

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS (Version May 2019)

1. Applicability

- 1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods (the "**Goods**") by F. LIST USA CORP. (the "**Seller**") to the buyer named on the reverse side of these Terms or in the Sales Confirmation (as defined below) (the "**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. Seller and Buyer together are hereinafter sometimes referred to as "**Parties**", and each individually a "**Party**".
- 1.2. The accompanying quotation or confirmation of sale (the "**Sales Confirmation**") and these 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 with respect to the subject matter hereof. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms, all of which are hereby rejected. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery of Goods

- 2.1. Unless otherwise agreed to in writing between the Parties, the Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.
- 2.2. Notwithstanding Section 2.1 hereof, if under this Agreement Buyer submits a blanket purchase orders for Goods to Seller, Buyer shall issue any releases under such purchase order, with each such release including a definite quantity of Goods, no later than 3 months before Buyer's preferred date of delivery. If Buyer issues any such release less than 3 months before Buyer's preferred date of delivery, Seller will use reasonable efforts to meet such preferred date of delivery and quantity of Goods but Seller shall not be liable for any delays or delivering less than the quantity specified in such release..
- 2.3. Unless otherwise agreed to in writing by the Parties, Seller shall deliver the Goods EXW Incoterms 2010 at Seller's place of business (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 5 days of Seller's Notice (as defined below) that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.
- 2.4. Seller may in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- 2.5. Delivery is deemed to have occurred upon Notice by Seller to Buyer that Goods are ready for pick-up. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's Notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation storage and insurance).

3. Non-Delivery

- 3.1. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- 3.2. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives Notice to Seller of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.
- 3.3. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Security Interest

- 4.1. Title and risk of losses passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods and performance in full of all the obligations of the Buyer under this Agreement, the Buyer hereby pledges and grants to the Seller, a lien on and security interest in and to all of the right, title, and interest of the Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase-money security interest under Article 9 of the Florida Uniform Commercial Code and Buyer grants to Seller power of attorney to file and cause all documents and actions to file and perfect any security interest, including but not limited to any UCC-1 filing.

5. Buyer's Acts or Omissions

- 5.1. If Sellers performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Seller 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 Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. Inspection and Rejection of Nonconforming Goods

- 6.1. Buyer shall inspect the Goods within 5 days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- 6.2. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at 325 5th Ave, Suite 103, Indialantic, Florida. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

- 6.3. Buyer acknowledges and agrees that the remedies set forth in [Section 6.2](#), are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under [Section 6.2](#), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller

7. Price

- 7.1. Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased Prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Prices.
- 7.2. All Prices are EXW Incoterms 2010 and exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets

8. Payment Terms

- 8.1. Buyer shall pay all invoiced amounts due to Seller on receipt of Seller's invoice. Buyer shall make all payments hereunder within 30 days of the invoice date in US-Dollars by wire transfer, check or as otherwise specified in Seller's invoice sent to Buyer.
- 8.2. Buyer shall pay interest on all late payments at the higher of the rate of 0.75% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following Notice thereof.
- 8.3. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or Dispute (as defined below) with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

9. Payment Terms

- 9.1. Except as otherwise provided for in the product-specific Limited Warranties which can be downloaded at <https://f-list.at/en/about-list/downloads/> and which form an integral part of these Terms, Seller warrants to Buyer that for a period of 6 months from the date of shipment of the Goods (the "**Warranty Period**"), that such Goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship.
- 9.2. Except for the warranties set forth in Section 9.1., Seller makes no warranty whatsoever with respect to the goods, including any (a) warranty of merchantability, or (b) warranty of fitness for a particular purpose, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.
- 9.3. Products manufactured by a third party (a "**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 9.1. For the avoidance of doubt Seller makes no representations or warranties with respect to any Third Party Product, including any (a) warranty of merchantability, (b) warranty of fitness for a particular purpose, or (c) 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.
- 9.4. The Seller shall not be liable for a breach of the warranties set forth in Section 9.1. unless: (a) Buyer gives Notice of the defective Goods, reasonably described, to Seller within 7 days of the time when Buyer discovers or ought to have discovered the defect; (b) if applicable, Seller is given a reasonable opportunity after receiving the Notice of breach of the warranty set forth in Section 9.1. to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (c) Seller reasonably verifies Buyer's claim that the Goods are defective.
- 9.5. The Seller shall not be liable for a breach of the warranty set forth in Section 9.1. if: (a) Buyer makes any further use of such Goods after giving such Notice; (b) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (c) Buyer alters or repairs such Goods without the prior written consent of Seller.
- 9.6. Subject to Section 9.4. and Section 9.5. above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (a) repair or replace such Goods (or the defective part) or (b) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.
- 9.7. The remedies set forth in Section 9.6. shall be in the Buyer's sole and exclusive remedy and Seller's entire liability for any breach of the Limited Warranties set forth in Section 9.1.

10. Limitation of Liability

- 10.1. In no event shall Seller be liable to Buyer or any other Third Party for any loss of use revenue or profit or loss of data or diminution in value 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 seller has been advised of the possibility of such damages and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 10.2. In no event shall Seller's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to seller for the goods sold hereunder.
- 10.3. The limitation of liability set forth in Section 10.2. shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

Supplier's Initials

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11. Compliance with Law

11.1. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

12. Termination

12.1. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon Notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

13. Waiver

13.1. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. Confidential Information

14.1. All non-public confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

15. Force Majeure

15.1. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller 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 (all such circumstances collectively, the "Force Majeure Events"). Seller may terminate this Agreement with immediate effect in case of any Force Majeure Event, which continues for 5 days or more.

15.2. The laws of the Province of Quebec and the laws of Canada applicable therein shall apply exclusively to these General Terms and Conditions and to any agreement between F/LIST and the customer. The application of the UN Convention on the International Sale of Goods (CISG) and of any conflict of laws provisions is expressly excluded

16. Assignment

16.1. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

17. Relationship of the Parties

17.1. The relationship between the Parties is that of independent contractors. Nothing contained in this 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.

18. No Third Party Beneficiaries

18.1. This 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.

19. Governing Law

19.1. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Florida. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.

20. Arbitration

20.1. The Parties agree that any dispute, claim, or controversy arising out of, connected with, or related to this Agreement (a "Dispute"), or the dealings between the Parties occurring at any time (including before the inception of or after termination of this Agreement), including without limitation any Dispute arising out of, connected with, or related to (i) the creation, existence, scope, validity, effect, interpretation, performance or non-performance, or termination of, or the legal relationships established by, this Agreement, or the consequences of its supposed nullity; (ii) any non-contractual rights or obligations arising out of, connected with, or related to this Agreement; and (iii) the relationship between the Parties created by this Agreement and any dealings between the Parties related to the subject matter of the transactions contemplated by this Agreement; all regardless of whether such Dispute may be characterized as sounding in contract, tort, breach of duty, fraud (including fraudulent inducement to enter into or fraud in the inception of this Agreement), or any other common law or statutory law or equitable principle or doctrine and regardless of the relief sought (even if such relief includes rescission of this Agreement) shall be finally and conclusively resolved by binding arbitration. In case the amount in dispute is less than USD 250,000 (or any equivalent thereof) such arbitration shall be conducted by one arbitrator, otherwise it shall be conducted by three arbitrators.

20.2. In either case the arbitrator(s) shall be appointed with the rules of the American Arbitration Association (the "AAA") and such arbitration shall be conducted in the English language in the city of Atlanta, Georgia, under the administration of the AAA in accordance with the laws of the State of Florida and the AAA's Commercial Arbitration Rules and Mediation Procedures (collectively, the "Rules"). The Parties to the arbitration shall facilitate the arbitration by: (i) conducting arbitration hearings to the greatest extent possible on successive days; and (ii) observing strictly the periods established by the Rules or by the arbitrator(s) for the submission of evidence or briefs.

20.3. Any award rendered by the arbitrator(s) shall be final and binding upon each Party to the arbitration and judgment on the award may be entered in any court of competent jurisdiction. The arbitration award may be enforced by any court of competent jurisdiction through injunctive or other equitable relief, as well as all relief and process available at law. The arbitrator(s) may issue interim awards, interlocutory, provisional or partial relief, including temporary restraining orders, preliminary injunctions, orders to compel discovery, orders of attachment, protective orders, any of which may be enforced as an arbitration award by any court of competent jurisdiction. Any arbitration award for money shall be made and shall be payable in U.S. dollars. The arbitrator(s) may award interest from the date of any breach of this Agreement and shall fix the rate of interest on any amount awarded from the date of the award to the date the award is paid in full.

21. Submission to Jurisdiction for Enforcement

21.1. For purposes of an action to confirm or enforce any award entered in the arbitration, the Parties hereby submit to personal jurisdiction in the Eighteenth Judicial Circuit Court, State of Florida, City of Melbourne, or the United States District Court for the Middle District of Florida. In addition, for purposes of an action to enforce any award entered in the arbitration, Buyer hereby submits to personal jurisdiction in any court anywhere in the world having jurisdiction over property that is the subject of this Agreement or Buyer's affairs, other property, or assets (including money and deposit accounts) in respect of or against which such award may be enforced, regardless of whether such affairs, property, or assets have any relation to the subject matter of this Agreement and even if Buyer's contacts with the forum for enforcement are fleeting, incidental, or unintentional.

22. Notices

22.1. 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 Confirmation 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 this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

23. Severability

23.1. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Survival

24.1. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Arbitration, Submission to Jurisdiction for Enforcement and Survival.

25. Amendment and Modification

25.1. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each Party.

SELLER'S SIGNATURE

SIGNED BY / NAME

DATE

BUYER'S SIGNATURE

SIGNED BY / NAME

DATE