

Dilution Solutions Terms and Conditions of Purchase

1. **Applicability.** These Terms and Conditions of Purchase ("Terms"), together with any other document(s) that Dilution Solutions International, Inc. ("Dilution Solutions") has attached hereto or executed that specifically reference these Terms; including but limited to an Order Form or Standing Order (collectively, "Agreement") 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 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. This Agreement will apply unless buyer has a separate written agreement with Dilution Solutions that expressly replaces this agreement. These terms and conditions may be updated or amended from time to time by Dilution Solutions, a copy of which will be available for review at :

<http://www.dilutionsolutions.com/userfiles/files/Dilution%20Solutions/DS%20Terms.pdf>

2. **Delivery.** (a) The products specified in the applicable Order Form ("Products") will be delivered within a reasonable time, subject to availability. Dilution Solutions shall not be liable for any delays, loss or damage in transit. Delivery dates provided by Dilution Solutions are estimates only. (b) Dilution Solutions shall deliver the Products to the Buyer's specified location (the "Delivery Point") using Dilution Solutions' standard methods for packaging and shipping such Products. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point. (c) Unless otherwise agreed by Dilution Solutions in writing, shipping, freight, handling, insurance and related costs (including, unless otherwise expressly agreed, return costs) are sole responsibility of Buyer and will be "pre-paid and added" or otherwise invoiced to Buyer. By default Dilution Solutions will ship products FOB Clearwater, Florida. (d) Dilution Solutions may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. (e) If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to Dilution Solutions' notice that the Products have been delivered at the Delivery Point, or if Dilution Solutions is unable to deliver

the Products at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Dilution Solutions, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. **Non-delivery.** (a) The quantity of any installment of Products as recorded by Dilution Solutions on dispatch from Dilution Solutions' place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. (b) Dilution Solutions shall not be liable for any nondelivery of Products (even if caused by Dilution Solutions' negligence) unless Buyer gives written notice to Dilution Solutions of the non-delivery within five days of the date when the Products would in the ordinary course of events have been received. (c) Any liability of Dilution Solutions for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

4. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Products at the Delivery Point. As collateral security for payment in full of the purchase price of the Products, Buyer hereby grants to Dilution Solutions a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

5. **Inspection and Rejection of Nonconforming Products or Components.** (a) Buyer shall inspect the Products within two (2) days of receipt and prior to use (whichever is earlier) ("Inspection Period"). Buyer will be deemed to have accepted the Products unless it notifies Dilution Solutions in writing of any Nonconforming Products or Components during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Dilution Solutions. "Nonconforming Products or Components" means only the following: (i) Product shipped is different than identified in Buyer's Order Form; or (ii) Product components contain material

manufacturing defects. (b) If, prior to use, Buyer timely notifies Dilution Solutions of any Nonconforming Products or Components utilizing Dilution Solutions' return authorization process

<http://www.dilutionsolutions.com/userfiles/files/Dilution%20Solutions/Dilution%20Solutions%20Return%20Policy.pdf>

("Return Policy") or call Dilution Solutions Customer Service at 1-800-523-8499, Dilution Solutions shall, in its sole discretion, (i) replace such Nonconforming Products or Components with conforming Products or components, or (ii) credit or refund the Price for such Nonconforming Products or Components (less the applicable restocking fee). Buyer shall ship, at its expense and risk of loss, the Nonconforming Products or Components to Dilution Solutions' facility located in Clearwater, Florida. If Dilution Solutions exercises its option to replace Nonconforming Products or Components, Dilution Solutions shall, after receiving Buyer's shipment of Nonconforming Products or Components, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products to the Delivery Point. Restocking fees apply to all returnable and returned Products, and custom or special order Products are not eligible for returns, refunds or credits. (c) Buyer acknowledges and agrees that the remedies set forth in Section 5(b) are, to the fullest extent possible under applicable law, Buyer's sole and exclusive remedies for the delivery of Nonconforming Products or Components.

6. **Price.** (a) Buyer shall purchase the Products from Dilution Solutions at the price(s) (the "Price(s)") set forth on the applicable Order Form. (b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Dilution Solutions' income, revenues, gross receipts, personnel or real or personal property or other assets.

7. **Payment Terms.** (a) Buyer shall pay all invoiced amounts due to Dilution Solutions in accordance with the payment terms and accepted payment methods specified in the applicable Order Form. (b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Dilution Solutions for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Dilution Solutions does

not waive by the exercise of any rights hereunder), Dilution Solutions shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due. (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Dilution Solutions, whether relating to Dilution Solutions' breach, bankruptcy or otherwise.

8. **Limited Warranty.** Please see the following for Dilution Solutions' current warranty policy: <http://www.dosatronusa.com/warranty> for warranty information. Except for defects in manufacturing, the foregoing warranty does not extend to custom or special order Products.

9. **Limitation of Liability.** (a) In no event shall Dilution Solutions be liable for any consequential, indirect, incidental, special exemplary, or punitive damages, lost profits or revenues or diminution in value, arising out of relating to any breach of the Agreement, whether or not the possibility of such damages has been disclosed in advance by Buyer or could have been reasonably foreseen by Dilution Solutions, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. In no event shall Dilution Solutions' 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 amount paid to Dilution Solutions under the Order Form covering the Product(s) at issue. (b) The limitation of liability set forth in Section 9(a) above shall not apply to (i) liability resulting from Dilution Solutions' gross negligence or willful misconduct and (ii) death or bodily injury resulting from Dilution Solutions' acts or omissions.

10. **Termination.** In addition to any remedies that may be provided under these Terms, Dilution Solutions may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms and such failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (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.

11. **Waiver.** No waiver by Dilution Solutions of any of

the provisions of these Terms is effective unless explicitly set forth in writing and signed by Dilution Solutions. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms 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.

12. **Confidential Information.** All non-public, confidential or proprietary information of a party, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by such party to the receiving party, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by the disclosing party in writing. Upon the disclosing party's request, the receiving shall promptly return all documents and other materials received from the disclosing party. The disclosing party shall be entitled to injunctive relief for any violation of this Section 12. This Section 12 does not apply to information that is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; or (c) rightfully obtained by the receiving party on a non-confidential basis from a third party.

13. **Force Majeure.** Dilution Solutions 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 in whole or in part from acts or circumstances beyond the reasonable control of Dilution Solutions 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, lockouts, strikes or other labor disputes 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, provided that, if the event in question continues for a continuous period in excess of 90 days, Buyer shall be entitled to give notice in writing to Dilution Solutions to terminate this Agreement. Dilution Solutions may at its option suspend

deliveries while such event or circumstance continues, apportion available inventory between its customers as it determines, or terminate this Agreement with immediate effect by written notice to buyer.

14. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Dilution Solutions, which consent shall not be unreasonably withheld. Any purported assignment or delegation in violation of this Section 14 is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

15. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

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. **Compliance with Laws.** Buyer agrees to comply with the applicable provisions of any federal, national, state or local law, and all orders, rules and regulations issued thereunder, with regard to the use, operation or condition of the Product(s).

18. **Governing Law.** All matters arising out of or relating to this Agreement, and or the products being shipped, are governed by and construed in accordance with the laws of the State of Florida without giving effect to any choice or conflict of law provision or rule.

19. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement, and or the products being shipped, shall be instituted in the federal courts of the United States of America and or the courts of the State of Florida located in Hillsborough County.

20. **Sales Representatives and Permitted**



Subdistributors. Buyer agrees that all of its sales representatives and permitted subdistributors (if applicable) will be subject to the provisions of these Terms and that all Product sales shall be subject to these Terms.

21. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Form or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 21.

22. **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.

23. **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 Order including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.