

Burkle, Inc.
Terms and Conditions of Sale
January 2016

1. GENERAL

All sales between BURKLE, Inc. ("BURKLE") and Customer are subject to the following terms and conditions:

These terms and conditions of commercial sale of BURKLE (the "Terms and Conditions") shall apply exclusively to, and form an integral part of all quotations and offers made by BURKLE, and all acceptances, acknowledgments and confirmations by BURKLE of any orders of Customer and any agreements ("Agreement(s)") regarding the sale by BURKLE and purchase by Customer of goods and services ("Products"), unless and to the extent BURKLE explicitly agrees otherwise in writing.

Any terms and conditions set forth on any document or documents issued by Customer either before or after issuance of any document by BURKLE setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by BURKLE, and any such terms shall be wholly inapplicable to any sale made by BURKLE to Customer and shall not be binding in any way on BURKLE.

Manufacturer's "General Terms and Conditions of Business of Bürkle GmbH" are incorporated herein by reference and are available at https://www.buerkle.de/media/files/Downloads/agb_en.pdf.

Customer's orders are accepted upon written acknowledgement of the same by BURKLE but any order may be revoked by BURKLE at any time prior to the acknowledgment of acceptance by BURKLE.

2. DESCRIPTION OF THE PRODUCTS

The dimension, colors, measures, illustrations and descriptions and the like of the Products as shown on BURKLE's catalogues, prospectuses, and other documents or on the internet are approximate only. Any images of the Products are for illustrative purposes only and may differ from an actual product. Due to the natural condition of materials and different lighting conditions, colors of the Products may vary due to their natural appearance. BURKLE reserves the right to make changes to the Products ordered by the customer during the delivery period due to improvement in technology or legal requirements.

3. DELIVERY AND SUPPLY

Unless agreed to otherwise, Products shall be delivered *Ex Works* Bohemia, New York, USA (EXW – INCOTERMS 2010) as designated and arranged by BURKLE, unless otherwise agreed to in writing. Transport insurance will be arranged by BURKLE only if expressly requested and will be on Customer's account. BURKLE is entitled to arrange for part-shipments or advance delivery.

Delivery dates and periods are approximate only, shall not be binding, and are understood to be exclusive of the duration of transport. BURKLE shall not be liable for, nor shall BURKLE be in breach of its obligations to Customer, for any delivery made within a reasonable period of time before or after the communicated delivery date. BURKLE agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Customer provides all necessary order and delivery information sufficiently prior to the such delivery date. BURKLE will inform Customer of any delay in delivery as soon as BURKLE becomes aware of such. BURKLE shall not be liable for any loss or damage suffered by Customer through reasonable or unavoidable delay in delivery.

Customer will give BURKLE written notice of failure to deliver, and provide BURKLE with thirty (30) days within which to cure. If BURKLE does not deliver within such thirty (30) day period, Customer's sole and exclusive remedy shall be to cancel the affected and undelivered portions of the related Agreement. In such event BURKLE will refund or re-credit Customer within fourteen (14) days for any sum that has been paid by Customer for the canceled and undelivered Products.

Unless provided for otherwise, title in the Products shall pass to Customer upon delivery and full payment of the purchase price. Until title in the Products has passed to Customer, Customer shall not assimilate, transfer or pledge any of the Products, or grant any right or title in the Products to any third party, except in the event such right or title is granted in normal course of business. Customer shall ensure that the Products remain identifiable as Products obtained from BURKLE.

In the event BURKLE's supplier of the Products is curtailed for any reason, BURKLE shall have the right to arrange for the allocation of available Products, in its sole discretion, among its various customers and as a result may sell and deliver to Customer fewer Products than specified in the Agreement, as the case may be, without being responsible or liable to Customer for any damage resulting therefrom.

In the event that Customer deliberately fails to take delivery of the Products (other than by reason of circumstances under

control of BURKLE) then without prejudice to any other rights or remedies available to BURKLE, BURKLE may: (i) charge Customer for re-delivery expenses; (ii) store the Products at Customer's expense until actual delivery can take place, and a ten percent (10 %) re-stocking fee will be charged to Customer; or (iii) sell the Products at the best readily obtainable price and charge Customer for any shortfall below the price agreed to pay for the Products or credit Customer's account with proceeds received after deducting all reasonable storage, selling and other reasonable expenses.

Customer shall be obligated to properly examine the Products immediately after delivery and report any defects to BURKLE within three (3) days of delivery of the Products. Time is of the essence. BURKLE shall have the right to inspect the Products upon receipt of a report of damaged Products.

4. FORCE MAJEURE

BURKLE shall not be liable for any failure or delay in performance if:

- (i) such failure or delay results from interruptions in the Product manufacturing process by BURKLE's manufacturer of the Products; or
- (ii) such failure or delay is caused by Force Majeure as defined below and/or by (case) law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without BURKLE being responsible or liable to Customer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond BURKLE's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which BURKLE cannot reasonably be required to execute its obligations including force majeure and/or default by one of BURKLE's suppliers. In the event that the Force Majeure extends for a period of two (2) consecutive months (or in the event that the delay is reasonably expected by BURKLE to extend for a period of two (2) consecutive months), BURKLE shall be entitled to cancel all or any part of the Agreement without any liability towards Customer.

5. LIMITED WARRANTY AND DISCLAIMER

BURKLE warrants that under normal use in accordance with manufacturer's applicable user manual the Products, shall, at the time of delivery to Customer and for a period of ninety (90) days from the date of delivery (or such other period as may be agreed upon in writing by the parties, or as communicated in writing at sale by BURKLE) (the "Warranty Period"), be free from defects in material or workmanship and shall substantially conform to manufacturer's specifications for such Product, or such other specifications as BURKLE has agreed to in writing, as applicable. BURKLE's sole and exclusive obligation, and Customer's sole and exclusive right, with respect to claims under this warranty shall be limited, at BURKLE's option, to (1) repair or (2) provide a replacement of the defective or non-conforming Product or (3) apply an appropriate credit for the purchase price thereof. BURKLE will have a reasonable time to repair, replace or credit. BURKLE is entitled at its option to replace the defective or non-conforming Product(s) with a product that has minor deviations in design and/or specifications not affecting the functionality of the agreed Product(s). The non-conforming or defective Products shall become BURKLE's property as soon as they have been replaced or credited.

Customer may ship Products returned under warranty to BURKLE's designated facility only in conformance with BURKLE's then-current product return policy. Where a warranty claim is justified, BURKLE will pay for freight expenses. Customer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.

Notwithstanding the foregoing, BURKLE shall have no obligations under warranty and excluded from this warranty are alleged defects or non-conformance, and damages due to or a result of (1) ordinary and/or natural wear and tear (2) misuse (including the misuse of samplers), use other than as set forth in manufacturer's applicable user manual, neglect or accident, (3) improper repair, alteration, modification, storage, transportation or improper handling, (4) the exposure of the Product(s) to a substance, a material or a medium which is not suitable to the Product(s).

Subject to the exclusions and limitations set forth in Section 6 of the Terms and Conditions, the foregoing states the entire liability of BURKLE and its affiliates in connection with defective or non-conforming Products supplied hereunder.

6. LIMITATION OF LIABILITY

BURKLE SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE OF ANY PRODUCTS OR SERVICES BY BURKLE OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF BURKLE HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

BURKLE'S AGGREGATE AND CUMULATIVE LIABILITY TOWARDS CUSTOMER UNDER ANY AGREEMENT SHALL

NOT EXCEED THE AMOUNT OF FIVE TIMES THE PURCHASE PRICE OF THE PRODUCT OR THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCTS STATED IN THE RELATED AGREEMENT, WHICHEVER IS LOWER.

Any Customer's claim for damages must be brought by Customer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

The limitations and exclusions set forth above in this Section 6 shall apply only to the extent permitted by applicable mandatory law.

7. PRICING

Prices in any offer, confirmation or Agreement are in U.S. Dollars unless agreed otherwise in writing between Customer and BURKLE and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products or any other expenses. BURKLE will add such taxes, duties and similar levies to the sales price where BURKLE is required or enabled by law to pay or collect them and these will be paid by Customer together with the purchase price for the Products. Prices do not include costs of packaging and transportation unless expressly so indicated and these will be paid by Customer together with the purchase price for the Products.

8. PAYMENT

Unless agreed otherwise and stated in the acceptance acknowledgment for an order, BURKLE will invoice Customer in advance for the price of the Products, payable within eight (8) days of the order acknowledgment from BURKLE. Invoices are due for payment as stated on the invoice unless agreed otherwise between BURKLE and Customer in writing. Otherwise, and in addition to any other rights and remedies BURKLE may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment is received in full. All payments shall be made to the designated BURKLE address. If deliveries are made in installments, each installment will be invoiced separately and shall be paid when due. There are no discounts allowed for early payment unless agreed to in writing by BURKLE.

Upon request of BURKLE, Customer will grant BURKLE and Customer hereby reserves a first and prior purchase money security interest in all of the Products sold to secure payment and for such purpose, Customer will execute as requested by BURKLE, all applicable financing statements and other documents for BURKLE to perfect and protect its security interest.

In the event of any default by Customer in the payment of any fees or charges due, or any other default by Customer, BURKLE shall have the right to refuse performance and/or delivery of any Products until payments are brought current and BURKLE may suspend, delay or cancel any credit, delivery or any other performance by BURKLE. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

(a) BURKLE, at its sole expense, shall: (i) defend or arrange for the defense of any legal proceeding brought by a third party against Customer to the extent that the proceeding includes a claim that any of the Products as sold by BURKLE under an Agreement directly infringes the claimant's patent, copyright, trademark, or trade secret; and (ii) hold Customer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.

(b) BURKLE shall have no obligation or liability to Customer under Section 9 (a) (1) if BURKLE is not: (i) promptly notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defense and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by Customer in such investigation, preparation, settlement and defense; (2) if the claim is made after a period of three (3) years from the date of delivery of the Product; (3) to the extent that any such claim arises from: (i) modification of the Products if the claim of infringement would have been avoided by use of the unmodified Products; or (ii) design, specifications or instructions furnished by Customer; (4) to the extent the claim is based directly or indirectly upon the quantity or value of products manufactured by means of the Products or upon the frequency of use or the amount of use of the Products irrespective of whether such claim alleges that the Products as such, or its use, infringe or contribute to the infringement of any intellectual property rights of the claimant; (5) for use beyond the specifications of the Products; (6) to the extent any such claim arises from Customer's manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Products after BURKLE's notice to Customer that Customer should cease any such activity, provided such notice shall only be given if the Products are, or in BURKLE's opinion are likely to become, the subject of such a claim of infringement; (7) for any costs or expenses incurred by Customer without BURKLE's prior written consent; (8) to the extent any such claim arises from any infringement or alleged infringement of third party's intellectual property rights covering a standard set by a standard setting body and/or agreed between at least two companies; (9) for infringement of any third party's intellectual property rights covering the manufacture, testing or application of any assembly, circuit, combination, method or process in which the Products may have been used, or (10) for infringement of any third party's

intellectual property rights with respect to which BURKLE or any of its affiliates has informed Customer, or has published (in a datasheet or other specifications concerning the Products or elsewhere) a statement, that a separate license has to be obtained.

For such claims of infringements referred to in this Section 9(b), Customer shall indemnify BURKLE and its affiliates against and hold them harmless from any damages or costs arising from or connected with such claims and shall reimburse all costs incurred by BURKLE and its affiliates in defending any claim, demand, suit or proceeding for such infringement, provided BURKLE gives Customer prompt notice in writing of any such suit or proceeding for infringement.

(c) If any of the Products are, or in BURKLE's opinion are likely to become, the subject of a claim of infringement as referred to under Section 9 (a) above or if BURKLE receives from a third party claiming infringement of third party intellectual property in relation to any of the Products, BURKLE shall have the right, without obligation or liability and at its sole option, to: (i) procure for Customer the right to continue to use or sell the Products; (ii) provide replacement Products with a non-infringing product, or (iii) modify the Products in such a way as to make the modified Products non-infringing; or (iv) repurchase such Products from the Customer for the initial price paid by Customer less reasonable depreciation; or (v) suspend or discontinue supplies to Customer of the Products or parts to which such notice relates or (vi) terminate any Agreement to the extent related to such Product.

(d) Subject to the exclusions and limitations set forth in Section 6 of the Terms and Conditions, the foregoing states BURKLE's entire liability and obligation to Customer and Customer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights or any other proprietary rights of any kind.

10. CONFIDENTIALITY

Customer acknowledges that all technical, commercial and financial data disclosed to Customer by BURKLE and/or its affiliates is the confidential information of BURKLE and/or its affiliates. Customer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

11. EXPORT/IMPORT CONTROLS

Customer understands that certain transactions of BURKLE are subject to export control laws and regulations, including but not limited to the UN, EU and the USA export control laws and regulations ("Export Regulations"), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of BURKLE to import, re-import or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, BURKLE may suspend its obligations and the Customer's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, BURKLE may even terminate the relevant order in all cases without incurring any liability towards the Customer.

Customer warrants that it will comply in all respects with the import, re-import and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Customer. Customer accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Customer shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Customer shall indemnify BURKLE against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Customer's or its customers' breach or non-compliance with this article.

Customer acknowledges that the obligations contained in this Section shall survive the termination of any agreement of other arrangement under which the products or technology was provided to Customer. In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between Customer and BURKLE, Customer understands that the terms of this Agreement shall control and be binding upon Customer.

12. ASSIGNMENT AND SETOFF

Customer shall not assign any rights or obligations under the Agreement without the prior written consent of BURKLE. Customer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Customer may have with BURKLE or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Customer or on its behalf.

13. ANTI BRIBERY

Customer agrees that it now and in future shall comply with national law on prevention of bribery, as well as any other law transforming from ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (including the US Foreign Corrupt Practices Act). In general, the law makes it illegal to bribe or make a corrupt payment to an Official for the purpose of obtaining or retaining business, directing business to any person, or securing any improper advantage.

Customer's failure to comply with any provision of this section is grounds for immediate termination of any Agreement by BURKLE (or its respective affiliate(s)), without BURKLE's incurring any liability towards Customer. In the event of such termination, (i) BURKLE shall be under no obligation to supply any Product to Customer, (ii) Customer shall be responsible for and indemnify BURKLE for any damages, claims, penalties or other losses (including attorneys' fees) that may be asserted against or incurred by BURKLE as a result of Customer's breach of this section; and (iii) BURKLE shall be entitled to any other remedies available at law or in equity. The terms and conditions of this section shall survive any expiration or termination of this Agreement.

BURKLE will only do business with those companies that respect the law and adhere to ethical standards and principles. Should BURKLE receive any information to the contrary about the Customer, BURKLE will inform and Customer agrees to cooperate and provide whatever information is necessary to allow BURKLE to decide whether there is any basis to any allegation received and whether the Agreement should continue. Such information includes, but is not limited to, books, records, documents, or other files.

14. GOVERNING LAW

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. It is expressly agreed and understood that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any offer, confirmation or Agreement. Nothing in this Section 14 shall be construed or interpreted as a limitation on either BURKLE's or Customer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

15. ARBITRATION

Notwithstanding the above, any dispute, claim or controversy arising out of or respecting any matter contained in the Agreement including the question pertaining to the entering into of the same and its pre- and post effects, the parties to the Agreement shall, without delay, confer in good faith in an attempt to settle it but if they fail to do so within three (3) months, then upon application of either party, the matter shall be referred to and settled by arbitration before a panel of one (1) arbitrator by the American Arbitration Association in New York, NY under the then effective Rules of Commercial Arbitration of the American Arbitration Association. The language of the arbitration shall be in English. Any such arbitration will be conducted in New York City, NY.

In any arbitration involving the Agreement, the arbitrator shall not make any award which alters, changes, cancels or rescinds any provisions of the Agreement. The award of the arbitrator shall be final and binding, and judgment may be entered in any court of competent jurisdiction.

The arbitrator will be selected from a panel of persons having experience with and knowledge of BURKLE's industry and shall be an attorney. The arbitrator shall have no authority to award punitive damages nor any other damages not measured by the prevailing party's actual damages, and shall not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of an Agreement. Either party, before or during any arbitration may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the arbitration proceedings. Arbitration will not be required for recovery of specific property, such as actions for replevin.

Neither party nor the arbitrator may disclose the existence or results of any arbitration hereunder without the prior written consent of both parties. Prior to initiation of arbitration or any other form of legal or equitable proceeding, the aggrieved party will give the other party written notice describing the claim and amount as to which it intends to initiate action.

Any such arbitration must be commenced no later than one (1) year from the date such claim or controversy arose.

16. BREACH AND TERMINATION

Without prejudice to any rights or remedies BURKLE may have under the Agreement or at law, BURKLE may, by written notice to Customer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (a) Customer violates or breaches any of the provisions of the Agreement;
- (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against

Customer, whether filed or instituted by Customer, voluntary or involuntary, a trustee or receiver is appointed over Customer, or any assignment is made for the benefit of creditors of Customer; or

(c) the control or ownership of Customer changes.

Upon occurrence of any of the events referred to above, all payments to be made by Customer under the Agreement shall become immediately due and payable. In the event of cancellation, termination or expiration of an Agreement, the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

17. MISCELLANEOUS

(a) In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction (including a court of arbitration) or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

(b) The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising there from preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.