

acknowledges and agrees that the remedies set forth in this Article 6 and Seller's Return Policy (see Cobeal's Return Policy) Buyer's exclusive remedies for the delivery of Non-Conforming Goods

1. **Applicability.** These terms and conditions (these "Terms") shall govern the sale of the goods (the "Goods") by The Cobeal Group and/or its affiliates, 1420 E. Roseville Parkway, Suite 140-144, Roseville, CA 95661, a California Corporation, ("Seller") to the Buyer set forth on the accompanying purchase order ("Purchase Order"). The Purchase Order and these Terms (collectively, this "Agreement") shall constitute the sole and entire agreement of the parties with respect to the sale, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the sale. Fulfillment of the Purchase Order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. **Delivery Date; Location.** Seller shall deliver the Goods in the quantities of and within reasonable time and date, subject to availability of finished Goods, after receipt of Buyer's Purchase Order (the "Delivery Date"). Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the address Buyer indicates on the Order Confirmation (the "Delivery Location") using Seller's standard methods of packaging and shipping such Goods. Buyer shall bear all costs incurred in connection with delivery of the Goods to the Delivery Location (including, without limitation, all packaging costs, transportation and freight costs, shipping fees, insurance costs, applicable taxes and custom duties). 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. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Location, or if Seller is unable to deliver the Goods at the Delivery Location on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (a) the Goods shall be deemed to have been delivered; and (b) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. **Title and Risk of Loss.** Risk of loss and title to all Goods ordered under the Purchase Order passes to the Buyer upon Seller's tender of such Goods to the commercial carrier. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a security interest in all Goods purchased pursuant to the Purchase Order (including Goods, Non-Conforming Goods and excess Goods) and the proceeds therefrom to secure Buyer's payment obligations under this Agreement. Buyer acknowledges and agrees that the security interest granted under this Article 3 is a purchase money security interest under California law. Seller may file a financing statement for such security interest and Buyer shall execute any such statements or other documentation necessary to perfect Seller's security interest in the Goods.

4. **Quantity.** If Seller delivers to Buyer a quantity of Goods of up to 15% more or less than the quantity set forth in the Purchase Order, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Purchase Order adjusted pro rata.

5. **Inspection and Rejection of Non-Conforming Goods.** Buyer shall inspect the Goods within six days following the Delivery Date. Buyer shall be deemed to have accepted the Goods unless it notifies Seller in writing of any Non-Conforming Goods (as herein defined) within 30 days of gaining knowledge of such Non-Conforming Goods, but in no event, later than six months after the date of shipment from Seller and furnishes such written evidence or other documentation as reasonably required by Seller to substantiate Buyer's objection(s). "Non-Conforming Goods" means: (a) the Goods shipped are different than identified in the Purchase Order; or (b) product's label or packaging incorrectly identifies its contents. If Buyer notifies Seller of any Non-Conforming Goods during the Inspection Period, Seller shall in its sole discretion: (i) replace such Non-Conforming Goods with conforming Goods; or (ii) credit or refund the price for such Non-Conforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith, less a 25% restocking fee. Buyer shall ship, at its expense and risk of loss, the Non-Conforming Goods (in its original condition and in full case quantities) back to Seller's applicable facility. If Seller exercises its option to replace Non-Conforming Goods, Seller shall, after receiving Buyer's shipment of Non-Conforming Goods, ship to Buyer, at Buyer's expense and risk of loss (including, without limitation, all packaging costs, transportation and freight costs, shipping fees, insurance costs, applicable taxes and custom duties), the replaced Goods to the Delivery Location. Buyer

6. **Price.** Buyer shall purchase the Goods from Seller for the prices set forth on the Purchase Order. If the prices set forth on the Purchase Order prior to delivery of the Goods to a carrier for shipment to Buyer increase, then the Terms shall be construed as if the increased prices 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.

7. **Payment.** Buyer shall remit payment to Seller for all amounts due within 30 days from the date of Seller's invoice. All payments shall be made by wire transfer and in U.S. dollars. Buyer shall pay a late payment charge for any payments not paid when due, equal to 1.5% per month or the maximum rate permitted by California law, whichever is less, calculated from the date that such payments were due and compounded monthly. Buyer shall reimburse Seller for all costs and expenses 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 purchased by Buyer if Buyer fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof. 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. **Compliance with Law.** Buyer shall comply with all laws applicable to this Agreement, Buyer's performance of its obligations hereunder and Buyer's use, sale or other exploitation of the Goods. Without limitation to the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase or use of the Goods; and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use, marketing or otherwise, that violates any law.

9. **No Warranty. ALL GOODS, PRODUCTS AND SERVICES PROVIDED BY SELLER UNDER THIS AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, THAT THE GOODS WILL ACHIEVE A PARTICULAR RESULT OR BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS IN THE GOODS WILL BE CORRECTED. SELLER HEREBY EXPRESSLY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ORAL OR WRITTEN.**

10. **Third Party Products.** Products, material and substances manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO ANY THIRD PARTY PRODUCT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, 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 IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, THAT THE GOODS WILL ACHIEVE A PARTICULAR RESULT OR BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS IN THE GOODS WILL BE CORRECTED.**

11. **Proprietary Rights.** Buyer acknowledges and agrees that (a) any and all of Seller's rights in and to its intellectual property, including, without limitation, trademark, trade dress, copyrights, patents and designs incorporated in or forming a part of the Goods or any of its other product or materials, whether registered or unregistered, are the sole and exclusive property of Seller or its licensors; (b) Buyer shall not acquire any ownership interest in any of Seller's intellectual property rights under this Agreement; (c) any goodwill derived from the use by Buyer of Seller's intellectual property rights inures to the benefit of Seller or its licensors, as the case may be; (d) if Buyer acquires any intellectual property rights in or relating to any Goods (including any rights in any trademarks, derivative works or patent improvements relating thereto) by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either of the parties; (e) Buyer shall use Seller's intellectual property rights solely for purposes of using the Goods under this Agreement and only in accordance with this Agreement and the instructions of Seller; and (f) Buyer shall not copy, reproduce, duplicate, reverse engineer, transfer, or resell the Goods or any intellectual property included therein or appurtenant thereto.

12. **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 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. Buyer shall not make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotional materials regarding Seller or its business unless: (i) it has received the express written consent of Seller; or (ii) it is required to do so by law.

13. **Indemnification.** Buyer ("**Indemnifying Party**") shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement (collectively, "**Losses**"), relating to or arising out of any actual or alleged (a) breach or non-fulfillment of any material representation, warranty or covenant contained in this Agreement, (b) act or omission of Indemnifying Party or its employees (including any negligence, recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement or use of the Goods; or (c) any bodily injury, death of any person or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party or its employees; and/or (d) any failure by Indemnifying Party or its employees to comply with any applicable Laws.

14. **Limitation of Liability.** **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, COSTS, EXPENSES OR LOST PROFITS IN ANY MANNER IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY EXCEED THE TOTAL AMOUNT PAID BY BUYER TO SELLER FOR THE GOODS SOLD PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM THAT GAVE RISE TO SUCH LIABILITY OCCURRED.**

15. **Amendment and Modification.** No change to this Agreement is binding upon Seller unless it is in writing, specifically states that it amends the terms and conditions of this sale, and is signed by an authorized representative of each party.

16. **Termination.** Seller may terminate this sale, in whole or in part, at any time with or without cause, immediately upon written notice to the Buyer

if Buyer: (a) fails to pay any amount due under this Agreement and such failure to pay continues for more than 30 days after the invoice date; (b) breaches this Agreement; or (c) becomes insolvent, admits in writing its inability to pay its debts as they become due, fails to satisfy any enforceable, final and material judgment against it, or otherwise ceases operations of its business in the ordinary course, 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.

17. **Force Majeure.** If Seller is unable to perform any obligation under this Agreement by reason of any strike or other work stoppage, or labor dispute, government order or directive, act of God or other cause beyond such Seller's reasonable control, it shall be excused from performance and may terminate this Agreement without any liability to Buyer.

18. **No Set-off.** Buyer shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or law, rule or regulation, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or Seller's affiliates, whether relating to Seller's or its affiliates' breach or non-performance of this Agreement or any other agreement between (a) Buyer or any of its affiliates; or (b) Seller or any of its affiliates, or otherwise.

19. **Relationship of the Parties.** The relationship between the parties created by this Agreement is that of independent contractors and nothing in this Agreement shall be construed or deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, business entity of any kind, nor constitute one party an agent of the other party.

20. **Waiver: Severability.** Seller's waiver of any right or remedy is only effective if made in writing and signed by an authorized representative of Seller. The waiver of any breach or default shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not (a) waive that or any other right or remedy; or (b) prevent or restrict the further exercise of that or any other right. 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.

21. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of California, excluding any applicable conflict of law provisions.