



PACK 2 PACK CONDITIONS OF SALE

1. **General Conditions.** The sale by Pack 2 Pack ("Vendor") to Buyer of Pack 2 Pack products ("Products") shall be subject to the provisions of this Agreement. Any provision of any purchase order placed by Vendor which is inconsistent with any term of this Agreement or, to the extent applicable, Buyer's standard terms and conditions of sale shall be null and void unless expressly accepted by Vendor in writing. If any portion of this Agreement is determined by a court of competent jurisdiction to conflict with any federal, state, or local law, and, as a result, such portion is declared to be invalid and of no force or effect, all remaining provisions of this Agreement shall remain in full force and effect and shall be construed as if such invalid portion had not been included herein, unless such portion or portions are essential to this Agreement.
2. **Price.** The prices of Products sold to Buyer by Vendor shall be determined from Vendor's price list submitted to Buyer as part of Vendor's estimate provided to Buyer. However, Vendor reserves the right to modify its pricing, and the final pricing shall be provided at the time of Buyer's placement of a Purchase Order.
3. **Purchase Orders.** No purchase order shall be binding on Vendor until accepted in writing by a duly authorized officer or employee of Vendor. Vendor may refuse to accept any purchase order for any reason. Vendor reserves the right to make minor modifications to its Products.

Vendor may refuse to accept any purchase order for any reason. Vendor shall have the right to cancel any purchase order and shall be discharged of any obligation in the event of a force majeure circumstance, or any failure by its own suppliers or customers to meet production deadlines, leading to the impossibility of manufacturing or delivering the goods as planned. Force majeure circumstances shall include circumstances beyond the reasonable control of that party, including, without limitation, shortage of raw materials, strikes, lockout or any other such action, accidents, explosions, natural disasters, act of God, fires, flooding, failure of equipment or machinery, equipment or tooling accidents, transport interruptions, war, terrorism, civil commotion, riots, sabotage, applicable legislation and regulations, interruptions by government, or any changes within and outside Vendor that prevent the normal planned execution of sales.

4. **Deliveries.** Delivery to Buyer shall be F.O.B. any plant or warehouse of Vendor or such other point of origin as Vendor shall designate. Vendor shall not thereafter be liable for transportation or for loss or damage in transit. Claims for shortages or damages to shipments thereafter shall be made against carrier by Buyer. Shipping dates are estimated, and Vendor shall not be liable for loss or damage due to delay in manufacture or delivery resulting from any cause beyond its reasonable control including, but not limited to, compliance with regulations, orders or instructions of any federal, state or municipal government or any department or agent thereof, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, facilities shutdowns or alterations, embargoes, war, riot, delays in transportation, or inability to obtain necessary labor, manufacturing facilities or materials from usual sources, and any delays resulting from any such cause shall extend the time for delivery correspondingly. In no event shall Vendor be liable for consequential or special damages due to any cause. All expenses and charges caused by Buyer, including, but not limited to, its failure to accept delivery of or pay for such Products, shall be paid by Buyer to Vendor on demand. Furthermore, Buyer shall not have the right to cancel an order unless the shipping date is more than a month after the estimated shipping date, and Buyer shall have previously notified Vendor, via e-mail and Certified Mail Return Receipt Requested, of Buyer's cancellation of its purchase order. Vendor will not accept return of Products without Vendor's prior approval.
5. **Payment.** Unless otherwise agreed in the specific terms of sale, invoices shall be payable within ten (10) days of the date of the invoice by company check, bank check, certified check or wire transfer. Any failure to pay an invoice shall lead to the cancellation of the purchase order. No discount shall be granted for payment in cash upon receipt.

Where permitted, any late payment shall be subject to a late fee penalty at the rate of 1.5% per month. In the event of non-payment, Vendor's Collection Department shall take charge of collection, and where permitted, Buyer shall be charged a collection fee of 15% of the purchase order, or \$150, whichever is greater. Buyer shall not use any claim or complaint against Vendor as a reason for deferring any part of a



payment when it becomes due, or for offsetting it against any amount. Buyer shall not offset the payment against any amounts owed by Vendor.

6. **Transfer of Title.** Vendor shall retain title to the goods sold until the goods are paid in full. The failure to make any part of a payment when it becomes due shall give Vendor the right to claim the return of the goods. Such right shall also apply if Buyer becomes insolvent, or asks its creditors for a moratorium, or files a voluntary petition in bankruptcy, or is adjudicated bankrupt pursuant to an involuntary petition, or suffers the appointment of a temporary or permanent receiver, trustee, or custodian for all or a substantial part of its assets who shall not be discharged within thirty (30) days. In such event, the sale shall be cancelled, and Buyer shall return the unpaid goods, at its own expense and risk, following Vendor's formal demand for return of the goods. Products held in stock by Buyer shall be deemed to be the unpaid goods. The recovery of unpaid goods by Vendor shall not exclude any other legal proceedings that Vendor may initiate. The goods shall remain the property of the Vendor until their invoice is paid in full.
7. **Claim and Return of Goods.** Buyer shall be responsible for checking the shipments upon receipt and, where applicable, taking any action against the carrier. The goods shall be inspected within forty-eight hours (48 hours) following their delivery. Without prejudice to the steps to be taken vis-à-vis the carrier, Buyer shall inform Vendor by e-mail and by Certified Mail Return Receipt Requested within the time provided above, of any visible defect or discrepancy ("Non-Conforming") in the delivered products with the purchase order. Vendor will not accept any claims of any nature after that time. Unless otherwise stated, the delivery shall be deemed to be made at the time of receipt, and to be conforming with the goods described in the packing slip. Any non-conformity of the goods in a part of a delivery shall not release Buyer from its obligation to pay for the products that are not the subject of a claim. Vendor shall not be responsible for Buyer's failure to notice visible defects or discrepancies.

For custom Products, Vendor will make a press proof layout for Buyer's approval. After Buyer has approved the press proof, Buyer cannot reject goods which comply with the press proof. Minor differences between the shape and shade of the goods and the press proof are not deemed Non-Conforming. Vendor will only accept claims relating to Non-Conforming goods under this Section made in writing no later than forty-eight hours (48 hours) from the date of delivery.

8. **Warranties.** Vendor warrants that the goods marketed shall comply with the technical specifications and shall be free from manufacturing defects. Wherever applicable, Vendor's liability shall be limited to the replacement of defective products. In no event shall Vendor be liable for any consequential damages due to delay or the loss of time, or for latent defects. This warranty shall be void if defects are caused by Buyer design defects.

NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE ABOUT WHICH BUYER IS INFORMED PURSUANT TO SECTION 8 HEREOF, ARE GIVEN IN RESPECT OF PRODUCTS, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE IS HEREBY EXPRESSLY DISCLAIMED. ANY ACTION FOR AN ALLEGED BREACH OF ANY CONTRACT OF SALE OR OF THE ABOVE-STATED WARRANTY IN RESPECT OF PRODUCTS SOLD BY VENDOR TO BUYER MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES.

9. **Termination and suspension.** If Buyer becomes insolvent, or asks its creditors for a moratorium, or files a voluntary petition in bankruptcy, or is adjudicated bankrupt pursuant to an involuntary petition, or suffers the appointment of a temporary or permanent receiver, trustee, or custodian for all or a substantial part of its assets who shall not be discharged within thirty (30) days, or if Buyer fails to make timely payments, Vendor shall be entitled to cease deliveries and terminate the contracts without prior notice, or require guaranties in order to continue performance, and obtain a purchase money security interest on the goods.
10. **Buyer Indemnification.** For custom Products ordered by Buyer requiring the use of third party trademarks, copyrights, or other intellectual property rights ("Intellectual Property Rights"), Buyer agrees to indemnify and hold Purchaser and its officers, directors, shareholders, employees, agents, representatives, attorneys and controlling persons harmless from any and all claims which Vendor may become liable for, or may incur, or be compelled to pay, solely and directly as a result of the



infringement of the Intellectual Property Rights of a third party unaffiliated with Vendor solely by reason of Vendor's manufacture of the Products in accordance with the terms and conditions of this Agreement. Vendor agrees to notify Buyer within a reasonable time after it receives notice of any claim and Buyer shall promptly assume Vendor's defense thereof with counsel acceptable to Buyer in its reasonable discretion. Vendor shall have the right to participate in the defense of any claim with separate counsel of its choosing and at Licensee's expense. Any settlement which contains a remedy other than the payment of money damages by Buyer must be approved in writing in advance by Vendor, which approval shall not be unreasonably withheld or delayed.

11. **Disputes and Jurisdiction.** In the event of any dispute relating to the formation, construction, performance or termination hereof, the parties agree to first attempt resolution of the dispute by engaging in informal settlement discussions. In the event informal settlement discussions do not resolve a dispute between the parties, the parties then agree to binding mediation through Alternative Resolution Centers low-cost program, for disputes involving less than \$50,000, with each party to bear their own costs. For disputes involving sums greater than \$50,000, the parties agree to first attempt non-binding mediation through Alternative Resolution Centers, with each party to bear their own costs. Thereafter, the parties hereto agree to submit themselves to the exclusive jurisdiction of the tribunals of Los Angeles, California. The validity, construction and performance of this Agreement shall be exclusively governed by, and interpreted in accordance with, the laws of the State of California, without regard to its conflicts of laws principles.