

## Sales Terms & Conditions

### 1. Agreement to Sell

Food Automation – Service Techniques, LLC, dba KitchenBrains® and its affiliates, subsidiaries and divisions, including without limitation, SCK Direct, LLC (collectively referred to with the terms “we”, “us” “our” or “Kitchen Brains”) agrees to sell goods (“Goods”) to the Buyer (referred to with the terms “Buyer”, “you” and “your”), provided that the sale is on the terms and conditions presented herein. In the event you elect to obtain the Kitchen Brain or SCK Direct Information Services, we shall provide such Information Services on the terms set forth in the Subscription and Agreement and User Terms. All rights not specifically granted herein are herein expressly reserved by us.

WE WILL ONLY FILL YOUR ORDER ON THE TERMS AND CONDITIONS SET FORTH HEREIN (THIS “AGREEMENT”). FOR THE AVOIDANCE OF DOUBT, WE DO NOT AGREE TO, AND SPECIFICALLY REJECT, ANY DIFFERENT OR ADDITIONAL TERMS IN YOUR PURCHASE ORDER OR OTHER DOCUMENTS UNLESS WE HAVE SPECIFICALLY ACCEPTED SUCH DIFFERENT OR ADDITIONAL TERMS IN SIGNED WRITING. THIS AGREEMENT IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF OUR STANDARD TERMS AS CONTAINED IN THIS AGREEMENT. IF YOU DO NOT EXPRESSLY AND PROMPTLY NOTIFY US IN WRITING THAT YOU DO NOT AGREE TO THESE TERMS, YOU SHALL BE DEEMED TO BE BOUND BY SAID TERMS.

### 2. Price Increases

We may increase our prices five (5) days after written notice to you, to reflect any increased costs to us in producing the goods. The increased price will become effective and govern this Agreement unless we receive written notice, before the increased price becomes effective, of your cancellation of this Agreement as it applies to any goods to which the increased price would apply.

### 3. Taxes

Unless otherwise specifically stated in the Order form, all Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, our income, revenues, gross receipts, personnel or real or personal property or other assets. As a result of the foregoing, we may increase or otherwise adjust the prices in this Agreement without prior notice to cover any taxes (other than taxes on net income) and governmental fees that we may be required to pay or collect with respect to the goods or services sold under this Agreement or with respect to any labor or materials used in their production.

### 4. Payments

Our payment terms are Net 30 days from date of shipment. Invoices not paid within agreed upon terms may incur interest at a rate of 1% per month on unpaid balances. We may revoke your credit if you fail to pay timely for goods shipped or services which have been activated, or if we determine, in our sole discretion, that your financial condition has undergone an adverse change. We may require you to pay before we manufacture or ship goods if we elect not to extend credit. Buyer shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document or law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing ) to Kitchen Brains or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Kitchen Brains or its affiliates, whether relating to Kitchen Brains’ or its affiliates’ breach or non-performance of this Agreement or any other agreement between Buyer or any of its affiliates, and Kitchen Brains or any of its affiliates, or otherwise.

## 5. Collection Costs

As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Kitchen Brains a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. If you do not pay for the goods or services in full and on time, we may engage lawyers and/or other agents to help us collect amounts owed to us. We may add amounts paid or incurred in collecting sums owed by you (including legal and collection agency fees and expenses) to the amount of the invoice and interest provided in Section 4.

## 6. Shipments

We will arrange transportation of the goods to you to your designated port or destination from either our manufacturing facility in Stratford, Connecticut or from any other facility at our discretion (our "Plant"). All shipments are FOB the Plant. You will pay on demand all transportation charges incurred in shipping the goods. Risk of loss of the goods passes to you as soon as the carrier takes ownership of goods when received. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Kitchen Brains' notice that the Goods have been delivered at the Delivery Point, or if Kitchen Brains is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) the Goods shall be deemed to have been delivered; and (ii) Kitchen Brains, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

Additionally, the quantity of any installment of Goods as recorded by Kitchen Brains on dispatch from Kitchen Brains' place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The determination of such conclusive evidence shall be at the sole and absolute discretion of Kitchen Brains. Kitchen Brains shall not be liable for any non-delivery of Goods (even if caused by Kitchen Brains' negligence) unless Buyer gives written notice to Kitchen Brains of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Kitchen Brains for non-delivery of the Goods shall be strictly limited to delivering the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

## 7. Excused Non-Performance

The goods will be delivered within a reasonable time after the date of this Agreement, subject to availability of finished Goods. Kitchen Brains shall not be liable for any delays, loss or damage in transit. We are not responsible for failures to make delivery, delays, or any other deviations in our performance directly or indirectly due to causes beyond our reasonable control. Excused non-performance includes but is not limited to: acts of war; public disorders, insurrection, rebellion, sabotage, riots of violent demonstrations, explosions, fires, earthquakes, typhoons, tsunamis or other natural causes or disasters, strikes, lockouts, or other industrial action, accidents; labor or transportation problems; difficulty in obtaining regular sources of fuel, power, materials or supplies at anticipated prices and quality; engineering and technical or design limitations; and the impact on our business of any existing or future legislation or any governmental orders, rules or regulations.

## 8. Delivery Terms

We agree to ship only on the following terms:

- a. Installments. I Kitchen Brains may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the quantity purchased under this Agreement. Any failure to pay each invoice as and when due will substantially impair the value of this entire Agreement to us and any further shipments may, in our sole discretion, be suspended until such time as the unpaid invoices are paid.
- b. Restocking Charge. We reserve the right to impose, at our sole and absolute discretion, a restocking charge equal to 25% of the invoice price for goods shipped to you and returned to us.

## 9. Inspection and Rejection of Nonconforming Goods

- a. Buyer shall inspect the Goods within five (5) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Kitchen Brains in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Kitchen Brains. "Nonconforming Goods" means only the following: (i) product shipped is significantly different in function than those identified in the Order Form; or (ii) product's label or packaging incorrectly identifies its contents.

- b. If Buyer timely notifies Kitchen Brains of any Nonconforming Goods, Kitchen Brains shall, in its sole and absolute discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to a location as directed by Kitchen Brains. If Kitchen Brains exercises its option to replace Nonconforming Goods, Kitchen Brains shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point
- c. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Kitchen Brains.

## 10. Limited Warranty

10.1 We provide the following limited warranty to the original purchaser:

Goods Covered By Service Contract or other custom contract duly executed by us. Unless otherwise stated in the same, the warranty in this Section 10 does not apply to any goods for which you have obtained a service contract with us or to any goods subject to the terms of a custom contract duly executed by us. The service contract and custom contract provides the sole warranty as to such goods.

Domestic Goods (Inside the United States). As to all other goods ("Warranted Goods"), provided they are used in the United States, we warrant that such goods shall not fail to function in accordance with our specifications because of defects in material or workmanship, for the following warranty periods:

- a. New Products: New Products consisting of microprocessor-based controllers, timers, data-loggers or remote monitoring devices with power cords ("Corded Controllers") for one (1) year from date of shipment from factory. Exceptions apply.
- b. New Products: New Products consisting of microprocessor-based controllers, timers, data-loggers or remote monitoring devices with batteries ("Battery Controllers") for six (6) months from date of shipment from factory. Exceptions apply.
- c. Sensors and Accessories: Sensors and accessories (consisting of probes, wireless sensors, hoses, relays, switches, mounting hardware or accessories) for 90 days from date of shipment from factory.
- d. Spare Parts: Spare parts for the period of 90 days from the date of shipment from factory.
- e. Replacement Units or Parts: Battery timers for 6 months from the purchase date of the original unit. Warranty replacement units or parts for other items, 1 year from the purchase date of the original unit.

### Customer Service and Technical Support.

- Customer service is available for orders and questions, Monday through Friday, between the hours of 8 AM and 5 PM ET, at 203-380-3540, Option 2, or toll-free in the US, Canada and the Caribbean at 1-800-FASTRON (800-327-8766), Option 2
- Technical support is available when immediate help is needed 24 hours a day, 365 days a year at 203-380-3540, Option 1, or toll-free in the US, Canada and the Caribbean at 1-800-FASTRON (800-327-8766), Option 1.

International Goods (Outside the United States). As to goods purchased ("Warranted Goods"), provided they are used outside the United States, we warrant that such goods shall not fail to function in accordance with our specifications because of defects in material or workmanship, for the following warranty periods:

- a. New Products: New Products consisting of microprocessor-based controllers, timers, data-loggers or remote monitoring devices with power cords ("Corded Controllers") for one (1) year from date of shipment from factory. Exceptions apply.
- b. New Products: New Products consisting of microprocessor-based controllers, timers, data-loggers or remote monitoring devices with batteries ("Battery Controllers") for six (6) months from date of shipment from factory. Exceptions apply.
- c. We warrant most Warranted Goods (such as computers, controllers and timers) for 1 year from date of purchase.
- d. We warrant probes and hoses for 90 days from date of purchase.
- e. We warrant the part only. We will supply a replacement unit to you at no cost or a credit to your account for the warranted item. You will be solely responsible for any and all shipping, installing and testing and for the expenses thereof.
- f. Complete warranty terms and conditions can be found in our Terms and Conditions of Sale.

To obtain the benefit of the above warranty, you must select one of the following two options:

**Option #1 – Return for Evaluation**

- Complete a Warranty Claim Form, which is available on our web site at <https://www.kitchenbrains.com/warranty-claim-form>. Email the completed form to your Sales Support specialist or [sog@kitchenbrains.com](mailto:sog@kitchenbrains.com) and request an RMA (Return Material Authorization) Number.
- When the RMA is received, package the items to be returned, along with a copy of the Warranty Claim Form carefully in an appropriate shipping container. Write the RMA number clearly on the outside of the shipping container. Send the package to Kitchen Brains freight PREPAID. Packages received with freight due will be returned to the sender.
- The product will be evaluated by our Quality Assurance Department to determine the root cause of failure. Such determination shall be in our sole and absolute discretion. If the unit is found to be a warranted failure, Kitchen Brains will provide a replacement unit or issue a credit at its sole discretion. If the unit is found to NOT be a warranted failure, a US\$55.00 evaluation fee will be charged. Additionally, the unit will be returned freight collect or scraped at the customer's sole discretion.

**Option # 2 – Hold for Evaluation**

1. Complete a Warranty Claim Form, which is available on our web site at <https://www.kitchenbrains.com/warranty-claim-form>. Email the completed form to your Sales Support specialist or [sog@kitchenbrains.com](mailto:sog@kitchenbrains.com) and request an RMA (Return Material Authorization) Number.
2. When the RMA number is received, notify the Sales Support Specialist that you will hold the product at your location until the Kitchen Brains Authorized technical specialist visits your area to perform the evaluation. Our inside Support Specialist will forward your claim form to the Kitchen Brains Authorized technical specialist.
3. The Kitchen Brains representative will evaluate the goods and make a determination as to the root cause of failure. NOTE: The claim form must have been filled out and an RMA number received for the evaluation to occur.
4. If the Kitchen Brains representative determines that the goods had a warranted failure, you will be asked to return the goods to Kitchen Brains freight prepaid. Kitchen Brains will provide a replacement unit or issue a credit at its sole discretion.

**FEES FOR ONSITE VISIT (APPLIES BOTH INSIDE AND OUTSIDE THE UNITED STATES)**

If the Kitchen Brains representative travels to your location based on a warranty call and determines that the goods did not have a warranted failure, you will be charged the following:

- a. For issues with controllers/fryers/bezels, the engineer callout fee shall be US\$120 (within a 60-mile radius). If the location is outside a 60-mile radius, the charge shall be US\$120 plus travel expenses @ US\$0.50 per mile (each way travelled). Both include the first hour on site. There is an additional charge of US\$50 per hour thereafter. International Exchange rates may apply.
- b. For IT issues, the engineer callout fee shall be US\$190 (within a 60-mile radius). If the location is outside a 60-mile radius, the charge will be US\$190 plus travel expenses @ US\$0.50 per mile (each way travelled). Both include the first hour on site. There is an additional charge of US\$55 per hour thereafter. International Exchange rates may apply.

**Other Warranted Goods (Both inside and outside the United States)**

If Warranted Goods other than those identified above fail to perform as warranted, we will supply replacements for the Warranted Goods (or any component parts thereof) only on the following conditions:

- a. You must notify us of the failure, specifying in the notice the unit or component part that has failed and the apparent cause of such failure.
- b. You must promptly return the failed unit, or remove and return the failed part, to us, freight prepaid.
- c. You will accept a replacement unit or part when we deliver it to you, for installation by you.

We will ship, freight prepaid, within the continental US a replacement of the unit or part you have found to have failed promptly after our receipt of your notification in accordance with this Warranty. You will be solely responsible for installing and testing the replacement units or parts and the expenses thereof. Replacement units or parts will be invoiced to you at the then current prices for units or parts sold without warranty or service contracts. After we have received the unit or part you have returned, we will determine whether the unit

or part has failed to perform as warranted. Such determination shall be in our sole discretion. If our determination accords with your claim, we will promptly issue you a credit notation for the invoice price of the shipped and invoiced replacement unit or part.

The warranty covers only the repair or replacement of the defective part or product (at the sole option of Kitchen Brains) and is not inclusive of any extra charges, that includes but is not limited to, any labor charges associated with the removal, repair, replacement or reinstallation of the defective part or product.

General Warranty Terms.

THE WARRANTY UNDERTAKING IN THIS AGREEMENT DOES NOT APPLY TO ANY GOODS THAT HAVE BEEN SUBJECTED TO ACCIDENT, DISASTER, LOSS OR DAMAGE DURING SHIPMENT, NEGLIGENCE, MISUSE, IMPROPER INSTALLATION, CORROSIVE ATMOSPHERE HARMFUL TO ELECTRONIC CIRCUITRY, EXCESSIVE ELECTROMAGNETIC FIELDS, FAILURE OR INSUFFICIENCY OF ELECTRICAL POWER OR UNUSUAL ELECTRICAL SURGE OR SHOCK, NOR TO DYSFUNCTION OR MALFUNCTION OF, OR CAUSED BY, ANY OTHER EQUIPMENT OR DEVICE (OTHER THAN EQUIPMENT OR DEVICES YOU HAVE BOUGHT FROM US) TO OR IN WHICH SUCH GOODS HAVE BEEN ATTACHED OR INSTALLED.

EXCEPT FOR THE WARRANTY SPECIFICALLY SET FORTH IN THIS SECTION, KITCHEN BRAINS MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Products manufactured by a third party ("Third-Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third-Party Products are not covered by the warranty in Section 10. For the avoidance of doubt, KITCHEN BRAINS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Kitchen Brains shall not be liable for a breach of the warranty set forth in Section 10 unless: (i) Buyer gives written notice of the defect, reasonably described, to Kitchen Brains within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Kitchen Brains is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Kitchen Brains) returns such Goods to Kitchen Brains' place of business at Kitchen Brains' cost for the examination to take place there; and (iii) Kitchen Brains reasonably verifies Buyer's claim that the Goods are defective.

Kitchen Brains shall not be liable for a breach of the warranty set forth in Section 10 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Kitchen Brains' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Kitchen Brains.

Subject to Section 10 above, with respect to any such Goods during the Warranty Period, Kitchen Brains shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Kitchen Brains so requests, Buyer shall, at Kitchen Brains' expense, return such Goods to Kitchen Brains.

THE REMEDIES SET FORTH IN SECTION 10 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND KITCHEN BRAINS'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10.

Remedies. Your remedies are exclusively those stated in Section 10 and in Section 12, and as may otherwise be specified by Kitchen Brains elsewhere or in the relevant Order Form.



#### 11. Limitation of Liability

The remedies described in Section 10, and in Section 12 are exclusive. Under no circumstances do we have any other or further liability or obligation, whether for breach of warranty or for any other claim. UNDER NO CIRCUMSTANCES WILL WE BE RESPONSIBLE TO YOU FOR THE COST OF ANY WORK YOU DO ON GOODS WE FURNISH, OR FOR COSTS OR EXPENSES YOU INCUR IN TESTING, INSPECTING OR PROCESSING GOODS. IN NO EVENT SHALL KITCHEN BRAINS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT KITCHEN BRAINS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL KITCHEN BRAINS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO KITCHEN BRAINS FOR THE GOODS SOLD HEREUNDER or \$50,000, WHICHEVER IS LESS.

We assume no responsibility for any equipment, parts, attachments or devices we have not supplied to you, or for expendable supply items, such as light bulbs, or for our failure to provide service due to any cause beyond our reasonable control.

Time limits for claims. You must commence any action for a breach of any of our obligations within one (1) year after the breach occurs, regardless of your lack of knowledge of the breach. Any action not commenced within the one (1) year period shall be forever barred, notwithstanding any longer statutory period of limitation.

#### 12. Cancellation

Except as provided in Section 2, you may not cancel any order or terminate your obligations to accept and pay for goods to be delivered in installments without our prior written consent. If we consent to any cancellation you request (other than under Section 2), you shall be liable to us for:

- a. The full invoice price of goods shipped or ready for shipment at the time of cancellation.
- b. For specially manufactured goods, an amount equal to 125% of the sum of the direct and indirect costs and expenses we have incurred in respect of your order for goods not ready for shipment at that time, including costs and expenses of engineering, fabrication, assembly, testing, and related aspects of the manufacture and supply for the returned goods.
- c. For all other goods, a restocking charge equal to 25% of the invoice price.

#### 13. Inventions and Other Intellectual Property

All ideas, discoveries, inventions, concepts, improvements, processes, methods, know-how, and other forms of intellectual property, and all plans, drawings, tools, computer programs and other items or materials that we have made, developed, created, compiled or fabricated in producing any goods especially for you, are and shall remain our exclusive property at all times. You have no rights therein apart from the right to use or resell the goods you purchase.

#### 14. Confidentiality

If you visit any of our facilities or otherwise are accorded access to any of our proprietary or confidential information, you will hold all such information in strict secrecy and not use or disclose any such information to a third party without our prior written consent. During the course of their performance under this Agreement, each party may make available to the other party information that is not generally known to the public and at time of disclosure is either identified as, or should reasonably be understood by the receiving party to be, proprietary or confidential (the "Confidential Information"). Confidential Information shall include, but shall not be limited to: business plans, strategies, forecasts, projects and analyses; financial information and fee structures; business processes, methods and models; employee, Buyer and supplier information; functionality, user experience, sales and marketing information.

Obligations. Except as otherwise expressly permitted under this Agreement, with the express prior written consent of the disclosing party, or as required by law, the receiving party will not disclose, transmit or otherwise disseminate to a third party any Confidential Information of the disclosing party. The receiving party will use the same care and discretion with respect to the Confidential Information received from the disclosing party as it uses with its own similar information, but in no event less than a reasonable degree of care. Seller

may disclose Buyer's Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information solely for the purpose of performing Seller's obligations under this Agreement and only to those who are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in this Agreement. Buyer may disclose Seller's Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information and are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in this Agreement.

Exclusions. The obligations set forth in this Section above shall not apply to any Confidential Information that the receiving party can demonstrate: (i) the receiving party possessed, without any obligation of confidentiality, prior to disclosure by the disclosing party; (ii) is or becomes publicly available without breach of this Agreement by the receiving party; (iii) is or was independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (iv) is or was received by the receiving party from a third party that does not have an obligation of confidentiality to the disclosing party or its affiliates. Either party may disclose the terms of this Agreement to potential parties to an acquisition or similar transaction to facilitate due diligence and closing of the transaction, provided that potential party is subject to written non-disclosure obligations and limitations on use only for the prospected transaction. The receiving party may disclose Confidential Information of the disclosing party if legally required to do so in connection with any legal or regulatory proceeding, provided, however, that in such event the receiving party will, if lawfully permitted to do so, notify the disclosing party within a reasonable time prior to disclosure so as to allow the disclosing party an opportunity to seek appropriate protective measures.

#### 15. Proprietary Rights and Indemnification

Buyer shall indemnify, defend and hold harmless Kitchen Brains and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party in a final non-appealable judgment, relating to or resulting from any claim of a third party or Kitchen Brains arising out of or occurring in connection with the products purchased from Kitchen Brains or Buyer's negligence, willful misconduct or breach of this Agreement. Buyer shall not enter into any settlement without Kitchen Brains' or Indemnified Party's prior written consent.

You warrant that goods that we have manufactured in accordance with or based upon your specifications or upon technical data you have furnished to us or any reports created or generated based upon your specifications do not infringe any United States and/or foreign patent, trademark, copyright, known trade secret or any other proprietary rights of persons not a party to this Agreement. If we request, you will defend us at your own expense in any action or proceeding instituted against us in which any such infringement in the manufacture, use or sale of goods or services conforming to your specifications or technical data is asserted. We may, if we desire, be represented by and participate through our own counsel, whose reasonable fees and expenses you agree to pay. If any claim of infringement or the like is made with respect to goods or services we have designed, manufactured or provided entirely in accordance with our own specifications, our obligations shall be exclusively as set forth herein. We will not be obligated on any claim if:

- a. You have failed to provide us with prompt written notice of any such claim or threatened claim; or
- b. Any such claim or threatened claim is based upon an allegation that your purchase, use or resale of goods we have supplied, but which have not been installed and operated in accordance with our specifications and directions, infringes the intellectual property rights of third persons; or
- c. Any such claim is attributable to equipment or other devices supplied by anyone but us (even if the equipment or devices were made or adapted for use or resale with goods sold by us); or
- d. You do not allow us to control the defense against or other opposition to such claim, including the settlement of such claim and any related proceedings.

#### 16. Applicable Law

This Agreement is to be construed and enforced in accordance with Florida law.

#### 17. Binding Arbitration and Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT. This Subscriber Agreement will be governed by the laws of the State of Florida without regard to its conflict of laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

Claims relating to this Agreement, or the Service will be resolved through final and binding arbitration, except as set forth below. The parties agree that the Subscriber Agreement affects interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions. Initial Dispute Resolution: The parties agree that most disputes can be resolved without resort to litigation. The parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with each other, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration. Accordingly, before initiating a lawsuit or arbitration, Buyer Agrees to contact Seller to attempt to resolve the dispute in good faith. Binding Arbitration & Class Action Waiver: If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time the informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to the Agreement (including its formation, performance and breach), the parties' relationship with each other and/or your use of the Services shall be finally settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, excluding any rules or procedures governing or permitting class actions. Thus, THE PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If any court or arbitrator determines that the class action waiver set forth in this Section is void or unenforceable for any reason or that arbitration can proceed on a class basis, then the disputes, claims or controversies will not be subject to arbitration and must be litigated in state or federal court located in Connecticut. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of the Subscriber Agreement, including, but not limited to any claim that all or any part of the Subscriber Agreement is void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written, and binding on the Parties and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration will be held in Broward County, Florida. If any court or arbitrator determines that this arbitration provision is void or unenforceable for any reason or that the parties are not bound to arbitrate their claims, then the disputes, claims or controversies deemed not to be subject to arbitration must be litigated in state or federal court located in Connecticut. Exception: Litigation of Intellectual Property Claims: Notwithstanding the foregoing, disputes, claims, or controversies concerning (1) either party's patents, copyrights, moral rights, trademarks, and trade secrets or (2) claims of piracy or unauthorized use of the Services (collectively, "IP Claims") shall not be subject to arbitration.

#### 18. Construction

This Agreement and any service contract you elect in lieu of the warranty of Section 10, are intended as the final expression of the agreement between you and us and constitute the complete and exclusive statement of the terms of the agreement between you and us. No statement or agreements, oral or written, made before or at the signing of this Agreement, may vary or modify the written terms of this understanding. Neither you nor we may claim any amendment, modification or release from any provision of this Agreement unless it is in writing, signed by both of us, and specifically states that it amends this Agreement or a service contract you have elected.

#### 19. Miscellaneous

- a. Relationship of the Parties. The parties are and shall be independent contractors with respect to all services provided under this Agreement.
- b. Force Majeure. Except for payment obligations, neither Seller nor Buyer will be liable for inadequate performance to the extent caused by a condition that is beyond the party's reasonable control, including but not limited to natural disaster, civil disturbance, acts of terrorism or war, labor conditions, governmental actions and interruption or failure of the Internet or any utility service.
- c. Assignment. Neither this Agreement nor any of the rights and licenses granted hereunder, may be transferred or assigned by either party without the other party's express written consent; provided, however, that either party may assign this Agreement without the other party's consent to an affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets. Any other attempt to transfer or assign this Agreement will be null and void.
- d. Entire Agreement. This Agreement, together with any Buyer purchase order or order form associated herewith, constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes and replaces any prior or contemporaneous understandings and agreements, whether



written or oral, with respect to the subject matter hereof. If a court of competent jurisdiction deems any provision of this Agreement invalid, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, which shall remain in full force and effect.

- e. No Waiver. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.
- f. Communications from Seller. You agree to receive electronically all communications, agreements, documents, notices, and disclosures that we provide in connection with the Service ("Communications"). We may provide Communications in a variety of ways, including by e-mail, text, in-app notifications, or by posting them on the Seller website or through the Service. You agree that all Communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.