

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Applicability. These terms and conditions ("**Terms**") are applicable to the sale of all products, goods, or services (collectively, the "**Goods**") by BEND-TEK, INC., a California corporation ("**Seller**"), to any purchaser thereof ("**Buyer**"), and are the only terms which govern the sale of the Goods. Notwithstanding anything herein to the contrary, if a subsequent written contract duly signed by both parties is in existence regarding the sale of the subject Goods, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. These Terms, along with any agreement, statement of work, amendment, addendum or other writing signed by Seller, constitute a complete and exclusive statement of the agreement (collectively, the "**Agreement**") between the parties, with respect to, and shall exclusively govern the sale of the Goods by Seller to Buyer. The Agreement comprises the entire agreement between the parties, and supersedes 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 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.

2. Shipping and Delivery. All shipments are F.O.B. shipping point. The methods and route of shipment are to be determined by Seller. Risk of loss, title, and right of possession pass to Buyer at the time delivery to a carrier ("**Delivery Point**"). Prepaid shipments at Buyer's request will not affect the transfer of title. Failure to make one or more shipments shall not constitute cause for cancellation of Buyer's order. The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, or as otherwise agreed upon in writing by the parties. Seller shall not be liable for any delays, loss or damage in transit. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. Failure to pay for any installment when due shall excuse Seller from making further deliveries any order from Buyer unless Seller receives assurance of payment that is satisfactory in Seller's sole and absolute discretion. In the event Buyer and Seller have agreed upon a delivery date and Buyer subsequently requests delivery of Goods that is either (i) earlier than the agreed upon delivery date, or (ii) 60 days later than the agreed upon delivery date, then Buyer shall be charged a fee that is the greater of (i) \$350 per such request, or (ii) the actual cost incurred by Seller as a result of Buyer's request. If Seller has completed Buyer's order at the time Buyer requests to push back an agreed upon delivery date, then Seller shall charge Buyer a storage fee in the amount of 15% of the purchase price of the Goods ordered by Buyer per month for Seller stores such Goods. If Buyer requests to cancel a PO within two weeks of the PO confirmation, Seller will charge a 50% fee for the cost of the total PO. Seller reserves the right to not accept any cancellations after the two week period (10 business days) have passed from the original date of PO confirmation.

3. Quantity. Seller reserves the right to overship, or undership up to 10% per order based on normal manufacturing variations. Orders with shipments of 90% or more of the ordered quantity may, at Seller's discretion, be considered complete, and Buyer shall be invoiced for the actual quantity shipped.

4. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and a first priority security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

5. Inspection and Rejection of Nonconforming Goods. Buyer shall inspect the Goods and notify Seller in writing within (i) 7 days of receipt of any Cosmetic Defect (defined as surface finish defects such as dings, scratches, dents, and tarnish to the finish or process); and (ii) 30 days of receipt of any Technical Defect (defined as a Good not made in accordance with the proper specification identified in Buyer's purchase order, causing it to be defective) (collectively, the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods; unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence, or other documentation as required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than as identified in Buyer's purchase order; (ii) product's label or packaging incorrectly identifies its contents; or (iii) the product contains a Cosmetic Defect or a Technical Defect. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit the Price for such Nonconforming Goods towards a future purchase order. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller at an address designated in writing by Seller. If Seller exercises its option to replace Nonconforming Goods, Seller shall,

after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller as such Goods are made to order for Buyer.

6. Price. Buyer shall purchase the Goods from Seller at the price ("**Price**") set forth in Seller's price list in force as of the date that Seller accepts Buyer's purchase order. The Price for any line item set forth in a purchase order shall be no less than \$175. If the Price should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Buyer shall pay Seller a First Article Inspection ("**FAI**") fee of \$100 to \$500, as determined by Seller, which fee will be included in Seller's written acceptance of Buyer's purchase order. Each FAI shall be valid for a maximum 2-year period per Good, after which Buyer shall be assessed a new FAI fee.

7. Payment Terms. Unless otherwise agreed upon in writing, Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 10% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

8. Limited Warranty. Seller warrants to Buyer that for a period of 1 year from the date of shipment of the Goods ("**Warranty Period**") that such Goods will materially conform to Seller's applicable drawings and specifications in effect at the time of shipment and will be free from material defects in the material and workmanship.

EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in this Section. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

The Seller shall not be liable for a breach of the warranty set forth in this Section unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 10 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective. The Seller shall not be liable for a breach of the warranty set forth in this Section if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

With respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller. **THE REMEDIES SET FORTH IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.**

9. Limitation of Liability. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

IN NO EVENT SHALL SELLER'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 OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

10. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance.

11. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent or is otherwise unable to pay its debt in the ordinary course of business, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

12. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. 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.

13. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller 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 Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to a temporary or permanent injunction against any breach or threatened breach of this Section from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. 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.

14. Force Majeure. Seller shall not be liable or responsible to Buyer, or be deemed to have defaulted under 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 beyond Seller's reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances causing delays in transportation or inability to obtain necessary labor, materials or supplies; (h) shortage of adequate power or transportation

facilities; (i) breakdowns or mechanical failure of machinery or equipment; (j) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; and (k) other events beyond Seller's reasonable control.

15. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. 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.

16. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

17. Relationship of the Parties. The relationship between the parties is that of independent contractors. 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.

18. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

19. Governing Law; Jurisdiction. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the County of Orange, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. Notices. 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 Seller's invoice or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

21. Severability. 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.

22. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

SELLER:

BEND-TEK, INC.,
a California corporation

By: _____
Name: _____
Title: _____

BUYER:

By: _____
Name: _____
Title: _____

