

TERMS AND CONDITIONS OF SALE

The following terms and conditions ("**Terms and Conditions**") shall apply to the sale of products by Julabo USA, Inc. ("**Seller**") to the entity shown as buyer ("**Buyer**") on Buyer's purchase order ("**Purchase Order**") or on Seller's invoice or quote, as applicable.

1. **Buyer's Acceptance of Seller's Terms and Conditions.** Seller's acknowledgement and acceptance of the Purchase Order is made expressly conditional upon Buyer's assent to the Terms and Conditions and upon no other terms and conditions. **Buyer's assent to the Terms and Conditions shall be conclusively presumed from the first to occur of (i) Buyer's execution of a credit application respecting credit with Seller; or (ii) Buyer's execution of any other document containing the Terms and Conditions; or (iii) Buyer's acceptance of delivery of any product ordered from Seller.** Seller hereby objects to and rejects any terms or conditions at variance with, different from or additional to the Terms and Conditions unless such terms and conditions are hereafter set forth in a writing signed by Seller. Anything herein to the contrary notwithstanding, no amendment to, or waiver, modification or deletion of, the Terms and Conditions shall be deemed effective unless any such amendment, waiver, modification or deletion, as the case may be, shall have been approved and accepted in writing by an officer of Seller.
2. **Prices.** All prices will be adjusted to conform to Seller's prices in effect at the date of shipment. All prices are FOB Allentown, Pennsylvania, U.S.A. and method of delivery and routing shall be at Seller's discretion. Notwithstanding any agreement to pay freight, delivery of products purchased hereunder to a common carrier or licensed trucker shall constitute delivery to Buyer and be determinative of the date and time of shipment and all risk of loss or damage in transit shall be borne by Buyer. Seller may arrange for storage, the risk and the cost, including insurance costs, to be borne by Buyer (and Buyer agrees to pay such amounts upon demand).
3. **Taxes.** Seller's prices do not include any sales, excise or value-added taxes, import/export duties, licenses, insurance or any other federal, state or local taxes or any other government fees or charges. Buyer shall be solely responsible for the payment of any sales, excise or value-added taxes, import/export duties, licenses, insurance or any other federal, state or local taxes or any other government fees or charges.
4. **Payment.** The terms of payment shall be as stated on Seller's invoice. If the full amount of each invoice is not paid by its due date, any amount outstanding shall accrue a service charge of 1.5% per month (subject to applicable law) until any such amount outstanding is paid in full. Accrued and unpaid service charges shall be added monthly to the outstanding balance due upon which such service charges accrue (and additional service charges shall accrue on the service charges so added), to the maximum extent permitted by applicable law. Seller is authorized to apply toward any payment of any monies due Seller hereunder any sums now or hereafter owed by Seller (or any entity affiliated with Seller) to Buyer (or any entity affiliated with Buyer).
5. **Title.** Upon Seller's receipt of payment in full of all amounts due and owing Seller in connection with the products being purchased hereunder, Seller shall be deemed to have sold or otherwise transferred title in such products purchased hereunder to Buyer.
6. **Delivery.** Delivery will be made in accordance with Seller's regular production schedule. Seller shall be excused from any failure to perform due to any actions, events, conditions, inactions or any other cause beyond Seller's control in the reasonable operation of its business. Any and all delivery dates given by Seller constitute good faith estimates only. Seller shall not be liable for any failure to meet any specific shipping or delivery date as long as Seller acts in good faith.
7. **Shortages and/or Defective or Damaged Materials.** Any alleged shortages and/or defective or damaged products received by Buyer in connection herewith must be reported in writing by Buyer to Seller within three (3) days of receipt of such products.
8. **Warranty Provisions.** Seller's Warranty Provisions are incorporated herein by reference.
9. **Cancellation.** Buyer may not cancel any order for products without Seller's express, written consent. Any cancellation so authorized shall be subject to a cancellation charge of fifteen percent (15%) at Seller's sole discretion. Seller may cancel Buyer's order, or any part thereof, upon the occurrence of any of the following events ("**Events of Default**"): (i) Buyer fails fully to perform any of its obligations under the Terms and Conditions or (ii) Seller in its reasonable opinion believes that Buyer's ability to perform the Terms and Conditions is in danger or impaired. If an Event of Default occurs, Seller shall be entitled to all rights and remedies set forth in the Pennsylvania Uniform Commercial Code and all other remedies available at law or in equity and the remedies herein reserved by Seller shall be cumulative and in addition to any other legal or equitable remedies.
10. **Indemnification.** Buyer assumes the entire responsibility and liability for, and agrees to release, indemnify, defend and hold harmless Seller, its affiliates and their respective officers, agents, employees, successors, and assigns, from and against any and all losses, expenses (including without limitation, reasonable attorneys' and other professional fees), costs, damages (including consequential and incidental damages), demands, liabilities, suits and claims in connection with or arising out of any actual or alleged personal injury (including death) or damage or destruction to property (including loss of use) by whomsoever suffered, sustained or alleged to have been sustained by reason of (i) any act, error or omission, whether negligent or not, of Buyer or its agents, employees, suppliers, subcontractors and consultants, provided that such injury, death, damage or destruction is not occasioned by the sole negligence of Seller or its agents, employees and subcontractors, or (ii) any failure of Buyer or its agents, employees, suppliers, subcontractors, or consultants to comply with any applicable law.
11. **Assignment.** Buyer shall not assign (by operation of law or otherwise) any of its rights or obligations hereunder without the prior written approval of Seller. The Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.
12. **Entire Agreement.** These Terms and Conditions constitute the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements, if any. Neither of the parties relied on any promises or representations made by the other or any third party, whether written or oral, including any advertising material, as an inducement to enter into this agreement, except as may appear herein. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term herein. Seller's acceptance or acquiescence in a course of performance rendered by Buyer hereunder shall not be relevant to determine the meaning of this agreement even though Seller has knowledge of the nature of the performance and opportunity for objection.
13. **Severability.** If any term, covenant or condition of this agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this agreement shall be valid and shall be enforced to the fullest extent permitted by law.
14. **Governing Law.** The Purchase Order and the Terms and Conditions and all questions relating to their validity, interpretation, performance, and enforcement shall be construed in accordance with, and shall be governed by, the substantive laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law. The Court of Common Pleas of Lehigh County or the United States District Court for the Eastern District of Pennsylvania shall have exclusive jurisdiction over any action arising hereunder. Anything herein to the contrary notwithstanding, any lawsuit brought by Buyer against Seller, whether based on contract, tort or any other legal theory of recovery must be commenced within one (1) year from the date when the alleged cause of action accrued.
15. **Attorneys' Fees.** In the event that Seller must institute a lawsuit against Buyer to collect any monies that it is due hereunder or pursuant to any purchase order for products, or if Seller successfully defends against a lawsuit instituted by Buyer against it hereunder, whether based on contract, tort or any other theory, then Seller shall be entitled to its costs and expenses, including reasonable attorney's fees, incurred in connection with any such lawsuit.
16. **Waiver.** Any failure of the part of Seller to insist on strict compliance with the Terms and Conditions shall in no way constitute a waiver of such right. No claim or rights arising out of a breach of the Terms and Conditions by Buyer may be discharged in whole or in part by a waiver of the claim or right, unless the waiver is in writing signed by an authorized representative of Seller. Seller's waiver or acceptance of any breach by Buyer of any provisions of the Terms and Conditions shall not constitute a waiver of or an excuse for nonperformance as to any other provision of the Terms and Conditions nor as to any prior or subsequent breach of the same provision.
17. **Headings.** The descriptive headings of the several sections of the Terms and Conditions are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.
18. **Warnings.** Buyer acknowledges that certain dangers including explosions, burns, and fires, may be associated with the misuse, improper installation or operation, unauthorized or improper repair, replacement, or alteration or unreasonable use or abuse of the product or the failure to follow the product's written installation or operating instructions.
19. **Installation.** If Buyer purchases, and/or receives the Installation and Operator Training service, then Buyer must prepare the Julabo products and the intended installation site according to the Pre-Installation Checklist, incorporated herein by reference, prior to the agreed upon installation date.

WARRANTY PROVISIONS - JULABO USA, INC.

The following Warranty Provisions shall apply to products sold in North America by Julabo ("Seller") to the entity shown as buyer ("Buyer") on Seller's invoice.

1. **Initial Warranty.** Upon Seller's receipt of payment in full for the products and subject to Buyer's compliance with the terms of sale and any other agreement with Seller relating to the products, Seller warrants to the Buyer that the products manufactured by the Seller are free from defects in material and workmanship for a period not to exceed two (2) years or ten thousand (10,000) hours of operation, whichever comes first, from the date the product is shipped by Seller to Buyer (the "Initial Warranty").

2. **EXCLUSION OF ALL OTHER EXPRESS WARRANTIES; EXCLUSION OF ALL IMPLIED WARRANTIES. OTHER THAN THE INITIAL WARRANTY, NO OTHER EXPRESS WARRANTIES ARE MADE. ALL IMPLIED WARRANTIES OF EVERY TYPE AND KIND, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, ARE EXCLUDED IN ALL RESPECTS AND FOR ALL PURPOSES. SELLER DISCLAIMS AND MAKES NO IMPLIED WARRANTIES WHATSOEVER.**

3. **Exclusions.** The Initial Warranty does not include damage to the product resulting from accident, misuse, improper installation or operation, unauthorized or improper repair, replacement or alteration (including but not limited to repairs, replacements, or alterations made or performed by persons other than Seller's employees or authorized representatives), failure to provide (or use of improper) maintenance, unreasonable or unintended use or abuse of the product, or failure to follow written installation or operating instructions. Buyer must return the product's record of purchase to the Seller or one of Seller's authorized representatives within thirty (30) days of the date the product is shipped by Seller to Buyer in order to make a claim under the Initial Warranty. Notwithstanding anything contained herein to the contrary, all glassware, including but not limited to reference thermometers, are expressly excluded from the Initial Warranty.

4. **Buyer's sole remedies; Limitations on Seller's Liability.** Buyer's sole and exclusive remedy under the Initial Warranty is strictly limited, in Seller's sole discretion, to either: (i) repairing defective parts; or (ii) replacing defective parts. In either case, the warranty period for the product receiving a repaired or replaced part pursuant to the terms of the Initial Warranty shall not be extended. All repairs or replacements performed by Seller pursuant to these Warranty Provisions shall be performed at one of the Seller's facility in Allentown, Pennsylvania, U.S.A. or at the facility of an authorized representative of Seller, which location shall be determined by Seller in its sole discretion; provided, however, that Seller may, in its sole discretion perform such repairs or replacements at Buyer's facility in which case Buyer shall pay Seller's travel, living and related expenses incurred by Seller in performing the repairs or replacements at Buyer's facility. As a condition precedent to Seller's obligation to repair or replace a product part under the Initial Warranty, Buyer shall (i) promptly notify Seller in writing of any such defect; (ii) shall have returned the product's record of purchase to Seller or to Seller's authorized representatives within thirty (30) days of the date the product is shipped by the seller; and (iii) assist Seller in all respects in its attempts to determine the legitimacy and basis of any claims made by or on behalf of Buyer including but not limited to providing Seller with access to the product to check operating conditions. If Buyer does not provide such written notice to Seller within the Initial Warranty period or fails to return the product's record of purchase as set forth above, Seller shall have no further liability or obligation to Buyer therefor. In no event shall Seller's liability under the Initial Warranty exceed the original purchase price of the product which is the subject of the alleged defect.

THE REMEDIES PROVIDED IN THE INITIAL WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO THE BUYER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, AND EVEN IF THE SOLE AND EXCLUSIVE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, IN NO EVENT SHALL SELLER BE LIABLE FOR BUYER'S MANUFACTURING COSTS, LOST PROFITS, GOODWILL, OR ANY OTHER SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO BUYER OR ANY THIRD PARTY AND ALL SUCH DAMAGES ARE HEREBY DISCLAIMED.

6. **Assignment.** Buyer shall not assign any of its rights or obligations hereunder without the prior written approval of Seller; provided, however, that if Buyer is a distributor of Seller, the rights and obligations of Buyer under these Warranty Provisions shall inure to the benefit of and be binding upon Buyer's customers who provide the product's proof of purchase to Seller pursuant to the terms set forth herein. Seller may assign any or all of its rights or obligations hereunder without Buyer's prior consent.

7. **Governing Law.** The Warranty Provisions and all questions relating to their validity, interpretation, performance, and enforcement shall be construed in accordance with, and shall be governed by, the substantive laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law.

8. **Waiver.** Any failure of the part of Seller to insist on strict compliance with the Warranty Provisions shall no way constitute a waiver of such right. No claim or rights arising out of a breach of the Warranty Provisions by Buyer may be discharged in whole or in part by a waiver of the claim or right, unless the waiver is in writing signed by an authorized representative of Seller. Seller's waiver or acceptance of any breach by Buyer of any provisions of the Warranty Provisions shall not constitute a waiver of or an excuse for nonperformance as to any other provision of the Warranty Provisions nor as to any prior or subsequent breach of the same provision.

9. **Freight.** Buyer will arrange and pay for shipping and handling charges for the unit to be returned to the Seller. Seller will arrange and pay for shipping and handling for the return of the unit to the Buyer.