



TERMS AND CONDITIONS OF SALE

1. **Definitions.** As used in these Terms and Conditions, “Agreement” shall mean any Endurance Defense, LLC quotation, invoice, or other agreement for the sale of Product(s), and all of its attachments and exhibits, including these Terms and Conditions in effect as of the date of Seller’s approval of the relevant purchase order for the Product(s). “Seller” shall mean Endurance Defense, LLC, a North Carolina limited liability company. “Buyer” shall mean the person or entity purchasing Product(s) from Seller pursuant to any Agreement. “Product(s)” shall mean any one or more of the products sold by Seller to Buyer pursuant to any Agreement. These Terms and Conditions shall govern the sale of the Products except as may be modified in writing and signed by the Seller in the Agreement. In the event of a conflict between these Terms and Conditions and any Endurance Defense, LLC quotation or invoice, the terms contained within such quotation or invoice shall control, whether or not signed by Seller.

2. **Shipment, Risk of Loss, and Delivery.** Shipping terms are DDP (as such term is defined in Incoterms 2020) to the location designated by Buyer in writing. Title, liability for and risk of loss to Product(s) sold hereunder pass to Buyer following the unloading of the shipment at Buyer’s designated location. Pricing includes packaging unless special packaging is requested by Buyer, in which case additional charges may apply. Seller’s delivery date estimate is based on conditions prevailing on the date of Seller’s estimate and are not a representation or guarantee of a particular date of shipment or delivery. Seller will attempt to ship the Products for delivery on or about the date stated, although time shall not be of the essence as to delivery. Seller may choose to ship the Product(s) in lots from time to time or all at one time.

3. **Payment Terms.** Payment terms are NET 30 from the date of Seller’s invoice. Late payments shall incur an interest charge of one and a half percent (1.5%) per month until paid.

4. **Express Limited Warranty.**

a. **Express Limited Warranty.** Seller warrants only to Buyer that the Product(s) manufactured by Seller and delivered hereunder will materially conform to Seller's standard specifications for the Product(s) as in effect on the date of shipment and as stated within Seller’s then-current practices and sales brochures (and therefore subject to tolerances and variations consistent with usages of the trade and regular factory practices concerning dimension, weight, straightness, flatness, section, composition, mechanical properties, normal variations in surface, internal conditions and quality and subject to deviations from tolerances and variations consistent with practical testing and inspections methods), or such other specifications as may have been expressly agreed to in any Agreement. This express limited warranty expires thirty (30) days after the date of delivery of the Product(s) to Buyer. All warranty claims must be made in writing specifying the alleged defect or non-conformity and delivered to Seller within thirty (30) days of the original delivery of the Product(s). For the avoidance of doubt, all Products which are not manufactured by Seller shall **not** be covered by the express limited warranty established within this Section 4(a) and instead may be covered by the warranties of such Products’ respective manufacturers, if any.

b. **Duty to Inspect; Limitations of Remedies.** Buyer shall have the exclusive duty to inspect the Product(s) upon delivery thereof, and will notify Seller immediately of any claim of an alleged defect or non-conforming goods. Buyer’s failure to give notice of a claim within thirty (30) days from date of delivery shall constitute a waiver by Buyer of all claims in respect of the Product(s).

c. **Limitations of Remedies.** Within a reasonable time after a timely notification of any claim pursuant to Section 4(b), Seller will inspect the alleged non-conforming goods and, if and only if they are deemed in Seller’s sole opinion to indeed be non-conforming, Seller will, at Seller’s sole option, (i) replace any non-conforming Products as the original point of delivery or (ii) refund the purchase price. No Product(s) shall be returned to Seller



without Seller's prior written permission, and then only in the manner prescribed by Seller. No claim of non-conforming goods shall be allowed for any Product that has been altered in any manner after delivery. Buyer acknowledges that it consensually waives the specific remedies stated for the delivery of non-conforming goods as stated and as that term is defined within Article 2 of the Uniform Commercial Code.

d. **Exclusions.** Seller's express limited warranty does not apply to: (i) damage caused by use of the Product(s) for purposes other than those for which they were designed; (ii) damage caused by disasters such as fire, flood or electrical storm; (iii) damage caused by unauthorized attachments, alterations or modifications of the Product(s); (iv) damage occurring during shipment; (v) damage caused by abuse, misuse or neglect by Buyer; (vi) defects in the manufacturing process discovered after the expiration of the express warranty; (vii) damage caused by third parties; (viii) damage caused by unauthorized repairs; or (ix) ordinary wear and tear. Buyer warrants that Buyer has the expertise and knowledge in the intended use of the Product(s) and assumes all risk and liability for results obtained by the use of the Product(s), whether used alone or in combination with other materials.

5. **Disclaimer of Other Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY (INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM ANY COURSE OF DEALING OR TRADE USAGE) REGARDING THE PRODUCT(S). SELLER DOES NOT WARRANT PRODUCTS AGAINST BREAKAGE.

6. **Damages; Exclusive Remedies; Statute of Limitations.** Seller shall not be liable for special, indirect, incidental, punitive or consequential damages of any kind which may arise in connection with the use of or inability to use the Product(s), including, without limitation, damages for loss of business profits, business interruption, or claims of third parties, whether or not caused by or resulting from the breach of contract, negligence or other wrongful act or omission of Seller, even if Seller has been advised of the possibility of such damages. Except as set forth in Section 4(b) for non-conforming goods, Buyer's exclusive and sole remedy for any claim, including without limitation those (a) for loss, damage, expense or injury, (b) based upon Seller's breach of warranty, contract, statute, or regulation or (c) negligence, strict liability or any other tort, shall be a refund of the purchase price paid for the Product(s) in respect of which damages are claimed, and in no event shall Seller's liability for any claim be greater than that amount. Any lawsuit for breach of warranty, breach of contract, tort, or other permitted action or remedy must be commenced within six (6) months following delivery of the Product(s) to Buyer or it shall be forever barred under of these Terms and Conditions as well as in all other judicial forums.

7. **Intellectual Property.** Where Product(s) are manufactured to Buyer's specifications, Buyer agrees to defend, indemnify and hold Seller harmless from any claim(s) of infringement of the intellectual property of any third party, and all costs and expenses related thereto (including attorneys' fees), by reason of the sale or use of the Product(s). Buyer hereby acknowledges and agrees that Seller shall have all right, title and interest in and to any and all ideas, concepts, know-how, techniques, processes, methods, inventions, discoveries, developments, innovations and improvements conceived or made by Seller in connection with this Agreement, whether patentable or not (collectively, the "Intellectual Property"). Buyer agrees to provide all assistance reasonably requested by Seller in the confirmation, preservation, protection and enforcement of Seller's rights in the Intellectual Property.

8. **Force Majeure.** No liability of Seller shall result from delay in performance or non-performance, directly or indirectly caused by circumstances beyond the control of Seller, including, but not limited to Acts of God, fire, explosion, flood, war, act of or authorized by any government, accident, labor trouble or shortage, equipment failure, inability to obtain from its usual sources of supply fuel, power, material, equipment or transportation or commercial impracticability (collectively, "Force Majeure"). Quantities so affected may be eliminated from this Agreement



without liability, but this Agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of the Product(s) specified herein to enable Seller to perform this Agreement.

9. **No Cancellation.** No order in process of production is subject to cancellation, suspension, termination or change in specifications without the express consent of Seller. It is understood and agreed between Buyer and Seller that if this Agreement covers Product(s) that must be manufactured especially for Buyer and the Agreement is suspended or terminated for any reason, Buyer will take delivery of and make payment for such Product(s) as have been completed and such Product(s) as are in process as of the date Seller agrees to such suspension or termination. If Buyer for any reason cannot accept delivery of such Product(s), Buyer will make payment therefore as though delivery has been made and Seller will store such Product(s) for Buyer's account and at Buyer's expense.

10. **Demand for Product(s).** If for any reason, including, without limitation, Force Majeure, Seller is unable to supply the total demand for Product(s) specified herein, Seller may distribute its available supply among any or all customers, including affiliates and subsidiaries of Seller, on such basis as Seller may deem fair and practical in its sole discretion, without liability for any failure of performance that may result therefrom. Seller shall have no obligation to purchase Product(s) to enable Seller to supply Buyer under this Agreement.

11. **Taxes.** The purchase price for the Product(s) excludes any and all taxes associated with the sale of the Products. Buyer shall pay directly or reimburse Seller for all taxes, licenses, or other charges, by whatever name, which Seller may be required to pay to any government authority upon the sale, production, or transportation of the Products sold hereunder.

12. **Financial Security.** In the event Buyer fails to fulfill Seller's terms of payment completely, or in case Seller shall have any doubt at any time as to Buyer's financial responsibility, Seller, without advance notice and at Seller's sole option, may decline to make further deliveries, except upon payment of all arrearages and receipt of cash in advance or delivery of security satisfactory to Seller.

13. **Waiver; Indemnification.** Buyer hereby (i) waives, releases and discharges any and all claims of any and every kind (including, but not limited to, injury to or death of any person or damage to property), which it may have at any time against Seller, its agents or employees, by reason of or arising out of any condition or defect in the Product(s), including, but not limited to, any claimed improper design, specifications or manufacturing defect of the Products; and (ii) covenants to indemnify and hold harmless Seller, its agents and employees, of, from and against any and all loss, damage, expense, claims, suits, costs of defense, including attorney fees or liability which Seller or any of its employees may sustain or incur at any time for or by reason of any injury to or death of any person or persons or damage to any property, arising out of any condition or defect of the Product(s), including, but not limited to, claimed improper design or manufacturing defect or other defect of the Product(s).

14. **Reservation of Rights.** Failure by Seller to require compliance by Buyer, or Seller's failure to claim a breach of any provision of this Agreement by Buyer shall not be construed as a waiver of any right arising under this Agreement, including the right to require subsequent performance or contest any subsequent breach.

15. **Severability.** If any term or provision of this Agreement shall be found to be invalid, illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. Seller and Buyer shall promptly agree upon a substitute for any such term or provision.



16. **Governing Law; Attorneys' Fees.** This Agreement is to be construed and the respective rights of Buyer and Seller are to be determined according to the laws of the State of North Carolina, U.S.A., without regard to choice of law or conflicts principles of North Carolina or any other jurisdiction. Buyer expressly consents to the exclusive personal jurisdiction of the State of North Carolina, and agrees that jurisdiction and venue for any proceeding related to or arising out of this Agreement shall be in the state courts of Guilford County, North Carolina or federal courts of Guilford County, North Carolina. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or the performance thereof or any aspect of any dispute arising therefrom. If Seller prevails in any such lawsuit, the costs and expenses associated with such lawsuit and Seller's reasonable attorneys' fees to collect the purchase price of the Product(s) and/or to defend any claims made by Buyer against Seller related to the Products shall be paid by Buyer.

17. **Entire Agreement.** This Agreement contains all of the terms and conditions with respect to the purchase and sale of the Product(s) sold hereunder. These terms and conditions supersede any of previous date and no modification shall be binding on Seller unless separately contracted in writing and agreed to by a duly authorized representative of Seller. Unless agreed in writing by Seller, Seller objects to any terms or conditions proposed by Buyer which vary the terms hereof, and this Agreement supersedes any purchase order or other Buyer provisions or forms whether sent or received prior, or subsequent to, this Agreement. Any reference to Buyer's purchase order number in this Agreement is for Buyer's convenience only. Unless Buyer shall notify Seller in writing to the contrary within three (3) days after the receipt of all or any part of the Product(s) ordered, Buyer shall be deemed to have accepted the terms and conditions hereof and, in the absence of such notification, Buyer's acceptance of the Product(s) shall be equivalent to Buyer's assent to the terms and conditions hereof.