

NINJA DE-ICER, LLC – TERMS AND CONDITIONS OF SALE

1. **Agreement.** These Terms and Conditions of Sale (“**Terms**”) are the only terms that govern the sale and supply of all products (“**Products**”) by Ninja De-Icer, LLC (“**ND**”) to the “**Reseller**” identified on the Order (defined below) during the 2023-2024 winter season. Each quote, proposal, order acknowledgement or invoice (each, an “**Order**”) and these Terms (together, the “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous communications, understandings or agreements (whether verbal or written). Each Order shall be deemed an offer by Reseller to purchase the Products listed therein and when accepted by ND shall constitute a contract in accordance with the terms and conditions of the Agreement. The Agreement prevails over any of Reseller’s general terms or conditions of purchase regardless of whether or when Reseller submitted its order or alternate terms. Neither the failure of ND to object to Reseller’s terms and conditions nor the fulfillment of Reseller’s order will (i) constitute acceptance of Reseller’s terms and conditions or (ii) serve to modify or amend these Terms. If there is any conflict or inconsistency between these Terms and those set forth in the Order, then the specific modification(s) noted in the Order will govern and control. **THESE TERMS ARE SUBJECT TO CHANGE BY ND WITHOUT PRIOR WRITTEN NOTICE AT ANY TIME, IN ITS SOLE DISCRETION. ANY CHANGES TO THESE TERMS WILL BE IN EFFECT AS OF THE “EFFECTIVE DATE” REFERENCED ON THE BOTTOM OF THE TERMS AND CONDITIONS OF SALE DOCUMENT ON THE ND WEBSITE LOCATED AT NINJADEICER.COM. RESELLER SHOULD REVIEW THESE TERMS PRIOR TO PURCHASING ANY PRODUCTS THAT ARE AVAILABLE, AND RESELLER’S PURCHASE OF ANY PRODUCTS AFTER THE “EFFECTIVE DATE” WILL CONSTITUTE RESELLER’S ACCEPTANCE OF AND AGREEMENT TO SUCH CHANGES.**

2. **Price; Payment Terms.** All prices are as quoted by ND for specific Products, and are subject to adjustment at ND’s discretion. All prices are quoted and to be paid in U.S. Dollars and are exclusive of taxes. Unless Reseller has been approved for credit by ND (which may be revoked at any time), all payments shall be made by Reseller by credit card at time of Order, and ND will not complete a delivery of Products until the amount due under the Order has been paid in full. If Reseller is approved for credit, (a) Reseller will pay all invoiced amounts on a Net 45 basis (due within 45 days of the date of ND’s invoice), and (b) all payments shall be made by Reseller by credit card, check, ACH, or other ND-approved payment options. Reseller will pay interest on late payments at the lesser of 1.8% per month or the highest rate permissible under applicable law. For late payments, interest shall accrue going back to the date of Order. Reseller will reimburse ND for all costs incurred for collection of late payments, including attorneys’ and collection agencies’ fees. In addition to all other remedies under these Terms or at law (which ND does not waive by exercise of any rights hereunder), ND may require COD or suspend the delivery or pick up of any Products if Reseller fails to pay any amounts when due hereunder. Reseller will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with ND. Reseller agrees that ND may charge, at ND’s discretion, Reseller additional fees constituting a price adjustment for Products in the event Reseller does not purchase at least 75% of the total amount of Products set forth on the Order by May 1st. Reseller agrees to pay any invoiced additional fees on a Net 30 basis. Reseller agrees that an Order will expire 10 days after ND has issued the purchase order number(s) (an “**Unused Order**”). Reseller agrees that ND may charge Reseller a \$100 administrative fee for any Unused Order.

3. **Delivery; Availability.** Products will be delivered within a reasonable time after receipt of Reseller’s Order. ND will use reasonable efforts to meet the estimated date of delivery set forth in the Order. ND does not guarantee delivery dates and will not be liable for any delays, loss or damage in transit. Delivery will be made F.O.B. ND supplier’s facility, or such other shipping point set forth in the Order. Title and risk of loss shift to Reseller upon delivery of Products by the supplier to the designated carrier. Reseller will be responsible for all costs, charges, and expenses of (a) Product shipment (including loading, freight and insurance) or storage and re-delivery costs if Reseller fails to timely accept delivery, and (b) additional delivery services requested by Reseller, and accepted by ND, at ND’s then-current rates (e.g., offloading, lift gates, expedited delivery, etc.). Reseller agrees to up to a 10% variance in quoted shipping cost at time of order. ND’s obligation to sell Products to Reseller is SUBJECT TO PRODUCT AVAILABILITY. ND has the right to (i) decline, or suspend shipments of, any of Reseller’s Product orders, (ii) terminate this Agreement if, at any time, ND encounters shortages of Products due to commitments to other Resellers, conditions at any ND supplier’s terminals or facilities, weather conditions, or any other reason that may affect ND’s ability to accept and/or complete orders, or (iii) add energy and/or transportation related surcharges to Reseller’s account.

4. **Inspection and Acceptance.** Reseller will inspect the Products upon delivery, and Reseller will be deemed to have irrevocably accepted the Products upon signing for and/or taking possession of the Product.

5. **Limited Warranty.** Reseller expressly acknowledges and agrees that ND (i) is solely a distributor of the Products, (ii) does not manufacture or produce any of the Products, and (iii) does not at any time take physical possession or control of the Products sold hereunder. Accordingly, ND does not provide any warranties whatsoever with respect to the Products. The Products are covered only by the manufacturer’s warranty, if any, and are subject to the discretion of the Product manufacturer. ND will provide Reseller with reasonable assistance in making a warranty claim against the manufacturer, however, all costs and expenses associated with making such warranty claim (including without limitation, all shipping costs and costs to analyze any Products) will be Reseller’s sole responsibility. Notwithstanding the foregoing, there shall be no warranty claim if a Product defect arises because Reseller failed to properly manufacture, store, and/or maintain the Products. Further, PRODUCTS ARE SOLD ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. ND NEITHER ASSUMES (NOR HAS AUTHORIZED ANY PERSON TO ASSUME) ANY WARRANTY OR LIABILITY IN CONNECTION WITH THE PRODUCTS.

6. **Quality Control.** Reseller shall be responsible for properly storing and maintaining the Products. Any Product that is manufactured by the Reseller must comply with established industry standards and must have quality assurance testing in place. Upon ND’s reasonable request and for quality purposes, (a) Reseller shall, at Reseller’s cost, send a sample of Products to ND, and (b) ND shall be allowed reasonable access to Reseller’s facility.

7. **Limitation of Liability.** IN NO EVENT WILL ND BE LIABLE TO RESELLER 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 ND HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. Further, in no event will ND be liable to Reseller’s end customer for any Products.

8. **Indemnification.** Reseller will indemnify and hold ND harmless from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney fees arising out of or occurring in connection with Reseller’s shipment, storage, use or disposal of the Products purchased by Reseller or Reseller’s negligence, willful misconduct or breach of this Agreement.

9. **Confidential Information.** All non-public, confidential or proprietary information of ND, including but not limited to information regarding ND customers, suppliers and vendors (including source or location of supply), pricing, discounts or rebates, and any other proprietary business and technical information, documents or data disclosed by ND, or otherwise made available to Reseller, in connection with the supply of the Products (the “**Confidential Information**”), whether disclosed verbally or 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 and may not be disclosed or used in any manner by Reseller (including without limitation seek or obtain alternate sources for or direct sourcing of the Products) unless expressly authorized in writing by ND. Upon ND’s request, Reseller will promptly return all documents and other materials received from ND. This Section does not apply to information that is: (a) generally available to the public without breach of this Agreement by Reseller; (b) known to Reseller at the time of disclosure; or (c) rightfully obtained by Reseller on a non-confidential basis from a third party. The provisions of this Section will survive for a period of three (3) years following delivery of the Product, and ND will be entitled to injunctive relief for any violation of this Section.

10. **Non-Solicitation.** Reseller agrees it shall not (i) induce, influence, or encourage, any client, customer, supplier, vendor, or other similar third party of ND that became known to Reseller directly or indirectly pursuant to any Confidential Information to alter, terminate, or breach its contractual or other business relationship with ND, or (ii) solicit business from any customer, supplier, vendor, or other similar third party that became known to Reseller directly or indirectly pursuant to any Confidential Information. The provisions of this Section will survive for a period of three (3) years following delivery of

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the Product, and ND will be entitled to injunctive relief for any violation of this Section.

11. Force Majeure. ND will not be liable for any failure or delay in fulfilling or performing any term of this Agreement, nor be deemed to have defaulted or breached this Agreement, if such failure or delay is caused by or results from acts or circumstances beyond ND's control, including, but not limited to, acts of God, fires, floods, earthquake, explosion, acts or orders of any governmental authority, war, insurrection, terrorist threats or acts, riots or other civil unrest, national emergency, pandemic/epidemic, lockouts, strikes or labor difficulties, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, breakdown of essential equipment or telecommunication breakdown or power outage, or any other acts or circumstances outside of ND's control.

12. Relationship of Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever. This Agreement is for the sole benefit of the parties hereto and nothing herein, express or implied, is intended to or will 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.

13. Termination. ND may terminate this Agreement with immediate effect upon written notice to Reseller, if Reseller: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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. Reseller agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by ND in enforcing this Agreement.

14. Marketing. Reseller agrees that ND has permission to use survey comments or quotes from Reseller for advertising purposes in social media posts, website, and other marketing collaterals.

15. Insurance. Reseller agrees to, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in commercially reasonable amounts, in accordance with standards in the commercial salt industry, and with financially sound and reputable insurers. Upon ND's request, Reseller shall provide ND with a certificate of insurance from Reseller's insurer evidencing the insurance coverage specified in these Terms. Reseller shall provide ND with thirty (30) days' advance written notice in the event of a cancellation or material change in Reseller's insurance policy.

16. Miscellaneous. Reseller will not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of ND. Any purported assignment or delegation in violation of this Section is null and void. Each party represents that it has the requisite authority to enter into this Agreement and that the individual(s) signing this Agreement, on behalf of each party, have the authority to do so. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to any choice or conflict of law provision. Any legal suit, action or proceeding arising out of or relating to this Agreement will be instituted in the United States District Court for the Eastern District of Wisconsin, located in Green Bay, Wisconsin, or in the Circuit Court for Brown County, Wisconsin. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of these Terms which by their nature should survive will remain in force after delivery of the Products and any termination or expiration of this Agreement.