

TERMS & CONDITIONS OF SALE AGREEMENT

The following are the terms and conditions applicable to any sale by DESIGN COUTURE, INC (“B. Coature”) and shall remain in effect unless otherwise modified by B. Coature (the “Agreement”). Additional conditions may apply in accordance with requirements as set forth on the applicable sales order, invoice or receipt.

1. General. B. Coature agrees to sell and the buyer (“Buyer”) named on the corresponding Sales Order (e.g., sales order, invoice, receipt, etc.) agrees to purchase the materials, goods and/or products (“Goods”) set forth in the Sales Order.

2. Acceptance/Order Terms. The Sales Order is expressly conditioned upon Buyer’s acceptance to foregoing terms. Buyer is hereby on notice that no terms additional to or deviating from the foregoing terms shall become part of the Order, unless and until letter acceptance of such additional or deviating terms, signed by an authorized representative of B. Coature has been issued to Buyer, or as designated on the form describing the Goods. Buyer’s placement of the Sales Order supplied by, or on behalf of, B. Coature shall, without limitation, constitute acceptance of B. Coature’s foregoing terms without condition or qualification, and in so doing, Buyer shall have confirmed its express intention to waive any conditions or qualifications on Buyer’s acceptance of B. Coature’s offer.

3. Price. Prices are stated on the Sales Order. No discount will be allowed unless specifically set forth in the Agreement. Buyer agrees to the payment conditions on Agreement.

4. Payment. Buyer shall remit payment by credit card, check, or wire transfer. Acceptable credit cards are American Express, Visa or Mastercard. Unless noted otherwise on Sales Order, payment must be received before Goods are shipped. All accepted orders with terms stated ON SHIPMENT, if not shipping immediately, require a non-refundable 25% deposit for B. Coature to proceed with the Sales Order. The remaining balance is due when order is ready to ship. Shipping charges will be billed at their normal rate and are not included in the amount listed on the Sales Order.

5. Taxes. All taxes, excises, customs duties, fees and other charges imposed by any government authority upon the manufacture, sale, transportation, export or import of Goods sold herein shall be paid by Buyer, or if required to be paid by B. Coature, shall be reimbursed to B. Coature by Buyer, and any increases after acceptance of the Sales Order will be added to the B. Coature’s prices.

6. Receipt of Goods. The Goods shall be deemed received by Buyer when either received by the Buyer or transferred to the Buyer’s preferred carrier as indicated address in the Sales Order, e.g. UPS, FEDEX or Buyer’s preferred carrier.

7. Right of Inspection. Buyer shall have the right to inspect the Goods at the time and place of delivery. Within fourteen (14) days after receipt, Buyer must provide notice to B. Coature of any claim for damages on account of the condition, quality, or grade of the Goods, and Buyer must specify in detail the basis of such claim. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the Goods by Buyer.

8. Warranty/Remedy. B. Coature warrants that at the time of delivery the Goods shall be free from defects in materials and workmanship. In the case of such manufacturing defect, at B. Coature’s option, the Goods will be repaired or replaced, or credit in the amount of the sale price will be issued if the Goods are returned prepaid to B. Coature’s warehouse and B. Coature’s subsequent examination reveals the Goods not to be free from defects in materials and workmanship. Additionally, the aforementioned warranty shall apply only to products used within the parameters, environments, and all other conditions for which said product has been qualified by B. Coature. Buyer is responsible for observing and maintaining these parameters, environments, or conditions during use, and warranty shall be considered void if product is used outside, in excess of, or otherwise discordant with any of these specifications.

9. Procedure as to Rejected Goods. Upon timely receipt of notification of rejection, B. Coature will immediately arrange to receive back the Goods for shipment and return. However, within five (5) days of such notice, B. Coature may have an agent inspect such Goods for nonconformity; otherwise, such inspection will be made on return to B. Coature’s designated facility.

10. Disclaimer of Consequential and Incidental Damages. In no event will B. Coature be liable for consequential or incidental damages arising out of, or in connection with, this Agreement, including, without limitation, breach of any obligation imposed on B. Coature hereunder or in connection herewith. The remedy under the warranty provision is limited to repair or replacement. Consequential damages for purposes hereof shall include, without limitation, loss of use, income or profit or losses sustained as the result of injury (including death) to any person or loss of, or damage to, property (including, without limitation, property handled or processed by the use of the Goods). Buyer shall defend, indemnify and hold B. Coature, its affiliates and their respective officers, directors, employees, agents and representatives harmless B. Coature against all liability, cost or expense which may be sustained by B. Coature on account of any such loss, damage or injury. The obligations set forth in this Section shall survive the expiration or termination of this Agreement

11. Termination, Cancellation and Changes. Sales Orders cannot be terminated, cancelled or modified, or shipment deferred, after acceptance of Buyer’s Order by B. Coature, except with B. Coature’s written consent and subject to a twenty-five percent (25%) repacking/restoring fees for expenses incurred and work executed by B. Coature or its suppliers. Buyer shall be obligated to accept any portion of the Goods shipped or delivered by B. Coature pending B. Coature’s written approval of cancellation. If Buyer cancels Order for any reason, Buyer forfeits the entirety of the initial deposit.

12. Returns. All returns must be preauthorized by B. Coature. Preauthorized returns within fourteen (14) days of receiving the Order shall be exchanged for in-store credit only. Preauthorized returns after fourteen (14) days of receipt of the Order are eligible to receive partial in-store credit. Preauthorized returns made after thirty (30) days from receipt of the Order will not be accepted under any circumstances.

13. No Waiver. Forbearance or failure of B. Coature to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair B. Coature’s rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of B. Coature’s rights in case of any subsequent default of Buyer.

14. Indemnification. Buyer agrees to release, defend, hold harmless and indemnify B. Coature from any and all claims, liabilities, costs and expenses, including but not limited to reasonable attorneys’ fees, that may arise from B. Coature’s acts or omissions relating to or arising from the design, manufacture, sale, use, display, advertising or promotion, shipment of goods, or from any claims arising out of or incidental to or in any way resulting from the acts or omissions of B. Coature’s officers, employees, contractors or agents, including, but not limited to, allegations of negligence, gross negligence or any other cognizable legal theory.

15. LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING UNDER THE INDEMNIFICATION SECTION OF THIS AGREEMENT, IN NO EVENT SHALL B. COATURE BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING THE POSSIBILITY OF NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE BUYER HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

16. Force Majeure. If the event that B. Coature is prevented from performing or is unable to perform any of its obligations under this Agreement due to any fire, casualty, flood, earthquake, war, strike, lockout, epidemic, pandemic, destruction of production facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of the party invoking this section, B. Coature shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences.

17. Attorneys’ Fees and Costs. To the extent any dispute arises with regard to any of the terms of this Agreement, obligations hereunder, or the subject matter of this Agreement, the prevailing party, as determined by the finder of fact, shall be entitled to the reasonable reimbursement of attorneys’ fees and legal costs expended by the prevailing party.

18. Construction of Agreement; Right to Counsel. Each party agrees that the language of this Agreement shall, for any and all purposes, be construed as a whole, according to its fair meaning, not strictly for or against either party, and without regard to the identity or status of any person or persons who drafted all or any part of this Agreement. Buyer acknowledges that: (i) Buyer has been provided with the opportunity to discuss the terms of this agreement with counsel of its own choosing; (ii) Buyer has fully reviewed this Agreement and fully understands the terms thereof; and (iii) in the event of a dispute over the meaning or interpretation of any provision of this Agreement, then the Agreement shall not be construed against any party as a result of any particular contribution to the collective drafting of this Agreement.

19. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly here from shall be litigated only in the courts of the State of California or United States federal courts located therein and the parties hereby consent to the jurisdiction and venue of such courts.

20. Entire Contract. Upon B. Coature’s acceptance of Buyer’s Order, the terms and provision set forth herein shall constitute the entire agreement between Buyer and B. Coature and no other statement, correspondence, sample or other terms shall modify or affect terms hereof except B. Coature’s written consent signed by an authorized representative.

21. Counterparts. This Agreement may be executed in multiple counterparts, each of which may contain the signatures (which may be original, electronic, facsimile or copy thereof) of one or more of the parties, all of which, taken together, shall constitute one and the same instrument.

BY EXECUTING THE ATTACHED INVOICE AND/OR SALES ORDER, THE BUYER AND B. COATURE EXPLICITLY UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS SET FORTH ABOVE