

Terms and Conditions for the Sale of ATLANCO, LLC's Goods

1. Applicability.

These terms and conditions of sale (these "Terms") covers the sale of Goods from Seller to Buyer (defined hereinbelow), and is a part of and incorporated into the Reseller Agreement (the "Reseller Agreement") between Atlanco, LLC ("Seller") and each of Seller's authorized resellers (each a "Buyer"). These Terms, the Reseller Agreement, and any accompanying confirmation of sale from Seller are the only terms which govern the sale of Goods, and comprise the entire agreement between the parties. Notwithstanding anything herein to the contrary, the terms of a Reseller Agreement shall prevail to the extent they are inconsistent with or conflict with these Terms.

THESE TERMS PREVAIL OVER ANY OF BUYER'S GENERAL TERMS AND CONDITIONS OF PURCHASE REGARDLESS OF 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. Orders.

(a) By issuing an order for Goods to Seller, Buyer makes an offer to purchase such Goods pursuant to these Terms. Seller has no obligation to accept any order; however, Seller may accept an order by confirming the order in writing or by delivering the applicable Goods to Buyer, whichever occurs first (each accepted order, an "Order"). Seller may reject or cancel an Order, which it may do without liability or penalty, and without constituting a waiver of any of Seller's rights or remedies under these Terms.

(b) Upon acceptance of an Order, Buyer shall be obligated to purchase from Seller quantities of Goods specified in such Order. Cancellation or modification of all or part of any Order is subject to Seller's prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller as a result of the cancellation or modification.

3. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of an Order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed to in writing by the parties, Seller will at Buyer's cost and expense deliver the Goods, at the location specified in the Order (the "Delivery Point"), using Seller's standard methods for packaging and shipping. Buyer shall take delivery of the Goods within 2 days of carrier's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) 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 Order.

4. Non-Delivery. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

5. Returns & Claims.

(a) Absolutely no returned merchandise will be accepted without prior approval from Seller. Buyer must email request so that a return authorization number (RGA) and/ or UPS call tag can be issued. Any merchandise returned without receiving prior approval will be refused and all freight charges will fall to the Buyer. An authorization to return merchandise is not an approval for credit. All goods are subject to inspection by Seller. All returns must remain in as-shipped condition.

(b) All claims must be made within 10 days of receipt of goods. Claims not made during this period are subject to denial.

(c) Notification of defective merchandise must be made within 30 days of receipt of goods. All claims (shortages, pricing errors or shipping errors) should be emailed to Seller to insure proper credit. Buyer will not accept merchandise or return which has been laundered or soiled in any way.

(d) Merchandise returned must have all store identification, labels and price tags removed; failure to do so will result in a 10% handling fee.

(e) The return of non-defective merchandise is subject to the greater of \$5 or 15% restocking fee.

(f) The return of any merchandise which is not purchased directly from Seller is subject to disposal or will be returned freight collect with a handling fee of \$5 charged to the Buyer.

(g) All claims for merchandise lost and/or damaged in transit must be made to the delivering carrier. Damaged and/or unsealed cartons must be noted upon receipt from carrier. Seller will provide the necessary assistance in furnishing documentation for freight claims. Seller is not responsible for any loss, damage, or pilferage in transit. No deductions for freight allowed.

6. Shipping Terms. Delivery shall be made FOB Seller's warehouse in Marietta, Georgia ("Seller's Location"). In the case of international shipments, deliveries will be made FOB Seller's applicable warehouse.

7. Title and Risk of Loss. Title to Goods shipped passes to Buyer upon shipment of the Goods to Buyer. Risk of loss or damage passes to Buyer upon delivery to the carrier.

8. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within 10 days of receipt ("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 identified in the Order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) 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 or refund the price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith.

(c) 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 these Terms to Seller.

9. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in any price sheet provided to Buyer by Seller. Seller shall provide price sheets in writing by email, EDI, or on its website. Seller reserves the right to adjust prices without prior written notice.

(b) 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.

10. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller by the due date indicated on the Seller's invoice. Buyer shall make all payments hereunder by check, wire transfer, or credit card and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% 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 amount when due hereunder and such failure continues for 5 days following written notice thereof.

(c) 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.

11. Limited Warranty.

(a) Seller warrants to Buyer that for a Period of 2 years from purchase date (the "Warranty Period") the Goods will be free from material defects in material and workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), 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.

(c) Seller shall not be liable for a breach of the warranty set forth herein unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within two 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.

(d) Seller shall not be liable for a breach of the warranty set forth herein 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.

(e) Subject to the terms of this Section, 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 provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(f) THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.

12. Limitation of Liability

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, 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 OR OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS 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.**

(c) The limitation of liability set forth in this Section shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. Resale of Goods.

(a) Buyer may only resell Goods if it has entered into a Reseller Agreement with Seller. Unless permitted by the Reseller Agreement, Buyer may only resell Goods to end-users or consumers and is prohibited from selling Goods to persons or entities that intend to resell the Goods (each a "Secondary Reseller").

(b) If Buyer has entered into a Reseller Agreement with Seller, then Buyer may offer customers Seller's limited consumer warranty. This warranty is void if sold to a Secondary Reseller.

(c) In the event Buyer breaches this section or sells to a Secondary Reseller, then Seller may terminate the relationship with Buyer and pursue any remedies Seller may have under these Terms or at law or equity.

14. 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 these Terms.

15. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate these Terms with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms; or (ii) has not otherwise performed or complied with any of these Terms, in whole or in part.

16. 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 these Terms is confidential, solely for the use of performing these Terms 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 injunctive relief for any violation of this Section. 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.

17. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached these Terms, for any failure or delay in fulfilling or performing any of these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

18. Miscellaneous

(a) **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under these Terms 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 these Terms.

(b) **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms 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.

(c) **Waiver.** No waiver by Seller of any of the provisions of these Terms 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 these Terms 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.

(d) **No Third-Party Beneficiaries.** These Terms are 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.

(e) **Governing Law.** All matters arising out of or relating to these Terms is governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule.

(f) **Severability.** If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

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