

SALES ORDER TERMS AND CONDITIONS

1. APPLICABILITY.

1. These terms and conditions for services (these "**SO Terms**") are the only terms which govern the provision of services ("**Services**") by Canary LLC ("**Canary**") to the Client named on accompanying sales order (the "**Sales Order**") ("**Client**"). Canary and Client are collectively referred herein as the "**Parties**", and each as a "**Party**." Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
2. The accompanying Sales Order and these SO 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 Client's general terms and conditions of purchase regardless whether or when Client has submitted its purchase order or such terms.

2. SHIPMENT AND DELIVERY

1. Product Shipping. Unless expressly agreed to by the Parties in writing, Canary shall select the method of shipment of, and the carrier for, the Products. Canary may, in its sole discretion, without liability or penalty, make partial shipments of Products to Client.
2. Delivery. Unless expressly agreed to by the Parties, Canary shall deliver the Products to the address specified in the Sales Order (the "Delivery Location"), using Canary's (or manufacturers, as the case may be) standard methods for packaging and shipping such Products.
3. Late Delivery. Any time quoted by Canary for delivery is an estimate only. Canary is not liable for or in respect of any loss or damage arising from any delay in filling any order, or delay in delivery.
4. Quantity. If Canary delivers to Client a quantity of Products of up to 3% more or less than the quantity set forth in the Sales Order, Client shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall and shall pay for such Products the price set forth in the Sales Order adjusted pro rata.
5. Client's Acts or Omissions. If Canary's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants, or employees, Canary shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay. If there are any returns, address changes or refused packages, any charges incurred from carrier will be invoiced when received.

3. TITLE AND RISK OF LOSS.

1. Unless expressly agreed to by the Parties in writing, title and risk of loss to all Products sold hereunder passes to Client upon Canary's tender of such units to the carrier.

4. INSPECTION AND REJECTION OF NONCONFORMING PRODUCTS.

1. Acceptance of Products. Client shall inspect the Products within fifteen (15) days of receipt ("**Inspection Period**"). Client will be deemed to have accepted the Products unless it notifies Canary in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Canary. "**Nonconforming Products**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product shipped is materially defective.
2. Remedy for Nonconforming Products. If Client timely notifies Canary of any Nonconforming Products,

Canary shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Client in connection therewith.

3. Expenses. Client shall ship, at its expense and risk of loss, the Nonconforming Products to Client's facility. If Canary exercises its option to replace Nonconforming Products, Canary shall, after receiving Client's shipment of Nonconforming Products, ship to Client, at Canary's expense, the replaced Products to the Delivery Location.
4. Exclusive Remedy. Client acknowledges and agrees that the remedies set forth in [Section 4.2](#) are Client's exclusive remedies for the delivery of Nonconforming Products. Except as provided under [Section 4.2](#), all sales of Products to Client are made on a one-way basis and Client has no right to return Products purchased under this Agreement to Canary.

5. PRICE AND PAYMENT.

1. Price. Client shall purchase the Products from Canary at the prices set forth in the Sales Order (the "**Price**").
2. Invoicing; Payment Terms. Canary shall issue an invoice for each Sales Order. Client shall pay all invoiced amounts due to Canary within thirty (30) days after the date of such invoice, except for any amounts disputed by Client in good faith.
3. Invoice Disputes. In the event of a payment dispute, Client shall deliver a written statement to Canary (along with a reasonably detailed description of the dispute) within fifteen (15) days from the date of such invoice. Client will be deemed to have accepted all invoices for which Canary does not receive timely notification of disputes and shall pay all undisputed amounts due under such invoices within the period set forth in [Section 4.2](#) (Invoicing; Payment Terms). The Parties shall seek to resolve all such disputes expeditiously and in good faith.

6. INTELLECTUAL PROPERTY.

- 1. Client-Supplied Materials. Client hereby grants to Canary a limited, revocable, non-exclusive, sublicensable, royalty-free license to use, reproduce, distribute, and display the trademarks, logos, copyrights, and any other intellectual property or materials that Client provides to Canary in connection with this Agreement (the "**Client-Supplied Materials**") for the purpose of providing Services set forth in this Agreement. Client warrants that it is the exclusive owner of such Client-Supplied Materials, and agrees to indemnify, defend and hold harmless Canary against any and all costs, losses, liabilities, expenses (including reasonable attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with third-party claims against Canary that result from any claim relating to Client-Supplied Materials.
 2. Canary IP. Except for any Confidential Information of Client or Client-Supplied Materials, all intellectual property rights, including copyrights, trade secrets, know-how and other confidential information, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Client under this Agreement or prepared by or on behalf of Canary in the course of performing the Services, shall be owned by Canary or its licensors. Canary hereby grants Client a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis solely to the extent necessary to enable Client to make reasonable use of the Deliverables and the Services.

7. WARRANTY.

- 1. Mutual Warranty. Each Party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing (unless the party is an individual), (b) it shall

comply with all applicable laws and regulations, and (c) it shall comply with all confidentiality provisions in the Agreement.

2. Canary Warranty. Canary further represents and warrants to Client that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Agreement.
3. Client Warranty. Client further represents and warrants to Canary that: the designs, specifications, instructions, directions and Client-Supplied Materials or other materials furnished to Canary by Client does not infringe, violate, or misappropriate any intellectual property rights or other rights of any person or entity.

8. LIMITATIONS OF LIABILITY AND WAIVERS.

1. Disclaimer of Damages. IN NO EVENT SHALL CANARY BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, 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 CANARY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
2. Cap on Liability. IN NO EVENT SHALL CANARY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO CANARY FOR THE PRODUCTS AND SERVICES SOLD HEREUNDER OR \$50,000, WHICHEVER IS LESS.
3. Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 6, CANARY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS OR SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY; OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR 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.

9. TERMINATION; SURVIVAL.

1. Termination for Convenience. Canary may terminate Agreement, in whole or in part, at any time with or without cause upon ten (10) days' prior written notice to Client.
2. Termination for Cause. Either Party may terminate Agreement, effective upon written notice to the other Party (the "**Defaulting Party**") if the Defaulting Party: materially breaches Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.
3. Effects of Expiration or Termination. If Canary terminates Agreement for any reason, Canary shall not be liable to Client for any damage of any kind (whether direct or indirect) incurred by Client by reason of the expiration or earlier termination of Agreement.
4. Survival. Provisions of Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of Agreement including, but not limited to, the following sections: 6 (Warranty), 7 (Limitations of Liability and Waiver), 9 (Confidentiality), 10.7 (Governing Law; Submission to Jurisdiction), and 8.4 (Survival) .

10. CONFIDENTIALITY

1. Scope of Confidential Information. From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), non-public or proprietary information of Disclosing Party, that is clearly identified as confidential at the time of disclosure, or is received under circumstances that a person exercising reasonable business judgment would understand as imposing an obligation of confidentiality ("Confidential Information").
2. Exclusions. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information.
3. Protection of Confidential Information. The Receiving Party shall: protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and not disclose any such Confidential Information to any person or entity, except to the Receiving Party's employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, sublicensees, subcontractors, attorneys, accountants, and financial advisors (collectively, "Representatives") who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.
4. Return or Destruction. On Disclosing Party's written request, Receiving Party will, at its discretion, promptly return to Disclosing Party or destroy all Confidential Information; provided, however, that Receiving Party may retain copies of Confidential Information that are stored on Receiving Party's IT backup and disaster recovery systems until the ordinary course deletion thereof, or as required by applicable law. Receiving Party will continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

11. **USE OF PROJECT MEDIA.** Client grants Canary the right to photograph, record, and showcase completed or in-progress projects for promotional purposes, including but not limited to social media, website content, and marketing materials. Canary will respect Client's privacy and will exclude any identifying information unless prior written consent is provided.

12. **GENERAL**

13.
 1. **Force Majeure.** Neither Party shall be liable, nor be deemed to have defaulted or breached Agreement, for any failure or delay in fulfilling or performing any term of Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of that Party 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.
 2. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have

authority to contract for or bind the other party in any manner whatsoever.

3. Amendment and Modification. No amendment to or modification of Agreement is effective unless it is in writing and signed by an authorized representative of each Party .
4. 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 Sales Order or to such 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 certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in Agreement, a Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section.
5. Assignment. Canary may at any time assign, transfer, or subcontract any or all of its rights or obligations under Agreement without Client's prior written consent.
6. No Third-Party Beneficiaries. Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms
7. Governing Law; Choice of Forum.
 1. ALL CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES, AND WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF CONTRA COSTA COUNTY, CALIFORNIA, USA. EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION, OR PROCEEDING.
 2. If the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are otherwise applicable, the parties expressly exclude them from applicability under the Terms.