

BLENDTEC TERMS OF SALE

1. **Agreement for Sale.** These terms of sale apply to your purchase of machines, parts, accessories, and any other products (collectively as applicable "Products") from Blendtec, Inc. ("Blendtec") unless you have a separate written agreement with Blendtec that expressly applies to your purchase of such Products. Blendtec's acceptance of any order from you is expressly subject to your assent to each and all of the terms and conditions set forth below. Any additional or different terms and conditions submitted by you shall be deemed objected to by Blendtec and shall not be binding upon Blendtec unless accepted by Blendtec in writing. If you object to any of the terms and conditions below, such objection must be specifically brought to the attention of Blendtec in writing separate from any purchase order or other printed form. Any objections will be deemed proposals for different terms and conditions and may only be accepted by a writing executed by an authorized Blendtec representative at Blendtec's offices in Orem, Utah. By accepting delivery of Blendtec Products, you agree and are bound by the terms and conditions of this Agreement. No course of dealing or custom or usage contrary to this Agreement shall apply.

2. **Appointment**

a. **General.** If you have been granted distribution rights pursuant to the Blendtec Distributor Program and subject to the terms and conditions of this Agreement and your compliance therewith, you may resell certain Products to End-Users. "**End-User**" means any entity purchasing or otherwise obtaining Products from you for its own internal end-use and not for reselling, distributing, or sub-licensing to others. You shall not market, resell, or use Products other than as expressly permitted in this Agreement.

b. **Restrictions to Appointment.** Notwithstanding Section 2.a, and unless and to the extent that you are expressly granted such rights under the Blendtec Distributor Program or in a separate written agreement between you and Blendtec, you shall not market or resell Products or Services (i) to any End-Users, consumers, resellers, distributors, or third-party sales agents; (ii) through retail storefronts, online stores, or auction or resale websites; or (iii) to any government (including federal, provincial, state, or local government), healthcare, or education End-Users.

c. **Non-Exclusive.** This Agreement is not exclusive. Blendtec may appoint third parties (including those who may compete with you) to sell or market Products to anyone. Blendtec may sell or market (whether directly or indirectly through a third party) Products at any price Blendtec chooses without any obligation or liability to you. This Agreement does not guarantee that you will make any sales of Products.

d. **Additional Requirements.** Your eligibility to resell certain Products may be subject to additional obligations or conditions not outlined in this Agreement, including additional training, specialization requirements, contractual agreements, and other conditions.

3. **Pricing.** All price quotations are subject to change without notice. Prices quoted are in U.S. dollars (unless otherwise specifically noted by Blendtec in writing) and do not include freight, handling or delivery charges, air shipment charges, taxes (sales, excise, use, ad valorem, etc.), insurance or any export or import duties. You shall be responsible for collecting and/or paying any and all such taxes. Such charges may, at Blendtec's sole discretion, be prepaid by Blendtec and reimbursed by you.

4. **Applicable Policies for Resale of Products.** If you have been granted distribution rights pursuant to the Blendtec Distributor Program and if you are located in the United States of America or Canada, you acknowledge having received a copy of Blendtec's Minimum Advertised Pricing ("MAP") policy and acknowledge that failure to comply with the MAP policy may affect your ability to purchase Products from Blendtec in the future.

5. **Purchase Orders.**

a. **Orders.** Each order must reference Blendtec's quote (if any), the requested Products, and any other information requested by Blendtec. If requested by Blendtec, you shall submit orders on Blendtec designated order form(s). All orders and transactions are subject

to acceptance or cancellation by Blendtec, in Blendtec's sole discretion. Each accepted order will be interpreted as a single agreement, independent of any other orders.

b. **Shipping, Title and Risk of Loss.** Unless otherwise specifically agreed by Blendtec in writing, all shipments to you are Ex-Works Blendtec's facility in Orem, Utah. A drop ship fee may apply to any shipment to a destination which does not match the billing address. Shipping and delivery dates are provided as estimates only and Blendtec is not responsible for any early or delayed shipment or delivery. Blendtec may ship parts of an order separately. You must notify Blendtec Account Management and file a claim within seven (7) days from the delivery date of your shipment for domestic US customers and within fourteen (14) days from the delivery date of your shipment for International customers if you believe any part of your order is missing, wrong, or damaged. Failure to so notify Blendtec will be deemed your acceptance of the Products shipped.

c. **Cancellation.** Orders for Products that have been discontinued or have reached the end of their product lifecycle, and formerly standard parts that are no longer regularly used in Products, may not be changed or cancelled without Blendtec's prior written approval. Blendtec is not responsible for pricing, typographical, or other errors in any offer or quote, and reserves the right to cancel any order arising from such errors. In addition, Blendtec may cancel orders due to shortage of Products or materials, increases in the costs of manufacturing, or any event beyond Blendtec's control. Orders cancelled or changed by the customer after product has been built, will be subject to a cancellation/change fee of 20% of the order.

d. **Returns.** Returns may only be made in accordance with Blendtec's Return Policy found at <http://www.blendtec.com/company/return-policy>. Without limiting the foregoing, you must contact your Blendtec account manager by email or at 1-800-253-6383 before returning any Product. Products may not be returned without a Return Authorization Number (RAN) from Blendtec. All returned Products must be marked with the applicable RAN. Blendtec will not accept new unopened items. Used, custom, obsolete, or discontinued items may not be returned or refunded. Any authorized return products should be shipped by you freight and delivery prepaid. Returned items for credit or exchange are subject to a 20% restocking fee. Refunds shall be made in the same manner in which the order was paid. Retail Partners only: Opened, used defective retail product returned to your facility by end consumers requires proof of consumer purchase within 30 days or less to receive credit from Blendtec. Defective units returned by customer over 30 days requires end consumer to contact Blendtec Customer Service 1-800-253-6383 for warranty options and quick troubleshooting solutions.

e. **Security Interest.** You hereby grant Blendtec, and Blendtec hereby retains, a first priority security interest and lien on any and all of your rights, title, and interest in Products, wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products is paid in full, including any late payment fees and costs of collection. You agree Blendtec may file any financing statements or related filings for protecting this security interest as Blendtec reasonably deems necessary or appropriate.

6. **INVOICING, AND PAYMENT**

a. **Invoices.** Blendtec may invoice parts of an order separately, or may invoice purchases of Products in one invoice. Blendtec reserves the right to change the method of delivery of all documentation. You agree that all invoices will be deemed accurate unless you advise Blendtec by sending an email to AR@blendtec.com of a bona fide, material error within fourteen (14) days from the date of such invoice. In the event you advise Blendtec of a material error, (i) payment of any amounts corrected or modified by Blendtec in writing will be due, and you shall pay such amounts, within fourteen (14) days of such correction, and (ii) you shall pay all other amounts by the invoice due date. In the event you withhold payment of any invoiced amounts upon an assertion that such amounts are erroneous, and Blendtec subsequently concludes that such invoiced amounts are accurate, then you shall pay a late payment fee as described in Section 6.c, from the due date, for such invoiced amounts, until Blendtec's receipt of those amounts. In no event will you be entitled to offset, defer or deduct any invoiced amounts that Blendtec determines are not erroneous

following the notification process described in this paragraph. If you do not receive an invoice or acknowledgement by email or with your Products, information about your purchase may be obtained by contacting your Blendtec sales representative.

b. **Payment.** Invoices are due and payable within the time period noted on your invoice, or if not noted, then within thirty (30) days measured from the date of the invoice, subject to continuing credit approval by Blendtec (such approval may be revoked without notice from Blendtec). Payment shall be made in the currency as invoiced by Blendtec. Payment for Products must be made by credit card, automated clearing house, wire transfer, electronic funds transfer or some other prearranged payment method, unless credit terms have been agreed to by Blendtec in writing. You shall make payment to Blendtec for Products to the account indicated by Blendtec (as may be amended from time to time). Timely payment is of the essence. Your assignment of a purchase order to a third-party financing company must be approved in advance in writing by Blendtec, and in no case will any such approval excuse you from your obligations hereunder.

c. **Late Payment.** Blendtec reserves the right to charge you a late payment fee of 1.5% per month (18% per annum) applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late payment fees will be recalculated every thirty (30) days thereafter based on your current outstanding balance. In addition, Blendtec may, without waiving any other rights or remedies to which it may be entitled, take any one or more of the following actions: (a) not accept additional orders from you; (b) suspend or terminate its provision of maintenance, warranty service, technical support, or any other service; and (c) seek collection of all amounts due, including reasonable attorney or legal fees, expenses and costs of collection. Blendtec will have no liability to you or to any End-User for any such suspension or termination or for any refusal of additional orders.

7. **Warranties**

a. **Limited Warranty on Blendtec Products.** BLENDTEC MAKES NO WARRANTIES TO YOU UNDER THIS AGREEMENT. YOU UNDERSTAND THAT WITH RESPECT TO BLENDTEC PRODUCTS, END USER WARRANTIES MAY BE FOUND IN THE END USER DOCUMENTATION PROVIDED WITH THE BLENDTEC PRODUCTS. You shall not make any warranty on Blendtec's behalf. You are solely responsible for, and you shall indemnify and hold Blendtec harmless from any claims related to, any warranty you grant that is beyond the Blendtec end user warranties described in this paragraph.

b. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.a, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, BLENDTEC (INCLUDING BLENDTEC AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SUCCESSORS AND ASSIGNS), ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS (COLLECTIVELY AND TOGETHER WITH BLENDTEC, THE "BLENDTEC PARTIES"), DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

8. **Intellectual Property**

a. **Trademarks and Copyrights.** If you have been granted distribution rights pursuant to the Blendtec Distributor Program, you may use the "Blendtec" name and the names of Blendtec Products (collectively, "Names") solely for the purpose of accurately identifying the Blendtec Products you market or sell under this Agreement. You shall not use any of the Names for any other purpose, and shall not use any other Blendtec trademarks, service marks, logos, or copyrighted works, unless and to the extent you are expressly granted such usage right by an authorized Blendtec representative in writing. You agree to change or correct, at your own expense, any materials or activity that Blendtec decides is inaccurate, objectionable or misleading, or is a misuse of any of the Names, trademarks, service marks, logos, or copyrighted works. You are prohibited from using Blendtec's logos, referring to yourself as an authorized reseller of Blendtec, or creating the impression that Blendtec is affiliated with you, other than as expressly permitted by the terms of a written Blendtec dealer agreement signed by an authorized Blendtec representative. You shall not claim or imply or create an impression that you and Blendtec are legal partners or that Blendtec has

sponsored, authorized, approved, or endorsed your business or any offer or marketing, advertising, or promotion thereof in any manner. You will clearly and prominently identify yourself in all your offers and advertising, marketing, and promotional materials. You may not register or use any domain name or business name containing or confusingly similar to any name or mark of Blendtec's. Additionally, you may not use any Names or Blendtec marks in search engine advertising, either as a keyword or in advertisements appearing on search engines or in email addresses, without Blendtec's prior written permission.

b. **Intellectual Property Ownership and Reservation of Rights.** All right, title and interest in and to the intellectual property rights in Blendtec Products, including technology and trade secrets embodied therein and any custom developments created or provided in connection with or related to this Agreement, and any derivative works thereof, belong solely and exclusively to Blendtec, and you have no rights whatsoever in any of the foregoing other than the rights expressly set forth in this Agreement. Nothing in this Agreement or otherwise will be deemed to grant to you an ownership interest in any of the intellectual property rights in or to any Blendtec Products, in whole or in part.

c. **Discontinued or Changed Products.** Blendtec reserves the right to revise or discontinue any Product offering at any time without notice to you or the End-User. Changes to Blendtec Products may occur after you place an order but before Blendtec ships the Blendtec Product. As a result, any Blendtec Products that you or an End-User receive might display minor differences from the Blendtec Products ordered, but Blendtec Products will meet or exceed all material specifications of such Blendtec Products that were ordered.

d. **Confidential Information.** The term "Blendtec Confidential Information" means any confidential or proprietary information pertaining to or provided by Blendtec, including, without limitation, product plans, software, pricing, discounts, marketing and sales information, business plans, customer and supplier data, financial and technical information, "know-how," trade secrets, and other information, whether such information is in written, oral, electronic, web-based, or other form. You will keep all Blendtec Confidential Information confidential for a period of three years from the date of Blendtec's disclosure to you, and use at least the same degree of care as you use to protect your own confidential information but no less than reasonable care. Notwithstanding anything to the contrary in this Agreement, your confidentiality obligations with respect to customers' personally-identifiable information and Blendtec trade secrets shall never expire. You may not disclose Blendtec Confidential Information to any third party without Blendtec's prior written consent. You may share Blendtec Confidential Information with only your employees who have a need to know and who are subject to legally binding obligations of confidentiality no less restrictive than those imposed by this Agreement. These confidentiality obligations do not apply to any Blendtec Confidential Information that (i) you can demonstrate was in your possession before receipt from Blendtec; (ii) is or becomes publicly available through no fault by you; or (iii) you rightfully received from a third party without a duty of confidentiality. If you are required by a government body or court of law to disclose any Blendtec Confidential Information, you agree to give Blendtec reasonable advance notice so that Blendtec may contest the disclosure or seek a protective order. You may use the Blendtec Confidential Information solely for the purpose of, and in connection with, your business relationship with Blendtec. No license or conveyance of any rights under any patent, copyright, trade secret, trademark or any other intellectual property right to Blendtec Confidential Information is granted under this Agreement except the limited rights to use the Blendtec Confidential Information as expressly set forth in this paragraph. Blendtec makes no warranties as to the accuracy or completeness of the Blendtec Confidential Information. ALL BLENDETEC CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". To the extent permitted by law, Blendtec disclaims all express, implied and statutory warranties and conditions, and assumes no liability to you for any damages of any kind in connection with the Blendtec Confidential Information or any intellectual property in them. Upon Blendtec's written request, you will promptly return all Blendtec Confidential Information, together with all copies, or certify in writing that all such Blendtec Confidential Information and copies thereof have been

destroyed. You acknowledge that damages for improper disclosure of Blendtec Confidential Information may be irreparable and that Blendtec shall be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity. You agree to adhere to all applicable United States, Canadian and foreign export control laws and regulations and will not export or re-export any technical data or Products, to any proscribed country listed in the U.S. Export Administration regulations, or foreign national thereof, unless properly authorized by the U.S. Government.

9. Limitation of Liability

a. BLENDTEC WILL NOT BE LIABLE FOR (A) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, (B) LOSS OF REVENUE, INCOME, PROFIT, SAVINGS OR BUSINESS OPPORTUNITY, (C) BUSINESS INTERRUPTION OR DOWNTIME, (D) LOST OR CORRUPTED DATA OR SOFTWARE, OR (E) LOSS OF USE OF ANY PRODUCTS OR SERVICES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ON BLENDTEC'S WEB SITE TO THE CONTRARY, BLENDTEC IS NOT RESPONSIBLE FOR INFORMATION OR DATA YOU PROVIDE TO US UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT TO THE CONTRARY. BLENDTEC DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH IN THIS AGREEMENT.

b. BLENDTEC'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL NOT EXCEED THE AGGREGATE DOLLAR AMOUNT YOU PAID TO BLENDTEC UNDER THIS AGREEMENT FOR SUCH PRODUCTS OR SERVICES THAT CAUSED THE LIABILITY IN THE PREVIOUS 12 MONTHS PRIOR TO SUCH CLAIM FOR LIABILITY. The existence of more than one claim will not increase or otherwise alter these limitations on Blendtec's liability.

c. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES OR LIABILITY, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. YOU AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR BLENDTEC'S SALE OF PRODUCTS TO YOU, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF BLENDTEC HAS BEEN ADVISED OF, KNEW OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LIABILITIES.

10. EXPORT.

a. If any Products are resold in violation of the restrictions in this Section, Blendtec is not obligated to provide any warranty service or technical support. Nothing in this Section shall be construed as authorization by Blendtec for you to market or resell Products in violation of Section 2.b.

b. You acknowledge that the Products provided under this Agreement are subject to the customs and export control laws and regulations of the United States, and may also be subject to the customs or export control laws and regulations of the country(ies) in which the Products are sold (together these laws and regulations are referred to herein as the "Export Laws"). You shall comply with the Export Laws. The Products may not be exported, re-exported, sold, leased or otherwise transferred to restricted end-users or to restricted countries (as defined by the Export Laws). You agree to apply the requirements of this Section to any agreement you enter with any party for the resale or distribution of the Products provided under this Agreement.

c. Unless otherwise specifically agreed by an authorized Blendtec representative in writing, you are solely responsible for obtaining any necessary licenses or other authorizations relating to the export of the Products provided under this Agreement, and you are responsible for ensuring compliance with the requirements of any such licenses or other authorizations. Blendtec's acceptance of any order for any Products is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government; Blendtec is not liable for delays or failure to deliver any Products resulting from your failure to obtain such license or to provide certification to Blendtec that any necessary license has been obtained.

d. You shall indemnify, defend, and hold Blendtec harmless from any claims, causes of action, or legal proceedings (including any investigations or proceedings by a governmental agency or entity) arising out of or in connection with your inaccurate representation regarding the existence of an export license or your violation or alleged violation of any applicable Export Laws.

e. If you or an End-User exports or acquires Products for export, you will use commercially reasonable efforts to ensure that the End-User complies with all applicable Export Laws. If any Product is moved outside of the United States or Canada, as applicable, to a geographic location in which such Product's warranty support service ("Warranty Support Service") is not available, or is not available at the same price as you paid to Blendtec for the Warranty Support Service, you or the End-User may not have coverage or may incur an additional charge to maintain the same categories of support coverage at the new location. If you or the End-User choose not to pay such additional charges, in Blendtec's sole discretion the Warranty Support Service may be automatically changed to categories of support which are available at such price or a lesser price in such new location with no refund available. You shall inform all End-Users of the foregoing limitations prior to or at the time an End-User places its order with you for any Warranty Support Services for any Products.

11. DISPUTE RESOLUTION - ARBITRATION. YOU AND BLENDTEC ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR, WHERE APPLICABLE, TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

a. The parties will attempt to resolve any claim, dispute, or controversy (whether in contract, tort or otherwise, whether pre-existing, present or future, and including statutory, consumer protection, common law, intentional tort and equitable claims) between you and Blendtec Parties arising from or relating to any purchase of Products, this Agreement or any service agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from such written agreements (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), any reseller or channel partner agreement, Blendtec's advertising, or any related purchase (each a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator.

b. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION administered by the International Institute for Conflict Prevention and Resolution (CPR), the American Arbitration Association (AAA), or JAMS (for Canadian resellers, arbitration will be at ADR Chambers pursuant to the general ADR Chambers Rules for Arbitration located at www.adrchambers.com). Arbitration proceedings shall be governed by this Dispute Resolution – Arbitration section and the applicable procedures of the selected arbitration administrator in effect at the time the claim is filed. The arbitration will be limited solely to the individual dispute or controversy between you and Blendtec.

c. You agree to arbitration on an individual basis. Where enforceable, NEITHER YOU NOR BLENDTEC SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER RESELLERS OR PARTNERS, OR ARBITRATE ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (BUT IN NO CASE SHALL THERE BE A CLASS ARBITRATION).

d. The arbitration hearing shall take place in Orem, Utah (unless the arbitrator orders otherwise), and will be governed by the United States Federal Arbitration Act to the

exclusion of any inconsistent state laws. The arbitrator shall base its award on the terms of any written Agreement(s), and will follow the law and judicial precedents that a United States District Judge sitting in the District of Utah would apply to the Dispute. (For Canadian entities: the arbitration hearing shall take place in Calgary, Alberta (unless the arbitrator orders otherwise), and will be governed by the Alberta Arbitration Act and the applicable laws of Alberta and Canada). The arbitrator shall render its award in writing and will include the findings of fact and conclusion of law upon which the award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. For information on CPR, call (212) 949-6490; on AAA, call (800) 778-7879; on JAMS, call (800) 352-5267. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this Dispute Resolution – Arbitration section.

12. **Governing Law.** You agree that this Agreement, any purchase hereunder and any Dispute will be governed by the laws of the State of Utah (or for Canadian entities, the Province of Alberta), without regard to its conflict-of-laws rules or to the United Nations Convention on Contracts for the International Sale of Goods.

13. **Miscellaneous**

a. **Headings, Interpretation and Language.** The section headings used herein are for convenience and reference only and are not to be considered in construing or interpreting this Agreement. All references herein to "Sections" will be deemed references to sections of this Agreement. The words "include" and "including", and other variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation". The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including all notices, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

b. **Independent Contractors.** No provision of this Agreement will be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between you and Blendtec, or impose a trust, partnership, or fiduciary duty, obligation, or liability on or with respect to such entities. You and Blendtec are independent contractors. Neither party will make any representations or warranties, or assume any obligations, on the other party's behalf. Neither party is or will claim to be a legal representative, franchisee, agent or employee of the other party.

c. **Audit and Record-Keeping.** You will maintain accurate and legible accounting books and records for a period of three years concerning the sale or use of Products. You will cooperate with Blendtec and will grant to Blendtec, or its designee, access to and copies of, any information requested by Blendtec to verify compliance with the terms of this Agreement.

d. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement is intended to, or will be deemed or construed to, create any rights or remedies in any third party.

e. **Limitation Period.** Neither party may institute any action in any form arising out of this Agreement more than two (2) years after the cause of action has arisen, or in the case of non-payment, more than two (2) years from the date of last payment.

f. **Assignment; Subcontracting.** You shall not assign this Agreement, in whole or in part, whether by operation of law, merger or stock or asset sale, or otherwise, without the prior written consent of Blendtec. Any attempt to assign this Agreement without Blendtec's written consent will render the purported assignment null and void. Blendtec has the right to assign, subcontract or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, provided

that Blendtec will remain responsible for the performance of services (if any) under this Agreement.

g. **Force Majeure.** Blendtec shall not be liable to you for any delays or failure to perform any of its obligations under this Agreement during any period in which such performance is delayed or prevented by circumstances beyond its reasonable control including fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.

h. **Waiver.** Failure by Blendtec to enforce any provision of this Agreement will not operate or be construed as a waiver of any future enforcement of that or any other provision of this Agreement. No waiver will be effective against Blendtec unless in writing and signed by an authorized representative of Blendtec.

i. **Severability.** If any provision of this Agreement is declared or found to be illegal, invalid or unenforceable, then such provision will be stricken or modified to the extent necessary to make it legal, valid, and enforceable while preserving the parties' original intent to the maximum extent possible. The remaining provisions of this Agreement will remain in full force and will not be terminated.

j. **Entire Agreement.** This Agreement (including all other agreements referenced herein) constitutes the entire integrated agreement between you and Blendtec regarding its subject matter, and supersedes all prior or contemporaneous, written or oral understandings, communications or agreements between you and Blendtec regarding such subject matter. This Agreement may not be altered, supplemented or amended by you via the use of any other document(s) unless otherwise agreed to in a separate written agreement signed by an authorized representative of Blendtec. Any use of your pre-printed forms, such as purchase orders, are for convenience only, and any pre-printed terms set forth therein that are in addition to, inconsistent or in conflict with the terms of this Agreement shall be given no force or effect.

k. **Agreement Updates.** Blendtec reserves the right to update this Agreement (including all applicable terms referenced herein) at any time, effective upon posting an updated version of the Agreement to the Blendtec website at www.blendtec.com/sales-order-terms. You shall monitor the revision date/version number, and any change to its posted date/version number will be deemed notice to you that the terms have been updated. However, subject to Section 8.c, your rights and obligations with respect to any particular Products will be as provided in the version of this Agreement executed by you or available to you at the time of your purchase of such Products.

l. **Notices.** Any notice to Blendtec relating to this Agreement must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (including facsimile or e-mail) as specified by Blendtec in writing, and will be effective upon receipt. Notice from Blendtec may be sent to you by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address and contact information provided by you to Blendtec in connection with this Agreement.

Blendtec, Inc.
Attention: Contracts Manager
1206 South 1680 West
Orem, Utah 84058