

## **SALE OF GOODS CONTRACT**

### **Terms and Conditions of Sale**

THIS IS A LEGAL DOCUMENT ("SALES CONTRACT") BETWEEN YOU ("BUYER") AND ULTRA NECTAR, INC. ("SELLER"). PLEASE READ THIS AGREEMENT CAREFULLY. BY USING AND ACCESSING THE ULTRANECTAR.COM WEB SITE YOU INDICATE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, DO NOT ACCESS AND USE THE ULTRA NECTAR, INC. WEB SITE. PLEASE NOTE THAT THE TERMS AND CONDITIONS MAY BE PERIODICALLY UPDATED AND MODIFIED, SO PLEASE BE SURE TO RECHECK THEM. BY ACCESSING AND USING THE SITE, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THE PRESENT TERMS AND CONDITIONS. YOU ALSO AGREE TO SO ACCEPT FUTURE UPDATES AND MODIFICATIONS OF THE TERMS AND CONDITIONS.

- 1. PAYMENT TERM:** Payment terms are net thirty (30) days from date of invoice. If payment is not received by the due date, invoices are considered past due. Past due payments will be subject to a service charge of one and one-half-percent (1 ½%) per month or the maximum amount allowed by law, whichever is less.

Visa, Mastercard, American Express, Discover, Money Orders, Certified Checks, Company Checks and Personal Checks.

All payments (checks) should be sent to:  
Ultra Nectar, Inc.  
2734 East 7<sup>th</sup> St.  
Oakland, CA 94601

Your name must be bank imprinted on the check with the correct address and telephone number. Buyer agrees to pay a \$20.00 charge for each returned check and all collection costs, including legal fees, if applicable.

If Buyer is delinquent in paying any amount owed to Seller by more than ten (10) days, then without limiting any other rights and remedies available to Seller under the law, in equity, or under the contract, Seller may (i) suspend production, shipment and/or deliveries of any or all products purchased by Buyer, or (ii) by notice to Buyer, treat such delinquency as a repudiation by Buyer of the portion of the contract not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable. If Seller retains a collection agency and/or attorney to collect overdue amounts, all collection costs, including attorney's fees, shall be payable by Buyer. Buyer hereby represents to Seller that Buyer is now

solvent and agrees that each acceptance of delivery of the Products sold hereunder shall constitute reaffirmation of this representation at such time.

2. **PRICES:** All prices quoted are subject to change, without notice, at any time prior to Seller's acceptance of Buyer's order, to such prices prevailing at the time of acceptance.
3. **SHIPMENTS:** All shipments F.O.B. office in Oakland, California, and are exclusive of all taxes, and freight charges, which shall be paid by the Buyer. Delivery to carrier constitute delivery to Buyer.
4. **RISK OF LOSS:** It is the Buyer's responsibility to seek compensation from the carrier for damaged or missing freight. Seller shall not be responsible for any claims or damages resulting from a delay in delivery or failure to perform which results from: governmental regulations, strike, lockouts, accident, fire, delays in manufacturing, transportation, acts of God, or any other causes beyond the control Seller. In case of partial or complete destruction of goods, Seller is excused unless destruction is due to Seller's own negligence.
5. **CANCELATION, MODIFICATION OR ALTERATION OF SALES CONTRACT:** Due to the short life of seasonal related goods, no returns will be accepted beyond 14-days from the execution of this Sales Contract. In no event shall any cancellation, modification, or alteration of winter AND/OR spring/summer related goods be accepted beyond or out of the proper time of the usual or pre-appointed time for the chosen particular season.
6. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods on arrival and, within 14 days after delivery. Any rights of Buyer with respect to inspection shall be deferred until after payment of the purchase price.
7. **RETURNS OF GOODS:** No Cash refund will be issued. For returns of goods tendered under this Sales Contract to be effective, the Seller must receive written notice of that return at its headquarters within 14 days after delivery. Returns are allowed only if nonconformity is substantial and noncurable. A "RETURN AUTHORIZATION" form obtained from Seller must be accompanied by Invoice Number and description of all defects of the goods on which the Buyer intends to rely. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by Buyer and Buyer is barred from any remedy. All returns must be shipped back to Seller's headquarters. All goods returned must be clean, free of price tags, and packed neatly. Seller has the right to refuse any returned goods or to credit the Buyer with the lesser amount paid, if the goods are damaged through improper packing or improper display methods at Buyer's locations.

- 8. EVALUATIONS RETURN POLICY:** A 15% restocking fee will be charged if the goods are not rejected within the 14-days evaluation period.
- 9. WARRANTY:** Seller gives 14 days limited warranty unless otherwise specified, from the date of delivery. The warranty will not apply to those goods that are damaged due to misuse, abuse, negligence or notification by any party other than Seller.
- 10. ASSIGNABILITY:** This Sales Contract shall not be assignable by the Buyer without the Seller's written consent.
- 11. LIMITATION OF DAMAGES:** In no event shall Seller be liable for (i) special, indirect, consequential, or punitive damages including but not limited to labor costs incurred by the Buyer or (ii) any damages whatsoever resulting from loss of use or profits arising out of or in connection with the goods sold hereunder. In no event shall Seller's liability exceed the purchase price of the goods in question.
- 12. WAIVER:** No waiver of any claim or right arising under this Sales Contract will be effective unless the waiver is in writing and signed by the waiving party.
- 13. ENTIRE AGREEMENT:** The parties intend this writing to be the final expression of the terms of their agreement and further intend that this writing be the complete and exclusive statement of all the terms of their agreement.
- 14. ATTORNEY FEE PROVISION:** In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Sales Contract or seeks a declaration of any rights or obligations under this Sales Contract, the prevailing party shall be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.
- 15. CHOICE OF LAW AND FORUM:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by California law. Any dispute that arises under or relates to this Agreement shall be resolved in Alameda County Superior Court.