

BIOTOP NATURAL POOL INC.
General Terms And Conditions Of Sale

1. **Definitions; Controlling Agreement.** "Seller" means BIOTOP Natural Pool Inc. "Buyer" means the party purchasing Products from Seller. "Products" means the goods being sold by Seller to Buyer as described in the Order Confirmation. "Buyer Related Party" means the "Buyer" and any affiliate, employee, agent, or customer of Buyer. "Buyer Destination" means Buyer's delivery address set forth on the Order Confirmation. "Claim" means a claim made against Seller or Buyer by a third party. "Loss" means a financial loss (including attorneys fees) incurred by Seller or Buyer as a result of a Claim. This Agreement contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written or communications between them relating to the subject matter hereof. If there is any inconsistency between these General Terms and Conditions and terms set forth in the Order Confirmation, the terms in the Order Confirmation shall control. Seller expressly rejects any Buyer purchase order or invoice terms or conditions that are inconsistent with, or in addition to, these Terms and Conditions.

2. **Quotations Not Contracts.**

(a) Seller's offers or quotations are always subject to a final contract in the form of an Order Confirmation in writing.

(b) Obvious errors and typographical, printing, and calculation errors that occur when Seller produces a quotation shall not be binding on Seller.

3. **Price and Payment.**

(a) All prices are *ex works* Seller's facility inclusive of loading and packaging and are exclusive of all federal, state, and local excise, sales, use, and similar taxes, and all import, export, or customs duties, tariffs, or like charges, all of which shall be paid by Buyer. Seller will arrange for shipment and bill Buyer for all shipping costs including insurance.

(b) Payment for Products shipped on approved credit is due net 30 days, or as stated on the Order Confirmation, from date of invoice. If Seller believes the Buyer's financial condition does not justify delivery upon the payment terms specified, Seller may require full or partial payment in advance. If Buyer fails to pay any sum owing to Seller when due, then, in addition to all other remedies available to Seller by law, in equity, or otherwise, until paid in full, Buyer shall be charged interest on the sum then owing at the rate of 1.5% per month, and Seller may cease making deliveries of the Products; provided, however, that no cessation of deliveries shall relieve Buyer from any payment obligations to Seller outstanding at the time of such cessation, all of which shall be paid in full by Buyer. Seller shall be entitled to recover reasonable attorneys' fees and collection costs incurred in collecting overdue amounts.

(c) Seller's invoices shall be considered accepted when not objected to in writing within 10 days of receipt.

4. **Shipment, Packaging.** Seller shall be entitled to make partial deliveries and to invoice them separately.

5. **Delivery and Risk of Loss.** Unless otherwise agreed in writing or otherwise stated in the Order Confirmation, Products shall be delivered to the Buyer Destination and Buyer assumes all risk of loss from the time the Products are transferred to the carrier. Stated delivery

dates are the dates the Products are shipped from Seller's facility or warehouse, are approximate, and are not guaranteed. Seller shall not be liable for any delay in delivery for which Seller is not responsible.

6. **Suitability; Technical Advice.** Seller assumes no obligation or liability, express or implied, with respect to any recommendations or advice as to the purpose or use of the Products. Any such recommendations or advice are given and shall be accepted at Buyer's own risk and shall not constitute any warranty or guaranty of the Products or the Products' performance.

7. **Limited Warranties and Exclusive Remedies.** Seller warrants that (a) Seller has good and sufficient title to the Products; and (b) the Products meet Seller's general, published specifications and any additional specifications set forth on the Order Confirmation. The foregoing warranty does not extend to any Products that have been combined with any other products or stored or used in violation of Seller's instructions or to any defect in the Products resulting from Buyer's failure to handle or use the Products as set forth herein. **THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Unless agreed otherwise, the contractual properties of the Products are specified in Seller's product descriptions. Public statements, recommendations, or third-party advertising are irrelevant in this respect. The specifications, drawings, illustrations, technical data, weights, measures and performance descriptions contained in Seller's prospectuses, guarantees for the benefit of third parties, catalogues, circulars and advertisements shall be binding only if they are confirmed in the Order Confirmation or in the written offer.

Seller may change the technical specifications and appearance of its Products without notifying the Buyer provided that the properties determining the Products' value and function are retained appropriately and no contrary wish of the Buyer is discernible to Seller.

8. **Notice of Defects.** If, upon receipt of the Products, Buyer discovers defective Products, Buyer shall give Seller notice of the defects within 10 days after receipt of the Products. The Notice of Defects must contain the following information: date and number of Seller's order confirmation, delivery note or invoice, production, commission or serial number of the goods in question, and description of the individual defects.

Buyer must initially accept delivered goods even if obvious defects, damage in transit or incomplete deliveries are found, unless Seller has declared its agreement to the immediate return of the Products. If Buyer gives Seller no opportunity to examine the defect on site and in situ, all claims due to defects shall lapse. Persons appointed to check for defects shall not be entitled to acknowledge defects with binding effect on Seller.

If there is a defect in the Products for which Seller is responsible, Seller shall be entitled to rectify defects or make a replacement delivery. The choice of the method of subsequent performance is at Seller's discretion provided that Buyer has no justified interest in a particular method of subsequent performance. Claims for damages instead of performance against Seller shall be limited to the difference between the purchase price and the value of the defective goods.

Seller makes no warranties with regard to damages arising from improper use, incorrect storage or negligent handling. If, despite a defect, the delivery item is still used, then Seller shall be liable only for the original defect but not for such damages arising as a result of the continued use.

If Buyer has sold the Products to a Buyer Related Party and a notice of defect is raised by the Buyer Related Party, Seller shall exempt Buyer from his warranty expenses to the extent that claims against Seller exist in accordance with the law and these terms and conditions. In particular Seller shall make replacement Products available for the subsequent performance step by step as the defective Products are returned to Seller. Seller reserves the right to settle Buyer's reasonable warranty expenses, which are to be reimbursed by us over and above the replacement of the Products, by means of an appropriate cash payment. The occurrence of a warranty claim from a Buyer Related Party is to be demonstrated to us with the Buyer Related Party's written confirmation and a detailed description of the defective Products, otherwise any warranty claims against us shall lapse.

9. **Disclaimer.** Neither party shall be liable to the other for consequential, incidental, punitive, special, exemplary, or indirect damages (including lost profits or savings), even if such party was advised of the possibility of the occurrence of such damages.

10. **Indemnification.** Seller shall indemnify, defend, and hold Buyer, its affiliates, and their respective officers, directors, employees, partners, members, and agents harmless against any Losses resulting from a Claim arising out of (a) an allegation that the Products furnished hereunder in accordance with Seller's specifications constitute an infringement of any U.S. patent, or (b) accidents or injuries to persons or property resulting from the manufacture of the Products or delivery of the Products to the shipper by Seller. Buyer shall indemnify, defend, and hold Seller, its affiliates, and their respective officers, directors, employees, partners, members, and agents harmless against any Losses resulting from a Claim arising out of (x) an allegation that the Products, as altered, used, or processed by Buyer, violate any U.S. patent, or (y) accidents or injuries to persons or property (including any Buyer Related Party) resulting from the unloading, handling, storage, or use of the Products by any Buyer Related Party following delivery of the Products to the shipper by Seller.

11. **Force Majeure.** The obligations of a party (except the payment of money) shall be suspended to the extent and for the period of time that such party is prevented from performing because of labor disturbances, forces of nature, acts of war, terrorism, or public enemy, fires, storms, water, unreasonable delays in transportation, governmental action, failure of suppliers, or any other cause beyond such party's reasonable control. The party affected by *force majeure* promptly shall notify the other of the existence thereof.

12. **Equipment Owned by Buyer.** Any equipment provided to Buyer by Seller in connection with the use of the Products shall remain the sole and exclusive property of Seller. Buyer shall not make any statements or otherwise take any action that could lead a third party, including any creditor of Buyer, to believe that Buyer has any rights in such equipment.

13. **Amendments; Waivers; Governing Law; Counterparts.** No amendment, modification, or waiver of any provision of these Terms and Conditions shall be effective unless in writing and signed by the parties. The failure of a party to insist upon the strict performance of any provision hereof or to exercise any right upon a breach thereof shall not constitute a waiver of such provision or limit that party's right thereafter to enforce such provision or exercise any

right. If any of the provisions herein shall for any reason be held void or unenforceable, the remaining provisions shall remain in full force and effect. These Terms and Conditions shall be governed by the laws of the State of Colorado, without reference to its choice of law rules. Each party submits and irrevocably waives any objection to *in personam* jurisdiction in the State of Colorado and the forum and convenience of the state and federal courts thereof. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.