Product will pass to the Buyer, (ii) the Product will be deemed to have been delivered (and Inscape shall have the right to invoice Buyer for such product as of the shipping date) and (iii) and the Product will be transferred into third party storage. Where Buyer has not designated a storage site, Inscape will transfer the Product to a location of its choice. Buyer will be responsible and billed for any direct and related costs for such storage.

**Drop Shipments and Docking Requirements:** Except as provided in this paragraph, Inscape requires that all Products be shipped only to Buyer's dock and that such docking facilities be equipped to handle a 53' tractor-trailer with appropriate personnel to offload the truck. Neither Inscape nor the carrier is responsible for offloading Product from the truck. In cases where Inscape determines that an order or portions thereof represent sufficient Product to account for a complete trailer load, Inscape may agree, if requested by the Buyer, to ship directly to an end user, provided that the end user has the proper docking facilities and personnel to offload the truck as set forth above. Any portion of such order that is less than a trailer load quantity will be delivered to Buyer's warehouse, as stated above. Product that cannot be delivered as a result of failure by the Buyer or end user to meet the above requirements will be delivered to a warehouse in accordance with the section above titled Deferral and Storage Terms, with redelivery at the Buyer's expense. Each partial shipment will constitute a separate sale and Buyer will pay for the Products shipped whether such shipment is in whole or partial fulfillment of the Purchase Order.

**Freight Damage Claims:** All Inscape Products are carefully inspected prior to shipping and are packaged according to International Safe Transit Association (ISTA) standards. As such, the Buyer is advised to examine the Product upon receipt as Inscape is not responsible for damage to Products that occur in transit or storage. In addition, the Buyer is advised that it must notify and file claims of any concealed damage to the Product in accordance with the carrier's terms and conditions. In most cases, the carrier's requirements will include notification of any claims relating to concealed goods within 5 days of delivery and that a formal freight claim must be filled with the carrier within 60 days of delivery. In addition, most carriers require that all packaging be retained and available for inspection and the Products left at the original delivery point. Terms and conditions do vary from carrier to carrier and the Buyer is advised to consult with the carrier directly for details.

**Requests for Special Shipping or Handling:** Inscape will make every effort to accommodate any special shipping or packaging requests. Inscape reserves the right to charge the Buyer with any direct or indirect costs associated with meeting such requests if they go beyond Inscape's standard procedures.

**Shipping Weights & Cubic Dimensions:** All shipping weights and cubic dimensions, if provided by Inscape, are approximate.

For certainty and without limiting the applicability of the foregoing, Inscape shall not be liable for any delays, loss or damage while the Products are in transit.

#### [Accessorial Freight Charges](#)

## **NON-OBSOLESCENCE**

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Refer to the Non-Obsolescence Policy document on Insite ([accessinsite.com](https://accessinsite.com)).

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## **WARRANTY**

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Refer to the North American Warranty document on [myinscape.com](http://myinscape.com) Except for the express warranty contained therein, Inscape makes no representation, express or implied, as to any Product including implied warranties of merchantability or fitness for any particular use. Inscape shall not be liable for incidental, indirect, economic, consequential, special, punitive or exemplary damages under the repair or replacement of defective parts or products under warranty, or the refund of payments received by Inscape with respect to said parts or Products.

## **CLAIMS & RETURNS PROCEDURE**

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Claims relating to defects in material or workmanship must be reported to Inscape Customer Experience within 30 days of detection. Inscape Products may only be returned with Inscape's prior written authorization, whether or not such Product is under warranty. All requests to return Product must be made in writing to Inscape and include a description of the Product, the reason for the return request, proof that the user is the original user, and evidence of the date that the Product was originally delivered. No returned product will be accepted by Inscape without prior written consent. Except in instances involving a valid warranty claim, returned Product will be subject to shipping, handling, re-stocking and restoration charges. Returns would be subject to a quality inspection upon return prior to credit.

Claims against Inscape, other than valid warranty claims, must be made in writing within 5 days after delivery, irrespective of whether Product remains concealed at the delivery site. Inscape shall not be liable for any non-warranty claims, including but not limited to shortage claims, that are made after 5 days from the date of delivery.

The remedies set forth in this section shall be the Buyer's sole and exclusive remedy and Inscape's entire liability for any breach of the limited warranty set forth in its North American Warranty document on [myinscape.com](http://myinscape.com)

## **LIMITATION OF LIABILITY**

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In no event shall Inscape's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total amount paid to Inscape for the products sold hereunder.

## **WAIVER**

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No waiver by Inscape of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Inscape. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **CONFIDENTIALITY**

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All non-public, confidential or proprietary information of Inscape, including but not limited to specifications, samples,

patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Inscape to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Inscape in writing. Upon Inscape’s request, Buyer shall promptly return all documents and other materials received from Inscape. Inscape shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

## **FORCE MAJEURE**

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Inscape shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Inscape including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

## **ASSIGNMENT**

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Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Inscape. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

## **RELATIONSHIP OF THE PARTIES**

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The relationship between the parties is that of independent contracts. 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 authority to contract for or bind the other party in any manner whatsoever.

## **SEVERABILITY**

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If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **GOVERNING LAW**

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This Agreement of purchase and sale arising here from shall be governed by and construed in accordance with the laws of Ontario. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement shall be instituted in the courts of the Province of Ontario and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding.

## **NOTICES**

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All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or Order Acknowledgment or to such other address that may be designated by the receiving party in writing. Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if sent by email during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the fifth day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

### **For more information, contact:**

#### **Inscape Corporation**

67 Toll Road  
Holland Landing, ON L9N 1H2  
Canada

#### **Inscape Walls**

15 Tiffany Avenue  
Jamestown, NY 14701  
USA