



TM

Rev:1-2011

## Standard Terms and Conditions of Sale/Consignment

Customer, by submitting an order or signing a quote, and/or paying an invoice expressly warrants to, and agrees with, FireHydrant Creative Studios as follows:

### 1. Definitions

In addition to the terms defined elsewhere in this Agreement, the following terms used herein have the following meanings:

- a. Agreement: These Standard Terms and Conditions of Sale, along with the Order, all as acknowledged by FireHydrant on its standard acknowledgement form.
- b. Customer: The purchaser of Products or Services from FireHydrant.
- c. Products: Any books, toys, clothing, general merchandise, or other products covered in the Quote or Order excluding any Services;
- d. FireHydrant: FireHydrant Creative Studios, Inc. or the FireHydrant affiliate identified on the Quote.
- e. Order: Customer's purchase order or signed Quote.
- f. Quote: The price quotation of FireHydrant itemizing the purchase price, and all exhibits referred to within such Quote, including any other documents specifically included or referred to in the Quote.
- g. Services: warranty, support or other services to be provided to Customer as part of this Agreement.

### 2. Quotes/Orders

- a. Validity of Quote. All Quotes are an invitation for an offer and automatically expire after thirty (30) days unless an extension of such period is granted or agreed to in writing by FireHydrant.
- b. Order Acceptance. An Order is accepted by FireHydrant only on the exact terms and conditions set forth herein and in the Quote, all of which shall constitute the final, complete and exclusive statement of the terms and conditions between Customer and FireHydrant regarding the purchase, sale and/or consignment of Products described in the Order. Customer specifically agrees that any additional or conflicting terms and conditions contained in Customer's purchase order or other document are rejected by FireHydrant and will be void, unless expressly accepted in writing and signed by an authorized representative of FireHydrant. The failure of FireHydrant to object seasonably to any such term and condition in Customer's purchase order or signed Quote will not constitute a waiver of this Agreement. In the event the terms of an Order conflict with the terms of the Quote or any attachment thereto, the terms of the Quote shall control. If any shipment is made or any part hereof, or if Services are provided by FireHydrant hereunder, it is understood and agreed that the terms and conditions of this Agreement are satisfactory and accepted by Customer in their entirety, without modification, notwithstanding the lack of Customer's written approval hereof. Acceptance of Customer's Order by FireHydrant is contingent upon approval of Customer's credit. Customer's Order shall be deemed accepted by FireHydrant only when FireHydrant transmits to Customer its standard order acknowledgement form.
- c. Changes to Products. Product specifications, nomenclature and design of Products are subject to change at any time and without notice.
- d. Changes in Pricing. FireHydrant reserves the right, in its order acknowledgment, to change prices, terms, and specifications where necessary to reflect FireHydrant's prices, terms, and specifications in effect on the date of the acknowledgment. FireHydrant shall make no price adjustments during the Quote validity period or after FireHydrant's acknowledgment of the Order unless Customer refuses to accept delivery when FireHydrant is ready to ship, except that FireHydrant shall have the right to modify pricing to pass cost increases or decreases from FireHydrant's suppliers and vendors along to Customer. Upon any such change by FireHydrant, Customer may elect to cancel the Order by written notice to FireHydrant sent via certified mail

within ten (10) days after Customer's receipt of the Order acknowledgement; if such timely written notice is not sent to FireHydrant, then changes made by FireHydrant in the Order acknowledgement shall be deemed accepted by Customer. In case of such cancellation, FireHydrant will refund to Customer any advance payment made by Customer without interest or penalty. FireHydrant may within a reasonable time reject any Order with or without cause. In no event shall FireHydrant's silence be construed as acceptance; acceptance by FireHydrant will occur only upon FireHydrant's written acknowledgement of the Order. FireHydrant's deposit or other disposition of funds paid by Customer with the Order shall not constitute acceptance of the Order. Upon FireHydrant's rejection (or failure to accept within a reasonable time) of any Order, FireHydrant will refund to Customer without interest or penalty any payment made by Customer with the Order.

e. Delays. Delays in delivery of Products or Services at Customer's request may give rise to a price increase by FireHydrant prior to shipment of Products or rendering of Services.

f. Contingent Orders. FireHydrant, in its sole discretion, may elect to accept Orders contingent upon (1) Customer's providing a deposit; (2) Customer's obtaining a financing commitment; or (3) another specified event. Any request for a contingent order must specifically state and designate one (1) of the three (3) types of permitted contingent Orders above. In the event that the contingency is resolved, Customer must immediately notify FireHydrant in writing that the contingency is resolved. Irrespective of the type of contingent Order designated by Customer, such contingency must be resolved as provided above and any amounts specified as payable must be received by FireHydrant before FireHydrant will deliver Products or Services. If the designated event or action does not occur within thirty (30) days, upon giving prompt written notice to that effect to the other party, either party may cancel the contingent Order for all or part of the items ordered. Upon such proper cancellation FireHydrant will, at its option, refund to Customer the payments made against the items being canceled or apply the funds to Customer's account.

g. Changes. FireHydrant may, if possible and prior to delivery of the Order, review requests for changes to the Order. Acceptance of any changes requested by Customer shall be at FireHydrant's reasonable discretion, and any changes may result in additional charges to Customer.

h. Delivery. Unless otherwise specified by Customer, FireHydrant may ship in any manner convenient to FireHydrant. The delivery date quoted by FireHydrant, (the "Scheduled Delivery Date") is FireHydrant's best estimate, is based upon conditions at the time of quotation and subject to availability of inventory and Customer's deposit. FireHydrant shall exercise reasonable efforts to comply with Customer's requested shipping schedule if Customer furnishes all information necessary, including sufficient detail to complete the technical specifications, to permit FireHydrant to complete the Order. FireHydrant may make, and Customer agrees to accept, shipments in more than one lot; payment for each lot shall be due accordingly. In no event shall time be of the essence regarding the Scheduled Delivery Date.

(1) Delay by Customer. Customer agrees to take delivery of the Products or Services (collectively, the "Goods") on the Scheduled Delivery Date. Customer may not delay delivery of the Goods without FireHydrant's consent. If delivery of the Goods is delayed by Customer, Customer agrees to pay all costs associated with such delay, including without limit any storage expenses, and payments are to be made by Customer as though shipment had been made or Services performed as scheduled. Title and risk of loss for Products placed in storage shall pass to Customer upon placement of the Products into storage. If Customer delays delivery of the Goods for a period of more than thirty (30) days beyond the Scheduled Delivery Date, then FireHydrant may cancel the Order by written notice to Customer. Upon any termination pursuant to this provision, FireHydrant will be entitled, as a minimum, to all costs actually incurred up to the time of termination, plus a fair and reasonable pro rata profit on such cost. A termination notice containing these charges will be prepared and an invoice for termination charges will be submitted to Customer, which amounts will be due and payable upon receipt.

2) Delay by FireHydrant. If shipment of any Goods is delayed by FireHydrant for more than forty-five (45) business days beyond the Scheduled Delivery Date, Customer may cancel the Order by written notice to FireHydrant, whereupon FireHydrant shall refund to Customer an amount equal to an equitable portion of any payment made by Customer towards the total price, without interest.

i. Freight Charges. Unless otherwise agreed in writing by the parties, all prices and terms are Ex Works place of shipment and are exclusive of freight charges. Customer will pay for all shipping charges to Customer's destination and such charges will be added to the FireHydrant invoices or paid directly by Customer. The method of shipment normally will be determined by Customer's Order, but if no carrier or method of shipment is specified FireHydrant will select a carrier as a convenience to Customer.

j. Transportation Insurance. FireHydrant, may at its option carry transportation insurance on the Products while it is in transit. It is Customer's responsibility to inspect the received Goods in accordance with carrier's

inspection requirements and report in writing within forty-eight (48) hours to the carrier and to FireHydrant any shortages or damage. Failure to report shortages or damages promptly will negate this insurance, if any, and risk of loss or damage will be Customer's responsibility. FireHydrant recommends that Customer arrange Customer's own transit insurance for maximum protection against loss or damage.

k. Title and Risk of Loss. Title to and risk of loss for Products sold under this Agreement shall pass to Customer at the Ex Works place of shipment, subject to Customer's rights with respect to any transit insurance purchased by FireHydrant as provided above.

l. Discontinued Availability/Last Time Buy. Customer acknowledges that FireHydrant has made no representation about the continued availability of the Products listed in any Order. FireHydrant reserves the right, in its absolute discretion, with or without notice, without incurring any liability to Customer or otherwise, whether in contract or tort, to discontinue manufacturing or selling any of the Products listed in any Order at any time. FireHydrant may, within its discretion, provide Customer with a limited time opportunity to purchase such quantities of the Products as Customer estimates it may need ("last time buy"). Customer's last time buy rights are limited to products available in FireHydrant's inventory at the time of Customer's request.

### **3. Payment Terms, Taxes, Security Interest and Insurance**

a. Payment Terms. Unless otherwise specifically stated in the Quote, all billed charges are due prior to shipment or delivery of the Goods or performance of the Services. Typically, FireHydrant requires a 50% non-refundable (except as provided for in Section 2d and Section 4) deposit at the time of the Order, with the remaining 50% due prior to shipment. Payment for consigned Products sold shall be made on a monthly basis within 10 days of the end of each month. Specific Consignment Provisions are located in Section 4. An invoice delivered by facsimile machine or by electronic means will have the same effect as an original. All balances past due will be subject to an annual finance charge of the lesser of eighteen (18) percent or the highest rate permitted by law, and FireHydrant may elect to suspend further deliveries under such Order and/or any other Order with Customer until such past due payments are received. Where FireHydrant is providing financing to Customer, shipments will not be made until all required security agreements and financing statements have been executed and approved by FireHydrant.

b. Taxes. All prices are exclusive of all sales, use, excise, VAT, GST, withholding and other taxes, duties, or charges. Unless valid evidence of tax exempt status is provided by Customer, Customer will be liable and will indemnify FireHydrant for all such taxes related to any Order.

c. Security Interest. As security for the full and prompt payment of all amounts and obligations owed by Customer to FireHydrant hereunder, Customer grants to FireHydrant a security interest in all Products supplied by FireHydrant to Customer hereunder and all proceeds thereof (collectively "Collateral"). Such security interest is and shall continue to be a first-priority security interest in the Collateral whether by virtue of the priority accorded purchase-money security interests under the applicable Uniform Commercial Code (the "UCC") or otherwise. Customer shall take all actions FireHydrant deems necessary or desirable to perfect such security interest and maintain its first priority. Customer irrevocably authorizes FireHydrant to file financing statements and amendments thereto in such places as FireHydrant deems necessary or desirable (without Customer's signature where permitted by applicable law). Upon request of FireHydrant, Customer will execute and deliver to FireHydrant a separate security agreement under which Customer grants to FireHydrant a security interest in the Collateral, and any such separate security agreement shall control over any conflicting terms of this Agreement. If the Products will be inventory in Customer's hands, Customer agrees that FireHydrant may notify others claiming security interests in Customer's inventory of FireHydrant's purchase-money security interest prior to supplying any Products to Customer. If Customer fails to pay or perform when due any amount or obligation owing to FireHydrant hereunder or if Customer becomes insolvent, is the subject of any bankruptcy or insolvency proceeding, then FireHydrant may declare all amounts and obligations of Customer owing to FireHydrant hereunder immediately due and payable and FireHydrant shall have the rights and remedies of a secured party under the UCC.

d. Insurance. If Customer's Order involves deferred payments and FireHydrant requires the same to protect its security interest, Customer shall furnish FireHydrant evidence of Customer's insurance of Products against fire and extended coverage perils in an amount equal to the full value of the Products, with loss first payable to FireHydrant as its interest may appear. Customer agrees to maintain such insurance until full payment shall have been made to FireHydrant.

### **4. Consigned Products.**

- a. **Payment.** A refundable 50% deposit is required prior to delivery of consigned Products. As provided in Section 3, payment shall be made to FireHydrant for all consigned Products sold during each month. The amount of such payment shall be the base cost per Product, plus 50% of the difference between the base cost for such Product and the MSRP for the unit. In the event that Customer sells the Product for more than the MSRP, Customer may keep 100% of the sales proceeds in excess of MSRP. In the event that Customer sells the Product for less than the MSRP, Customer shall remain obligated to make a payment in an amount equal to the base cost per Product, plus 50% of the difference between the base cost for such Product and the MSRP for the unit. FireHydrant reserves the right to request a deposit for consigned Products, and any such deposit shall be credited against the payment of amounts due at the end of the consignment period, as described in Section 4b.
- b. **Return.** Customer shall return all unsold Products promptly following the end of the consignment period, which shall be the end of each calendar year during which the Products were provided to Customer. FireHydrant reserves the right to demand the return of unsold consigned Products at any time upon 10 days notice. Upon receipt of such notice, Customer may at its option, either agree to return the unsold consigned Products or pay to FireHydrant the amount that would be due upon the sale of the consigned Products. Upon such a payment, title to the previously consigned Products shall transfer to Customer. In the event consigned Product will be returned to FireHydrant, Customer shall arrange for, insure, and pay for the shipping and other costs associated with the return of consigned Products.
- c. **Inspection.** The Customer hereby agrees to give authorized representatives of FireHydrant access to each consignment location during normal business hours, to facilitate inspection of the Products which are located at such location and to inspect and audit records relating to the Products. FireHydrant shall have the right to suggest improvements to the Product displays, including signage, location, and design.
- d. **Ownership and Control of Product.** The Customer agrees that during the time that any consigned Product is in transit to, or is stored by, Customer at any Customer location, such consigned Product will remain the exclusive property of FireHydrant. The Customer shall not allow any lien, mortgage or encumbrance (excepting, however, liens created by FireHydrant) to attach to the consigned Product and shall not interfere with or permit any interference with FireHydrant's authority and control over the consigned Product while stored at a Customer location. Following receipt of the consigned Product at any of Customer's locations, the Customer shall be responsible for all shortages and for any damage incident to handling of the consigned Product by the Customer or by anyone in its employ or under its control.

## **5. PRODUCT RETURN POLICY**

- a. **Product Damaged in Shipment.** Upon receipt of shipments, Customer must open and inspect all boxes immediately for possible freight damage. If damage is found, Customer must notify the delivering carrier within 48 hours and request an inspection. After notifying the freight carrier, Customer promptly shall contact FireHydrant for further instructions. Damaged Product shall not be returned without FireHydrant's prior authorization.
- b. **Items Shipped in Error.** If the Product Customer receives is not what the Customer ordered, Customer will promptly notify FireHydrant. Customer agrees not to discard packing material. FireHydrant will issue a return authorization. Product shipped in error is not subject to restocking fees provided it is returned without damage and in complete and unused condition. FireHydrant will pay for the costs of return shipping.
- c. **Defective Product.** If the Product Customer receives is defective, Customer promptly must contact FireHydrant service center for warranty support. Customer agrees not to return the Product until a service representative has issued a return authorization, including a form Customer must fill out describing the nature of the Product defect.
- d. **Other Reasons.** If Customer needs to return Product for other reasons, Customer must contact FireHydrant for a return authorization. FireHydrant's customer service representative will require a clear statement of the reason for the return request. Seasonal merchandise is not returnable after the lesser of more than 15 days after delivery or 45 days from the end of the season. Upon approval of Customer's request, a return authorization will be issued. Customer agrees not to return any Product without a return authorization. Product being returned is subject to restocking and other charges as indicated below. CUSTOM MANUFACTURED OR SPECIAL ORDER ITEMS ARE NOT RETURNABLE.
- e. **Upon Receipt of a Return Authorization.** Return authorization numbers must appear on each individual package being returned. Customer is responsible for insuring the return for the full invoice amount and all shipping costs. FireHydrant may refuse shipments of Product. All Product being returned for credit must be returned in a timely manner and in good condition in its original packaging. FireHydrant will inspect all Product

returned. If there is damage, wear and tear, or if there are missing parts or accessories, FireHydrant will charge Customer for repair/refurbishment in addition to the basic restocking fee of the returned Product.

f. Restocking Charges. FireHydrant will charge restocking charges as follows:

(1) For all Products returned (pending inspection):

<u>Date of Return</u>	<u>Restocking Charge</u>
After Shipment up to 15 Days*	15% of quoted price
16-21 Days*	25% of quoted price.
22-30 Days*	35% of quoted price.
Beyond 30 Days*	NO RETURNS

\*Days are based on calendar days

## **6. LIMITATIONS ON PRODUCT AND SERVICES WARRANTIES**

a. For purposes of FireHydrant' warranties for Products a defect is defined as a failure of any unit or component manufactured or supplied by FireHydrant that is not attributable to unauthorized modification or alteration, lack of care in use, improper/excessive use. The written notice of claim of defect must include a description of the defect with detailed information, which will enable FireHydrant to identify the defect and determine its probable cause. Units that Customer claims to be defective must be available to FireHydrant for inspection and evaluation. No defective Product or parts are to be returned without first receiving written authorization and instructions from FireHydrant. Customs clearance for all replacement parts under the warranty or otherwise will be Customer's sole responsibility.

b. CLAIMS UNDER ANY OF THE FOREGOING WARRANTIES ARE WAIVED UNLESS MADE WITHIN THE PRODUCT WARRANTY PERIOD. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES OR TO ASSUME ANY OTHER LIABILITIES ON FIREHYDRANT' BEHALF, UNLESS MADE OR ASSUMED IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF FIREHYDRANT.

c. FIREHYDRANT' LIABILITY FOR BREACH OF ANY OR ALL WARRANTIES FOR PRODUCTS AND SERVICES IS EXPRESSLY LIMITED TO THE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE OF DEFECTIVE PRODUCT, LESS A REASONABLE CHARGE FOR USE AND IN NO EVENT WILL FIREHYDRANT OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES BY REASON OF ANY BREACH OF WARRANTY OR DEFECT IN MATERIALS OR WORKMANSHIP. FIREHYDRANT WILL NOT BE REQUIRED TO REPAIR, REPLACE, OR REFUND THE PURCHASE PRICE OF PRODUCT WHICH HAS BEEN SUBJECTED TO NEGLIGENCE, ACCIDENT, OR IMPROPER USE, OR WHICH HAVE BEEN ALTERED OTHER THAN BY AUTHORIZED FIREHYDRANT PERSONNEL.

d. THIS LIMITED WARRANTY CONSTITUTES FIREHYDRANT'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING PRODUCT OR SERVICE. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE), WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OR CONDITION ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR CUSTOM OR USAGE OF TRADE. CUSTOMER AGREES THAT NO CIRCUMSTANCE CAUSING CUSTOMER EXCLUSIVE AND LIMITED REMEDIES TO FAIL IN THEIR ESSENTIAL PURPOSE SHALL INCREASE OR EXTEND ANY FIREHYDRANT WARRANTY. THE TOTAL LIABILITY OF FIREHYDRANT AND ITS LICENSORS UNDER THIS WARRANTY SHALL IN ANY EVENT BE SUBJECT TO THE LIMITATIONS IN THIS SECTION.

## **7. INTELLECTUAL PROPERTY INDEMNIFICATION**

Customer agrees to promptly notify FireHydrant in writing of any notice, suit, or other action against Customer based upon a claim that any Product or Licensed FireHydrant Program infringes a U.S. patent, copyright, trademark, or trade secret of a third party. FireHydrant will defend at its expense any such action, except as excluded below, and shall have full control of such defense, including all appeals and negotiations, and will pay all settlement costs or damages awarded against Customer; **BUT FIREHYDRANT SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES.** In the event of such notice, suit, or action, FireHydrant will at its expense procure for Customer the right to continue using the Product or Service or modify the Product or Service to render the same non-infringing, or accept return of the Product or Service and replace the same with substantially equivalent non-

infringing Product or Service, or accept return of the Product or Service and refund or credit to Customer the amount of the original purchase price, less a reasonable charge for depreciation and damage. The preceding agreements by FireHydrant shall not apply to any Product or portion thereof, manufactured to specifications furnished by Customer or on Customer's behalf or to any infringement arising out of the use of such Product or Service in combination with any other product or service not furnished by FireHydrant, or to use in a manner not normally intended, or to any patent, copyright, trademark or trade secret in which Customer, or any of Customer's affiliates has a direct or indirect interest, or if Customer has not provided FireHydrant with prompt notice, authority, information and assistance necessary to defend the action. THE FOREGOING STATES THE ENTIRE LIABILITY OF FIREHYDRANT AND CUSTOMER'S SOLE REMEDY FOR PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENTS BY ANY PRODUCT OR LICENSED FIREHYDRANT PROGRAM SOLD OR LICENSED UNDER THESE CONDITIONS OR THE AGREEMENT.

## **8 . EXCUSABLE DELAY**

a. FireHydrant will be excused from performance under the Agreement and not be liable to Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including, but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of public enemy or terrorism, labor difficulties, failure or delay in delivery by FireHydrant' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or Product, accident, fire, flood, storm or other act of nature, Customer's fault or negligence or where compliance with any applicable environmental law or regulation by FireHydrant is not reasonably technologically or economically feasible, or would otherwise require FireHydrant to change its manufacturing process.

b. In the event of an excusable delay, FireHydrant will make reasonable efforts to notify Customer of the nature and extent of such delay and (1) FireHydrant will be entitled to a schedule an extension on at least a day-for-day basis, and (2) if the delay is caused by Customer's fault or negligence, FireHydrant will be entitled to an equitable adjustment in price under the Agreement.

## **9. LIMITATION OF LIABILITY**

CUSTOMER IS EXPRESSLY NOTIFIED THAT UNDER NO CIRCUMSTANCES SHALL FIREHYDRANT BE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY PARTY, INCLUDING THIRD PARTIES, EVEN IF SUCH DAMAGES ARE FORESEEABLE, OR (B) LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOST SAVINGS, OR LOST OR CORRUPTED DATA EVEN IF FIREHYDRANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY TO ANY CLAIM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR BREACH OF WARRANTY). IN NO EVENT SHALL FIREHYDRANT'S LIABILITY TO CUSTOMER OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE ACTUAL SALES PRICE PAID BY CUSTOMER FOR ANY PRODUCT OR SERVICES SUPPLIED HEREUNDER. THIS SECTION SHALL SURVIVE THE TERM OR EXPIRATION OF THE AGREEMENT. CUSTOMER AGREES TO INDEMNIFY FIREHYDRANT AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY CUSTOMER OR A THIRD PARTY ARISING OUT OF OR RELATING TO CUSTOMER'S USE OF THE PRODUCT OR SERVICE, WHETHER ON ACCOUNT OF NEGLIGENCE OR OTHERWISE. ANY WARRANTY CLAIM NOT SENT TO FIREHYDRANT IN WRITING DURING THE APPLICABLE WARRANTY PERIOD IS WAIVED. REPLACEMENT PRODUCTS AND SERVICES ARE WARRANTED ONLY FOR THE BALANCE OF THE UNEXPIRED PORTION OF THE ORIGINAL WARRANTY PERIOD, IF ANY.

## **10. APPLICABLE LAW, VENUE, AND JURISDICTION**

The Agreement, and any disputes related thereto, shall be governed by and interpreted in accordance with the laws of the State of Missouri, USA, regardless of any conflict of law principles requiring the application of any other law. The parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to the Agreement, to the contractual relationship created under the Agreement, and to the construction, validity, enforcement, and interpretation of the Agreement. The parties agree that the exclusive venue for any action arising out of or related to the Agreement shall be in the courts with the appropriate jurisdiction serving St. Louis County, Missouri and each party irrevocably submits to the jurisdiction of each such court in any such action and waives any objection it may now or hereafter have to venue or personal jurisdiction in each such court. The prevailing party in any action related to the dispute or interpretation of the Agreement shall be entitled to recover its reasonable attorneys fees incurred in pursuing the action, including those fees incurred throughout all bankruptcy and appellate proceedings.

## **11. JURY WAIVER**

CUSTOMER AND FIREHYDRANT FURTHER AGREE, TO THE EXTENT PERMITTED BY LAW, TO WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ANY ACTION RELATING TO THE DISPUTE OR INTERPRETATION OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE ITS TERMS AND THAT SUCH WAIVER IS MATERIAL CONSIDERATION FOR THE SALE AND PURCHASE CONTEMPLATED HEREBY.

## **12 ASSUMPTION OF RISK**

Each party hereto acknowledges the allocation and assumption of risks outlined in this Agreement. Each party has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such party's opinion shall be the basis of that party's decision to enter into the Agreement.

## **13. RELIANCE ON COUNSEL AND OTHER ADVISORS**

Each party has had the opportunity to consult such legal, financial, technical or other experts it deems necessary or desirable before entering into the Agreement. Each party represents and warrants that it has read, knows, understands and agrees with these Conditions and the terms of the Agreement, and these Conditions and the Agreement shall not be construed against either party as the drafter.

## **13. COMPLIANCE WITH APPLICABLE LAWS**

Customer warrants that Customer shall comply with any and all applicable US federal and state laws, and shall operate in good faith to comply with other laws and regulations and industry best practices, applicable to such party's performance hereunder, and shall promptly act to correct any noncompliance once identified.

## **14. GENERAL PROVISIONS**

a. Product and Services Sold to Lessors. If this transaction is (1) covered by a lease payment arrangement from a third party leasing company or (2) financed by a third party, and if payment to FireHydrant is dependent on Customer's signing a release such that payment can be made by the lessor or finance company to FireHydrant, then Customer agrees that the release for payment purposes will be executed at such time as 90% of the Product (by price) is shipped.

b. Default. If Customer defaults in any of Customer's obligations hereunder, including, but not limiting to failure to pay all sums when due, Customer will be liable for all costs to FireHydrant resulting from FireHydrant's attempt to enforce its rights hereunder, including, but not limited to collection agency fees, attorney fees, court costs, etc.

c. Assignment. Customer shall not assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights in violation of this Section is null and void.

d. Enforceability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will, to the extent of such invalidity, illegality, or unenforceability, be severed, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect.

e. No Waiver. Waiver or failure by FireHydrant to enforce any of the terms or conditions hereunder or the delay in exercise of any of its remedies or any terms or condition herein, will not be a future waiver of any such right, or be a waiver of any other term, condition or remedy contained herein.

f. Notices. All notices must be in writing and will be effective when received by (1) personal delivery, (2) registered, certified, or nationally recognized overnight mail, proof of receipt requested, and (3) facsimile, if confirmed within three (3) business days by one of the other methods herein, at the addresses or facsimile numbers indicated or to such other addresses or facsimile numbers as the parties may specify by giving notice pursuant hereto. A copy of all notices must be sent to FireHydrant Corporation, at the address listed on the FireHydrant website ([www.FireHydrantCS.com](http://www.FireHydrantCS.com)).

## **15. ENTIRE AGREEMENT**

The Agreement supersedes all previous proposals, negotiations, conversations, and understandings, whether oral or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to these terms, will be binding unless made in writing and signed by duly authorized representatives of both parties.

## **16. MINIMUM ADVERTISED PRICE (MAP) POLICY**

The following is FireHydrant's policy regarding the advertising and pricing of the Products.

1. **Purpose:** FireHydrant's MAP Policy is designed to avoid depreciation of, or damage to, the trademarks, brands or trade names under which its products, including the Products, are sold. FireHydrant's intention and policy is not to engage any dealer, distributor or retailer that advertises products below FireHydrant's then current and published Minimum Advertised Price (MAP).
2. **Minimum Advertised Pricing:** A dealer, distributor or retailer may advertise at any price it chooses, as long as it is not less than FireHydrant's then current and published MAP. FireHydrant hereby provides notice that advertising FireHydrant products, including the Products, using FireHydrant's copyrighted materials (including photographs from the website, photo library or FireHydrant-created product descriptions) at a price below FireHydrant's MAP constitutes a violation of this policy and will lead to remedial action by FireHydrant which may result in ultimate discontinuance of business with such dealer, distributor or retailer. No part of this policy is intended to influence the actual prices at which a dealer, distributor or retailer resells FireHydrant's products.
3. **Advertising Defined:** For the purposes of this policy, the term "advertising" shall include ANY listing, description or graphic display of FireHydrant products accessible to consumers/customers directly, including but not limited to, print media, television, radio and the World Wide Web. Advertising shall not include a price quotation sent via email to a consumer/customer at the consumer's/customer's request.
4. **Wholesalers:** This policy does not apply to distributors whose business consists exclusively of the resale of FireHydrant's product (also known as "wholesalers") to resellers, dealers or retailers. FireHydrant requires that all wholesalers use good faith efforts in enforcing this policy and comply with any published "Do Not Sell" list which FireHydrant may publish.
5. **Violations of Policy:** All failures to comply with this policy constitute a material breach of these Terms and Conditions. It is FireHydrant's intention to administer the policy fairly, reasonably and in a progressive fashion.
6. **Changes in MAP and Products:** All FireHydrant products, including the Products, are subject to this policy, including any new products. FireHydrant at any time, in its sole discretion may revise its MAP policy for any product. Each addition and each revision shall be effective at such time specified by FireHydrant in its pricing schedule, which will be provided to each dealer or distributor. FireHydrant's last price lists are available to all dealers, distributors and retailers at its office. All changes of such prices, as and when made, will also be available.
7. **Discounts, Premiums, Combinations:** Should any dealer, distributor or retailer advertise the giving of any article of value in connection with the sale of any FireHydrant products, or the making of any concession in connection with sale of any products, or combination of FireHydrant products, which together would be below MAP if sold separately, shall represent a violation of this policy.
8. **Price Reductions, Inventory Reduction & Clearance:** FireHydrant may exempt certain designated items from this policy for the purpose of inventory reduction and model closeouts.

FireHydrant has the exclusive authority to resolve all disputes, conflicts, controversies or questions in relation to this Policy.