

WOODBOLT DISTRIBUTION, LLC d/b/a NUTRABOLT
PURCHASE ORDER TERMS AND CONDITIONS

These Purchase Order Terms and Conditions (these "Terms") apply to the attached purchase order (the "Purchase Order" and together with these Terms, the "Agreement") and constitute the entire agreement between Woodbolt Distribution, LLC d/b/a Nutrabolt (the "Buyer") and the seller identified on the Purchase Order (the "Seller") with respect to the purchase of goods set forth in the Purchase Order (the "Goods").

1. GENERAL.

- 1.1 Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Goods upon the terms and conditions of the Agreement.
- 1.2 Seller's written acknowledgment of all or any part of a Purchase Order, furnishing of all or any part of the Goods, acceptance of payment, and/or commencement of performance of any part of a Purchase Order shall constitute Seller's acceptance of a Purchase Order.
- 1.3 **BUYER OBJECTS TO AND REJECTS ANY ADDITIONAL TERMS, CONDITIONS OR LIMITATIONS IMPOSED BY SELLER UNLESS EXPRESSLY AGREED IN A SEPARATE WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER.**
- 2 **SHIPPING.** Seller shall properly pack, mark, and ship Goods as instructed by Buyer and otherwise in accordance with applicable law and industry standards. Seller shall provide Buyer with shipment documentation showing the Contract Reference Number (if applicable), the quantity of Goods in shipment, the number of cartons or containers in shipment, Seller's name, the air waybill/bill of lading number, the country of origin, and any other documentation necessary to release the Goods to Buyer.

3 DELIVERY.

- 3.1 Time is of the essence in Seller's performance of its obligations hereunder. Unless otherwise specified in a Purchase Order, delivery shall be made in accordance with Incoterms 2020 FCA Buyer's facility.
- 3.2 If Seller fails to deliver any Goods in full by the delivery date set forth in a Purchase Order (the "Delivery Date"), Buyer may terminate the Purchase Order immediately, and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods by the Delivery Date.
- 3.3 Seller shall deliver the quantities of the Goods specified in the Purchase Order. If Seller delivers more than 105% or less than 95% of the quantity of Goods specified in the Purchase Order, Buyer may reject all or any Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the price for the Goods shall be adjusted on a pro-rata basis.
- 3.4 Unless otherwise agreed by Buyer in writing, Buyer shall not be obliged to accept delivery by installments or partial delivery. If Buyer agrees to accept delivery by installments or partial delivery, late delivery of any one installment or any part of the Goods shall, without prejudice to any other rights and remedies available to Buyer, entitle Buyer to immediately terminate the whole or any unfulfilled part of the applicable Purchase Order and to refuse to take delivery of the remaining installments or Goods. Acceptance by Buyer of any late installment delivery or late partial delivery does not relieve Seller from the obligation to make punctual delivery of the remaining installments or Goods.
- 4 **RISK OF LOSS.** Title passes to Buyer upon delivery of the Goods to the shipping address set forth in the Purchase Order. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to such location.

5 INSPECTION AND REJECTION OF NONCONFORMING GOODS.

Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Purchase Order in its entirety, or (b) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and expedited transportation charges for delivery of replacement Goods. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations hereunder, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

6 PRICE; PAYMENT TERMS.

- 6.1 Buyer shall purchase Goods from Seller at the price specified in the Purchase Order. The price shall include all packaging, transportation costs to the delivery location indicated in the Purchase Order, insurance, customs duties, and fees and applicable taxes, including, but not limited to, all sales, use, or excise taxes. Unless otherwise specified in a Purchase Order, Buyer shall not be required to make deposits, prepayments or partial payments of any kind.
- 6.2 Seller shall issue an invoice to Buyer after the completion of delivery of the Goods. Buyer shall pay all properly invoiced amounts due to Seller within forty-five (45) days after Buyer's receipt of such invoice.
- 6.3 Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer.
- 6.4 Seller shall provide Buyer with an executed W-9, and the failure of Seller to provide such executed W-9 in a timely manner may result in a delay of payment of amounts due herein. Seller shall submit the W-9 and all invoices to Buyer by email to ap@nutrabolt.com.

7 WARRANTIES.

- 7.1 Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date (the "Warranty Period"), all Goods will: (i) be free from any defects in workmanship, material, and design; (ii) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Buyer to Seller; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; and (v) be free and clear of all liens, security interests, or other encumbrances. During the Warranty Period, Seller shall, at its own expense, either promptly repair or replace any defective Goods, or refund to Buyer the full price for any defective Goods if prompt repair or replacement is not feasible.
- 7.2 Seller further represents and warrants to Buyer that the Goods shall, at all times, not infringe upon any third party's intellectual or other proprietary rights.

7.3 Seller further represents and warrants to Buyer that Seller: (i) is in compliance with and shall comply with all applicable laws, regulations, and ordinances; (ii) has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Agreement; and (iii) has the full right and power to enter into the Agreement and perform its obligations hereunder.

7.4 Seller hereby assigns to Buyer any warranties provided to Seller by the manufacturer and/or its supplier of the Goods.

7.5 The warranties in this Section survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties.

8 **INDEMNIFICATION.** Seller shall indemnify, defend, and hold harmless Buyer and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, the "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under the Agreement, and the cost of pursuing any insurance providers incurred by the Indemnified Party arising out of or resulting from any claim in connection with: (a) the Goods, including any claim alleging that the Goods infringe or misappropriate the patent, copyright, trade secret or other intellectual property right of any third party; (b) Seller's breach of the Agreement; or (c) Seller's negligence, willful misconduct, or fraudulent act or omission in its performance of the Agreement. Seller shall not enter into any settlement without the Indemnified Party's prior written consent.

9 **INSURANCE.** While the Agreement is in force and for a period of twelve (12) months after the date of the Agreement, Seller shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing such insurance coverage.

10 **CANCELLATION; TERMINATION.**

10.1 Buyer may partially or completely cancel any Purchase Order at any time with or without cause for undelivered Goods. In such event, Seller will immediately cease all procurement, production, and shipment of undelivered Goods, and Buyer shall only be liable for payment of any conforming Goods delivered to Buyer prior to the date of cancellation. Seller shall refund any prepaid amounts to Buyer within three (3) business days of the date of cancellation.

10.2 In addition to any remedies that may be provided hereunder, and notwithstanding the above, Buyer may terminate any Purchase Order and/or the Agreement with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of the terms and conditions of the Agreement, in whole or in part.

10.3 If Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, 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, then Buyer may terminate any Purchase Order and/or the Agreement upon written notice to Seller.

10.4 If Buyer terminates any Purchase Order and/or the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

11 **ASSIGNMENT.** Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under the Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this section shall be null and void.

12 **MISCELLANEOUS.**

12.1 IN NO EVENT SHALL BUYER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES UNDER THE AGREEMENT.

12.2 Seller shall not use Buyer's name, logos, service marks, trademarks, trade dress, trade names or other marks or intellectual property without Buyer's prior written consent.

12.3 No waiver by Buyer of any of the provisions of, or any rights, remedy, power, or privilege arising from, the Agreement shall be effective unless explicitly set forth in writing and signed by an authorized representative of Buyer.

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

12.5 The Agreement shall be governed by and construed with the laws of the state of Texas, without regard to conflicts of laws principles that would require the application of any other law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

12.6 Any action, suit or proceeding arising out of or relating to the Agreement shall be brought in the state or federal courts located in Austin, Travis County, Texas, and each party irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding.

12.7 Any notices required or permitted hereunder must be in writing and sent to the party's address set forth on the Purchase Order, with notice deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date of delivery if delivered personally, or (iv) upon receipt if sent via email transmission with electronic confirmation of receipt, with a copy of email notices to Buyer sent to legal@nutrabolt.com.

12.8 The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, 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. No relationship of exclusivity shall be construed from the Agreement.
