



Zest Labs, Inc.
TERMS AND CONDITIONS OF SALE
EFFECTIVE: JANUARY 1, 2017

1. SCOPE

The terms and conditions of sale set forth herein (“*Terms and Conditions*”) apply to all quotations issued and purchase orders accepted by Zest Labs, Inc. (“*Zest Labs*”) for the sale of its products (“*Products*”), except in the case that Zest Labs and buyer (“*Buyer*”) have executed a written agreement that supersedes these Terms and Conditions. To the extent the Products contain or consist of software or firmware in any form (“*Software*”), such Software is licensed, not sold, solely in accordance with the terms and conditions referenced in Section 11. Terms such as “sell” and “purchase”, as used in these Terms and Conditions, apply only to the extent the Products consist of items other than Software. These Terms and Conditions will apply whether or not they are enclosed with the Products sold hereunder.

2. ORDERING

If Buyer desires to purchase Products from Zest Labs, Buyer will submit a written purchase order signed by an authorized representative of Buyer. Each purchase order will include at least the following information: (1) Product name; (2) Product identifier (part number, sku #); (3) quantity; (4) unit price; (5) requested delivery dates; and (6) any requested special shipping terms. No such order will be binding on Zest Labs unless and until Zest Labs accepts Buyer’s order and sends Buyer a written order confirmation (“*Order Confirmation*”), which will confirm the quantity of Products purchased and the selling price, and will specify a shipment date (“*Order Confirmation Shipment Date*”). Zest Labs’s acceptance of Buyer’s order is expressly conditioned on Buyer’s unconditional assent to these Terms and Conditions in lieu of any terms and conditions in Buyer’s order or in any other Buyer communication. Zest Labs hereby rejects any terms or conditions in Buyer’s order or in any other Buyer communication that conflict with or that purport to add to or modify these Terms and Conditions. All such terms and conditions will be deemed stricken and will be null and of no effect.

3. ORDER CANCELLATION AND RESCHEDULING

Cancellation of an order is permitted only if Zest Labs receives Buyer’s cancellation notice at least ninety (90) days prior to the Order Confirmation Shipment Date. Buyer may reschedule an order, provided that Zest Labs receives Buyer’s written request to reschedule no less than thirty (30) days prior to the Order Confirmation Shipment Date and Buyer’s requested shipment date is no more than ninety (90) days

after the Order Confirmation Shipment Date. Buyer may only reschedule an order one (1) time. Buyer may not cancel or reschedule partial orders, special orders, or orders for custom or obsolete products. Notwithstanding the above, for Buyers who are part of Zest Labs' Partner Program, orders may not be cancelled nor rescheduled if Buyer's minimum annual purchase obligations to Zest Labs would be avoided.

4. SHIPMENT AND DELIVERY

A. For orders within the U.S., Zest Labs will ship the Products FOB Zest Labs's point of shipment. For orders outside the U.S., Zest Labs will ship the Products Ex-Works (Incoterms 2000) Zest Labs's point of shipment. Unless otherwise agreed in writing, Zest Labs will pack the Products in accordance with its standard practices. Unless Buyer provides Zest Labs with specific instructions, Zest Labs will select the carrier. Buyer will be responsible for all freight, packing, insurance and other shipping-related costs and expenses. Title to the Products (except to the extent that the Products consist of Software) and risk of loss will pass to Buyer upon Zest Labs's delivery of the Products to the carrier.

B. Buyer acknowledges that all scheduled shipment dates, including the Order Confirmation Shipment Date, are estimates only. Zest Labs will make reasonable efforts to meet the scheduled shipment dates, but in no event will Zest Labs be liable for any loss, damage, or penalty resulting from any delay in shipment or delivery, nor will the carrier be deemed an agent of Zest Labs. Zest Labs will have the right to ship the Products in installments and separately invoice Buyer for such installments. Zest Labs will have the right to allocate its available inventory of the Products among its buyers in such manner as Zest Labs deems equitable. Zest Labs will have the right to delay or suspend shipment of the Products if Buyer fails to make any payment as provided in these Terms and Conditions or if Buyer fails to meet Zest Labs's credit or financial requirements.

5. INSPECTION AND ACCEPTANCE

Buyer will have a period of ten (10) days following receipt of a shipment of the Products to inspect the Products and must accept or reject them in writing within such period. If Buyer rejects the Products, Buyer must provide Zest Labs with the specific reasons for such rejection and provide Zest Labs a reasonable opportunity to inspect the Products. If Buyer fails to notify Zest Labs in writing of its acceptance or rejection within such ten (10) day period, then the Products will be deemed accepted. Buyer may return Products to Zest Labs only upon Zest Labs's prior written authorization.

6. PRICE

The prices for the Products will be as specified in the applicable Order Confirmation. Prices are stated in U.S. dollars and are exclusive of all applicable sales, use, excise, withholding, value-added and other taxes, duties and charges (collectively, "**Taxes**"). Unless Buyer timely provides Zest Labs with a tax-exemption certificate acceptable in the appropriate taxing jurisdiction, Zest Labs will include all Taxes as separate items on Zest Labs's invoice, which will be payable by Buyer pursuant to Section 7 hereof. Buyer will indemnify and hold Zest Labs harmless from and against any

liabilities, interest, penalties or fees assessed against Zest Labs arising from any failure by Buyer to pay any Taxes.

7. PAYMENT TERMS

All invoices issued by Zest Labs will be due and payable thirty (30) days from the date of the invoice. Zest Labs reserves the right, based on Zest Labs's assessment of Buyer's financial condition or payment record, to require payment in advance or to require Buyer to obtain an irrevocable letter of credit. All payments will be made in U.S. dollars, free of any currency controls or other restrictions. All amounts not paid when due will accrue interest at the lower of 1.5% per month or the highest rate permissible by applicable law. Buyer may not setoff against Zest Labs's invoices any amounts that Buyer claims are due to it. Zest Labs hereby reserves and Buyer hereby grants to Zest Labs a purchase money security interest in the Products sold and the proceeds thereof until Buyer has paid the total amount invoiced by Zest Labs for the Products. Buyer agrees to execute any financing statements or other documents as Zest Labs requests to protect Zest Labs's security interest.

8. LIMITED WARRANTY AND DISCLAIMERS

- A. Zest Labs warrants that, for a period of (a) two (2) years from the date of manufacture for all RFID tags and chip-level products, (b) one (1) year from the date of shipment for all RFID readers, antennas, and other hardware products, and (c) ninety (90) days for all software, firmware and other computer code, the Products will be reasonably free from defects in materials and workmanship under normal use. As Zest Labs's sole liability and Buyer's sole and exclusive remedy for any breach of the limited warranty set forth herein, Zest Labs will, at its option and expense, repair or replace any Product returned to Zest Labs during the warranty period that does not comply with such warranty, as confirmed by Zest Labs. Replacement Products will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. All Products that are replaced become the property of Zest Labs. Zest Labs shall not be responsible for Buyer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Zest Labs for repair, whether under warranty or not. Buyer must obtain a Return Materials Authorization number from Zest Labs prior to returning any Products to Zest Labs and Buyer will bear the cost of returning Products to Zest Labs. If Zest Labs determines that a Product returned by Buyer complies with the warranty set forth herein, then Buyer will also bear Zest Labs's cost of shipping the Product back to Buyer.
- B. Zest Labs will have no obligation to the extent that any failure of a Product to comply with the limited warranty set forth in subsection (a) above results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Zest Labs's published specifications or user manual; (iii) modifications, alterations or repairs to the Product made by a party other than Zest Labs or a party authorized by Zest Labs; (iv) any failure by Buyer or a third party to comply with environmental and storage requirements for the Product specified by Zest Labs, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any third-party devices or products that

have not been provided or recommended by Zest Labs.

- C. THE LIMITED WARRANTY SET FORTH HEREIN IS IN LIEU OF, AND ZEST LABS SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM ZEST LABS OR ELSEWHERE, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS. BUYER ACKNOWLEDGES AND AGREES THAT ZEST LABS MAKES NO WARRANTY OR GUARANTEE THAT THE ZEST LABS PRODUCTS WILL OPERATE IN THE COMBINATIONS OR APPLICATIONS THAT BUYER OR ITS END USERS SELECT, THAT THE OPERATION OF THE ZEST LABS PRODUCTS WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE OR FIRMWARE ERRORS WILL BE CORRECTED. ZEST LABS WILL HAVE NO LIABILITY FOR ANY PERSONAL INJURY OR DAMAGES TO ANY COMMODITIES, GOODS OR PRODUCTS ARISING FROM ANY APPLICATION OR USE OF ZEST LABS PRODUCTS.

9. INDEMNITY

- A. Zest Labs will defend or settle, at its expense, any action or suit brought against Buyer to the extent based on a third-party claim that any Product provided by Zest Labs to Buyer pursuant to these Terms and Conditions infringes a United States patent or any copyright or misappropriates any trade secret, and Zest Labs will pay any damages awarded in final judgment against Buyer or agreed to in settlement by Zest Labs that are attributable to any such claim, provided that Buyer: (i) notifies Zest Labs promptly in writing of the claim; (ii) gives Zest Labs sole control of the defense and any related settlement of the claim; and (iii) gives Zest Labs, at Zest Labs's expense, all reasonable information, assistance and authority in connection with the defense and settlement of the claim. Zest Labs will not be bound by any settlement or compromise that Buyer enters into without Zest Labs's express prior written consent.
- B. If a Product becomes, or in Zest Labs's opinion be likely to become, the subject of a claim against Buyer, as specified in subsection (a) above, then Zest Labs may, at its sole option and expense: (i) procure for Buyer the right to continue using the Product; (ii) replace or modify the Product to avoid the claim; or (iii) if options (i) and (ii) cannot be accomplished despite Zest Labs's reasonable efforts, then Zest Labs may accept return of the Product from Buyer and grant Buyer credit for the price of the Product as depreciated on a straight-line two (2) year basis for all RFID tags and chip-level products and five (5) year basis for all other products, commencing on the date of receipt by Buyer of such Product.
- C. Zest Labs will have no obligation under this Section 9 for any infringement or misappropriation claim of any kind to the extent that it results from: (i) the combination, operation or use of a Product with or in equipment, products, or processes not provided by Zest Labs; (ii) modifications to a Product not made by or

for Zest Labs; (iii) Buyer's failure to use an updated or modified Product provided by Zest Labs; (iv) Zest Labs's compliance with Buyer's designs, plans or specifications; or (v) Buyer's use of a Product other than in accordance with Zest Labs's published specifications or user manual. The foregoing clauses (i) to (v) are referred to collectively as "*Indemnity Exclusions*".

- D. THE FOREGOING PROVISIONS OF THIS SECTION 9 SET FORTH ZEST LABS'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATIONS AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY KIND.
- E. Buyer will defend or settle, indemnify and hold Zest Labs harmless from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to an Indemnity Exclusion.

10. LIMITATIONS ON LIABILITY

- A. IN NO EVENT WILL ZEST LABS BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, USE, PROFITS, DATA, OR GOODWILL) OR COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE PURCHASE, SALE, USE, OPERATION OR PERFORMANCE OF THE PRODUCTS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT ZEST LABS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. ZEST LABS AND BUYER HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THESE TERMS AND CONDITIONS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL ZEST LABS'S LIABILITY TO BUYER ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE ACTUAL AMOUNT PAID TO ZEST LABS BY BUYER FOR THE PRODUCT THAT GIVES RISE TO THE CLAIM.
- B. Zest Labs Products are not designed for use in life support and/or safety equipment where malfunction of the product can result in personal injury or death. Your use or sale of Zest Labs Products for use in life support and/or safety applications is at your own risk. You agree to defend and hold Zest Labs harmless from any and all damages, claims, suits or expenses resulting from such use.
- C. Buyer may seek Zest Labs' assistance in the installation of the Zest Labs Products, which assistance Zest Labs may provide in its sole discretion. Buyer agrees to defend and hold Zest Labs harmless from any and all damages, claims, suits, or expenses resulting from injuries to person or property in connection with such installation.
- D. Zest Labs Products include wireless capabilities that have been designed and certified for use in particular countries and subject to certain limitations. Zest Labs makes no representation that the Products are appropriate or available for use in any particular

location, or for any ongoing period of time. To the extent Buyer chooses to use the Products, Buyer does so at its own initiative and risk and is responsible for compliance with any applicable laws, including but not limited to applicable local laws governing the use of wireless products. At any time, Zest Labs may be required to remove or limit the use of a particular Product from a particular geographic market without notice or liability to Buyer.

11. SOFTWARE LICENSE

- A. All Software is protected by intellectual property laws, including without limitation U.S. copyright law and international treaties. All Software is licensed, not sold, to Buyer. All Software whether embedded in chip-level products, tags, readers, or otherwise, is subject to these Terms and Conditions unless the Software is accompanied by a separate license agreement, in which case the terms and conditions of that separate license agreement shall control.
- B. Zest Labs grants to Buyer a nonexclusive, nontransferable license to use the Software, in executable form, solely as embedded in the Products, solely for Buyer's internal use. Buyer may not copy or modify the Software. Buyer acknowledges that the Software contains trade secrets of Zest Labs, and, in order to protect such trade secrets, Buyer agrees not to disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law. Zest Labs reserves all rights and licenses in and to the Software not expressly granted to Buyer under this Agreement.
- C. Buyer acknowledges and agrees that Zest Labs may periodically collect and use data and related technical information stored on the Products to facilitate the provision of updates to the Software, Product support and other services. Zest Labs may use this information, as long as it is in a form that does not personally identify Buyer, to improve its products or to provide new services or technologies.
- D. Buyer either itself or with third parties may include or make available content, data, information, applications or materials that interact with the Software or rely on data therefrom (the "Third Party Content"). Buyer acknowledge and agrees that Zest Labs is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, quality or any other aspect of the Third Party Content. Zest Labs does not warrant or endorse and does not assume and will not have any liability or responsibility to Buyer or any other person for the Third Party Content.

12. GENERAL PROVISIONS

- A. These Terms and Conditions will be governed and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. The parties disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. Any legal action or proceeding arising under these Terms and Conditions will be brought exclusively in the federal or state courts located in Santa Clara County, California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. Notwithstanding the foregoing, Zest Labs may commence proceedings in any other court of its choice of appropriate jurisdiction to obtain an injunction, specific performance or other equitable relief for protection of intellectual property rights.

- B. Buyer may not assign or transfer these Terms and Conditions, or any order accepted by Zest Labs hereunder, in whole or in part, by operation of law or otherwise, without Zest Labs's express prior written consent. Any attempt to do so, without Zest Labs's consent, will be null and of no effect.
- C. Zest Labs will not be responsible for any failure or delay in its performance under these Terms and Conditions due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or acts of God.
- D. The failure by Zest Labs to enforce any provision of these Terms and Conditions will not constitute a waiver of future enforcement of that or any other provision. If for any reason a court of competent jurisdiction finds any provision of these Terms and Conditions invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms and Conditions will remain in full force and effect.
- E. These Terms and Conditions constitute the complete and exclusive agreement between Zest Labs and Buyer regarding its subject matter and supercedes all prior or contemporaneous quotations, agreements, communications or understandings, whether written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of these Terms and Conditions will be effective only if in writing and signed by duly authorized representatives of each party. Nothing in these Terms and Conditions will be construed as creating any legal partnership, joint venture, agency, or similar relationship between the parties.
- F. Buyer will not export or re-export, directly or indirectly, the Products, or any technical information related thereto, or any direct products thereof, to any destination or person prohibited or restricted by the export control laws and regulations of the United States, without the prior authorization from the appropriate governmental authorities.
- G. All software contained in the Products and any related documentation are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. To the extent that the Products are being acquired by or on behalf of the U.S. Government then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the software and any related documentation will be only those specified in these Terms and Conditions.
- H. All notices required or permitted to be given under these Terms and Conditions will be in writing and will be deemed given: (i) upon actual delivery, if made by personal service; (ii) three (3) days after mailing, if made by U.S. certified or registered mail; and (iii) one (1) business day after delivery to the courier or overnight delivery service, if made by courier or overnight delivery service. All notices will be addressed as set forth on the purchase order or Order Confirmation, as the case may be, or to such other address as the party who is to receive the notice so designates by written notice to the other.