

## American Sporting Goods Corporation (ASG) Terms and Conditions

**Shortage Claims/Proofs of Delivery** – Purchaser will be responsible for inspecting shipments upon delivery for total carton count and condition. Any shortages or evidence of damage to merchandise must be noted on the carrier's delivery receipt and reported to the carrier's local office. All shortages must be reported within ten (10) days of receipt in writing to our Customer Service Department. Purchaser will be required to furnish our Customer Service Department with an invoice or shipping order number and an itemization of all shortages/overages by product code, size and quantity. In the event that no such notice is given, it will be conclusively presumed that no shortages or damages exist.

**Variation in Products** – Delivery of Products shall be subject to normal variations in weight, color, size, quantities, etc., as are standard in the trade.

**Returns** – All requests for returns must be in writing to our Customer Service Department. All merchandise returns are subject to acceptance by our Customer Service Department. No return will be authorized after 60 days from the date of delivery. Upon approval by our Customer Service Department, special return authorization numbers will be issued to the Purchaser and must be affixed to the outside of each carton. Products returned without our special return authorization numbers will be refused and returned unopened. Credit will not be issued for any Products determined Seller to have been damaged by improper use or care of, or for which no defect can be found. Credits will not be given for Products used for display purposes. At Seller's option, return freight must be paid by Purchaser. A 15% restocking charge for all returns will be levied unless the return is due to our error and reported to Seller's Customer Service Department within 10 days of receipt. Additional charges will be assessed if re-boxing, unlacing, and/or removal of customer tags or stickers are necessary.

**Limitation of Liability** - PURCHASER'S EXCLUSIVE REMEDY AND SELLER'S EXCLUSIVE LIABILITY FOR THE BREACH OF ANY OF SELLER'S WARRANTIES SHALL BE TO REPLACE NONCONFORMING PRODUCTS AT THE ORIGINAL POINT OF DELIVERY OR TO REFUND PURCHASER'S PURCHASE PRICE FOR THE NONCONFORMING PRODUCTS, WHICHEVER OPTION SELLER SELECTS. SUCH REPLACEMENT OR REFUND WILL BE MADE ONLY UPON THE RETURN OF THE NONCONFORMING PRODUCTS, WHICH MAY BE RETURNED AT SELLER'S COST ONLY AFTER INSPECTION BY SELLER AND RECEIPT BY PURCHASER OF DEFINITIVE SHIPPING INSTRUCTIONS FROM SELLER.

SELLER'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM OR IN ANY WAY CONNECTED WITH THE PRODUCTS SHALL NOT EXCEED PURCHASER'S PURCHASE PRICE FOR THE PRODUCTS UPON WHICH SUCH LIABILITY IS BASED, REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT (INCLUDING, BUT NOT LIMITED TO, FAILURE OR DELAY IN PERFORMANCE OR DELIVERY DUE TO ANY CAUSE WHATSOEVER), TORT, (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR LOSS OF PROFITS OR REVENUE OR INTERRUPTION OF BUSINESS OR FOR ANY INCIDENTAL, CONSEQUENTIAL, DIRECT, SPECIAL OR PUNITIVE DAMAGES.

**Limited Warranty** - As to the Products sold to Purchaser, Seller warrants good title and conformance to its standard specifications and those specifications, if any, agreed upon in writing by Seller. SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL EXCEPT AS EXPRESSLY SET FORTH HEREIN. Purchaser shall promptly notify Seller of any suspected breach of Seller's warranties and hold the Products for Seller's inspection.

**Waiver of Claims** - Regardless of prior delays, any claim from Purchaser from any cause, including, but not limited to, claims based on the quantity of goods received, shall be deemed waived unless made in writing within ten (10) days of the receipt by Purchaser of the goods to which such claim relates. No legal proceedings may be brought by Purchaser for any breach of this contract more than six (6) months after the date Purchaser receives such goods.

**Indemnity** - Purchaser agrees to release, indemnify, defend and hold harmless Seller, and Seller's employees, officers, directors, shareholders, partners and affiliates from and against any and all loss, cost, damage, or expense, including legal fees, costs and expenses and actual or alleged injuries to and death of any person and loss of or damages to property arising, directly or indirectly, from (a) any violation of Purchaser of any applicable law, rule or regulation and (b) the Products sold hereunder, other than such claims, demands, obligations and liabilities which result directly from the sole and exclusive gross and intentional negligence of Seller and the aggregate liability of Seller pursuant hereto shall not exceed, even in the instance of the sole and exclusive gross and intentional negligence of Seller, the amount paid to Seller pursuant to the terms hereof.

**Non-Sufficient Funds (NSF)** – NSF checks will automatically put an account on "Shipping Hold." Checks will be resubmitted after a first return and a \$35.00 fee charged to the Purchaser's account. If a check is returned a second time, another \$35.00 fee will be assessed and the account will be immediately referred to a corporate attorney. Upon resolution of NSF check and related fees, account will be referred to the Credit Department for review and possible revision of Credit terms.

**Security Interest** - Until such time as Seller has received payment, in full, for the Products sold hereunder, Seller shall have a security interest in the Products supplied and to be supplied by Seller hereunder and is hereby irrevocably appointed as attorney-in-fact of the Purchaser in order to execute and deliver such financing and other documents and instruments as Seller may, at any time, and from time to time, desire in connection therewith. Purchaser agrees to extend such cooperation as Seller may require, at any time, or from time to time, with respect to the execution of such financing statements or other documents necessary, in the opinion of Seller, in order to cause such security interest to be perfected against third parties. In the event of a default by Purchaser, Seller shall have available to it all rights afforded, at law or in equity, to a secured seller including, but not limited to, the right to enter upon the premises where such goods shall be located for purposes of recovering the same and Purchaser shall cooperate with respect to any such action. Upon repossession of such security, Purchaser agrees to waive any and all rights to notice of sale, reinstatement and any and all rights afforded Purchaser as a Debtor under the Uniform Commercial Code. Regardless of Purchaser's title to such Products, risk of loss thereof shall be controlled by the conditions recited above.

**Transshipment/Diversion of Merchandise** – In order to enhance the image and goodwill of the Seller and its Products that has been created by the trademarks and trade names of Seller, we will only sell selected retail outlets on the express condition that such outlets may not resell to any person or entity who is not the final user of the Products. Accordingly, the resale, transshipment or other diversion of Products to any person or entity who is not the final user is prohibited and may constitute a breach of the contract of sale, for which we may seek appropriate legal remedies, including money damages and injunctive relief and/or termination of Purchaser's ability to purchase goods on credit. We reserve the right to cancel all previously accepted orders of any Purchaser who we believe engages in such activity and to demand the return at Purchaser's expense, of all diverted merchandise and any other merchandise previously shipped to the Purchaser.

**Patent/Copyright/Trademark** – If any material is furnished to Purchaser's specifications, Purchaser shall indemnify Seller, its affiliated companies and its successors and assigns against all liabilities and expenses to include reasonable attorney fees resulting from any claim of infringement of any patent/copyright/trademark in connection with the processing of such materials.

**Credit Approval** – Shipments, deliveries and performance of work shall at all times be subject to the approval of Seller's Credit Department. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to such Department.

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**Assignability** - Neither this contract nor any claim arising directly or indirectly out of or in connection with this contract will be assignable by either party or by operation of law, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign its rights to an entity which acquires substantially all of its assets or business. This document shall be binding upon and inure to the benefit of each party hereto and their respective permitted successors and assigns.

**Attorney Fees** – In the event that the Seller must institute or engage counsel for a lawsuit against the Purchaser to collect any monies that is due hereunder or if the Seller successfully defends against a lawsuit instituted by the Purchaser against it hereunder, then the Seller shall be entitled to its costs and expenses to include reasonable attorney fees incurred in connection with such lawsuit.

**Notices** - Notice by either Seller or Purchaser will be made only by facsimile or similar electronic transmission, effective on the first business day after confirmed receipt, or by letter addressed to the other party at its address shown herein, effective three business days after deposit with the U.S. Postal Services, postage prepaid, or one business day after deposit with a recognized overnight express service.

**FOREIGN GOVERNMENT OR INDIAN NATION** – If Purchaser is a foreign government or Indian Nation, PURCHASER HEREBY EXPRESSLY WAIVES ANY DEFENSE BASED UPON SOVEREIGN IMMUNITY IN THE EVENT OF A DISPUTE BETWEEN PURCHASER AND SELLER RELATED TO THE SALE OF THE PRODUCTS. PURCHASER EXPRESSLY AGREES TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE UNITED STATE OF AMERICAN TO ADJUDICATE ANY DISPUTE HEREUNDER.

**ARBITRATION AND DISPUTES BETWEEN THE PARTIES.** Any and all disputes, controversies and/or claims with respect to the transactions contemplated by these Terms and Conditions shall be submitted to arbitration. Such arbitration shall be held in Orange County, California and shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (the “Arbitration Rules”). The arbitration shall be conducted by an arbitrator selected in accordance with the Arbitration Rules. The arbitration proceedings shall be kept private and confidential and both parties agree not to disclose any aspect of the proceedings without the prior written consent of the other party. The arbitrator shall have the power to award specific performance or injunctive relief and to determine the scope or applicability of this arbitration clause. The arbitration award shall be final and binding upon the parties. Purchaser consents to service of all papers filed in connection with the initiation of any such arbitration proceeding or any other papers filed in connection with any such arbitration proceeding via facsimile and/or any method reasonably calculated to provide actual notice, in addition to any other method authorized by the Arbitration Rules. Purchaser waives and agrees not to assert as a defense or otherwise, in any proceeding, any claim that Purchaser is not subject to the jurisdiction of JAMS or the federal and/or state courts sitting in Orange County, California, in the case of any proceeding to enforce any arbitration award, or that Purchaser's property is exempt or immune from attachment or execution. Purchaser acknowledges and agrees that any arbitration award may be entered and/or confirmed in any court in the world having jurisdiction thereof.

**Jurisdiction, Applicable Law** – These Terms and Conditions shall be governed by the laws of the State of California, U.S.A. without regard to its conflict of laws provisions. The parties hereto expressly submit to the personal jurisdiction of the federal and/or state courts sitting in Orange County, California, and agree that such courts may be utilized if necessary to obtain injunction relief hereunder or to enforce any arbitration award hereunder. The Hague Convention and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the construction or interpretation of these Terms and Conditions or affect any of its provisions.

**General** - We may immediately terminate the Purchaser's ability, to purchase merchandise on credit or otherwise, at any time at our sole discretion. Prices and other terms and conditions are subject to change by us without prior notice. We reserve the right to discontinue product lines and to make changes in products at any time. No supplement, modification or amendment of these terms and conditions will be binding upon us unless made in writing and signed by a duly authorized representative of our company. The terms and conditions herein being final, complete and an exclusive statement of the contract of sale. Purchaser's rights under this contract may not be assigned or sold by purchaser without prior written consent. This document, together with any credit application and/or credit agreement, constitutes the entire agreement of the parties with respect to this transaction. No person is authorized to make any oral modification hereof, and written modification may be made only by Seller's duly authorized officers. In the event of any conflict or variance between the terms hereof and Purchaser's business terms, these terms shall prevail. In the event that any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions hereof which shall remain in full force and effect. No waiver of any provision hereof shall constitute a waiver of any other provision, and no single provision shall be held to constitute a continuing waiver or a subsequent waiver. All photocopy, or fax signatures of the Purchaser shall be effective, valid and enforceable as if it was an original signature.

**Compliance** – Purchaser agrees, warrants and represents that it fully complies with all applicable laws, rules and regulations governing any and all transactions arising out of Purchaser attempting to or actually conducting business with Seller including, but not limited to the USA Patriot Act; the Foreign Corrupt Practices Act; the Bank Secrecy Act; UCP 600; Financial Crimes Enforcement Network; Financial Action Task Force; Export Administration Regulations; and any other rule, regulation and/or law now existing or later enacted applicable to such transactions. Seller shall not be responsible for Purchaser's failure to so comply.