

# Leveltek Processing, LLC

## Terms & Conditions

This document contains the Terms and Conditions (the “Terms and Conditions”) for the provision of processing services by Leveltek Processing, LLC, a West Virginia limited liability company (“Leveltek”). Each purchaser of any processing service (“Customer”) of Leveltek agrees to be bound by these Terms and Conditions.

1. **Acceptance** – Any additional or different terms set forth in any purchase order or other communication from Customer are hereby rejected and not binding upon Leveltek.
  
2. **Warranty** –
  - a. Leveltek will use its best efforts to process material provided by Customer in accordance with the specifications Customer expressly provides. In the event Customer does not expressly provide such specifications, Leveltek shall use its best efforts to process material provided by Customer to industry standards. Leveltek will not be responsible for any claims if the material in question has been further processed by Customer, another processor, service center, fabricator, end-user, or any other third party, without prior written authorization by Leveltek. Material properties or other issues beyond Leveltek’s control may limit Leveltek’s ability to remove shape defects or achieve specified tolerances or commercial standards. These limitations are due to material properties or other issues beyond Leveltek’s control, and not Leveltek’s processes. Leveltek shall have no obligation to correct any such limitations or provide any remedy therefor.
  
  - b. The foregoing warranty shall not apply if: (i) Customer does not present a claim for a non-conformance or rejection within 180 days of material being shipped from Leveltek’s facility; (ii) the product is a secondary product (i.e. product that does not have written mill certification as “prime”) unless commercial terms have been agreed upon in writing; or (iii) more than 10% of the coil has been processed by Customer, or a party other than Leveltek, without prior written authorization from Leveltek. Customer shall be conclusively deemed to have finally accepted material processed by Leveltek in the event Customer does not assert any issues in writing and within 180 days of material being shipped from Leveltek’s facility. Customer may not reject such materials, or revoke such acceptance, after such 180 day period
  
  - c. Leveltek’s obligations shall be limited to either, at the option of Leveltek: (1) attempting to reprocess any defectively processed material, freight prepaid by Customer to the Leveltek factory; or (2) the provision to Customer of a refund of any amounts paid to Leveltek for Leveltek to process such defectively-processed material.
  
  - d. Notwithstanding anything herein to the contrary, Leveltek shall have no obligation to issue any refund with respect to, or to reprocess any material which, upon inspection by Leveltek, shows evidence of damage as a result of abuse, misuse, mishandling, accidental damage, alteration, negligent handling, or improper installation or application, or as a result of alteration or other causes beyond the control of Leveltek.
  
  - e. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED HEREIN, LEVELTEK EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED OR ARISING UNDER ANY LAW, RELATING TO THE SERVICES PROVIDED BY LEVELTEK INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSES. NO PERSON, FIRM, OR CORPORATION IS AUTHORIZED TO ASSUME ON BEHALF OF

LEVELTEK ANY ADDITIONAL OBLIGATION OR LIABILITY NOT EXPRESSLY PROVIDED HEREIN, EXCEPT IN A WRITING DULY EXECUTED BY AN OFFICER OF LEVELTEK.

3. **Non-compliance/Quality Rejection** – In the event that Customer rejects one or more coils for any reason including, without limitation, non-compliance with a purchase order or for quality reasons, Leveltek will invoice Customer a coil charge of at least Four Hundred Fifty Dollars (\$450.00) to cover Leveltek's operating expenses.
4. **Claims** - Claims for any non-conformance or rejection of processing must be submitted in writing along with any supporting documents (see below) that identifies Leveltek as being at fault. Submission of said claims and documentation shall be made not later than 180 calendar days from the date that material was shipped from Leveltek's facility.
  - a. Supporting documents:
    - i. Leveltek tag number/s and/or work order number.
    - ii. Reason for rejection with applicable information
      1. Flatness measurements on a flatness table or otherwise flat surface
      2. Repeating marks – Type of mark and measurement of distance between
      3. Location of defect on the width/length in relation to edge, end, etc.
    - iii. Rejection weight
    - iv. Break down of material form (sheets/coil/mult) and piece count/weight of each item
    - v. Pictures or samples
5. **Debits** – Leveltek will not honor a debit memo on any non-conformance or rejection until a full investigation into the claim has been performed. Aforementioned debit is not to be taken by the Customer on a forthcoming payment. Should an unauthorized debit be taken by a Customer, a hold may be placed on Customer's material.
6. **Shipping and Delivery; Risk of Loss** – Delivery dates are approximate and are based upon prompt receipt of all necessary information from Customer. Under no circumstances does Leveltek guarantee date of shipment. Shipment will be made F.O.B. point of shipment unless otherwise specified. Leveltek shall ship materials as it deems appropriate unless instructed otherwise in writing by Customer. Unless otherwise specified by Customer, all shipments will be packaged in Leveltek's standard packaging and manner to be protected against normal handling and freight. Leveltek will only provide special packaging when specified and agreed to by Leveltek. Risk of loss or damage passes to Customer upon shipment. Leveltek is not responsible for any damage to Customer's material during transit. Claims for loss or damage to goods in transit should be made to the carrier and not to Leveltek.
7. **Patent Infringement; Title** – Customer shall hold Leveltek harmless against, and indemnify Leveltek for, any expense or loss resulting from infringement of any patents, trademarks or other intellectual property rights arising from compliance with Customer's designs or specifications. Customer shall also hold Leveltek harmless against, and indemnify Leveltek for, any expense or loss resulting from any claims relating to title to the materials provided by or on behalf of Customer for processing by Leveltek.
8. **Force Majeure** – All delivery dates are approximate. Leveltek shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of Customer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, or other labor difficulties, fuel, energy or material shortage, war, terrorism, riot, delay in transportation, defaults of common carriers or, without limiting the foregoing, any other delays beyond Leveltek's control.

9. **Storage** - Leveltek reserves the right to charge, and Customer shall upon request pay, storage fees as detailed below:
- a. Coils – Charges of \$5.00/ton per month after 60 days of receipt unless otherwise negotiated and documented.
  - b. Packaged/Finished Goods – Charges of \$5.00/ton per month after 60 days of date of completion, unless otherwise negotiated or documented.
  - c. Scrap – Charges of \$7.50/ton per month after 60 days, unless otherwise negotiated and documented.

Invoicing will be conducted monthly for the above items, itemized separately. Leveltek shall have the right to dispose of any material stored for more than one year, at Customer's sole cost, and Customer shall indemnify and hold Leveltek harmless from any cost, damage, or loss resulting from such disposal.

10. **Custom Built Skids** – If Leveltek has built, or contracted with a third party to build, customized skids for an order, and the coil or coils for such order are rejected during processing and/or not run, Customer will be invoiced for such customized skids. This provision shall not apply to standard skids.
11. **Limitation of Liability** – IN NO EVENT WILL LEVELTEK, ITS AFFILIATES OR THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS BE LIABLE FOR (A) CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, COSTS, EXPENSES, OR LOSSES (INCLUDING PROFITS OR OPPORTUNITY COSTS), REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE. IN NO EVENT SHALL LEVELTEK'S MAXIMUM AGGREGATE LIABILITY FOR ANY ACTIONS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES EXCEED THE AMOUNTS PAID TO LEVELTEK OUT OF WHICH SUCH ACTION, DAMAGE, CLAIM, LIABILITY COST, EXPENSE OR LOSS ARISES. ALL SUCH LIABILITY SHALL TERMINATE UPON CUSTOMER'S FINAL ACCEPTANCE OF MATERIAL PROCESSED BY LEVELTEK AS PROVIDED FOR HEREIN.
12. **Technical Information** – Any sketches, models, samples or designs submitted by Leveltek, as well as any other non-public proprietary information Leveltek provides to Customer, whether in writing, orally, or in any other form, shall remain the sole and exclusive property of Leveltek, and shall be treated as confidential information unless Leveltek has in writing indicated a contrary intent. Customer shall not, and shall not permit or enable any third party to, use or disclosure any of such sketches, models, samples, designs, production process or techniques, or any other non-public proprietary information, without the express written consent of Leveltek.
13. **Financial Conditions** – If Leveltek determines in good faith that the financial condition of Customer at any time does not justify the continuation of processing on the terms of payment originally specified, Leveltek may require full or partial payment in advance. In the event of Customer bankruptcy or insolvency, Leveltek shall be entitled to discontinue any work in progress and shall receive payment for any material processed prior to such discontinuance.
14. **Payment Terms** – Unless terms are specifically set forth on the Customer's purchase order and agreed to in writing by Leveltek, Customer shall pay all amounts due thirty (30) days after completion of processing by Leveltek.
15. **Assignment** – Neither party may assign, transfer or delegate any of such party's rights or obligations to the other without the written consent of the other party, except that Leveltek may (a) assign and/or subcontract all or a portion of its obligations to an affiliate or subsidiary without consent of Customer or

(b) assign its rights and obligations to any successor in interest to all or substantially all of the assets and business of Leveltek, without the consent or approval of Customer.

16. **No Waiver of Breach** – No waiver of any breach will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
17. **Severability** – If any provision of these Terms and Conditions shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity or enforceability of any legal and enforceable provision(s), and these Terms and Conditions shall be treated as if the illegal or unenforceable provision had not been inserted herein.
18. **No Waiver of Default** – Forbearance or failure of Leveltek to enforce any of these conditions or any of the other terms of the agreement between Leveltek and Customer or to exercise any right accruing from any default of Customer shall not affect or impair Leveltek’s rights upon continuance of such default nor shall such forbearance or failure constitute a waiver of that or any future default.
19. **Relationship of Parties** -- The agreement between Leveltek and Customer shall not constitute, create, give effect to or otherwise imply a joint venture, partnership, teaming agreement, or similar arrangement. Each party to such agreement shall act as an independent contractor and not as an agent or in any such manner to appear as an agent, officer, or employee of the other.
20. **Governing Law; Jurisdiction** – The agreement between Leveltek and Customer and these Terms and Conditions will be governed and construed under West Virginia law without regard to its conflict of law’s provisions. Customer hereby submits to the personal jurisdiction of the courts of the state of West Virginia for all purposes connected hereto. In any legal proceeding between the parties, venue shall exclusively lie in the state and federal courts situated in or having jurisdiction over Marshall County, West Virginia. Unless a lesser time period is specifically provided herein, any action by Customer against Leveltek must be brought within twelve months after the event giving rise to the cause of action, or such action shall be barred notwithstanding any statutory limitations period which may provide a longer period of time for bringing any such action.