



Mushkin, Inc.  
**STANDARD TERMS and CONDITIONS OF SALE**  
June 2011

**1. Entire Agreement**

These terms and conditions, ("T&C"), together with Mushkin's written Purchase Order Acceptance, Mushkin's invoice, and Customer's Purchase Order regarding the products ordered by Customer, are the complete and exclusive agreement between Mushkin and Customer, ("Agreement"). The T&C supersedes all prior or contemporaneous proposals, oral or written, understandings, representations, conditions, warranties, and all other communications between Mushkin and Customer relating to the subject products. The T&C may not be explained or supplemented by any prior course of dealings or trade by custom or usage and may not be modified in any way except by a writing signed by both Parties

**2. Price**

"Price" means the price quoted in Mushkin's Purchase Order Acceptance to Customer on the date the order is accepted. The Price is exclusive of all duties and taxes and shall be paid in accordance with Mushkin's payment terms to Customer. Mushkin reserves the right to vary the Price without notice.

**3. Delivery**

Any delivery time frame quoted by Mushkin to Customer shall be an estimate only and Mushkin shall not be liable for any delay in the delivery of the Products. For Products delivered in installments, failure by Mushkin to deliver one or more installments shall not impair the contract in respect to Products previously delivered or undelivered.

**4. Payment**

Mushkin's standard payment terms are strictly payment in advance or as otherwise stipulated to Customer by Mushkin in writing. If Mushkin grants Net Terms to Customer, Customer agrees to pay the amount(s) due as specified on the invoice, per the Terms granted by Mushkin, and Customer agrees to pay interest on all past-due sums at a rate of 1.5% per month or the highest rate allowed by law, whichever is greater.

**5. Order Acceptance**

An order will be deemed accepted upon Mushkin issuing a written Purchase Order Acceptance to Customer. If no formal acceptance is provided, the order will be deemed accepted once it has shipped.

**6. Receipt of Products**

The Customer shall carefully examine the Products immediately upon receipt and must notify Mushkin in writing of any defect (including any discrepancy in the condition of the Products) or short delivery reasonably discoverable upon careful examination. If the Customer does not notify Mushkin within 3 days from the date of delivery, Mushkin shall not be liable for any short delivery or defect (including any discrepancy in the conditions of the Products) that could have been discovered upon examination.

**7. Product Return Procedure**

To return a product Customer must obtain a Return Merchandise Authorization, ("RMA"), number from Mushkin. Mushkin will not accept any returns without prior authorization and an RMA number. RMA numbers are valid for 15 days from the date issued within which 15 days returned products must be received by Mushkin. RMA number(s) shall be prominently displayed on the shipping label of boxes containing the returned product.

Customer is solely responsible for shipping any returned product to Mushkin unless an Advance RMA process has been approved by Mushkin. Customer shall bear all shipping and insurance charges and all risk of loss for the return product during shipment. Customer shall use only carriers approved by Mushkin who are capable of providing proof of delivery and insurance for the entire value of the shipment. If any component of the returned product is missing or damaged, Mushkin may, in its sole and absolute discretion, reject the entire return or impose additional charges against the Customer for replacement of the missing or damaged component(s).

**8. Restocking Fee**

Customer agrees that product purchased from Mushkin, whether Mushkin has shipped the product or not, may have been manufactured specifically for the Customer and Mushkin may not have another customer for this product. Mushkin may, in its sole and absolute discretion, refuse to allow Customer to return a product or cancel a purchase order. If a return or cancelling of a purchase order is allowed, Mushkin may charge a restocking fee.

**9. LIMITATION OF LIABILITY**

IN ALL CIRCUMSTANCES MUSHKIN'S MAXIMUM LIABILITY IS LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS SOLD. MUSHKIN SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE UPON A CLAIM OR ACTION IN CONTRACT, TORT, INDEMNITY OR CONTRIBUTION, OR ANY OTHER CLAIM RELATING TO THE PRODUCTS SOLD. MUSHKIN SHALL NOT BE LIABLE TO OR FOR ANY THIRD PARTY THAT CLAIM DAMAGES AGAINST THE CUSTOMER, OR FOR MALFUNCTION, DELAYS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS, LOSS OR DAMAGE TO EXEMPLARY DAMAGES, WHETHER OR NOT MUSHKIN IS OR HAS BEEN MADE AWARE OF THE POSSIBILITY OF ANY SUCH CLAIM OR DAMAGE.

**10. Shipping Charges**

Shipping charges will be determined by MUSHKIN and the Customer prior to shipment and stated on MUSHKIN'S Purchase Order Acceptance and on the Customer's purchase order.

**11. Title; Risk of Loss**

MUSHKIN may arrange for shipment of ordered product(s) to the Customer, Free On Board (F.O.B.) shipping point. Title to the product(s) and the risk of loss transfers to Customer upon delivery of product to the carrier. MUSHKIN will advise Customer of estimated shipping dates, but MUSHKIN shall, under any circumstances, be responsible for delays in delivery and associated damages, due to events beyond its reasonable control, including without limitation, acts of God or public enemy, acts of federal, state or local government, fire, floods, civil disobedience, strikes, lockouts, and freight embargoes.

**12. Governing Law and Jurisdiction**

Any dispute arising out of or related to these Terms and Conditions or the sales transaction between MUSHKIN and Customer shall be governed by the laws of the State of Colorado, without regard to its conflicts of law rules. Specifically, the validity, interpretation, and performance of this agreement shall not be governed by the United Nations Convention on the International Sale of Products. MUSHKIN and Customer consent to the exclusive jurisdiction and the exclusive venue of the State Courts of the State of Colorado, Douglas County, to resolve any dispute between them related to this Agreement, and the parties hereby waive all rights to contest this exclusive jurisdiction and venue of such Courts. Customer also agrees not to bring any legal action, based upon any legal theory including contract, tort, equity or otherwise, against MUSHKIN that is more than one year after the date of the applicable invoice.

**13. Severability**

If any provision contained in this Agreement is or becomes invalid, illegal, or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect the remaining provisions and portions of this agreement, and the invalid, illegal, or unenforceable provision shall be deemed modified so as to have the most similar result that is valid and enforceable under applicable Colorado law.

**14. Waiver**

The failure of either party to require performance by the other party of any provision of this agreement shall not affect in any way the first party's right to require such performance at any time thereafter. Any waiver by either party of a breach of any provision in this agreement shall not be taken or held by the other party to be a continuing waiver of that provision unless such waiver is made in writing.