

## Terms and Conditions of Sale

**1. Acceptance of Terms.** Capitalized terms are defined below. Unless other terms are specified in Seller's Quotation or Invoice, the following Terms and Conditions of Sale ("Terms") will govern the offer and sale of all Goods and Services provided by Seller to Buyer. Any terms and conditions of sale that may be contained in any purchase order or other form provided by Buyer will be without force and effect, regardless of when received by Seller. By placing an Order, Buyer accepts these Terms, and the sale and delivery by Seller of Goods and Services will be conclusively presumed to be subject to these Terms.

**2. Definitions.** "Seller" is Lollicup USA Inc. "Buyer" is the individual and/or entity identified on the Quotation or Invoice. "Goods" are all equipment, products, Goods, or materials listed on a Quotation or Invoice. "Services" are Services listed on a Quotation or Invoice. A "Quotation" is issued by Seller to Buyer to offer the sale of Goods and any Services. "Order" means Buyer's commitment to purchase Goods from Seller. An "Invoice" is a written invoice for Goods and/or Services provided by Seller to Buyer for Orders accepted by Seller in writing or by performance.

**3. Formation of Contract.** Seller's acceptance of Buyer's Order is binding on Seller only if made by written instrument or, if not by written instrument, by shipment of the products ordered (and acceptance by shipment shall only be binding as to the portion of the order actually shipped by Seller). Any automatic or computer-generated response to an order by Seller's internal electronic data exchange system or otherwise shall not be deemed acceptance of an Order. Seller's acceptance is subject to Seller's Terms and Conditions of Sale stated herein.

**4. Credit Application.** Seller may, but shall not be obligated to, grant credit terms to Buyer. Buyer represents that the information supplied in the Credit Application is in all respects complete, accurate and truthful. Buyer agrees to notify Seller promptly, in writing, of any substantive changes in the information provided on Credit Application. Acceptance of any Order is subject to final credit approval by Seller. Seller reserves the right to cancel any sale if Seller deems Buyer unable to pay for any products. Seller reserves the right, in its sole discretion and without prior notice, to deny, change or limit the amount or duration of credit to be allowed Buyer, either generally or with respect to a particular purchase order, and may require cash payments in advance or security satisfactory to Seller. In the event credit is extended, Buyer shall pay all Invoice(s) when due and pay interest on overdue amount and acknowledges that Seller may change such conditions from time to time. Standard payment term is NET 15, unless agreed to in writing and signed by Seller. A service charge of two percent (2%) per month, or twenty four percent (24%) per annum, will be assessed on delinquent invoices but not to exceed at any time the highest legal rate of interest legally allowed. Buyer certifies that its request for extension of credit is for business purposes only and is not for personal, family or household purposes. Buyer agrees to abide by this Terms and Conditions of Sale and the terms and conditions of the Invoice by applying for credit from Seller. Buyer agrees that by signing the Credit Application of Seller, it is authorizing Seller to obtain financial information from the Bank and Trade referenced listed on the credit application. Buyer also authorizes the Bank and Trade references, listed on Credit Application, to release to Seller on a continuing basis any other financial information required by Seller to make its credit decisions. Buyer therefore waives its right of privacy with respect to all applicable Privacy Laws. Should Seller refer Buyer's account to a collection agency and/or attorney, all reasonable collection and legal fees are to be paid by Buyer. It is understood that any and all sales contract between Seller and Buyer is governed by the laws of the state of California. Venue of any

action to enforce the Credit Agreement, or any document executed in connection with the Credit Agreement, shall be in San Bernardino, California.

**5. Delivery and Acceptance.** Buyer shall pay the costs of delivery of the products. Buyer shall pay all sales, use, excise or similar taxes, or other charges, which Seller is required to pay, or to collect and remit, to any Government (national, state or local) and which are imposed on or measured by the sale. Buyer shall pay all freight, insurance, and other shipping expenses, as well as any special packing expenses. Seller will use commercially reasonable efforts to meet the quoted delivery dates and will have the right to deliver partial shipments of Goods. Buyer is deemed to have accepted the Goods upon delivery unless Buyer notifies Seller in writing of any loss, damage, shortage or other non-conformity within 7 days from the date of delivery. In the absence of receipt of such notice, Buyer will have no right to reject the Goods or Services and will be required to pay the invoice price for such Goods. Buyer will have no right to suspend or delay delivery of Goods. If Buyer fails to accept delivery of Goods, Seller will have the right to store or arrange storage of the Goods at Buyer's risk and expense. Buyer will promptly pay for the reasonable costs of storage and insurance of the Goods until delivery. Seller will not accept any returns of Goods without Seller's prior written authorization.

**6. Transfer of Property and Risk of Loss.** Seller retains the right and title to the products sold to Buyer until Seller is paid in full for the products. Buyer shall obtain the right and title to the products upon payment to Seller of the purchase price and any taxes, excise or other charges. The risk of loss, including, but not limited to the risk of loss, theft, damage or destruction of the products, transfers to Buyer F.O.B. Seller's facility.

**7. Payment.** Buyer shall pay all Invoices in accordance with the payment term stated thereon the Invoice in U.S. dollars. Payment will not be deemed to have been received until Seller has received cleared funds. If Seller delivers Goods to Buyer in lots, Seller has the right to invoice Buyer for each lot and Buyer will pay all such Invoices as provided herein. Buyer will make all payments due in full without any deduction, whether by way of set-off, counter-claim, discount, abatement or otherwise. Buyer understands that a \$35 fee will be associated on any received checks that are returned by the bank because of insufficient funds. A service charge of two percent (2%) per month, or twenty four percent (24%) per annum, will be assessed on overdue and unpaid invoiced amount but not to exceed at any time the highest legal rate of interest legally allowed.

**8. Intellectual Property Rights.** As between Buyer and Seller, Seller owns and retains all right, title and interest in and to any patents, copyrights, mask works, trade secrets, trademarks and other intellectual property rights in and to the Goods and Services. The sale of Goods or performance of Services does not convey a license, express or implied, to use any Seller trademark or trade name, and Buyer will not use any Seller trademark or trade name in connection with any Goods or Services, other than with respect to resale of Goods pre-marked or packaged by or on behalf of Seller.

**9. Discontinue of Unlicensed Goods.** Sellers reserves the right to discontinue deliveries of any products, the manufacture, sale or use of which would, in Seller's opinion, infringe upon any U.S. patent, trademark or design now or hereinafter issued, registered, or existing and under which Seller is not licensed.

**10. Disclaimer of Warranties.** THE WARRANTIES SET FORTH HEREIN OR IN SELLER'S WARRANTY DOCUMENTS WITH RESPECT TO A PRODUCT ARE THE ONLY WARRANTIES MADE BY SELLER IN CONNECTION WITH THE PRODUCTS AND THE TRANSACTIONS CONTEMPLATED AS A RESULT OF THIS SALE.

SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS TO BUYER OR ANY OTHER PERSON OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PRODUCTS SOLD HEREUNDER ARE SOLD ONLY TO THE SPECIFICATIONS SPECIFICALLY SET FORTH BY THE SELLER IN WRITING. SELLER'S SOLE OBLIGATION FOR A REMEDY TO BUYER SHALL BE REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF PRODUCTS PURCHASED, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS OR SUBSTANCES.

**11. Limitation of Liability.** No claim by Buyer of any kind including, but not limited to, claims for indemnification, whether as to quality or amount of product delivered or non-delivery, shall be greater in amount than the purchase price for the products in respect of which damages are claimed. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF THE PRODUCTS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

**12. Indemnification.** To the fullest extent permitted by applicable law, Buyer will defend, indemnify and hold harmless Seller, its subsidiaries, affiliates, parents, partners, their successors and assigns and each of their respective past and present directors, officers, employees and agents (collectively "Seller Indemnitees") from and against any and all losses, damages, liabilities, demands, claims, actions, judgments, charges, court costs, and legal or other expenses, including, without limitation, reasonable attorneys' fees ("Liabilities"), which Seller Indemnitees may sustain, incur or become liable for in defending or compromising any suit, action, or other proceeding arising out of, related to, or in any way connected with Buyer's purchase, sale, or use of the Goods or Services, including, but not limited to, Buyer's misuse of such Goods or Services, environmental claims resulting from Buyer's use of the Goods or Services, or any other acts or omissions, willful misconduct or negligence, whether active or passive, on the part of Buyer; provided, however, Buyer will have no indemnity obligations under this paragraph for any Liabilities caused solely by the willful misconduct or negligence of a Seller Indemnitee or covered by Seller's infringement indemnification obligations set forth in these Terms.

**13. Excuses for Non-Performance.** If the manufacture, transfer or receipt by either party of any products covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference, and neither party shall be liable to the other for default or delay in performing, except with respect to Buyer's payment obligations.

**14. Seller's Rights.** If Buyer should fail in any manner to fulfill the terms and conditions hereof, Seller may defer further shipments until such default is cured. Remedies provided herein shall be in addition to, and not in lieu of, other remedies that may be available to Seller. If for any reason, the quantities of the products covered hereby or of any materials used in the production of the products reasonably available to Seller shall be less than Seller total needs for its own use and for sale, Seller may allocate its available

supply of products among its existing or prospective purchasers and/or its own departments, divisions and affiliates in such manner Seller deems proper in Seller's sole discretion, without thereby incurring liability on account of the method of allocation determined or its implementation or for failure to perform this Agreement.

**15. Privacy Notice.** Seller, acting as controller, collects certain personal data regarding Buyer, its employees and its representatives as required for the purposes described below, including name, title, email address, phone number and mailing address ("Personal Data"). Such Personal Data will need to be provided in order for Seller to be able to manage Seller's supply of Goods to Buyer. Seller may share Personal Data with its affiliates around the world. Seller and its affiliates will collect and use Personal Data in accordance with applicable privacy and data protection laws, solely to communicate with Buyer regarding pending and potential supply activities, for customer management purposes and other legitimate business purposes concerning Buyer's and Seller's business relationship. Personal Data may be transferred to Seller's global headquarters in the United States and may be shared with Seller's affiliates in the United States and other locations where Seller has offices. Personal Data may also be shared with third party suppliers of Seller and its affiliates (including hosting service providers) who will process the Personal Data on Seller's and its affiliates' behalf, and may be located in the United States or elsewhere. Buyer will inform its employees and representatives of the information set out in this clause. BUYER CONSENTS AND WILL SECURE THE CONSENT OF ITS EMPLOYEES AND REPRESENTATIVES, TO THE TRANSFER TO AND PROCESSING OF ANY PERSONAL DATA TO SELLER AND ITS AFFILIATES WHETHER LOCATED IN THE UNITED STATES OR ANY OTHER COUNTRIES FOR THE PURPOSES DESCRIBED IN THIS PARAGRAPH OR FOR ANY OTHER PURPOSE TO WHICH BUYER CONSENTS. Buyer will indemnify, defend and hold harmless Seller and its affiliates from and against any claim arising out of or in connection with Buyer's failure to comply with this clause or any privacy and data protection laws applicable to Buyer.

**16. Governing Law.** This Agreement shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of California, without giving effect to its principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**17. Attorney's Fees.** If either party brings any legal action against the other party to enforce these Terms, the prevailing party will be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party.

**18. Dispute Resolution.** Any dispute, controversy or claim arising out of or related in any way to these Terms and Conditions of Sale and/or any sale and purchase of products hereunder or any transaction contemplated hereby which cannot be amicably resolved by the parties shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place before an arbitrator in California San Bernardino county. The language of the arbitration shall be English. The arbitrator will be bound to adjudicate all disputes in accordance with the laws of the State of California. The decision of the arbitrator shall be in writing with written findings of fact and shall be final and binding on the parties. The arbitrator shall be empowered to award money damages, but shall not be empowered to award incidental damages, consequential damages, indirect damages, statutory damages, special damages, exemplary damages, punitive damages or specific performance. Each party shall bear its own costs relating to the arbitration

proceedings irrespective of its outcome. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement.

**19. No Assignment.** This contract between Buyer and Seller is not transferable by either party without the prior written consent of the other party, except that Seller may assign this Agreement without Buyer's consent if the assignment is to a to an affiliate or if the assignment is carried out as part of a merger, restructuring, or reorganization, or sale or transfer of all or substantially all of Seller's assets.

**20. Compliance with Laws; Export Laws.** Buyer and Seller shall comply with all applicable international, national, state, regional and local laws and regulations with respect to their performance of this Agreement. Buyer agrees to adhere to all applicable US Export laws and regulations with respect to the products.

**21. Miscellaneous.** This Terms and Conditions of Sale is the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by sale of products or Services, notwithstanding any other terms that might be contained in any purchase order or other document received from Buyer or submitted to Seller. This Terms and Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and can only be modified or changed in writing and signed by authorized representatives of both parties. No waiver by Seller of any of Seller's Terms and Conditions of Sale or any breach hereof shall constitute or be deemed to be a waiver of any such term or any such breach in any other case. No waiver shall be deemed to occur as a result of the failure to enforce any term or condition of these Seller's Terms and Conditions of Sale. If any clause or portion hereof shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses or portions shall remain in full force and effect. The paragraph headings are for convenience only and shall not be used in interpreting or construing Seller's Terms and Conditions of Sale.