

TERMS AND CONDITION OF SALE - 5 NINES ECOMM, LLC

All orders for machines and other products (hereafter referred to as "PRODUCTS") sold by 5 NINES ECOMM, LLC (HEREIN REFERRED TO AS "Seller") to Purchaser are sold upon the following terms and conditions of sale.

1. DELIVERY

Seller shall not be liable for delay in delivery caused by fires, floods, accidents, hazards or transportation, strikes, labor conditions, material shortage, including delay of material from supplier's usual source of supply, federal and state legislation, and all other causes beyond Seller's control. In any such event, the date of delivery shall be correspondingly increased or extended. All risk of damage to or loss of the PRODUCTS after shipment from Sellers dock is assumed by purchaser and such damage or loss of the PRODUCTS shall not operate in any way to release the purchaser from any of its obligations. Shipping dates are approximate and are subject to prompt receipt of information. Every effort will be made to ship within the time estimated but due to the nature of Sellers undertaking, notice is given that Seller shall have no liability for loss or damage (including incidental and consequential damages) resulting from Seller's delayed performance or shipment, for any reason whatsoever.

2. TAXES

(a) Unless otherwise provided herein, all prices are exclusive of federal, state, local and other excise, sales, use, property, transportation, occupational and other taxes relating to the sale, now or hereafter imposed, together with penalties and expenses, all of which shall be paid by Purchaser. Purchaser shall be responsible for collecting and/or paying any and all such taxes whether or not they are stated in any invoice for Products shipped and shall indemnify Seller with respect thereto. Seller, at its option, may at any time separately bill Purchaser for any taxes not included in Seller's invoice and Purchaser shall pay said taxes, or in lieu thereof, shall provide Seller with a tax exemption certificate acceptable to the taxing authorities. (b) Unless otherwise provided herein, shipment hereunder shall be F.O.B. Seller's shipping point. Any additional conditions or specifications applying to the order must be stated above hereof (page 1). (c) Partial shipment will be accepted unless otherwise specifically agreed to in writing by Seller. (d) Shipping dates are approximate only and are subject to prompt receipt of all necessary information. Every effort shall be made by Seller to ship within the time estimated, but due to the nature of Sellers undertaking, notice is given that Seller shall have no liability for loss or damage (including incidental or consequential damages) resulting from Seller's delayed performance or shipment, for any reason whatsoever. In addition to the foregoing, if any shipment, or delivery hereunder shall be delayed through the act or neglect of the carrier or any other person, including subcontractors and suppliers, or any embargo, hostility, war civil disturbances, strike or other labor difficulties, shortages or inability to obtain raw materials, fuel shipping space or transportation, fire accident, government seizure or requisition, priorities which may be set by any government or its agencies, force major, or by reason of any cause whatsoever, whether domestic or foreign, whether direct or indirect beyond the reasonable control of the Seller. Seller shall not be responsible therefore and shipment and delivery may be postponed or canceled by Seller at its option without liability hereunder. In any such event, the date of delivery shall be correspondingly increased or extended. Risk of loss shall pass at the F.O.B. point, and is assumed by buyers and such damage or loss shall not operate in any way to release Buyer from any of its obligations under this contract.

3. TERMS OF SALE AND DELINQUENCY CHARGE

(a) Each shipment or delivery hereunder shall be construed and considered as a separate sale and Purchaser agrees to accept and pay for each such shipment or delivery as provided herein. Should Purchaser fail to accept or pay for each shipment or delivery, Seller may, without prejudice to any other lawful remedy, defer further shipments or deliveries until acceptance hereof by Purchaser or payment is made by Purchaser, or at its option, Seller may without liability whatsoever terminate this Agreement as to any unaccepted or undelivered portion thereof, as well as any other outstanding agreement with Purchaser, and Purchaser shall be responsible for any expenses and/or losses sustained by so doing. (b) Unless otherwise indicated herein all sums due Seller shall be due thirty (30) days after the date of invoice. Seller reserves the right to charge one and one half (1½%) percent per month (but no more than the maximum percent permitted by law) on all balances not paid by Purchaser within the designated net terms. Seller reserves the right at any time to revoke any credit extended to Purchaser because of Purchaser's failure to pay for any goods when due or for any other reason deemed good and sufficient by Seller. Seller shall make no sale or shipment of any Products to Purchaser on open account or in any manner, if at any time the financial responsibility of the Purchaser becomes impaired or unsatisfactory to Seller, and Purchaser does not provide full security to Seller, or if at time of such sale or shipment, Purchaser is delinquent in the payment of any account to Seller, in the event (a) Purchaser shall be in default of any of the terms and conditions hereof, (b) Purchaser becomes insolvent, (c) proceedings are instituted to declare Purchaser bankrupt, or (d) a receiver is appointed for Purchaser in any court. Seller may, at its option, terminate the contract and upon such termination by Seller, any and all claims or demands against Purchaser held by Seller shall immediately become due and payable.

4. SECURITY INTEREST

Purchaser hereby grants to Seller and or Seller hereby retains a security interest in all of the Products and accessories or additions thereto sold by Seller and held by Purchaser, whether presently upon Purchaser's premises or after acquired, all spare parts and components therefore, and all proceeds of their sale or other disposition, including but not limited to cash, accounts, contract rights, instruments and chattel paper. Purchaser shall join with Seller in executing one or more financing statements pursuant to the Uniform Commercial Code in force in the state of Purchaser's place of business in a form satisfactory to Seller to evidence Seller's security interest in the Products. Purchaser shall keep the Products free from any adverse lien, security interest or encumbrance and will not waste or destroy the Products or any part thereof or use the Products in violation of any statute or ordinance. In the event Purchaser shall be in default under this contract, Seller shall have the remedies of a secured party under the Uniform Commercial Code in force in the State of New Jersey. Seller may enter the premises of Purchaser and remove the Products or may require Purchaser to assemble the Products and make them available to Seller for repossession. Purchaser agrees to pay Seller's reasonable attorney's fees and costs for the collection of any amounts due hereunder or replevin of said Products.

5. ADDITIONAL CHARGES

Except as otherwise specifically provided herein, Seller shall not be responsible for freight, transportation, insurance, shipping, storage handling, demurrage or similar charges. If such charges are made by the terms of sale included in a price, any increases in rates become effective after the date hereof shall be for the account of the Purchaser.

6. WARRANTY DISCLAIMER

The information, data, and recommendations provided by Seller are believed to be accurate but may not be all inclusive and should only be used as a guide. The information is furnished upon the condition that the person receiving it shall make their own determination of the suitability of the product for their particular use and on condition that they assume the risk of the use thereof.

THE PRODUCTS ARE SOLD AS-IS AND WITHOUT ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER. THE MANUFACTURER HAS NOT MADE AND DOES NOT MAKE ANY OTHER REPRESENTATION, WARRANTY, GUARANTY, OR COVENANT, EXPRESS OR IMPLIED WITH RESPECT TO THE DESIGN, CONDITION, DURABILITY, SUITABILITY, FITNESS FOR USE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF THE PRODUCTS IN ANY RESPECT, UNDER NO CIRCUMSTANCES AND IN NO EVENT WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE SHALL UTMED BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR OTHER ECONOMIC LOSS. IN NO EVENT SHALL THE MANUFACTURER'S LIABILITY TO THE PURCHASER WITH RESPECT TO THIS WARRANTY WITH RESPECT TO THE PURCHASE OF A PRODUCT EXCEED THE PURCHASE PRICE FOR SUCH PRODUCT

7. REMEDY/LIABILITY LIMITS

The exclusive remedy for losses or damages resulting from this publication or the related product (including claims based on contract, negligence, strict liability or other legal theories) shall be limited to, at Manufacturer's sole election, one of the following: A. Refund of purchase price paid by buyer or user for product bought, or B. Replacement of amount of product used. Manufacturer shall not be liable for losses or damages resulting from use of this publication or handling or use of this product, IN NO CASE SHALL MANUFACTURER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSSES, INCLUDING WITHOUT LIMIT, HEALTH RELATED DAMAGES OR INJURIES. The terms of this Warranty Disclaimer and statement of Remedy/Liability Limits cannot be varied by any written or verbal statements or agreements. No employee or sales agent of Manufacturer or the Seller is authorized to vary or exceed the terms of this Warranty Disclaimer or Limitation of Remedies in any manner.

8. INDEMNIFICATION

PURCHASER hereby agrees that it shall indemnify, defend and hold harmless Seller and any of their officers, employees and agents in both their corporate and individual capacity, from any and all liability, claims, damages, expenses including attorney's fees and litigation costs, resulting from or arising out of the purchase and sale, distribution, and use of any of Manufacturer/Seller's products. The undersigned acknowledges that specific consideration has been given for this indemnity provision.

9. CANCELLATION OF ORDERS

Purchaser shall not countermand or cancel any order or cause the work or shipment to be delayed, except with the written consent of, and upon terms agreed to by Seller, and with full compensation to Seller for any loss sustained by reason of cancellation.

10. SAFETY PRECAUTIONS

Purchaser shall require its employees to use all safety devices, guards, and proper safe operating procedures as set forth on manuals and instruction sheets furnished by Seller, Purchaser shall not remove, modify any such device, guard or warning sign. It is the Purchasers responsibility to provide all means that may be necessary to effectively protect all employees from serious bodily injury which otherwise may result from the method of particular use, operation set up or service of the Products. The operator's or PRODUCTS manual, ANSI safety standards, OSHA regulations and other sources should be consulted. If Purchaser fails to comply with provisions of this paragraph or the applicable standards and regulations aforementioned and a person is injured as the result thereof, Purchaser agrees to indemnify and save Seller harmless from any liability or obligation incurred by Seller.

11. MISCELLANEOUS PROVISIONS

(a) The foregoing comprises the Seller's and Purchaser's entire agreement, and constitutes the final expression of all terms of the agreement between the Seller and Purchaser, and is a complete and exclusive statement of those terms. The provisions contained herein entirely supersede any prior oral or written correspondence quotation or agreement. There are no agreements between Seller and Purchaser with respect to the Product herein except as set forth in writing and expressly made part of this contract. Acceptance of this contract is limited to the terms, conditions, specifications and prices set forth herein or attached hereto and any additional terms, conditions, specifications and/or prices are rejected by Seller unless expressly agreed to in writing by Seller. (b) If any term or condition or a part contained herein is held invalid, the remaining terms and conditions of this contract shall not be affected thereby. (c) This contract may be modified or rescinded only in writing signed by both parties of their duly authorized agents. (d) No claim or right arising out of a breach of this contract may be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver is in writing, signed by the aggrieved party. (e) No delegation of any obligation owed, nor performance of any obligation by Purchaser shall be made without the written permission of the Seller. Any attempted assignment or delegation shall be wholly void. (f) All rights available to Seller under the Uniform Commercial Code, even though not specifically enumerated herein, are expressly reserved to Seller as remedies available to it in case of Purchaser's breach. (g) This contract shall be construed in accordance with State of New Jersey. (h) The parties acknowledge that this agreement has multiple copies and that one copy has been signed in the original and the others bear carbon copies of said original signatures. The parties further agree that each carbon signature is intended to authenticate this writing and that each carbon signature is considered and deemed to be an original.

Initials: _____