

## TERMS AND CONDITIONS

### 1. Applicability.

(a) These Terms and Conditions of sale (these “**Terms**”) apply to the sale of all commodities, products, or other goods (“**Goods**”) by Branching Out, Inc. (“**Seller**”) to the buyer of such Goods (“**Buyer**”).

(b) The sales confirmation, sales contract, or sales ticket issued by Seller, as applicable, (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

### 2. Order Procedure.

(a) Buyer may initiate an order via the website. By placing an order, Buyer makes an offer to purchase the Goods pursuant to the terms and conditions of this Agreement, and on no other terms. Any variations made to the terms and conditions of this Agreement by Buyer in any order are void and have no effect.

(b) Seller has the right, in its sole discretion, to accept or reject any order. Seller may accept any order by confirming the order (whether by written confirmation, invoice or otherwise) or by delivering such Goods, whichever occurs first. No order is binding on Seller unless accepted by Seller as provided in this Agreement. Seller reserves the right to limit sales of Goods to any person, geographic region or jurisdiction. Seller reserves the right to limit the quantities of Goods offered.

(c) Buyer agrees to provide current, complete, and accurate purchase and account information for all purchases made with Seller. Buyer agrees to promptly update any account and other information, including email address, credit card numbers and expiration dates, so that Seller can complete transactions and contact Buyer as needed.

### 3. Shipment and Delivery.

(a) Unless expressly agreed to by the parties in writing, Seller shall select the method of shipment of, and the carrier for, the Goods. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer.

(b) Unless expressly agreed to by the parties in any individual transaction, Seller shall deliver the Goods to the delivery location, using Seller's standard methods for packaging and shipping such Goods. All taxes, customs, duties, tariffs, and broker fees will be the sole responsibility of Buyer.

(c) Any time quoted by Seller for delivery is an estimate only. Seller is not liable for any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery. However, if Seller delays shipment of all or any Goods for more than 30 days after the estimated delivery date (the “**Delayed Shipment Date**”), then Buyer may, as its sole remedy, cancel the related order with respect to the delayed Goods by giving Seller Notice within 10 days of the Delayed Shipment Date. No delay in the shipment or delivery of any Goods relieves Buyer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Goods.

(d) Seller shall properly pack, mark, and ship Goods and provide Buyer with shipment documentation showing the order number, Seller’s identification number for the subject Goods, the quantity of goods in shipment and the number of cartons or containers in the shipment.

Buyer’s Goods should be ready to plant upon arrival. However, Buyer has 30 days from receipt of the Goods (“**Inspection Period**”) notify Seller if the Goods are damaged during shipping, if the Buyer is missing product, or if the shipment contains damaged or unsatisfactory Goods (“**Nonconforming Goods**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of the Nonconforming Goods during the Inspection Period. If Buyer timely notifies Seller of any Nonconforming Goods by providing the Seller with photographic evidence, Seller shall determine, in its sole discretion, whether the Goods are Nonconforming Goods. If Seller determines that the Goods are Nonconforming Goods, it shall, in its sole discretion: (i) replace such Nonconforming Goods with conforming Goods, or (ii) refund the price paid for such Nonconforming Goods, together with all shipping and handling expenses incurred by Buyer in connection with the purchase.

BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS SECTION 3(d) ARE BUYER’S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS.

(e) Except as provided under Section 3(d), Buyer has no right to return Goods purchased under this Agreement to Seller.

(f) Seller is required to charge sales tax for some locations. The tax amount shown in Buyer’s shopping cart, at checkout, and order details are estimates based on tax rates at the time Buyer’s order is submitted. The final tax amount Seller is required to collect is based on the date the order ships and may differ from the estimates initially provided. Seller retains the right to recover any difference in tax amount or order balance at the time of shipment with the payment method provided by Buyer.

4. Unauthorized Resale Prohibited. Seller represents and warrants that its products are not eligible for resale under any circumstances. Additionally, third-party sellers are prohibited by law from any unauthorized first-sale of Seller’s Goods or misrepresentations or unauthorized use of Seller’s intellectual property. Violators will be held responsible.

5. Shipping Limitation. Seller only ships inside the continental U.S. Seller does not ship to the following states: California, Nevada, Arizona, Texas, Louisiana, Alabama, Mississippi, Georgia, South Carolina, and Florida (the “**Restricted States**”). Shipping to any destination

outside the continental United States or to the Restricted States is not allowed. If Buyer attempts to ship outside the continental United States or the Restricted States, Seller will not offer any refunds or accept any returned orders. Furthermore, Seller will not be responsible for the loss of Buyer's order, confiscation, or any quarantine fees.

6. Goods. Certain Goods may have limited quantities and may not always be available for purchase. Seller makes every effort to display as accurately as possible the colors and images of the Goods. Seller cannot guarantee that Buyer's computer monitor display of any color will be accurate. All descriptions of Goods and pricing of Goods are subject to change at any time without notice at the sole discretion of Seller. Seller reserves the right to discontinue sale of any Good at any time.

7. Buyer's Acts or Omissions. If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

8. Price and Payment. Buyer shall purchase the Goods from Seller at the price set listed on Seller's website as of the date of Buyer's purchase order.

9. No Warranty. **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) WARRANTY OF TITLE, OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

10. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER 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 SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

(c) The limitation of liability set forth in Section 10(b) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

11. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

12. Indemnification. Buyer agrees to indemnify, defend, and hold harmless Seller and any parent, subsidiaries, affiliates, partners, officers, directors, agents, contractors, licensors, service providers, subcontractors, suppliers, inters and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third-party due to or arising out of a breach by Buyer of these Terms or any documents incorporated by reference.

13. Termination. These Terms are effective unless and until terminated by Buyer or Seller. Buyer may terminate the Terms at any time by notifying Seller that Buyer no longer wishes to purchase Seller's Goods, or when Buyer ceases using Seller's website. Seller may also terminate the Terms if Seller, in its sole discretion, determines that Buyer has failed to comply with any term or provision of the Terms and Buyer will remain liable for all amounts due up to and including the date of termination.

14. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

16. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall 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.

17. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the state of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the state of Michigan

or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the state of Michigan.

18. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the state of Michigan in each case located in the City of Lansing and County of Ingham, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

19. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

20. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

21. Amendment and Modification. Buyer can view the most current version of the Terms at any time at <https://branching-out-trees.com/>. Seller reserves the right, at its sole discretion, to update, change, or replace any part of the Terms by posting updates and changes to the website. It is the responsibility of the Buyer to check Seller's website. Any purchases of Goods following the posting of any changes to the Terms constitutes acceptance of such changes.

22. Contact Information. Questions about the Terms should be sent to [terms@branching-out-trees.com](mailto:terms@branching-out-trees.com).

36470:00001:6766680-3