



TERMS AND CONDITIONS

WHEREAS, Buyer, in the course of its business, requires a supply of coffee, espresso, tea, as well as coffee equipment and coffee related supplies;
WHEREAS, Seller is the manufacturer of various coffee, espresso, and tea (collectively the “Products”) as set forth in Exhibit “A”. Moreover, Seller engages in the business of selling coffee, espresso, and tea related equipment and supplies (collectively “Equipment”), also set forth in Exhibit “A”;
WHEREAS, Buyer desires to purchase, and Seller desires to sell to Buyer, Buyer’s full supply of the Products and Equipment from Seller, and desires for Seller to be Buyer’s sole and exclusive supplier of said Products and Equipment;
WHEREAS, the pricing and availability of Products may change, without notice to Buyer, due to market conditions and availability. Accordingly, Seller will provide regularly updated Products listing information to Seller which include pricing and availability;
WHEREAS, subject to the terms and conditions contained herein, Buyer agrees to be bound by and Seller desires to accept said supplier engagement set forth in this Agreement.
NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged by the parties to this Agreement, the parties hereby agree as follows:

1. PURCHASE AND SALE. In consideration of the mutual covenants in this Agreement, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer the Products and Equipment as referenced herein and attached hereto as Exhibit “A” which is incorporated by reference. The purchase and sale terms are as follows:

(a) **Products Prices and Availability.** Seller shall provide to Buyer a list of the available Products and Equipment, including purchase prices in U.S. Dollars (the “Product Prices”). The Buyer acknowledges and agrees that due to various market conditions, the Product Prices and availability will fluctuate. Accordingly, Seller will provide a regularly updated listing to Seller that includes Product Pricing and availability. This regularly updated Products list will be available online at www.EspressoRepublic.com or by request. Seller, at Seller’s sole discretion, reserves the right at any time to change the specifications, functionalities, features and/or designs of the Products and/or to withdraw the availability of any Products or Equipment. Seller has the right to discontinue the distribution or availability of any item(s) specified in the Products and Equipment listing.

(b) **PRODUCTS SOLD AS-IS. DUE TO THE PERISHABLE NATURE OF THE PRODUCTS, ALL PRODUCTS ARE SOLD AS-IS WITH NO EXPRESS OR IMPLIED WARRANTIES PROVIDED BY SELLER.**

(c) **Equipment Pricing and Warranty.** Seller’s recommended list of Equipment for Buyer’s specific coffee program will be set forth in Exhibit “A”. All Equipment purchased from Seller will be installed by a certified technician. It is required that Buyer have a water filtration system in place for all Equipment used for brewing. Proper water filtration will reduce equipment malfunctions, prolong the life of the equipment, and help to ensure the highest level of quality beverages served. **ALL EQUIPMENT IS SOLD AS-IS WITH NO EXPRESS OR IMPLIED WARRANTIES PROVIDED BY SELLER EXCEPT FOR WARRANTIES, IF ANY, SUPPLIED BY THE MANUFACTURER OF THE EQUIPMENT.**

(d) **Purchase Orders.**

- (i) Purchases of Products and Equipment shall be initiated by Buyer pursuant to the terms and conditions appearing on Seller’s purchase order acknowledgment. All purchase orders placed by Buyer hereunder shall be governed by the terms and conditions of this Agreement which shall supersede any different or additional terms on Buyer’s purchase orders, which different or additional terms, not previously agreed to by the parties in writing, are hereby rejected. In the event of a conflict between the provisions of this Agreement and the terms and conditions of any purchase orders, the provisions of this Agreement shall prevail and control. No order shall be binding upon Seller until accepted by Seller in writing;
- (ii) Seller shall respond to the proposed purchase order by either accepting or reasonably rejecting the proposed purchase order in writing;
- (iii) Seller shall use commercially reasonable efforts to make deliveries of purchase orders so accepted in a timely manner, but Seller shall not be liable for any delay in delivery which occurs notwithstanding such commercially reasonable efforts or any errors in filling any purchase orders. If purchase orders for the Products and Equipment exceed Seller’s inventory, Seller shall be provided sufficient time to accommodate such large orders;
- (iv) **All orders need to be placed by: M T W TH FR SA SU | 12pm 3pm 5pm**
Orders for Products are roasted, packed and shipped **FEDEX** using ground shipping. The Products and Equipment, if available, may be picked-up from the Espresso Republic Roasting Works located at 4300 Edison Ave., Chino, CA 91710 on **WEDNESDAY** between 9am-5pm; and
- (v) All orders are subject to any and all applicable shipping and handling fees. Overnight and International orders are subject to any and all applicable shipping and handling fees.

(e) **Cancellation and Rescheduling.** Upon the acceptance of a purchase order by Seller, the purchase order may not be cancelled by Buyer for any reason. Upon Buyer’s request, Seller will make commercially reasonable efforts to produce and deliver an accepted purchase order in a time frame that will be scheduled at the time of purchase and based on to availability. Seller expressly does not provide any guarantee for any delivery schedules, but Seller will make all commercially reasonable efforts to deliver by the scheduled time frame.





(f) Payment.

- (i) The total amount payable for the Products and Equipment shall be the Product Price included on the applicable purchase order together with any and all costs, fees, charges and expenses related to the shipping, transportation and importation of the Products and Equipment. In addition to foregoing, Buyer shall pay, indemnify and hold Seller harmless from any sales, use, excise, import or export, value added or similar tax, and any penalties or interest associated with any of the taxes, imposed by any governmental authority with respect to any payment to be made by Buyer to Seller under this Agreement or any Products and Equipment to be delivered by Seller under this Agreement;
- (ii) **Payment shall be due and payable on the due date.** Payment will be made only in United States Dollars, by Credit Card, Business Check or wire transfer to the bank designated by Seller or other means satisfactory to Seller. Payments made by Buyer, even if marked to indicate payment in full, will be deposited by Seller or otherwise accepted by its bank notwithstanding such markings and such deposit and/or acceptance shall not indicate Seller's acceptance of the payment as payment in full unless the remittance actually constitutes payment of all sums owed. All sums not paid when due shall accrue three percent (3%) interest daily on the unpaid balance until paid in full;
- (iii) In the event that Buyer fails to pay any amounts due and such failure extends beyond thirty (30) days after the applicable invoice date, Seller may, at any time thereafter, in Seller's sole discretion and without any liability to Buyer, suspend production, shipments and/or deliveries of Products and Equipment, and demand such other terms or conditions or security arrangements for Buyer's due performance, as Seller, in its sole discretion, deems appropriate, including without limitation requiring full payment be made prior to shipment of the Products and Equipment or termination of the Agreement;
- (iv) Buyer's sole remedy against Seller for any Seller's defaults will be limited to the cost of replacement of the Products and Equipment purchased by Buyer from Seller.

2. TERM AND TERMINATION.

(a) Term. The term of this Agreement shall commence as of _____/_____/_____, ("Term") **1 2 3 4 5**

(b) Termination. Notwithstanding anything to the contrary contained herein, Seller may terminate this Agreement, without notice, immediately upon the Buyer's bankruptcy or insolvency, as well as due to any Buyer's defaults in payment or Buyer's breach of any of the terms set forth in this agreement.

3. EXCLUSIVITY. N/A

4. TRAINING AND SELLER'S MARK. At no additional cost to Buyer, Seller will provide Products and Equipment training to Buyer at Seller's training lab in Chino, California or Buyer's place of business the duration of which will be at the sole discretion of Seller. The various training that is offered will include pour over brewing, espresso preparation, milk steaming, and machine maintenance. Any additional training will be offered at a cost based on Seller's training lab schedule. The Buyer must follow all Products preparation, storage, and use guidelines ("Procedures") that are set forth by Seller and may not deviate from said Procedures.

The Buyer may not use or infringe upon the Seller's trademark, logos, other identifying marks ("Marks") without the prior written consent of the Seller. Moreover, Buyer may not act in any manner that would damage or harm the reputation of the Seller's or Seller's Marks.

5. TECH SUPPORT.

(a) Service. Any Equipment, purchased from Seller will be covered by the manufacturer's warranty, if any. Seller will provide limited technical support, problem specific. At Buyer's request, Seller can provide Tech Support services to Buyer at an additional fee. Buyer acknowledges that Buyer will be responsible for all parts and labor for any services rendered after and upon expiration of the manufacturer's warranties for the Equipment.

Please note, Equipment failure related to water quality (scale build-up) voids any and all manufacturer's warranties.

6. NO EXPRESS OR IMPLIED WARRANTIES. Any services, Products, or Equipment supplied by the Seller pursuant to this Agreement are sold AS-IS WHERE-IS and done so without any express or implied warranties from Seller and without recourse from Buyer to Seller.

7. INDEMNITY. Buyer shall defend, indemnify and hold Seller and its affiliates and its and their respective directors, officers, agents employees and contractors harmless from and against any and all claims, lawsuits, damages, losses, costs, liabilities, expenses (including reasonable attorneys' fees and costs of litigation and investigation regardless of outcome) and settlement amounts incurred in connection with any suit, claim or action by any third party (including any end-user) against Seller as a result of: (i) negligence, misrepresentation, misconduct, error or omission on the part of Buyer or its agents, employees, or other representatives relating to or concerning the Products and/or Equipment, including their installation, operation, use, maintenance, servicing or repair; or (ii) Buyer's breach of this Agreement.

8. CONFIDENTIALITY. The parties to this Agreement shall not disclose the terms of this Agreement to any non-party or other person or entity, except to any government agency which has jurisdiction over the parties to this Agreement or the parties representatives, advisors, attorneys, bankers and/or accountants, without the prior written consent of the other party to this Agreement, unless required by law.





9. FORCE MAJEURE. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused (I) by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, acts of God including weather restrictions and natural disasters, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

10. NO PRESUMPTIONS AGAINST DRAFTER. Parties understand, agree, and acknowledge that this Agreement has been freely negotiated by both parties; and that in any controversy, dispute, or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

11. GENERAL PROVISIONS. This Agreement may be executed by facsimile, simultaneously in one or in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument. In the event that any action, suit or other proceeding is instituted due to a breach of this Agreement, the prevailing party shall recover all of its reasonable attorneys' fees. In the event that such representation is false, and any such claim or matter is asserted against any party hereto (and/or the successor of such party) by any party or entity who is the assignee or transferee of such claim or matter, then the party hereto who assigned or transferred such claim or matter shall fully indemnify, defend and hold harmless the party against whom such claim or matter is asserted (and its successors) from and against such claims or matters and from all actual costs, fee (including attorneys' fees), expenses, liabilities and damages which that party (and/or its successors) incur as a result of the assertion of such claim or matter. This Agreement shall be binding upon and inure to the benefit of the parties' respective legal heirs, successors and assigns. Should any portion (word, clause, phrase, sentence, paragraph or section) of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder. The remaining portions of the Agreement will remain in effect. This Agreement shall be construed in accordance with and be governed by the laws of the State of California. Buyer may not transfer or assign this Agreement without Seller's prior written consent.

12. ARBITRATION CLAUSE. Any controversy, claim, problem, complaint, misunderstanding or dispute that may arise concerning any aspect of this Agreement, including but not limited to any disputes arising out of or based upon any state or federal statute, law or act applicable to this Agreement and the terms thereof shall be submitted to binding arbitration in the State of California in accordance with the rules of the American Arbitration Association. An award of arbitration may be confirmed in a court of competent jurisdiction.

