

Hakwood, Inc. ("Hakwood"), 2244 95th St. Suite 200, Naperville, Illinois 60564

Version: 2022

Manufacturer: Hakwood (Hak Houtindustrie, Handelmaatschappij en Houtverwerking Hak B.V.)  
("Hakwood Netherlands")

## **1. Definitions**

(a) Hakwood Installation Information (or HII) means Hakwood Netherlands' document describing the installation, site preparation, storage, handling and tool instructions;

(b) Hakwood Care & Maintenance Instructions (or CMI) means Hakwood Netherlands' document describing the care, maintenance and cleaning instructions;

(c) Hakwood Subfloor Heating and Cooling (or SHC) means Hakwood Netherlands' document describing the Product instructions for application on subfloor heating and cooling;

(d) Hakwood Delivery Information (or DI) means Hakwood's document describing the delivery information Client shall provide Hakwood and/or its agents and Client's delivery obligations;

(e) "Custom Work" means Products that are not included in the Hakwood general price list and/or are specifically developed and/or designed for the Client, and/or identified in Hakwood's Quotation, Order Confirmation, Order or any other document set forth in Hakwood's agreement with the Client that the Products are Custom Work. e.g., in terms of finish or shape; and

(f) The latest versions of the HII, CMI and SHC are available on and can be downloaded via Hakwood Netherlands' website: [www.hakwood.com](http://www.hakwood.com). The DI is attached and incorporated herein as **Exhibit 1**.

## **2. General**

All transactions and all sales and delivery of Products by Hakwood to its client ("Client") are governed by these terms and conditions including the DI, HII, CMI and SHC ("Terms"). Except as otherwise excluded by agreement in writing signed by Hakwood and Client and expressly referencing a change to the Terms: (a) these Terms shall apply to and are incorporated into all agreements, whether written, oral or implied, with respect to the purchase of any products ("Products") from Hakwood by Client, including without limitation, pursuant to any quote, proposal, purchase order, invoice/pro-forma invoice, order, order confirmation or any other document related to the Products provided by Hakwood to Client, and into all "Orders" (as defined below), (b) in the event Client has submitted a purchase order, order or other Client document with conflicting terms and conditions applicable to Products, these Terms shall control, and (c) Client's acceptance of the Products shall reflect Client's assent to Hakwood's Terms as set forth herein. In the event of any conflict between these Terms and any other Hakwood document, including without limitation, the DI, HII, CMI, or SHC, these Terms shall control.

**3. Protection of Hakwood Netherlands' designs and rights thereto**

The designs, models, images, descriptions, drawings, calculations and/or budgets provided by Hakwood in connection with a Quotation or Order, and all right, title and interest therein, including without limitation, all the related intellectual property rights, shall be and shall remain the sole and exclusive property of Hakwood Netherlands and shall be returned immediately upon Hakwood's request and the use thereof by the Client or by third parties engaged by the Client shall be discontinued immediately. The Client is prohibited from fully or partially copying the aforementioned designs, models, etc., disclosing them or making them available to third parties or for inspection.

**4. Quotations and Order Acceptance**

(a) Any quote issued by us ("Quotation") will be valid for sixty (60) days unless another date is set forth in the Quotation. Quotations can be amended or revoked by us in writing. Client shall order Products through a written Quotation and Hakwood's acceptance of such Quotation shall be reflected by Hakwood sending to Client Hakwood's document titled, "Order Confirmation," which will include descriptions of Products, price, shipment and other specific terms between the parties. (when so accepted, an "Order"). The Order Confirmation will contain a date by which Hakwood estimates the Products will be ready for shipment from Hakwood Netherlands or Hakwood's warehouses (the "Ready for Shipment Date"). Client acknowledges and agrees that the Ready for Shipment Date is merely an estimate and subject to change by Hakwood in its sole discretion based upon current circumstances and the Ready for Shipment Date does not represent any guarantee or agreement to ship on such date and is separate and apart from actual delivery of the Products to Client. All the information set forth in the Order Confirmation shall be deemed to be final, correct and agreed to by the Client unless the Client submits a written objection to the information set forth in the Order Confirmation within three (3) business days of the receipt by Client of the Order Confirmation ("Written Objection"). The Written Objection shall state with particularity the error(s) that the Client believes is contained in the Order Confirmation. In the event Client timely provides Hakwood its Written Objection, Hakwood and Client shall cooperate to address the Written Objection and, if proper, both shall execute an amended Order Confirmation. In the event Hakwood determines in its sole reasonable discretion that the Order Confirmation is correct and/or Client does not timely provide a Written Objection, the Order Confirmation (and, in turn, the "Order") shall remain in full force and effect.

(b) Each Order is a separate and independent agreement between Client and Hakwood unless an Order expressly incorporates all or part of another Order. Client agrees and acknowledges that these Terms shall apply to, be made a part of, and are incorporated into each Order. Hakwood's acceptance of any writing from Client is made conditional on Client's assent to these Terms and these Terms shall govern over any Client's conflicting terms and conditions set forth in any writing of Client.

(c) To request a change to any Order, including any change to the Ready for Shipment Date specified on the Order Confirmation, Client shall submit a written request to Hakwood. No change in the Order shall be effective unless and until accepted by Hakwood by its execution of an amended Order. Client agrees and acknowledges that changes accepted by Hakwood may result in a change in schedule, change in Ready for Shipment Date, change in pricing, and Additional Delivery Costs (as defined in paragraph 9 of these Terms), or all of the foregoing.

## **5. Prices and Trade Terms**

(a) Prices for the Products as set forth in the Order or any invoice/pro-forma invoice are in U.S. Dollars and includes all shipment and transportation costs and Taxes (defined below) (collectively, "Purchase Price"). Prices are on a DDP basis or such other delivery terms set forth in the Order Confirmation. Client is responsible for and shall pay the Purchase Price, including all transportation costs unless otherwise specified in the Order Confirmation.

(b) Additionally, Client is responsible for and shall pay all taxes and fees associated with the purchase and sale of the Products and materials provided hereunder or otherwise arising from these Terms or any applicable Order, including without limitation, sales, use, personal property, excise and value added taxes including all fines, interest or penalties assessed by federal, state, and/or local authorities ("Taxes"). Such Taxes will be added to each invoice/pro-forma invoice provided to the Client and Client agrees to promptly pay any and all Taxes whether included in the original invoice/pro-forma invoice or invoiced at a later time. In addition, Client authorizes Hakwood to pay any Taxes when and as they become due, after confirmation through reasonable diligence by Hakwood that such Taxes are legitimate and properly calculated, and Client agrees to reimburse Hakwood promptly and on demand for the full payment for such Taxes.

## **6. Payment**

(a) Client shall pay Hakwood the Purchase Price set forth in the Order Confirmation and any invoice/pro-forma invoice as follows: at least fifty percent (50%) of the Purchase Price upon placement of the Order ("Deposit"), and the remainder of the Purchase Price shall be paid in full in advance and prior to the Ready for Shipment Date or within five (5) business days of Hakwood's notice to Client of the occurrence of a Client Delay (as defined in paragraph 9 of these Terms), whichever occurs first, in accordance with the Order Confirmation or any invoice/pro-forma invoice, unless other payment terms are set forth in the Order Confirmation or invoice/pro-forma invoice (collectively, "Due Date").

(b) If the Order concerns Custom Work, the 50% payment of the Purchase Price upon placement of the Order is non-refundable except as provided in paragraph 8 of these Terms.

## **7. Non-Payment**

(a) Client shall be in default if it fails to pay the Purchase Price by its Due Date or in full or fails to perform any other obligation under the Order and these Terms. Upon default by Client, Hakwood may, without notice to Client and without waiving any other rights or remedies available to Hakwood hereunder or at law or in equity:

- (i) suspend or cease deliveries of Products on the Order or any other Order by Client; and/or
- (ii) cancel any accepted Orders; and
- (iii) collect and recover the Purchase Price, all Additional Delivery Costs, all other sums due under the Order and these Terms, and all attorneys' fees and costs as provided in Paragraph 17 of these Terms.

(b) Additionally, if Client fails to make any payment of the Purchase Price and all other sums due under the Order and these Terms in full, including Additional Delivery Costs, by its Due Date, Client shall pay interest on the part of the payment that is late in the amount of 1.5% per month or any part of a month, or the maximum interest rate allowed by law, whichever is less, from the Due Date to the date paid ("Late Fee"). The Late Fee is without waiver of any of Hakwood's rights and remedies due to a default as set forth in these Terms or of Hakwood's right to suspend or cease delivery of Products or cancel accepted Orders if Client fails to pay the Purchase Price or any invoice/pro-forma invoice.

## **8. Cancellation**

(a) An Order that has already been confirmed and accepted by us cannot be cancelled unless the Client has paid Hakwood the following cancellation fee:

(i) An Order (except for Custom Work) that has already been confirmed and accepted by us can be cancelled only if (i) the written cancellation notice from Client has been received by Hakwood within 10 business days after the date of the Order Confirmation; and (ii) Client agrees in the cancellation notice to pay Hakwood from the Deposit a cancellation fee of 15% of the Purchase Price of the Products set forth in the Order (excluding transportation costs and taxes, except for any applicable sales Tax).

(ii) An Order (except for Custom Work) that has already been confirmed and accepted by us more than 10 business days after the date of the Order Confirmation but before the agreed Ready for Shipment Date can be cancelled only if (i) the written cancellation notice from Client has been received by Hakwood before the agreed Ready for Shipment Date; and (ii) Client agrees in the cancellation notice to pay Hakwood a cancellation fee of 50% of the Purchase Price of the Products set forth in the Order (excluding transportation costs and taxes, except for any applicable sales Tax).

(iii) An Order for Custom Work that has already been confirmed and accepted by us can be cancelled only if (i) the written cancellation notice from Client has been received by Hakwood within 3 business days after the date of the Order Confirmation; and (ii) Client agrees in the cancellation notice to pay Hakwood a cancellation fee of 50% of the Purchase Price set forth in the Order (excluding transportation costs and taxes, except for any applicable sales Tax).

(b) In the event of a timely and complete cancellation by Client as set forth herein, Hakwood will refund to the Client any amounts previously paid by Client that are in excess of the applicable cancellation fee.

(c) Client may not otherwise cancel any Order except as explicitly set forth in this paragraph 8 of these Terms.

## **9. Shipment and Delivery**

(a) Except as qualified by paragraph 4 of these Terms, Hakwood will use commercially reasonable efforts to have the Products ready for shipment on a date within a reasonable time after the Ready for Shipment Date, provided Client has performed its payment obligations and timely provided to Hakwood all required shipping and delivery information, including as set forth in the DI.

(b) For purposes of these Terms, "Client Delay" shall mean any (i) delay of the shipment of Products caused by Client, including without limitation, Client's failure to pay the Purchase Price in full prior to the Ready for Shipment Date, Client's failure to submit all shipping and delivery information prior to the Ready for Shipment Date (including as required by the Hakwood DI), and all other occurrences or circumstances not attributable to Hakwood and/or all other conduct of Client that delays the shipment of the Products; and/or (ii) delay of the delivery of Products after shipment caused by Client, including without limitation, Client's failure to comply with Hakwood's DI and all other occurrences or circumstances not attributable to Hakwood and/or other conduct of Client that delays the delivery of the Products after shipment.

(c) In the event of any Client Delay, Hakwood shall have the right to store the Products at Client's expense and risk, and Client hereby authorizes and consents to such storage at its risk and expense.

(d) In the event of Client Delay pursuant to paragraph 9(b)(i) of these Terms, Client shall be obligated to pay Hakwood the balance of the Purchase Price and all other sums due under the Order and these Terms within five (5) business days of Hakwood's notice to the Client of the Client Delay, and pay Hakwood all storage costs at \$0.50 per square foot per month and all other costs resulting from such Client Delay.

(e) In the event of Client Delay pursuant to paragraph 9(b)(ii) of these Terms, Client shall be obligated to pay Hakwood all storage costs, including without limitation, third-party storage costs, additional delivery costs and all other costs resulting from such Client Delay (all of the costs described in paragraphs 9(d) and (e) of these Terms shall be deemed as "Additional Delivery Costs").

(f) At Hakwood's option, Additional Delivery Costs shall be added to Client's invoice/pro-forma invoice as part of the Purchase Price, or due within five (5) business days following Hakwood's written demand for the payment of Additional Delivery Costs. If storage is provided, this document shall constitute a warehouse receipt and Hakwood shall have a warehouse lien on all Products and property presently stored or hereafter stored for all storage and all other Additional Delivery Costs.

**10. Client Obligations**

Client shall install and maintain the Products in accordance with the HII, CMI and SHC, and any failure to do so is "Misuse." Client shall use the Products only for the purpose for which they were intended.

**11. (Extended) Retention of Title**

Without prejudice to the passing of the risks in accordance with the applicable trade terms, if Client has not paid the full Purchase Price and all other sums due under the Order and these Terms for Products by the Ready for Shipment Date or before delivery, title shall not pass to Client until the Purchase Price and all other sums due under the Order and these Terms has been paid in full.

**12. Complaints and Returns**

(a) Client shall inspect the Products immediately upon delivery and shall not refuse to accept Products on the basis of minor imperfections. Client shall comply with all of its obligations set forth in the DI.

(b) If the Products are damaged upon delivery and/or there is an error on the pallet count upon delivery, Client shall describe in writing on the delivery receipt the description of damage to the Products and/or the discrepancy of the pallet count, and Client shall provide written notice to Hakwood within one (1) business day of delivery of the Products and such written notice shall specify the reason(s) for the requested return including a description of any damage and/or discrepancy of the pallet count with the Products in the Order. ("Damage Notice"). In the event Client fails to provide Hakwood the Damage Notice within one (1) business day after delivery of the Products, Client shall be deemed to have accepted the Products, and Client has waived and released any objections to the damage of the Products and/or to the pallet count.

(c) If there was an error in the quantity of the Products (e.g. square footage) upon delivery, Client shall provide written notice to Hakwood within five (5) business days of delivery of the Products and such written notice shall specify the discrepancy of quantity with the Products in the Order. ("Quantity Notice"). In the event Client fails to provide Hakwood the Quantity Notice within five (5) business days after delivery of the Products, Client shall be deemed to have accepted the Products, and Client has waived and released any objections with the quantity of the Products in the Order.

(d) If there was a non-compliance with the description of the Products in the Order upon delivery, Client shall provide written notice to Hakwood within five (5) business days of delivery of the Products and such written notice shall specify the reason(s) for the requested return including a description of the non-compliance with the Products in the Order. ("Description Notice"). In the event Client fails to provide Hakwood the Description Notice within five (5) business days after delivery of the Products, Client shall be deemed to have accepted the Products, and Client has waived and released any non-compliance with the description of the Products in the Order.

(e) Upon a timely Damage Notice, Quantity Notice, or Description Notice, Client shall permit Hakwood to inspect the Products and the Products may be returned to Hakwood only in the event of a well-founded complaint regarding the Products as determined in the sole discretion of Hakwood. If

Hakwood agrees in writing that the Client may return such Products, Client shall remove and/or ship the Products in accordance with Hakwood's instructions.

**13. Limited Warranty Assigned From Hakwood Netherlands**

(a) Hakwood shall assign any limited warranty offered by the manufacturer (Hakwood Netherlands) with respect to the Products. Hakwood will assist the Client in processing any warranty claim with Hakwood Netherlands pursuant to any warranty provided by Hakwood Netherlands with respect to the Products. However, Client's recourse with respect to any claim of breach of any warranty shall be solely against Hakwood Netherlands and not against Hakwood.

(b) Any Misuse, abuse or any other negligence by Client and/or any of Client's agents, including without limitation, improper installation, improper use, improper maintenance, improper repair, modification, improper storage, improper handling or unauthorized combination with third party products may void the warranty of Hakwood Netherlands.

(c) **DISCLAIMER OF ALL WARRANTIES. HAKWOOD MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WITH RESPECT TO THE PRODUCTS AND HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WITH RESPECT TO THE PRODUCTS, ARISING BY APPLICABLE LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THAT ANY PRODUCTS WILL MEET CLIENT'S NEEDS OR REQUIREMENTS, AND/OR THE PRODUCTS WILL MATCH THE DESCRIPTION OF THE PRODUCTS OR SAMPLES DELIVERED BY US, INCLUDING WITHOUT LIMITATION, THOSE REGARDING DIMENSIONS, COLOR, PRINT, STRUCTURE, OR ANY OTHER INFORMATION, DESCRIPTION, IMAGE OR SPECIFICATIONS REGARDING PRODUCTS AND ANY DOCUMENTATION PROVIDED OR MADE AVAILABLE TO YOU OR ON THE HAKWOOD NETHERLANDS WEB SITE, INCLUDING WITHOUT LIMITATION, IMAGES, CATALOGUES, BROCHURES, COLOR REFERENCE SHEETS, SPEC SHEETS, ANY TECHNICAL PRODUCT INFORMATION (TPI), MATERIAL SAFETY DATA SHEET (MSDS) AND/OR THE HII, CMI OR SHC.**

**14. Client's Sole Remedy and Limitation of Hakwood's Liability.****(a) Client's Sole Remedy**

Hakwood's sole obligation shall be to repair or replace the damaged Products or provide the correct quantity or description of the Products within a reasonable time period after receipt of a timely Damage Notice, Quantity Notice, or Description Notice. ("Complaint Remedy").

In the event Hakwood fails to correct an alleged breach by providing a Complaint Remedy, Client's sole remedy shall be to receive a refund of any amount actually paid for the non-conforming Product or for any Product which was not provided by Hakwood. Notwithstanding the foregoing, in the event of such a refund or credit, Client shall be responsible for and shall pay Hakwood for all other Products previously provided by Hakwood pursuant to any Order for which no Damage Notice or Complaint Notice was provided.

(b) Limitation of Hakwood's Liability

HAKWOOD SHALL NOT BE LIABLE TO CLIENT FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE AND/OR ANY OTHER DAMAGE ARISING FROM OR RELATING TO THE DESIGN, SPECIFICATIONS OR MANUFACTURING OF THE PRODUCTS AND/OR FROM CLIENT'S USE, INSTALLATION, OR MAINTENANCE OF THE PRODUCTS.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL HAKWOOD'S TOTAL LIABILITY TO CLIENT FOR ANY CAUSE OR CLAIM WHATSOEVER EXCEED THE PURCHASE PRICE ACTUALLY PAID BY THE CLIENT FOR THE NON-CONFORMING OR UNDELIVERED PRODUCTS AS SET FORTH IN THE APPLICABLE INVOICE/PRO-FORMA INVOICE AND/OR ORDER. THIS LIMITATION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR STATUTE INCLUDING WITHOUT LIMITATION, FOR PERSONAL INJURY AND DEATH, NEGLIGENCE, STRICT LIABILITY AND/OR PRODUCTS LIABILITY CLAIMS. CLIENT AGREES AND ACKNOWLEDGES THAT THIS IS AN ADEQUATE REMEDY. IN NO EVENT SHALL HAKWOOD BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE IN ANY WAY ARISING OUT OF OR RELATING TO ANY ORDER OR THESE TERMS, INCLUDING WITHOUT LIMITATION, DELAY OR SUSPENSION IN PROVISION OF PRODUCTS OR CANCELLATION OF ORDERS, LOSS OF BUSINESS, LOSS OF PROFITS, SAVINGS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF GOODWILL, LOSS OF USE OF HOME, LOSS OF USE OF PRODUCTS, COST OF SUBSTITUTE PRODUCTS, EQUIPMENT OR GOODS, OTHER COSTS OR LOST OPPORTUNITY COSTS, OR ANY LOSS RELATED TO NON-PERFORMANCE, DELAY, OR CANCELLATION, OR ANY OTHER LOSS EVEN IF SUCH DAMAGES WERE FORESEEABLE AND THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES THAT THE AMOUNTS PAID HEREUNDER REFLECT THE ALLOCATION OF RISK SET FORTH HEREIN AND THAT HAKWOOD WOULD NOT ENTER INTO ANY APPLICABLE ORDER WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

**15. Force majeure**

In the event of the occurrence of force majeure, Hakwood shall be entitled to suspend delivery of the Products for the duration of the prevention or delay caused by such force majeure, without any liability of Hakwood to Client. In that case, the Ready for Shipment Date shall be extended for the period of prevention or delay caused by such force majeure. If it reasonably appears that the suspension will last for five (5) consecutive months, Hakwood may terminate the Order in whole or in part upon written notice to Client without any liability of Hakwood to Client. For purposes hereof, the term "force majeure" shall mean circumstances or events beyond Hakwood's reasonable control, whether or not foreseeable at the time of the Order, as a result of which Hakwood cannot reasonably be expected to perform its obligations pursuant to the Order. Such circumstances or events include but are not limited to: acts of God, fire, lightning, explosion, war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; civil war, rebellion, revolution, military or usurped power, insurrection, embargo, civil commotion or disorder, mob violence, act of civil disobedience; terrorism, riot, sabotage, or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; flood, draught; weather of exceptional severity, natural disaster; humidity that exceeds the HII; acts of local or central government or other authorities or regulatory bodies, act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, seizure of

works, requisition, nationalization; industrial disputes, transportation delays, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance or disputes such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical materials or supplies to the extent not subject to the reasonable control of Hakwood; un-availability of any required permits, licenses and/or authorizations (including custom clearance or import permissions), and defaults or force majeure of suppliers or subcontractors.

**16. Governing Law/Venue**

These Terms and each Order shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of law provisions. The parties hereby consent to the sole proper venue and jurisdiction for any dispute related hereto or to the Products in the state courts shall be situated in the County of DuPage, State of Illinois, or, if jurisdiction is exclusively proper in federal court, in the U.S. District Court, Chicago, Illinois. The United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded.

**17. Attorneys' Fees**

Client shall pay all costs and expenses, including attorneys' fees, incurred by Hakwood in connection with: (a) Hakwood's enforcement of any Order and these Terms, (b) any breach of any Order and these Terms by Client, including but not limited to Client's failure to pay for Products, any Additional Delivery Costs or any other sums due under any Order and these Terms, (c) Hakwood's collection or attempts to collect Client's account, and (d) defense by Hakwood of any claim or action by Client against Hakwood in which Hakwood is the prevailing party.

**18. Entire Agreement**

The Order and/or Order Confirmation, including these Terms, sets forth all of the terms and conditions related to Client's purchase of the Products and evidences the entire agreement between the parties and supersedes all prior written or oral representations and agreements between the parties.