

## TERMS AND CONDITIONS OF SALE

**BLUE RIBBON PET PRODUCTS, INC.** (“Company”) acceptance of an order placed by your company (“Purchaser”) is expressly conditioned upon Purchaser’s assent to the following terms and conditions and in the event any of such terms and conditions conflict with the terms and conditions contained in Purchaser’s order, the conflict will be resolved in favor of the terms and conditions set forth below:

1. **Orders.** Orders placed by Purchaser shall not be binding on Company until accepted in writing. An order for goods to be purchased from Company hereunder (collectively, the “Goods”) may not be cancelled by Purchaser except with Company’s written agreement (which consent will be given in Company’s absolute discretion) and the payment by Purchaser of such amount as may be necessary to indemnify Company against all loss resulting from the cancellation of the order. No Goods are offered on a sale or return basis and Company’s representatives are not authorized to accept orders on this basis.

2. **Price and Payment.** The purchase price for Goods shall be as specified on the Order Confirmation, or in the absence thereof, Company’s price at the time of shipment. In addition to the purchase price, Purchaser shall be responsible for any and all transportation costs, insurance and all applicable federal, state and local taxes, duties or governmental charges imposed on or with respect to the purchase or importation of the Goods. Purchaser hereby waives its right to off-set any claims it may have under this order or Other Orders (defined below) against funds payable to Company hereunder or under Other Orders.

3. **Delivery; risk of loss and related matters.** (a) All shipping dates contained in an Order Confirmation are estimates only and time of delivery shall not be of the essence. Unless otherwise specified on the Order Confirmation provided to Purchaser by Company (i) Goods originating in the United States shall be delivered “*F.O.B. Company’s warehouse*”, and if originating outside the United States, the Goods shall be delivered “*Ex Works Company’s manufacturing plant*” (Incoterms 2010); (ii) Section 2-504 of the UCC shall govern the requirements for proper tender of delivery; and (iii) unless otherwise indicated in an Order Confirmation provided by Company to Purchaser, payment shall be due within ten (10) days after delivery of the Goods. At Company’s option, Company may for any reason suspend the credit term specified below for any delivery, and may demand cash payment on delivery or impose other payment terms including, without limitation, pre-payments.

(b) Unless otherwise specified on the Order Confirmation, delivery shall occur and risk of loss for Goods shall pass to Purchaser upon delivery of such Goods, at Company’s applicable plant or other agreed upon location, to a third party carrier. Further, for purposes hereof, “shipment” shall also be deemed to occur upon such delivery. Transportation of such Goods shall be at Purchaser’s sole risk and expense. In the event Purchaser breaches any provision hereof or otherwise repudiates its obligations hereunder, the risk of loss of identified Goods at Company’s plant shall immediately pass to Purchaser.

(c) If for any reason Purchaser fails to accept delivery of any of the Goods or

Company is unable to deliver Goods because Purchaser has not provided appropriate instructions or authorizations, then Company may thereafter (at its sole discretion) store the Goods for Purchaser's account (and the cost, including insurance, shall be an additional obligation of Purchaser to Company, payable on demand) or sell the Goods at the best price readily obtainable and any shortfall below the purchase price shall be payable by Purchaser to Company on demand. Nothing contained herein shall limit any other available remedy or modify Purchaser's obligations for the payment for Goods.

(d) Company shall have the right to deliver all of the Goods ordered at one time or in portions from time to time within the time of delivery specified on the Order Confirmation. Unless otherwise indicated in an Order Confirmation provided by Company to Purchaser, Payment for each delivery of Goods shall be due ten (10) days after delivery of the Goods. Any delivery of Goods not made in accordance herewith shall not affect any prior deliveries, nor entitle Purchaser to reject subsequent deliveries or entitle Purchaser to off-set any invoices of Company. Notwithstanding the rights of Company contained herein, Purchaser shall not have the right to accelerate, postpone, cancel or otherwise modify delivery dates specified on the Order Confirmation. If Purchaser attempts to do so, it will be deemed to have repudiated this contract.

(e) Delivery volumes are subject to a margin of five percent (5%) for over-run or under-run, and payment shall be made for the quantities actually delivered. Claims for shortages shall not be accepted unless such claims are given in writing, setting forth in detail the extent of the shortage, and such notice is received by Company in writing within two (2) business days after receipt of the Goods by Purchaser. Company will be given immediate opportunity to inspect any shipment claimed by Purchaser to have shortages. Sale of the Goods by Purchaser prior to such inspection by Company shall constitute acceptance of the Goods and waiver of all claims by Purchaser.

**4. Limited Warranty.** (a) Subject to the provisions and qualifications set forth herein, Company warrants only to Purchaser that the Goods will be new and conform to the applicable Specifications (hereinafter defined) on the date of shipment, subject to permissible variations and defects. The warranty period is six (6) months from the date of shipment (the "Warranty Period"). For purposes hereof, the term "Specifications" shall mean the specifications mutually agreed upon between the parties, and to the extent applicable, shall mean the specifications of any samples provided by Company to Purchaser.

(b) Purchaser is barred from any recovery (including, without limitation, any recovery under the express warranty specified in paragraph 4(a)) on account of any of the following, and any liability of Company on account of any of the following is hereby waived: (i) any Goods which have been subject to accident, negligence, alteration, abuse, tampering, improper storage (including, without limitation, exposure to weather), or the like; (ii) any Goods which are subjected to any secondary processes after delivery; (iii) Permissible Defects (as defined below); (iv) failure to maintain Goods in good condition and repair, or the like; (v) the failure of the Goods to meet any performance criteria; or (vi) the occurrence of an Event of Default, including without limitation, failure of Purchaser to make payments to Company when

due. For purposes hereof, the term "Permissible Defects" means deviations from Specifications to the extent of variations permitted by Company's standard manufacturing variations, such as normal manufacturing defects, any imperfections inherent in the materials or processes used, and variations of colors or shade.

**(c) IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE EXPRESS TERMS OF PARAGRAPH 4(a). THE EXPRESS WARRANTY SET FORTH AND THE OBLIGATIONS AND LIABILITIES OF COMPANY HEREUNDER ARE EXCLUSIVE AND ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE.**

(d) Notwithstanding the limited warranty included herein, Company makes no warranty or representation to Purchaser as to Goods which are private labeled for Purchaser being free of any claim of patent infringement or violation of any other intellectual property rights of third parties. In the event of any claim asserted of patent infringement or infringement of any other intellectual property rights relating to private labeled Goods, Purchaser acknowledges that it shall have no claim against Company, and Purchaser will indemnify and hold Company harmless from and against any loss, cost, claim, action, damage, liability or expense (including, without limitation, reasonable legal fees) incurred by Company in connection therewith.

(e) The express warranty contained in paragraph 4(a) shall not be extended, altered or varied, except by a written instrument signed by an authorized representative of Company.

**5. LIMITATION OF REMEDIES, WAIVER OF CONSEQUENTIAL DAMAGES.**

**(a) EXCEPT AS OTHERWISE EXPRESSLY STATED IN PARAGRAPH 5(b), COMPANY'S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO (i) ANY BREACH OF WARRANTY, EXPRESS OR IMPLIED (HEREUNDER OR OTHERWISE), (ii) NON-CONFORMITIES OF THE GOODS OR THE TENDER THEREOF, AND/OR (iii) OTHER BREACHES OF ANY OBLIGATION OR DUTY OWED BY COMPANY HEREUNDER OR UNDER APPLICABLE LAW, AND PURCHASER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT THERETO, SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT, AT COMPANY'S OPTION, OF SUCH GOODS WHICH ARE DETERMINED TO BE DEFECTIVE WITHIN THE WARRANTY PERIOD AS A DIRECT RESULT OF SUCH BREACH OF WARRANTY, NON-CONFORMITY OR OTHER BREACH. SUBJECT TO THE PROCEDURES SET FORTH BELOW, COMPANY WILL REPAIR OR REPLACE SUCH DEFECTIVE GOODS, AS THE CASE MAY BE, FREE OF CHARGE.**

No Goods may be returned without Company's prior written authorization. In order for Purchaser to be entitled to receive the rights and remedies contained in this paragraph 5, Purchaser must have made timely payment in full for the Goods in question, and during the Warranty Period, notify Company in writing of the existence of possible defects in Goods within thirty (30) days after discovery thereof or the time Purchaser should have discovered such possible defect. Otherwise such claims shall be deemed waived. Such notification shall contain a request for a return material authorization ("RMA") from Company, and Purchaser shall comply with Company's then applicable RMA procedures. Purchaser shall deliver the specified Goods to the location designated by Company for that purpose, all as stated in the RMA, free of all liens and encumbrances. Company may initially only request a small sample of Goods in the RMA. Company will pay for the transportation of the suspect Goods to the designated location. All other costs and expenses in connection therewith shall be the responsibility and liability of Purchaser including, without limitation, insurance, repackaging and other costs and expenses incurred in connection with this paragraph 5(a). Purchaser shall bear the risk of loss of all such Goods returned pursuant to this paragraph 5(a).

The determination of whether Goods are defective will be made by Company in its sole and absolute discretion, and such determination shall be conclusive and binding on Purchaser. If Company determines that the Goods in question are defective, Company will remedy such defects in accordance with this paragraph 5. However, if Company determines such Goods are not defective or are not covered by the warranty contained in paragraph 4(a), then, such non-defective Goods will be returned to Purchaser, at Purchaser's sole cost and expense. In addition, Company shall charge a fee to Purchaser and Purchaser shall promptly pay a fee equal to the costs and expenses of testing and inspecting such Goods as incurred by Company. Purchaser shall promptly reimburse Company for the transportation expenses incurred by Company on account of the RMA. Company shall not be liable or responsible for damaged or destroyed Goods as a result of any inspection or testing. Company shall also have no liability or obligation to Purchaser for loss or damage resulting from the testing, repair or replacement of Goods.

Purchaser hereby acknowledges and agrees that the notice and time periods specified in this paragraph 5 regarding discovery of defects and notification of defectiveness are the appropriate, commercially reasonable and fair time and notice periods.

**(b) IN THE EVENT REPAIR OR REPLACEMENT OF DEFECTIVE GOODS IS NOT APPROPRIATE OR PRACTICAL, AS DETERMINED BY COMPANY IN ITS SOLE AND ABSOLUTE DISCRETION, PURCHASER SHALL EITHER RECEIVE A REFUND OR A CREDIT IN THE AMOUNT EQUAL TO THE PURCHASE PRICE OF THE DEFECTIVE GOODS, AS DETERMINED BY COMPANY, IT BEING AGREED THAT THE SUCH REMEDY SHALL THEN BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY.**

**PURCHASER'S RIGHTS AND REMEDIES PROVIDED IN PARAGRAPH 5(a) AND THIS PARAGRAPH 5(b) SHALL BE PURCHASER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES HEREUNDER AND ARE EXPRESSLY MADE**

**IN SUBSTITUTION OF ANY AND ALL RIGHTS AND REMEDIES OTHERWISE PROVIDED UNDER APPLICABLE LAW.**

(c) In addition to Company's rights under Section 508 of the New York Uniform Commercial Code (the "UCC"), Company shall have the right to cure all non-conformities of Goods and the tender thereof without regard to whether Company had reasonable grounds for believing that the tender or non-conformities would be acceptable. Company shall have such right to cure even if Company's time to do so pursuant hereto extends beyond the initial time for performance hereunder. The parties acknowledge and agree that to the extent Purchaser's order has more than one delivery, this agreement is, and shall be deemed to be, an installment contract within the meaning of Section 2-612 of the UCC and the parties' rights and obligations hereunder shall be construed in accordance therewith, even if it is determined that this is a unitary contract with several deliveries.

**(d) THE MAXIMUM LIABILITY OF COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE PURCHASE PRICE OF GOODS SOLD HEREUNDER AND ACTUALLY PAID BY PURCHASER AND RECEIVED BY COMPANY. (IN RESPECT THEREOF, BUYER HEREBY ACKNOWLEDGES THAT SUCH LIMITATION OF LIABILITY IS NOT SUBJECT TO THE PROVISIONS OF UCC SECTIONS 2-718, 2-719(1)(b) OR 2-719(2) AND IF AND TO THE EXTENT SUCH SECTIONS MAY BE APPLICABLE, WAIVES APPLICATION OF SUCH.) UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO PURCHASER, OR TO ANY OTHER PERSON, FOR ANY (i) DAMAGES ARISING OUT OF OR RELATING TO PERMISSIBLE DEFECTS UNDER THE STANDARD; OR (ii) CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, OR LOST PROFITS, EXPENSES OR LOSSES ARISING OUT OF OR RELATING TO ANY (1) BREACH OF WARRANTY, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE; (2) DEFECTIVE GOODS OR ANY NON-CONFORMITIES IN THE TENDER THEREOF; OR (3) OTHER BREACH OF ANY OBLIGATION OR DUTY OWED BY COMPANY HEREUNDER OR UNDER APPLICABLE LAW, REGARDLESS OF WHETHER THE LIABILITY RESULTED FROM ANY GENERAL OR PARTICULAR REQUIREMENT OR NEED WHICH COMPANY KNEW OR SHOULD HAVE KNOWN OF. IN THE EVENT THAT ANY OTHER TERM OF THIS AGREEMENT IS FOUND UNCONSCIONABLE OR UNENFORCEABLE FOR ANY REASON, OR ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, THIS PROVISION OF WAIVER BY AGREEMENT OF CONSEQUENTIAL DAMAGES SHALL NEVERTHELESS CONTINUE IN FULL FORCE AND EFFECT.**

**6. Title.** Solely for the purpose of reserving a security interest in the Goods, Company retains title to such Goods until they are paid in full by Purchaser. Such retention of title by Company shall not affect the passage of risk of loss as specified in paragraph 3.

**7. Force Majeure.** (a) Notwithstanding any provision herein to the contrary, Company shall not be liable or responsible for any delay in or failure of delivery of a Goods by reason of

force majeure, including, but not limited to, Company's inability to obtain raw materials from suppliers or to obtain same on a timely basis, or as a result of interruption of transportation, delays in delivery, governmental regulation, labor disputes, strikes, war, fire, flood, accidents, acts of G-d, civil disturbance, quota restrictions, unavailability of necessary raw materials or any other causes beyond Company's control, whether or not such causes be of the same class or kind as those enumerated above, such enumeration being expressly understood to be in addition to other causes or classes of causes beyond Company's control. In the event of the occurrence of any such causes, Company shall have the right to allocate production and deliveries of Goods among its customers in such manner as it deems appropriate in its sole and absolute discretion.

(b) In the event Company is unable to make timely delivery of all or any of the Goods ordered hereunder, by reason of any events or occurrences referred to in this paragraph 7, Purchaser must accept delivery of the Goods whenever Company is able to make such delivery regardless of the duration of the delay in delivery of the Goods, or Company may, in its sole and absolute discretion, cancel the undelivered portion of the Goods without liability.

**8. Design Protection.** Purchaser has no right, title or interest in or to the design (including the packaging) or process to manufacture the Goods by reason of the purchase of such Goods or otherwise. All intellectual property rights in the Goods, packaging, tools, dies, fixtures, molds, drawings, plans, data, testing information or other equipment or materials, technology, trade secrets, know how or other proprietary information shall remain the property of Company and its agents. Purchaser, as a special inducement to Company to supply them with the Goods, agrees not to directly or indirectly copy or reproduce any proprietary designs and manufacturing processes or otherwise misappropriate or utilize Company's proprietary property. Any manufacturing information furnished by Company to Purchaser shall be kept confidential by Purchaser and not disclosed to any third party, nor shall same be used by Purchaser for any purpose.

**9. Interest Charges and Attorney's Fees.** Purchaser shall pay interest charges on past due amounts at a rate of the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law. Such rate of interest shall not exceed the maximum rate permitted under applicable law. In the event Company refers Purchaser's nonpayment to an attorney for collection, Purchaser shall promptly pay all reasonable legal fees and disbursements incurred by Company in connection therewith. In addition to all other rights available to Company in the event of the breach of this Agreement by Purchaser, Company shall have the right to impose reasonable storage charges and relocation fees.

**10. Company's Right of Possession.** Purchaser acknowledges and agrees that Company shall have the right, at any time, and from time to time, for credit reasons or because of the occurrence of an Event of Default (hereinafter defined) or Purchaser's default under any other orders or agreements with Company (collectively, "Other Orders"), to withhold shipments of Goods ordered hereunder or under Other Orders, and to recall all such Goods in transit, retake same, and repossess all such Goods which may be stored with Company for Purchaser's account, without the necessity of taking any action and without incurring any liability for exercising its rights hereunder.

**11. Default, Cancellation and Related Matters.** (a) The occurrence of one or more of the following events shall constitute an “Event of Default”: (i) Purchaser’s breach or failure to perform any of its obligations hereunder or under any Other Orders; (ii) Purchaser makes a general assignment for the benefit of creditors or admits in writing an inability to pay its debts as they mature or takes advantage of, or files under any federal or state insolvency statute or law, including, without limitation, the United States Bankruptcy Code, or consents to the institution of proceedings or the filing of any petition thereunder, or any proceeding is filed or commenced against Purchaser under any insolvency statute or law which is not stayed and dismissed promptly, or any substantial part of the properties of Purchaser are placed in the control of a receiver, custodian, trustee or similar official, or Purchaser consents to the appointment thereof; (iii) prohibition of Company by any cease and desist order, injunction, or other valid order, decree, process of law, or restraint from shipping, selling, exporting or distributing any Goods pursuant to the terms hereof; or (iv) determination by Company, in its sole and absolute discretion, that the prospect of payment, or Purchaser’s financial condition, has been impaired or Purchaser may be insolvent within the meaning of §1-201(23) of the UCC.

Upon the occurrence of an Event of Default, Company shall have the sole and absolute right to cancel all or any Goods ordered pursuant hereto and/or under any Other Orders. Company shall exercise such right by giving written notice of its intention to do so to Purchaser. Company shall not be liable to Purchaser on account of exercising such cancellation right.

(b) In the event Company, in its sole and absolute discretion, believes that an Event of Default has occurred or is likely to occur, then reasonable grounds for insecurity shall be deemed to exist and Company shall have the right to demand adequate assurance of due performance.

**12. Sale of Goods on Default.** Upon the occurrence of an Event of Default, Company shall have the authority, at its option and without the obligation to do so, to sell the completed or partially completed Goods in a commercially reasonable manner, and Purchaser shall be liable and responsible for all resulting losses and damages. In connection with Company’s exercise of its rights under this paragraph 12, Purchaser waives any claim for trademark infringement or any other claim for use of Purchaser’s intellectual property incorporated into the Goods (including packaging) as against Company and any purchaser of the Goods.

**13. Choice of Law and Forum.** (a) The parties acknowledge and agree that this agreement and the order to which it relates shall be a contract made in the United States, State of New York. All questions pertaining to the validity, construction, execution and performance of this sales order shall be construed and governed in accordance with the domestic laws of the State of New York (including, without limitation, the UCC), without giving effect to principles of (i) comity of nations or (ii) conflicts of law, and this sales order shall not be governed by the provisions of the U.N. Convention on Contracts for the International Sale of Goods; and (b) any action commenced in connection with this sales order shall be brought in a federal or state court located in the United States of America, State of New York, County of Suffolk, and to the extent not otherwise subject to the jurisdiction of such courts, Purchaser agrees to waive any objection to

such jurisdiction and to subject itself to the jurisdiction of such courts.

**14. Remedies.** All of Company's rights and remedies hereunder shall be cumulative and not exclusive and shall be in addition to all other rights and remedies available under applicable law. Failure by Company to exercise any right, remedy or option hereunder or under applicable law, or delay in exercising same, will not operate as a waiver, it being understood that no waiver by Company will be effective unless it is in writing and signed by Company, and then only to the extent specifically stated. Purchaser shall pay Company all costs and expenses, including reasonable attorneys' fees incurred by Company in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

**15. Miscellaneous.**

**(a) Integration.** This writing is intended by the parties to be a final, complete and exclusive statement of their agreement with respect to the subject matter hereof. All prior or contemporaneous oral or written statements are hereby excluded and are superseded. It is expressly agreed that no course of performance, course of dealing or usage of trade shall be admissible to contradict, supplement or explain the terms of this Acknowledgment. Furthermore, it is expressly agreed that a party's acceptance of or acquiescence in a course of performance under this agreement shall not be admissible to modify, waive, supplement or explain the terms hereof, even if that party is aware of the course of performance and has an opportunity to object to it.

**(b) Assignability.** This Acknowledgment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Purchaser shall not have the right to assign its rights, benefits or duties hereunder without the prior written consent of Company. Any assignment in contravention of this provision shall be null and void, and of no legal force or effect.

**(c) Modification or Amendment.** The terms of this Acknowledgment may not be modified or amended except by an instrument in writing signed by the party or parties against whom enforcement is sought.

**(d) Notices.** All notices made hereunder shall be made in writing, and shall be deemed adequately delivered if delivered by certified mail, return receipt requested, postage pre-paid or by a courier service that regularly maintains records of its pick ups and deliveries, addressed to the parties at their respective addresses set forth above or to any other address designated by a party hereto by written notice of such address change. Mailed notices shall be deemed given when mailed and notices sent by courier shall be deemed given when delivered to the courier service. Both mailed and courier service notices shall be deemed received three (3) days after mailing such notice or delivering it to the courier service, as the case may be.

**(e) Severability.** Any term or provision of this agreement which is invalid or unenforceable in any jurisdiction on account of unconscionability or otherwise, shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering



invalid or unenforceable the remaining terms and provisions of this agreement or affecting the validity or enforceability of any of the terms or provisions of this agreement in any other jurisdiction. Further, to the extent that any term or provision hereof is deemed so invalid, void or otherwise unenforceable, but may be made enforceable by amendment thereto, the parties agree that such amendment may be made so that the same shall, nevertheless, be enforceable to the fullest extent permissible under the laws and public policies applied in any such jurisdiction in which enforcement is sought.

**(f) Waiver of Breach.** Any waiver of any of the provisions of this Acknowledgment shall not be effective unless made in writing and signed by the Company.

**(g) Survival.** This paragraph 15 and the following paragraphs 4, 5, 6, 8, 9, 12, 13, 14 and 16 shall survive the consummation, termination and cancellation of this agreement.

**16. REQUIRED CALIFORNIA PROPOSITION 65 WARNING.** Certain Goods purchased from Company may be shipped to Purchaser with a California Proposition 65 warning, which will be attached to the Goods as a product label or a hang-tag (the “On-Product Warning”). All Goods shipped with a Proposition 65 warning and offered or sold, distributed, transferred, or otherwise placed in the stream of commerce in the State of California, directly or indirectly, by Purchaser must comply with Proposition 65. Purchaser shall not remove, cover, obscure or alter any On-Product Warning. If no On-Product Warning is included on Goods to be offered or sold, distributed, transferred, or otherwise placed in the stream of commerce in the State of California, directly or indirectly, by Purchaser, Purchaser shall be responsible for insuring compliance with the requirements of Proposition 65. If Purchaser resells Goods that require a Proposition 65 warning via the Internet and/or catalog, Purchaser must provide a Proposition 65 warning for those Goods in the manner set forth in 27 C.C.R. § 25602 (b) (“Internet Warning”) and/or 27 C.C.R. § 25602(c) (“Catalog Warning”), which require that a Proposition 65 warning be displayed prominently to consumers prior to purchase. Purchaser acknowledges that the sale of certain Goods subject to Proposition 65 absent an On-Product Warning and, if applicable, an Internet Warning and/or Catalog Warning, may constitute a violation of Proposition 65. Purchaser agrees to indemnify, defend and hold harmless Company from and against any and all loss, liability, penalties, damage, claims, demands, actions, and/or proceedings (“Prop 65 Claims”) and all costs and expenses connected with any thereof (including, without limitation, attorneys’ fees) arising out of or relating to Purchaser’s offer or sale, distribution or transfer or placement in the stream of commerce of any Goods in violation of this paragraph.

If Purchaser does not agree with the terms and conditions contained herein or if anything herein is incorrect or unacceptable, please advise us immediately in writing.