

## TERMS AND CONDITIONS

### 1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms that govern the sale of all required materials, supplies, articles, goods, products, services and/or other deliverables (“**Goods**”) constituting the subject matter of the purchase order to which these Terms are attached (the “**Order**”) by Leisure Time Packaging, Inc., a California corporation dba Earthpack, to whom the Order is addressed (“**Seller**”), to Buyer of the Goods (“**Buyer**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of that contract shall prevail to the extent they are inconsistent with these Terms.

(b) The Order and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of the Order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Acceptance. The Order is not binding on Seller until Seller accepts the Order in writing or starts to perform in accordance with the Order. Buyer may withdraw the Order in writing at any time before it is accepted by Seller.

### 3. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Buyer’s place of business (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping those Goods. Buyer shall take delivery of the Goods on the day that the Goods have been delivered to 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 the Order.

(d) 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 Point, or if Seller is unable to deliver the Goods at the Delivery Point on that date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered to Buyer; and (iii) 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).

### 4. Non-Delivery.

(a) 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.

(b) 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 three (3) business days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

5. Quantity. Buyer shall not be entitled to object to or reject Goods or any portion of them by reason of a surplus or shortfall in the quantity of Goods set forth in the Order (the “**Quantity**”) that are delivered by Seller and shall pay for those Goods the price set forth in the Order, adjusted pro rata, so long as the surplus or shortfall is more or less than:

- (a) up to 30% of the Quantity where the Quantity is less than 10,000 items;
- (b) up to 25% of the Quantity where the Quantity is between 10,000 and 24,999 items;
- (c) up to 20% of the Quantity where the Quantity is between 25,000 and 49,999 items;
- (d) up to 15% of the Quantity where the Quantity is between 50,000 and 99,999 items; and
- (e) up to 10% of the Quantity where the Quantity is equal to or more than 100,000 items;

6. Shipping Terms. Delivery shall be made FOB Delivery Point, unless Buyer and Seller agree otherwise in writing.

7. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods by Seller to the carrier at the Delivery Point when transported by Seller’s designated carrier; provided, however, if the parties agree that a carrier specified by Buyer will deliver the Goods, then Buyer will take title and bear all risk of loss upon delivery by Seller to the carrier specified by Buyer. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code.

8. Amendment and Modification. These Terms may be amended or modified only in a writing that specifically states that it amends these Terms and is signed by an authorized representative of each party.

### 9. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within three (3) business days of receipt thereof (“**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 that 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. No variation within industry standards in the color, material or size of Goods shall make those Goods Nonconforming Goods.

(b) If Buyer timely notifies Seller of any Nonconforming Goods and obtains a return authorization number from Seller, Seller shall, in its sole discretion, (i) replace the Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for the Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at Seller’s expense and risk of loss, the Nonconforming Goods to Seller’s facility located at 1692 Deere Avenue, Irvine, California 92606. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Seller’s expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in **Section 9(b)** are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 9(b)**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

### 10. Price.

(a) Unless set forth on the Order, Buyer shall purchase the Goods from Seller at the price(s) (the “**Price**”) set forth in Seller’s published price list in force as of the date of the Order.

(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 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

### 11. Payment Terms.

(a) Unless otherwise agreed to in writing, Buyer shall pay all invoiced amounts due to Seller upon receipt of Seller’s invoice. Buyer shall make all payments hereunder by wire, Automated Clearing House or check 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 amounts when due.

(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.

### 12. Limited Warranty.

(a) Seller warrants to Buyer that for a period of one (1) year from the date of shipment of the Goods (“**Warranty Period**”), that such Goods will be free from material defects in material and workmanship. No variation within industry standards in the color, material or size of Goods shall be treated as a material defect in material or workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 12(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) 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) Products 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 WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) 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.

(d) Seller shall not be liable for a breach of the warranty set forth in **Section 12(a)** unless Seller reasonably verifies Buyer’s claim that the Goods are defective or if (i) Buyer or any third party in control of the applicable Goods makes any further use of the Goods after giving the notice; (ii) the defect arises because Buyer or any third party in control of the applicable Goods failed to follow Seller’s oral or written instructions to Buyer as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs the Goods without the prior written consent of Seller.

(e) Subject to **Section 12(d)** and **Section 12(d)** above, with respect to any Goods during the Warranty Period, Seller shall, in its sole discretion, repair or replace the Goods (or the defective part); no credit or refund of the price of the Goods shall be given.

(f) THE REMEDIES SET FORTH IN SECTION 12(e) SHALL BE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12(a).

### 13. 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 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 OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, 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 **Section 13(b)** above 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.

14. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer’s receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, 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.

15. Waiver. No waiver by Seller of any of the provisions of this Agreement 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 this Agreement 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.

16. Sale Conveys No License. The Goods are offered for sale and are sold by Seller subject in every case to the condition that the sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent claim with respect to which Seller can grant licenses. Seller expressly reserves all its rights under patent claims. Seller retains for itself all proprietary rights in and to all designs, engineering details, and other data pertaining to the Goods except where rights are assigned under written agreement by an officer of Seller.

17. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent the 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, invasion or hostilities (whether war is declared or not), 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. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this **Section 18** is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. Seller may at any time assign, transfer or subcontract any or all of its rights or obligations under this Agreement without Buyer’s prior consent.

19. Governing Law and Venue. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the County of Orange, and each party irrevocably submits to the exclusive jurisdiction of those courts in any suit, action or proceeding.

20. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to any other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or electronic mail and is effective only upon receipt of the receiving party.

21. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, that invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable that term or provision in any other jurisdiction.

22. Survival. Provisions of these Terms that by their nature should apply beyond their terms will remain in force and effect after any termination or expiration of these Terms, including, but not limited to, the following provisions: Governing Law and Venue, Submission to Jurisdiction and Survival.