

## ENFLO LLC AND ENFLO CANADA LTD TERMS AND CONDITIONS OF SALE

**1. AGREEMENT:** THE ACCEPTANCE OF CUSTOMER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON CUSTOMER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND ENFLO LLC, INCLUDING ENFLO CANADA LTD ("COMPANY") AGREES TO FURNISH THE PRODUCTS COVERED THEREBY ("PRODUCTS") ONLY UPON THESE TERMS AND CONDITIONS OF SALE. Any terms and conditions that may be contained in any purchase order or other form of Customer shall be absolutely without force and effect, regardless of when received by Company. No waiver, alteration, or modification of any of the provisions hereof shall be binding on Company unless made in writing and signed by an authorized representative of Company. Company reserves the right to accept or reject any order in whole or in part.

**2. CANCELLATION:** Cancellation or modification of orders (prior to shipment) are subject to Company's prior written consent in each instance, which may be withheld at Company's sole discretion. Company reserves the right to charge a cancellation, restocking, change, or similar fee in its sole discretion.

**3. PRICE CHANGES:** Quoted prices are subject to change with notice to Customer from time to time. Products are invoiced at prices as agreed to, and accepted by Enflo, in the Customer's Purchase Order.

**4. PAYMENT; TAXES:** Subject to credit approval and unless otherwise set forth on Company's invoice or otherwise agreed upon by the parties in writing, payment shall be made within thirty (30) days of the date of Company's invoice. Outstanding balances shall accrue interest at a rate equal to the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, from due date until paid, plus Company's reasonable costs of collection. Company reserves all other rights granted to a Company under the Uniform Commercial Code for Customer's failure to pay for Product(s) or any other breach by Customer of these terms and conditions of sale. There shall be added to the purchase price of each Product amounts equal to any sales, use, or equivalent taxes required to be collected by Company, unless Customer provides Company with an appropriate exemption certificate. Notwithstanding any specified payment terms, Company may require payment in advance of shipment if Customer's credit, in Company's sole judgment, becomes impaired. The purchase price shall become immediately due and payable and Company may cancel any unfilled portion of a shipment upon Customer's failure to make any payment when due.

**5. SECURITY INTEREST:** Customer grants to Company a purchase money security interest in each Product delivered hereunder and in proceeds from the sale, exchange, collection, or disposition thereof, until Customer has paid the applicable purchase price in full for such Product. Customer shall, upon request by Company, provide all information and signatures required by Company to perfect such security interest. Company reserves all rights granted to a secured creditor under the Uniform Commercial Code, including the right to repossess upon default by Customer.

**6. DELIVERY:** Unless otherwise set forth on Company's invoice or otherwise agreed upon by Company in writing, delivery terms are FOB Shipping Point (Incoterms 2010), freight prepaid and added to the invoice. Customer is advised that quoted ship dates are based on estimates at the time of quotation and that Company will devote its commercially reasonable efforts to meeting such schedules; provided, however, Company assumes no liability for additional costs or damages resulting from late deliveries.

**7. ACCEPTANCE:** Customer shall inspect the Products as soon as delivered. If no notice of defect is received by Company within five (5) business days of Customer's receipt of the Products, the Products are irrevocably accepted.

**8. RISK OF LOSS:** Company shall not be liable for any Product(s) lost, damaged, or destroyed while in transit, and Customer acknowledges and agrees that any risk of such loss, damage, or destruction transfers to, and is assumed by, Customer upon delivery of Product(s) to a common carrier or when otherwise placed in transit.

**9. COMPLIANCE:** Customer shall comply with (a) all instructions, requirements and restrictions (if any) set forth in the published specifications for the applicable Product ("Specifications") which are incorporated herein by reference and (b) all applicable federal, state and local laws, rules, regulations, including, without limitation, any of the foregoing related to Customer's storage, use, removal, and disposal of Products and any materials or debris resulting from use of the Products.

**10. SPECIAL ORDERS:** Customer acknowledges that if this purchase is a special order, the provisions of this paragraph supersede any conflicting general terms of these terms and conditions. Customer agrees to defend, protect, and hold harmless Company against all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign intellectual property right and to defend any suit or actions which may be brought against Company for such injury and/or any alleged infringement because of the manufacture and/or sale of the material covered thereby. All special ordered Products are subject to a cancellation fee of 100% of the purchase price if cancelled at any time after placed. A Special Order is any order that is Made to Order, or not a stocked item as determined by Enflo.

**11. LIMITED WARRANTY:** The sole and exclusive warranties for the Products are governed by a separate document published by Company, which is available upon request (the "Warranty Document"). The Warranty Document is hereby made part of and incorporated hereto. EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY DOCUMENT, COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY DOCUMENT NO WARRANTIES ARE MADE BY ANY OF COMPANY'S LICENSORS OR SUPPLIERS.

**12. RETURNED GOODS POLICY:** All returns are subject to prior authorization of Company, in its sole discretion. Customer must notify Company prior to any return and must receive an RMA (Return Material Authorization) form from the Company. Only items appearing on the RMA form are acceptable for return. **All returns (excluding warranty items) are subject to a 25% restocking charge.**

**13. PROPRIETARY INFORMATION:** Company may provide proprietary information to Customer in connection with the Products. Customer agrees that such information shall include all information which Customer knows or reasonably may know is confidential to Company. Such information shall

remain the exclusive property of Company, and Customer agrees to preserve and protect such information and to take all other acts reasonably requested by Company with respect to it. Upon Company's request, Customer will return to Company all documents containing Company's proprietary information and retain no copies thereof. Customer agrees that its obligation to protect Company's proprietary information shall be ongoing and shall not cease upon completion or termination of these terms and conditions.

**14. ADVICE:** Company may provide Customer technical advice regarding the Products, but Company does not control or supervise the subsequent manufacture, fabrication, or installation of its Products or their use after sale, and does not warrant or guarantee such advice.

**15. INDEMNIFICATION:** Customer is solely responsible for its storage, use, removal, and disposal of Products and any materials or debris resulting from use of the Products. To the fullest extent permitted by applicable law, Customer agrees to defend, indemnify, and hold harmless Company, its subsidiaries, affiliates, parents, partners, their successors and assigns, and each of their past and present directors, officers, employees and agents (collectively "Indemnitees"), jointly and severally, from and against any and all losses, damages, liabilities, demands, claims, actions, judgments, charges, court costs, and legal or other expenses, including, without limitation, reasonable attorneys' fees and expenses, which Indemnitees may sustain, incur, or become liable for in defending or compromising any suit, action, or other proceeding arising out of, related to, or in any way connected with Customer's purchase, sale, or use of Product(s), including, but not limited to, (a) Customer's misuse of such Product(s) or (b) any other acts or omissions, willful misconduct or negligent misconduct, whether active or passive, on the part of Customer; provided, however, Customer shall have no indemnity obligations under this paragraph for any losses, damages, liabilities, demands, claims, actions, judgments, charges, court costs, and legal or other expenses to the extent caused by the willful misconduct or negligent misconduct of an Indemnitee.

**16. LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT WILL COMPANY BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (B) COMPANY'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO ANY PRODUCT SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL AMOUNTS PAID TO COMPANY BY CUSTOMER FOR THE PRODUCT GIVING RISE TO THE CLAIM, REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT AGAINST COMPANY. IF THE ENFLO PRODUCT DOES NOT CONFORM TO THIS WARRANTY, THEN THE SOLE AND EXCLUSIVE REMEDY IS, AT ENFLO'S OPTION, REPLACEMENT OF THE ENFLO PRODUCT OR REFUND OF THE PURCHASE PRICE. NO ACTION RELATING TO THE PRODUCTS MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER SHIPMENT.

**17. EXPORT:** These terms and conditions are subject to all laws, regulations, orders and other restrictions on the export from the U.S. or CANADA or re-export of the Products. Customer shall not export directly or indirectly any Products to any country for which an export license or other governmental approval is required at the time of export without first obtaining all necessary licenses and approvals. Customer shall hold Company harmless from any liability arising from Customer's failure to comply with such laws, regulations and orders, or the provisions of this paragraph.

**18. FORCE MAJEURE:** Company shall not be liable for any delays in making delivery where occasioned by strikes, differences with workers, or any causes beyond the control of Company, including, but not limited to, fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures of delivery are caused by labor difficulties, Company shall not be obligated to seek or obtain any settlement which, in Company's sole judgment, is not in Company's best interest.

**19. ARBITRATION:** The parties agree that any and all disputes, claims or controversies arising out of or relating to any Product(s) that are not resolved by their mutual agreement (a) shall be brought by a party in such party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding and (b) shall be submitted to final and binding arbitration before JAMS (formerly Judicial Arbitration and Mediation Services), or its successor. The arbitration will be conducted in accordance with the provisions of JAMS' Comprehensive Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The Arbitration shall take place in Hartford, Connecticut and in the English language. The parties will share equally in the costs of the arbitration. The provisions of this Section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

**20. MISCELLANEOUS:** Customer acknowledges that is has not been induced to purchase any Product from Company by any representation or warranty not expressly set forth herein. This document constitutes the entire agreement of the parties and supersedes all existing agreements and all other oral or written communication between them concerning its subject matter. None of the terms and conditions contained herein may be added to, modified, superseded, or otherwise altered except by a written document signed by an authorized representative of Company. The paragraph headings contained herein are intended for convenience of reference only and shall not affect the interpretation of any provision. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. These terms and conditions of sale and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Connecticut, without reference to its choice of laws rules that would require the application of the laws of a different jurisdiction.