

# GENERAL TERMS/ CONDITIONS OF SALE

("GTS") of PUNKER LLC, a Delaware LLC ("SELLER")

01/2015



**punker LLC**

914 25th Street SE ▶  
Hickory ▶ NC 28602 ▶ USA

Fon: +1.828.322.1951

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## 1. THESE GTS:

All orders for Seller's goods are subject to issuance of its written order confirmation ("OC"). All information on the front of each OC regarding the goods ordered by Buyer, the prices and the payment terms therefor is deemed correct, unless Buyer otherwise notifies Seller in writing within three (3) days after receipt of the OC.

Unless Seller elects to ship without same, no order shall be deemed accepted by or binding on Seller unless Buyer shall have signed and returned to Seller a copy of an OC containing these GTS or another document indicating Buyer's acceptance of Seller's GTS. The provisions of these GTS shall be binding on Buyer and Seller for any and all orders even if Buyer fails to sign or return to Seller any OC or other writing agreeing to these GTS, by virtue of Seller shipping goods corresponding to any order placed by Buyer with Seller. The terms contained in these GTS, together with the price, payment, delivery and other terms specified in this OC, shall control to the exclusion of any inconsistent or additional terms contained in any business form or other writing of Buyer. These GTS apply (i) to the order embodied in this OC, (ii) to any previous accepted order from Buyer, and (iii) should Buyer fail to sign any OC or other document indicating acceptance of Seller's GTS for any subsequent order(s), to them as well. These GTS may not be modified orally, only by a writing signed by each party. Buyer represents that the person signing these GTS or an OC containing them has full authority to do so on Buyer's behalf.

## 2. BUYER'S CREDIT, ETC.:

If Buyer's credit at any time in Seller's judgment becomes impaired precluding the extension or continued extension of credit terms to Buyer or shipment on the payment terms specified, Seller may require immediate full or part payment for the goods. Failing timely receipt of such payment, or upon Buyer's default or breach of any accepted order, Seller may, without notice or liability, re-consign or stop shipments in transit, cancel the unshipped balance of any order and exercise any similar or different remedy available under applicable law.

## 3. CANCELLATIONS, RETURNS, EXCHANGES:

Orders accepted by Seller cannot be changed, returned or cancelled in whole or in part by Buyer except with Seller's prior written consent and on terms that will indemnify Seller against any cost or loss incurred as a result. Any agreed changes, returns, and/or cancellations requested after Seller has put the goods into the possession of the carrier shall be subject to a reasonable re-handling and restocking charge, but not in excess of ten percent (10%) of the invoiced value, plus shipping, handling, and any other charges actually incurred by Seller. Goods returned by Buyer hereunder must be in their original packaging, in unused and undamaged condition. No returns, exchanges, changes, or total or partial cancellations whatsoever are allowed for goods made to Buyer's specifications or specially fabricated goods.

## 4. SHIPMENTS; RISK OF LOSS; INSURANCE; DAMAGE OR LOSS; INSPECTION:

Unless otherwise specifically agreed in writing, all sales of Seller's goods shipped to Buyer from Seller's U.S. warehouse are made FCA Seller's point of shipment; and all sales of Seller's goods shipped to Buyer from outside the USA are made CIP, Buyer's named destination (both per Incoterms 2010). Unless Seller receives from Buyer timely shipping destination, mode of shipment and carrier instructions, the goods will be shipped at Buyer's expense to Buyer's last known place of business by the mode and carrier Seller selects. Buyer shall inspect the goods and report/explain in writing to Seller any claim of patent defect or non-conformity within fifteen (15) days from Buyer receiving physical possession thereof. Title to all goods shall remain in Seller until it receives payment in full and such reservation constitutes the grant to Seller of a security interest therein. During such period, Buyer shall (i) maintain such goods in good condition; (ii) insure them against loss and damage at Buyer's expense for at least their full purchase price; and (iii) bear and pay all taxes, charges and expenses applicable to such goods while in Buyer's possession or control.

## 5. DATES; PART SHIPMENTS; DELAYS:

Seller shall, if possible, comply with the specified or requested shipping date (if any). However, shipping dates are non-binding estimates only and Seller's non-compliance shall not entitle Buyer to claim damages or to terminate or cancel, in whole or in part, any order or shipment. Seller may sell and ship to Buyer less than the full quantity of goods ordered according to available supply. Should reshipment or local redelivery of goods become necessary because Buyer is not ready to accept delivery, Seller's and its supplier's actual cost of storage, warehousing, freight, redelivery, restocking and/or re-handling shall be borne and paid for by Buyer. If Buyer is unable or unwilling to accept delivery of Seller's goods by an agreed date or Seller's deadline, Seller reserves the right to sell the goods to third parties. Seller shall not be liable for any failure or delay under any contract or order resulting from causes beyond Seller's or its supplier's reasonable control.



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## 6. BREACH OR DEFAULT:

Any breach or default by Buyer in the timely performance of its obligations shall, at Seller's option, operate as a breach of the entire sales contract. Terms for Buyer's payment for Seller's goods are as stated in the corresponding OC. Overdue Seller invoices (or overdue portions thereof) bear interest from the date payment was due at twelve percent (12%) per annum, until Seller receives full payment of the overdue amounts. Any claims by Buyer will not impair Seller's right to payment when due, and any price adjustments granted by Seller regarding any such claims are contingent on full payment first received. Buyer has no right of setoff or any right to withhold payment of amounts due Seller on any order based on any claims connected with that order, any prior or order, transaction, or sale. Seller may, at its option, postpone or cancel any shipment or pending order to which credit terms apply in case of any payment default by Buyer. Waiver by Seller of payment default or any other Buyer default must be in writing. Buyer shall bear all costs of collection incurred by Seller, including Seller's reasonable attorney's fees.

## 7. LIMITED WARRANTY; CLAIMS; LIMITATIONS/EXCLUSIONS OF LIABILITY:

A. Seller warrants only that the goods sold to Buyer shall have the characteristics in the Seller's or agreed Buyer specifications as set forth or agreed to in Seller's OC or other acceptance of Buyer's order, and shall be free from defects in workmanship and materials under normal use and service in accord with Seller's instructions and said specifications for the earlier of one (1) year from the date of Buyer's sale thereof to Buyer's customer, or two (2) years from the date of Seller's sale thereof to Buyer. If any failure to conform to this limited warranty is reported in writing to Seller during the warranty period, Seller, upon being satisfied of the existence of such defect or non-conformity, will repair or replace the non-conforming goods, as Seller may elect in its sole discretion. All other remedies and claims whether in tort, contract or warranty are excluded. This limited warranty does not apply to any goods operated or used in a manner other than in Seller's instructions, or subjected to abuse, or disassembled or otherwise tampered with or altered; or not warehoused, handled, packed or distributed in accordance with customary good commercial trade practices; or to ordinary wear and tear, including of spare parts. B. Seller shall not be liable under any circumstances to Buyer or any other person if the goods are not properly used for the purpose for which they are designed or if Section 7. A, last sentence, applies. C. Unless initiated within one (1) year after the cause of action has accrued, Buyer is barred from initiating any legal proceeding of any type in connection with the goods or orders therefore; D. No agreements varying or extending the Seller's limited warranty or the foregoing limitations, whether made by Buyer or third parties, will be binding on Seller unless in writing and signed by Seller's authorized representative. E. Buyer will not make any warranties or representations on behalf of Seller or its supplier as to quality, merchantable quality, merchantability, fitness for a particular use or purpose, or any other features of the any goods supplied by Seller or incur any liabilities, obligations, or commitments on behalf of Seller or its supplier. F. All warranties of merchantability, fitness for a particular purpose, by sample, or any other non-express warranties regarding Seller's goods sold and delivered to Buyer at any time are hereby waived by Buyer. Regarding claims of any nature relating directly or indirectly to Seller's

goods, including based on Seller's ordinary negligence (i) Seller's maximum liability to Buyer and third parties is limited to the invoice price to Buyer of the particular goods; (ii) Seller will incur no liability to Buyer or any third party for (a) incidental, indirect, special, reliance, exemplary or consequential damages or losses; (b) loss of anticipated profits or goodwill, business interruption, failure to provide properly any service, and any other economic loss or damages sustained by Buyer or any third party, although Seller has been advised of the possibility of such damages.

## 8. TITLE TO GOODS; SECURITY AGREEMENT/FINANCING STATEMENTS AND COMPARABLE SECURITY:

A. Seller shall retain title to all goods supplied to Buyer on credit terms until the invoice corresponding to such order shall have been fully paid. B. This Paragraph 9.B. applies only if Buyer or the goods mentioned hereafter as collateral are located in the USA, or the Province of Ontario, Canada, or in any other Canadian Province which has the legal mechanism known as the "security interest": To secure all sales of goods from Seller to Buyer, Buyer hereby grants to Seller a first, best and continuing security interest in all goods supplied by Seller to Buyer as well as in all accounts receivable and the proceeds thereof, arising from Buyer's resale or other disposition of all such goods. Buyer and Seller agree that this Paragraph constitutes a Security Agreement. Upon Seller's request, Buyer shall execute for filing at Buyer's expense one or more Financing Statements to perfect or maintain Seller's security interest in all such collateral. In addition, Seller is hereby authorized to sign and file Financing Statements consistent with the above in Buyer's name. Seller shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law, including without limitation, upon five (5) days prior notice, repossession without benefit of judicial order. C. This Paragraph 8.C. applies if Buyer is not located in a jurisdiction specified in the first sentence of Paragraph 9.B.: Upon Seller's request, Buyer agrees to grant promptly to Seller security for payment of Seller's sales and invoices to Buyer roughly equivalent to that provided in Paragraph 8.B., including by conferring preferred creditor status on Seller utilizing one or more mechanisms of Buyer's home jurisdiction.



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## 09. PROTECTION CLAUSE:

Any and all contracts entered and concluded by us shall be subject exclusively to our general and standard terms and conditions of business even if other party's general and standard terms and conditions of business are not specifically opposed. Any general and standard terms and conditions in variance to our own shall be invalid and shall only be recognized if explicitly referred to in writing as part of the contract.

## 10. DISPUTE RESOLUTION; APPLICABLE LAW:

A. All claims, controversies and disputes arising directly or indirectly out of this transaction or in connection with the goods supplied hereunder or any other sale of goods by Seller to Buyer, be they past, present or future, whether sounding in contract, tort or otherwise, shall be finally settled by binding arbitration by one (1) arbitrator in accordance with then current Commercial Arbitration Rules of the American Arbitration Association ("AAA") if the Buyer is located in the USA, or, if the Buyer is located outside of the USA, in accordance with the AAA's International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR"); and judgment upon the award may be entered in any court having jurisdiction thereof. Claims of the product liability type whereby Buyer seeks redress against Seller or its supplier (such as indemnification, contribution or any other damage claim) shall be brought pursuant hereto; however no punitive, exemplary or similar damages may be claimed by Buyer against Seller, including by way of indemnification, contribution or otherwise. Arbitration shall be conducted in Manhattan, NY, USA, if possible, at the AAA's headquarters. The AAA's or ICDR's (as applicable) list procedure shall apply regarding selection of the arbitrator, but if that does not produce an arbitrator within forty-five (45) days from the time the first list is submitted to the parties, the AAA or ICDR (as applicable) shall select the arbitrator. The decision of the arbitrator shall be final and binding upon the parties. In addition to any other award, Seller, if the prevailing party, shall be awarded its reasonable attorneys' fees and other expenses and disbursements incurred by Seller relating directly or indirectly to the arbitration proceeding and to any other judicial proceeding ancillary to said arbitration, including those incurred by Seller in preparation for any such proceeding as well as relating to the execution and enforcement thereof. Upon Seller's request, the arbitrator shall require Buyer to post pre-award security sufficient to cover the amount of Seller's claims with minimal security posted. Buyer acknowledges the validity of this agreement to arbitrate, and hereby consents to the exercise of personal jurisdiction over it by the courts located in the place of arbitration for purposes incidental or ancillary to this agreement to arbitrate. This GTS and OC and transactions pursuant thereto shall be governed exclusively in all respects by the substantive laws of the State of New York, USA, excluding its conflict of laws rules. B. Exception: Should the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards or another international or bilateral convention facilitating the execution and enforcement of foreign commercial arbitral awards not be in force in both the Buyer's country and the USA, then Seller, at its sole option, reserves the right to not pursue arbitration pursuant to Section 8.A., but to commence an action or proceeding against Buyer in the Buyer's country, to recover all amounts owed by Buyer to Seller and to pursue such other remedies as are available to Seller.

