

TERMS AND CONDITIONS OF SALE**1. GENERAL:**

B&R PERFUME COLOGNE, INC ("SELLER") and the "Purchaser" named on the first page of the NEW CLIENT APPLICATION (annexed hereto) as the COMPANY NAME/COMPLETE LEGAL NAME or DBA/TRADE NAME agree that the following terms and conditions ("Agreement") apply and control all purchases of Products (hereinafter defined and/or listed) by the Purchaser from the Seller. All orders placed by Purchaser to Seller ("Order(s)") shall be deemed to incorporate the terms hereof. The Purchaser hereby acknowledges and agrees that this Agreement may be amended by the Seller from time to time, and this Agreement shall be deemed to include any such amendments as set forth in the Seller's invoice to Purchaser. In the event of any conflict between this Agreement and an invoice, the terms of the invoice shall control. Any document entitled "TERMS AND CONDITIONS" that may be attached to any Order issued by Purchaser to Seller or any other terms and conditions set forth in or attached to any Order which is in conflict with this Agreement SHALL NOT apply.

2. CAPACITY:

Products are only available for sale to Purchasers who can make and enter into legally binding contracts.

3. PRODUCTS AND ORDERS:

For purposes of this Agreement, "Products" means any product of Seller listed in an Order. Purchaser shall purchase Products by placing an Order(s), indicating specific Products, quantity, price, bill-to and ship-to addresses, e-mail address, telephone number, FAX number and any other special instructions. Any contingency contained on such Order ARE NOT binding upon the Seller. Seller will accept or reject Orders according to its then current procedures.

4. PAYMENT

Unless otherwise agreed to in writing by the Seller to the Purchaser or indicated on the Seller's invoice, the PAYMENT TERMS shall be **net thirty (30) days from the date of shipment and payment shall be made in U.S. Dollars ("USD")**. If at any time Purchaser is delinquent in the payment of any invoice or is otherwise in breach of any obligation to Seller, Seller may, at its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order or may at its option, require Customer to prepay for further shipments. Delinquency charges of one and one-half percent (1.5%) per month, or the maximum amount permitted by law, whichever is less, on any sums not paid by the Purchaser when due shall be due and payable at the option of the Seller. In addition, any past due invoice may be submitted for collection, and Purchaser shall pay all of Seller's costs and expenses associated with such collection, including but not limited to, all attorney's fees and court costs.

5. **RISK OF LOSS**

Unless otherwise agreed to in writing by the Seller, title and RISK OF LOSS for the Product(s) shall pass from the Seller to the Purchaser, **“FOB Seller’s Warehouse.** Notwithstanding any term or condition herein, if shipment of any Product is delayed at Purchaser’s request, Seller may invoice Purchaser for such Product and RISK OF LOSS of such Product will pass to the Purchaser on the date that Seller is prepared to make shipment to Purchaser. Unless otherwise agreed to in writing by Seller, Purchaser shall be responsible for insuring the Product(s) at and after the time it assumes the RISK OF LOSS.

6. **SHIPPING AND DELIVERY**

Shipping dates shall be established by the Seller upon its receipt and acceptance of an Order from the Purchaser. Seller may select and engage on Purchaser’s behalf third parties, including U.S. domestic and international forwarder(s) and carrier(s), for the handling, transportation, clearance and delivery of the Products. Seller shall use reasonable care in making such selection, but shall have no liability for the means, route and procedures used and followed by such third parties. In the event Seller pays or is required to pay or prepay any fees or charges related to these services, Purchaser shall promptly reimburse Seller for any and all such fees or charges. All shipments provided for hereunder may be made in a single delivery or in lots, at the discretion of the Seller.

7. **CANCELLATION, TERMINATION AND CHANGES:**

Orders cannot be cancelled, terminated, or modified, or shipment deferred after acceptance of Purchaser’s Order by the Seller, except with Seller’s written consent and subject to reasonable charges for expenses incurred and work executed by Seller. Purchaser shall be obligated to accept any portion of the Order shipped or delivered by Seller pending Seller’s written approval of cancellation.

8. **INSPECTION AND ACCEPTANCE**

Purchaser shall have three (3) days from the date Purchaser receives any Products to inspect such Products and make written claims for defect, non-conformance, damage, shortage or errors in shipping. After such three (3) day period, Purchaser shall be deemed to have irrevocably accepted the Products, if not previously accepted. After such acceptance, Purchaser shall have no right to reject the Products for any reason or to revoke acceptance. Purchaser hereby agrees that such three (3) day period is reasonable amount of time for such inspection and rejection.

9. **PROCEDURE TO RETURN PRODUCTS:**

Delivered Products returned to Seller require prior written authorization by Seller before such Products will be accepted. All returns are subject to approval by Seller, in its sole discretion. The Purchaser must relay to the representative of Seller the invoice number and a description of the Product together with a full reason for the return. Seller is not responsible for Products returned without prior authorization of Seller. Returns must be sent through a traceable carrier. Handling, inspection, restocking and

invoicing charges will be assessed, if applicable, plus any outgoing packaging and freight expenditures paid by the Seller. All returns allowed must be shipped to Seller prepaid.

10. WARRANTY:

Seller, a distributor, stocks and sells products offered by several manufacturers. Products are sold only with such warranties as may be extended by the manufacturer of the product. Seller warranties, whether implied by operation of law or otherwise, including, without limitation, all implied warranties of merchantability and fitness or fitness for a particular purpose.

11. CONSEQUENTIAL AND INCIDENTAL DAMAGES WAIVER:

In NO EVENT shall Seller be liable for any loss of use, interruption of business, lost income or profits or lost data, or indirect, special, incidental, punitive or consequential damages of any kind regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, even if Seller has been advised of the possibility of such damages. Purchaser shall indemnify Seller against all liability, cost or expense which may be sustained by Seller on account of any such loss, damage or injury.

12. LIMITATION OF LIABILITY:

Seller's aggregate liability arising out of or in any way related to the Products shall not, under any circumstances, exceed the payment, if any, received by the Seller for the Products furnished or to be furnished, as the case may be, which is the subject of the claim or dispute. Additionally, and without limiting the generality of the foregoing, Purchaser hereby acknowledges that the Seller is a distributor (not a manufacturer) of the products, and as a result thereof, the Purchaser hereby agrees that the Seller shall have no responsibility or liability with the respect to any and all claims arising out of any (i) use or disposal of the products by or for the account of Purchaser or its customers, (ii) defects in the products, whether alleged and/or actual, including but not limited to improper construction and design, in each case, whether alleges and/or factual, or (iii) failure of the Products to comply with specifications.

13. GOVERNING LAW:

This Agreement shall be construed in accordance with and governed by the laws of the State of New York without regard to its Conflict of Law provisions. All actions or proceedings arising directly or indirectly herefrom shall be litigated ONLY in the courts of the State of New York or United States Federal Courts located therein and the parties shall consent to the jurisdiction and venue of such courts.

14. SEVERABILITY:

If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part thereof.

