



PRODUCT TERMS AND CONDITIONS

DATED effective the ___ day of _____, 2022 (the “Effective Date”)

BETWEEN:

POPEYE'S LOGISTICS LTD., a British Columbia company, with an office at 1317 Rauma Avenue, Sicamous, BC, V0E 2V4

(the “Company”)

AND:

_____ ,
with an office at address: _____

(the “Purchaser”)

BACKGROUND

- A. The Company has developed the Products (defined below) for use by the construction industry to assist in the performance roofing work; and
- B. The Purchaser is in the construction industry and wishes to purchase the Product to use for business purposes.

IN CONSIDERATION of the mutual covenants and agreements of the Parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Purchaser agree as follows:

1. DEFINED TERMS

1.1 In these Terms:

- (a) “**Manual**” means the owner’s manual accompanying Product.
 - Upon Request @: info@theearthangel.ca or customerservice@theearthangel.com
- (b) “**Order**” means an offer to purchase a Product submitted through Company’s email ordering process or other manner specified by Company;
- (c) “**Party**” means either Company or Purchaser and “**Parties**” both;
- (d) “**Product**” means any of the Company’s products sold at <https://www.theearthangel.com> or <https://www.theridgerider.com> , including The Earth Angel™ (FRS) and The Ridge Rider™;
- (e) “**Terms**” means these Product Terms and Conditions.

2. ACKNOWLEDGEMENT AND ASSUMPTION OF RISKS

- 2.1 PURCHASER ACKNOWLEDGES THAT THE PRODUCT MUST BE USED STRICTLY IN ACCORDANCE WITH THE INSTRUCTIONS AND SAFETY NOTICES SET OUT IN THE MANUAL. THE PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT BY PURCHASING AND USING THE PRODUCT THEY WAIVE CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE OR CLAIM COMPENSATION.
- 2.2 USE OF THE PRODUCT IS AT PURCHASER’S OWN DISCRETION AND SOLE RISK.



PURCHASER ACKNOWLEDGES AND AGREES THAT USE OF THE PRODUCT INVOLVES MANY RISKS, DANGERS AND HAZARDS WHICH MAY RESULT IN PROPERTY DAMAGE AND BODILY INJURY, INCLUDING DEATH.

- 2.3 PURCHASER ACKNOWLEDGES AND VOLUNTARILY ACCEPTS ALL RISKS, DANGERS AND HAZARDS, INCLUDING PROPERTY DAMAGE AND BODILY INJURY, INCLUDING DEATH, THAT MAY RESULT FROM THE USE OF THE PRODUCT BY THE PURCHASER OR ANY THIRD PARTY THE PURCHASER PROVIDES WITH ACCESS TO THE PRODUCT.

3. **RELEASE**

- 3.1 TO THE FULLEST EXTENT PERMITTED BY LAW, PURCHASER UNCONDITIONALLY AND IRREVOCABLY RELEASES, AGREES NOT TO SUE, AND FOREVER DISCHARGES COMPANY AND ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES, AND SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "**RELEASEES**") FROM ANY AND ALL PAST, PRESENT OR FUTURE CLAIMS, LIABILITIES, RIGHTS OF ACTIONS, COMPLAINTS, DEMANDS, LOSSES, OBLIGATIONS, COSTS (INCLUDING LEGAL FEES AND EXPENSES), DISBURSEMENTS, FINES, PENALTIES, JUDGMENTS, OF ANY KIND WHATSOEVER ("**CLAIMS**"), WHETHER KNOWN, UNKNOWN, FORESEEN OR UNFORESEEN, THAT ARE RELATED TO, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED WITH THE USE OF THE PRODUCT (WHETHER BY PURCHASER OR ANY THIRD PARTY PURCHASER PROVIDES WITH ACCESS TO THE PRODUCT), ANY ERROR, FAILURE OR DEFECT OF SUCH PRODUCT, OR ANY PROPERTY DAMAGE, BODILY INJURY OR LOSS CAUSED BY THE USE OF SUCH PRODUCT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH PROPERTY DAMAGE, BODILY INJURY OR LOSS OR SUCH PROPERTY DAMAGE, BODILY INJURY OR LOSSES WERE OTHERWISE FORESEEABLE.

- 3.2 PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT COMPANY IS NOT RESPONSIBLE FOR ANY PROPERTY DAMAGE, BODILY INJURY, INCLUDING DEATH, OR LOSSES THAT MAY RESULT FROM THE USE OF THE PRODUCT BY THE PURCHASER OR ANY THIRD PARTY THE PURCHASER HAS PROVIDED WITH ACCESS TO THE PRODUCT.

- 3.3 PURCHASER ACKNOWLEDGES AND AGREES THAT THE FOREGOING ASSUMPTION OF RISKS AND RELEASE ARE INTENDED TO BE AS BROAD AND INCLUSIVE AS IS PERMITTED BY LAW AND THAT IF ANY PORTION THEREOF IS HELD INVALID, THE BALANCE SHALL NOTWITHSTANDING THAT INVALIDITY CONTINUE IN FULL LEGAL FORCE AND EFFECT.

4. **LIMITATION OF LIABILITY**

- 4.1 SUBJECT ONLY TO SECTION 6.2, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE OR USE OF THE PRODUCT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED, IN THE AGGREGATE, AN AMOUNT EQUIVALENT TO THE PURCHASE PRICE PAID BY PURCHASER FOR THAT PRODUCT. THE COMPANY SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

5. **ACCEPTANCE.**

- 5.1 These Terms constitute an offer by the Purchaser to purchase the Products on the terms set out herein. When signed and returned by the Purchaser, and countersigned by the Company, these Terms become a binding agreement applicable to all Products ordered by the Purchaser. All Orders are subject to the acceptance by the Company, at the Company's sole discretion.



6. COMPANY'S REPRESENTATIONS AND WARRANTIES

- 6.1 Company represents and warrants to the Purchaser that Company has the right to sell the Products and to convey ownership of the Products on purchase.

7. PRODUCT WARRANTY

- 7.1 Company's sole and exclusive liability, and Purchaser's sole and exclusive remedy, for defects in materials and workmanship in respect of each purchased Product is set out in the One (1) Year Limited Warranty incorporated as Schedule "A" to these Terms, attached. The Company expressly disclaims all other warranties whether express, implied, oral or written, including but not limited to the warranties of merchantability and fitness for a particular purpose.

8. PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

- 8.1 Purchaser represents and warrants to the Company that:
- (a) Purchaser has reviewed and understands the information contained in the Manual as well as all safety notices and training videos for the Product that have been made available to Purchaser by the Company; and
 - (b) Purchaser understands and agrees that by purchasing or using the Product it agrees to the terms, conditions and limitations set out in these Terms and the Manual, including the waiver and release of any right to sue for property damage or personal injury, including death.

9. COVENANTS

- 9.1 Purchaser covenants and agrees with the Company that it will, and will ensure its employees and contractors will:
- (a) prior to any use of the Product by them, read the Manual; and
 - (b) strictly adhere to the instructions, safety information and specifications in the Manual when using the Product.

10. INDEMNIFICATION

- 10.1 TO THE FULLEST EXTENT PERMITTED BY LAW, PURCHASER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE RELEASEES FROM AND AGAINST ANY AND ALL CLAIMS, INCLUDING THIRD PARTY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES OF SUCH CLAIMS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR UNDER ANY OTHER THEORY OF LIABILITY, ARISING IN CONNECTION WITH PURCHASER'S PURCHASE OR USE OF THE PRODUCT OR THE USE OF THE PRODUCT BY ANY THIRD PARTY TO WHOM THE PURCHASER HAS PROVIDED ACCESS TO THE PRODUCT, AND INCLUDING, WITHOUT LIMITATION, CLAIMS RELATED TO PROPERTY DAMAGE AND BODILY INJURY, INCLUDING DEATH.

11. ASSIGNMENT

- 11.1 The Purchaser may not assign any of its rights or obligations under these Terms without the prior written consent of the Company, which consent may be arbitrarily withheld.

12. ENUREMENT

- 12.1 These Terms shall inure to the benefit of and be binding upon the Parties and their respective successors, permitted assigns, heirs and executors.

13. WAIVER



- 13.1 Failure by either Party to insist in any one or more instances upon the strict performance of any one of the covenants contained in these Terms shall not be construed as a waiver or relinquishment of such covenant. No waiver by either Party hereto of any such covenant shall be deemed to have been made unless expressed in writing and signed by the waiving Party.

14. **SEVERABILITY**

- 14.1 The unlawfulness or invalidity or unenforceability of any provision in these Terms or of any covenant contained in any of them on the part of either Party shall not affect the validity or enforceability of any other provision or covenant thereof or therein contained.

15. **AMENDMENTS**

- 15.1 No term or provision hereof may be modified, waived or amended except by an instrument in writing signed by both of the Parties to these Terms and referring expressly to these Terms or the term or provisions being amended.

16. **GOVERNING LAW**

- 16.1 Any and all matters of dispute between the Parties, whether arising from the Terms itself or from alleged extra-contractual dealings, interactions, or facts prior to or subsequent to the formation of the Terms, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the contract, are governed by, and are to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable therein, excluding any conflicts of law principles or rules that would impose a law of another jurisdiction for the construction of these Terms. The application of the *United Nations Convention on Contracts for the Sale of Goods* is expressly excluded. Any action or proceeding between the Parties will be resolved by the courts of the Province of British Columbia in the city of Kelowna. Each Party hereby irrevocably accepts and submits to the exercise of personal jurisdiction over such Party by such courts, agrees that venue shall be proper in such courts and irrevocably waives and releases any and all defenses in such courts based on lack of personal jurisdiction, improper venue and/or *forum non conveniens*. In any action or proceeding to enforce rights under these Terms, the prevailing party shall be entitled to recover costs and legal fees on a full indemnity basis.

17. **ENTIRE AGREEMENT**

- 17.1 These Terms represent the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement, communications or understanding regarding the subject matter of these Terms. No representation, inducement, promise or agreement not specifically set out in this Agreement shall be of any force or effect. Terms and conditions of any Purchaser-issued purchase order shall have no force and effect, even if SAP accepts or does not otherwise reject the purchase order

18. **NO ADVERSE RULE OF CONSTRUCTION TO APPLY**

- 18.1 The language in these Terms shall be in all cases construed simply according to its fair meaning and not strictly for or against either Party to these Terms.

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19. **COUNTERPARTS**



- 19.1 These Terms may be executed and delivered in counterparts by facsimile, e-mail or other electronic means. Each counterpart so executed and delivered shall be deemed to be an original and shall constitute one and the same instrument.

By signing below, the Purchaser hereby offers to purchase the Products on the terms set out herein:

Company Name Here _____

Name: _____

Title: _____

I have the authority to bind the Purchaser

Signature: _____

Date: _____

By signing below, the Company hereby accepts Purchaser's offer to purchase the Products on these Terms:

POPEYE'S LOGISTICS LTD.

Name: Lawrence "Popeye" Jertberg

Title: Founder / Owner / CEO

I have the authority to bind the Purchaser

Signature: _____

Date: _____

Witness provided by: **www.docusign.com**

SCHEDULE "A"

One (1) Year Limited Warranty

Popeye's Logistics LTD. (the "Company"), whose office is located at 1317 Rauma Avenue, Sicamous, British Columbia, Canada, V0E 2V4, extends a one (1) year limited warranty to the purchaser of Company products (the "Purchaser") sold at <https://www.theearthangel.com> or <https://www.theridgerider.com>, including The Earth Angel™ (FRS) and The Ridge Rider™ (the "Products"). This limited warranty begins on the official date of shipping (proof of shipping will be provided and required for any warranty claims) and extends for a period of one (1) year (the "Warranty Period").

20. LIMITED WARRANTY

The Company warrants that its Products will, for the Warranty Period, be free from defects in materials and workmanship. This limited warranty only applies to (1) Products purchased directly from the Company, and (2) the original purchaser. The Company expressly disclaims all other warranties whether express, implied, oral or written, including but not limited to the warranties of merchantability and fitness for a particular purpose. Furthermore, the Company hereby assigns to the Purchaser all rights under manufacturers' warranties (if any) covering any third-party products sold with the Products or as part of one of Company's Starter Kits. Defects in items covered by third party manufacturers' warranties are expressly excluded from coverage under this Limited Warranty, and the Owner should follow the procedures in the manufacturers' warranties if defects appear in those items.

This limited warranty does not cover Product failure or defects caused by use in excess of specified capacity limits, misuse, negligence or accident, alteration or repair not authorized by the Company, failure to maintain the Products or any other damage beyond Company's control. No Products shall be field modified after manufacture without the written authorization of Company. Any modification to the Products without Company's written consent shall void Company's limited warranty obligations hereunder.

21. COMPANY'S OBLIGATIONS

If a covered defect occurs during the Warranty Period, the Company agrees to repair, replace, or refund to the Purchaser the reasonable cost (limited to the purchase price paid by the Purchaser for the defective Product) of repairing or replacing the defective item, which shall be Company's sole and exclusive liability and Owner's sole and exclusive remedy under this limited warranty. Company will be the sole judge and decider of Product condition and warranty options. Any steps taken by the Company to correct defects shall not act to extend the Warranty Period of this limited warranty. All warranty repairs by the Company shall be at no charge to the Purchaser and shall be performed within a reasonable length of time. All shipping costs to Company and for return to Purchaser will be the Purchaser's responsibility if the Purchaser resides outside of Canada and the contiguous United States.

22. PURCHASER'S OBLIGATION

Purchaser must provide proof of normal maintenance and proper care of the Product in accordance with the owner's manual. Purchaser must provide the Company with a written notice to plesltd2019@gmail.com of any defect before the expiration of the Warranty Period. Purchaser shall have no right or action at law or in equity against Company hereunder for which the Company has not received notice in writing.

23. NO MODIFICATIONS TO WARRANTY

No employee, contractor, agent, or representative of the Company has the authority to modify the terms of this one (1) year limited warranty.