

EARTHS ELEMENTS WELLNESS LIFESTYLE INC.

WHOLESALE PRODUCT PURCHASE AGREEMENT

THIS WHOLESALE PRODUCT PURCHASE AGREEMENT (the “Agreement”) is made and entered into on the date first set forth below (the “Effective Date”), by and between Earths Elements Wellness Lifestyle Inc., a California limited liability having offices at 2835 La Mirada Dr Vista CA 92081 (“Distributor”), and _____ (“Customer”), having offices at _____. Distributor and Customer are each referred to in this Agreement as a “Party,” and collectively the “Parties.”

WHEREAS, Distributor wholesales certain products to its customers, which include (LIST OF PRODUCTS) (herein defined as “Products” and more specifically defined on **EXHIBIT A**, which is attached hereto and incorporated by reference herein and which may be modified from time to time by the Parties upon written mutual consent); and

WHEREAS, the Parties desire to enter into this Agreement so that Distributor can sell, distribute and maintain the Products to Customer.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I **PRODUCTS AND SERVICES**

1.1 APPOINTMENT OF DISTRIBUTOR. This Agreement governs Distributor’s distribution of those Products set forth in **EXHIBIT A**. Customer hereby appoints Distributor and Distributor hereby accepts such appointment, as a distributor of the Products during the term of this Agreement, subject to the terms and conditions of this Agreement. This appointment is non-exclusive, and Distributor reserves the right to distribute Products to other customers at any time. Customer also reserves the right to purchase Products from additional distributors.

1.2 PURCHASE ORDERS. Customer shall submit written purchase orders to Distributor by electronic mail or in accordance with written instructions provided by Distributor no later than ten 5 business days prior to the requested delivery date, setting forth the following: (i) quantity, (ii) type of Product, (iii) requested delivery date for the Products, (iv) specific shipping instructions, and (v) any relevant export control information or documentation required of Distributor to enable Distributor to comply with Applicable Laws, all in accordance with the Product Price List as stated on **EXHIBIT A**. Distributor has the sole right to change, modify, or amend the Product Price List without providing any notice.

1.3 ACCEPTANCE OF ORDERS. Customer purchase orders are subject to acceptance by Distributor in Distributor's sole discretion. Distributor shall have no liability to Customer for orders that are not accepted. Each purchase order shall be deemed to be an offer by Customer to purchase the Products pursuant to the terms of this Agreement. Acceptance of an order by Distributor shall oblige the Parties to the terms and conditions set forth in this Agreement with respect to such order to the exclusion of any additional or contrary terms set forth in the Customer purchase order.

1.4 PRODUCTS SOLD ONLINE. For all Products sold online, Customer must first obtain written consent from Distributor, Customer must have a valid seller's license or permit, and Customer is only authorized to sell through the online sites that are preapproved by Distributor. For all Products sold online, Customer must adhere to the Product Price List as provided by Distributor.

1.5 DELIVERY OF PRODUCT.

(a) *Delivery Terms.* The Products ordered by Customer and accepted by Distributor shall be packed for shipment and storage in accordance with Distributor's standard commercial shipping practices. Distributor shall use its Commercially Reasonable Efforts to deliver the Products into the possession of a common carrier for delivery within a reasonable period of time after acceptance of a purchase order by Distributor. Each order may be shipped or collected in person from Distributor's warehouse.

(b) *Risk of Loss.* Risk of loss and title to the Products shall pass to Customer upon delivery at its designated shipment location. Distributor shall have no liability for any loss, theft, destruction, or damage to the Products caused after they have been delivered to a designated shipment location. Customer shall, at its sole cost and expense, insure or self-insure the Products from the time of delivery at Customer's designated shipment location until delivery of the Products by Distributor to Customer has been completed.

(c) *Inspection of Product.* Customer shall promptly inspect each shipment of the Products. In the event of any shortage, damage, expiration, or discrepancy in a shipment of the Products that is patently obvious, Customer shall promptly report the same to Distributor and furnish such written evidence or other documentation as Distributor may reasonably request. Customer shall be deemed to have accepted a shipment and Distributor shall not be liable for any such shortage, damage, expiration, or discrepancy in such shipment unless Customer provides Distributor with such notice and substantiating evidence within five 10 days of receipt of the Products at Customer's designated shipment location. Upon receipt of reasonable substantiating evidence of such shortage, damage or discrepancy, Distributor shall promptly provide additional Products or substitute products to Customer.

(d) *Modification of Orders.* No accepted purchase order shall be modified or canceled except upon the written agreement of both Parties.

- (e) *Change Order Charges.* If Distributor requests modifications to an accepted order prior to the scheduled delivery date and prior to such time that delivery courier has accepted contents of order, then, in consideration for accepting such change order, Distributor may extend the scheduled delivery date.
- (f) *Product Changes.* Subject to applicable regulatory approval, Distributor reserves the right, in its sole discretion and without incurring any liability to Customer except as otherwise provided in this Agreement, to: (a) alter the Products, (b) discontinue the sale of the Products, or (c) commence the sale of new products having features which compete with the Products or make of the Products that become obsolete.

1.6 PRODUCT RETURNS. Distributor will not accept the return of any Products, unless the Products are returned to Distributor within ten (10) days of Customer's purchase of the Products, and for Products that (i) do not conform to the Customer's product specifications, or (ii) were damaged or shipped incorrectly. All returns will be credited to Customer's account or replaced with other Products as agreed to between the Parties.

ARTICLE II **PRICES, FEES, AND PAYMENT**

2.1 PRODUCT PRICING.

- (a) *Product Price.* The price Customer will pay Distributor for Products is set forth in **EXHIBIT A** (the "Product Price").
- (b) *Resale Price.* Customer acknowledges and agrees that Customer will not resell the Products less than the retail prices pertaining to any Earths Elements Branded Products provided by Distributor. Customer acknowledges and agrees that reselling any Products under the retail prices will damage the integrity and reputation of Distributor. Any breach of this Section 2.1(b) shall give rise to immediate termination of this Agreement.
- (c) *Price Changes.* At any time during the term of this Agreement, Distributor may increase or decrease its Prices for the Products with advance written notice to Customer of the effective date of the price change. Any such price change shall not apply to purchase orders accepted prior to the effective date of the applicable price change. Distributor agrees to continue placing purchase orders at quantity volumes consistent with demand and inventory levels prior to the effective date of any such price change.
- (d) *Costs.* All costs related to shipping, insuring, packing, handling, and delivering the Products to Customer's facility shall be at the sole expense of Customer, unless Distributor allow for certain promotional advertising.

2.2 PAYMENT TERMS. Upon acceptance of purchase orders by Distributor, Customer will be invoiced for the Products and full payment is due before Distributor ships the Products

to Customer, unless payment terms are mutually agreed between the Parties. . All payments shall be made in United States Dollars.

ARTICLE III **DISCLAIMER**

3.1 LIMITATION OF LIABILITY.

- (a) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DISTRIBUTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANDISE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY DISTRIBUTOR. IN NO EVENT SHALL DISTRIBUTOR BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS OF CUSTOMER.

- (b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, DISTRIBUTOR MAKES NO WARRANTY WITH RESPECT TO ANY GOODS, SERVICES, TECHNOLOGY, OR THIRD PARTY INTELLECTUAL PROPERTY AND HEREBY DISCLAIMS ALL WARRANTIES.

ARTICLE VI **TERM AND TERMINATION**

4.1 TERM. The term of this Agreement shall continue until this Agreement is terminated by either Party.

4.2 TERMINATION. This Agreement is made in good faith based on the assumption that early termination shall not be required. Notwithstanding the foregoing, early termination shall be permissible as follows:

- (a) By either Party with ninety (90) days' written notice for any reason.

- (b) Immediately by either Party if such Party provided written notice detailing a material breach of this Agreement and the breaching Party failed to cure the breach within ten (10) days of the date of the notice.

- (c) Immediately with written notice, by either Party, except that only Distributor may terminate this Agreement with respect to subsection (vi), in the event that:

- (i) the other Party shall file any petition under any bankruptcy, reorganization, insolvency or moratorium laws, or any other law or laws for the relief of or in relation to the relief of debtors;
 - (ii) there shall be filed against the other Party any involuntary petition under any bankruptcy statute or a receiver or trustee shall be appointed to take possession of all or a substantial part of the assets of the Party that has not been dismissed or terminated within sixty (60) days of the date of such filing or appointment;
 - (iii) the other Party shall make a general assignment for the benefit of creditors or shall become unable, or admit in writing its inability, to meet its obligations as they mature;
 - (iv) the other Party shall institute any proceedings for liquidation or the winding up of its business other than for purposes of reorganization, consolidation, or merger;
 - (v) the other Party's financial condition shall become such as to endanger completion of its performance in accordance with the terms and conditions of this Agreement;
 - (vi) Distributor suspends distribution and sale of the Products for more than six (6) weeks; or
 - (vii) the other Party is unable to perform its duties for a period of thirty (30) days.
- (d) Immediately upon notification by either Party if the terms of this Agreement are determined by either Party in good faith to be inconsistent with any Applicable Law, or upon a change in law pursuant to Section 7.1.

ARTICLE V **CONFIDENTIALITY**

5.1 CONFIDENTIALITY. Each Party shall take all reasonable actions and do all things reasonably necessary to ensure that any information contained in this Agreement, as well as any information that is disclosed by one Party to the other under this Agreement (in any case "Confidential Information"), shall not be disclosed or used for purposes outside this Agreement. The foregoing prohibition shall not apply to disclosures: (a) to the disclosing Party's attorney or accountant; (b) made pursuant to a request from a legal or regulatory authority; (c) by the disclosing Party to its affiliate (provided such affiliate is subject to the confidentiality restrictions herein), and for the purpose of this section "affiliate" shall mean an entity in which the disclosing Party maintains an ownership position or an entity under common ownership or control with the disclosing Party; or (d) that are required pursuant to a court order or by law. The foregoing prohibition shall not apply to information that:

(i) a Party can show it knew prior to disclosure without obligation of confidentiality; (ii) is or becomes public knowledge through no fault of said Party; or (iii) is lawfully disclosed by a third party under no obligation of confidentiality. This Section 5.1 shall survive any termination of this Agreement for a period of five (5) years thereafter.

ARTICLE VI **REPRESENTATIONS AND WARRANTIES**

6.1 PRODUCT WARRANTY. Customer shall only rely upon the standard warranty set forth by the manufacturers of the Products. Distributor shall not have any additional warranty obligations to Customer under this Section 6.1 beyond the standard warranty provided by the manufacturers of the Products.

ARTICLE VII **INDEMNIFICATION, LIMITATION OF LIABILITY, AND INSURANCE**

7.1 MUTUAL INDEMNIFICATION.

- (a) *Customer Indemnification.* Customer will indemnify and hold Distributor and its affiliates, officers, directors, agents and employees harmless from and against any loss, cost, damage, expense, or other liability, including, without limitation, reasonable costs and attorney fees (collectively “Damages”) incurred in connection with any and all actual or threatened third party claims, suits, investigations, enforcement actions, or any other judicial or quasi-judicial proceeding (“Claims”) arising out of (i) Customer’s negligent acts or omissions or willful misconduct, (ii) Customer making any changes or modifications to the Products prior to selling to third parties, or (ii) Customer’s breach of this Agreement. Customer shall have no obligation to indemnify Distributor in connection with any Claims caused by or based upon the negligence or intentional misconduct of Distributor or Distributor’s breach of this Agreement.
- (b) *Distributor Indemnification.* Distributor will indemnify and hold Customer harmless from and against any Damages incurred in connection with any and all Claims arising out of (i) Distributor’s sale of the Products; (ii) Distributor’s negligent acts or omissions or willful misconduct; or (iii) Distributor’s breach of this Agreement. Distributor shall have no obligation to indemnify Customer in connection with any Claims caused by or based upon the negligence or intentional misconduct of Customer or Customer’s breach of this Agreement.
- (c) *Notification.* As a condition of indemnification, the Party seeking indemnification shall notify, to the extent possible under Applicable Law, the indemnifying Party in writing promptly upon learning of any Claim for which indemnification may be sought hereunder. The indemnifying Party shall have a right to participate in the defense of such Claim, and the Parties will cooperate in good faith in such defense. No Party shall have an obligation to indemnify the other Party as described herein with respect to any

Claim settled without the mutual written consent of both Parties, which consent shall not be unreasonably withheld.

7.2 LIMITATION OF LIABILITY. In no event shall either Party be liable to the other under this Agreement for any special, incidental, indirect, exemplary, or consequential damages, whether based on breach of contract, warranty, tort (including negligence), lost profits or savings, punitive damages, injury to reputation, loss of customers or business, product liability, or otherwise, regardless of whether such Party has been advised of the possibility of such damage. The Parties acknowledge and agree that the foregoing limitations of liability are a condition and material consideration for their entry into this Agreement.

ARTICLE VIII **GENERAL TERMS**

8.1 NON-EXCLUSIVITY. Nothing herein shall be construed to limit Distributor from entering into other agreements with other customers.

8.2 NOTICE. Any notice, demand, request, consent, or approval required or permitted hereunder shall be in writing and shall be delivered: (a) personally; (b) by certified mail, return receipt requested, postage prepaid; (c) by facsimile transmission; or (d) by overnight courier by a nationally recognized courier service, to the address indicated herein.

8.3 SEVERABILITY. In the event any portion of this Agreement not material to the remaining portions hereof shall be held illegal, void, or ineffective, the remaining portions hereof shall remain in full force and effect. Subject to the consent of both Parties, such consent not to be unreasonably withheld, if any of the terms or provisions of this Agreement are in conflict with any Applicable Laws, then such terms or provisions shall be deemed inoperative to the extent that they may conflict with such Applicable Laws and shall be deemed to be modified to conform to such Applicable Laws.

8.4 ENTIRE AGREEMENT. This Agreement and the Exhibits attached hereto contain the entire agreement and understanding of the Parties and supersede any and all prior agreements and understandings regarding the same subject matter.

8.5 AMENDMENT. No amendment, modification, revision, representation, warranty, promise or waiver of or to this Agreement shall be effective unless the same shall be in writing and signed by both Parties. Notwithstanding the foregoing, **EXHIBIT A** (Product Pricing and Product List) may be modified by Distributor. Upon the effective date of the change, the Exhibit(s) will be deemed amended to reflect such change.

8.6 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument.

8.7 ASSIGNMENT. Distributor may assign this Agreement without the written consent of Customer.

- 8.8 FORCE MAJEURE.** Notwithstanding anything to the contrary herein, Distributor shall not be liable in any manner for any delay to perform its obligations under this Agreement where the cause of such delay is beyond Distributor's reasonable control, including, without limitation, any delay or failure due to strikes, labor disputes, riots, earthquakes, storms, hurricanes, floods or other extreme weather conditions, pandemics, epidemics, lock-downs, fires, explosions, acts of God, embargoes, war or other outbreak of hostilities, government acts or regulations, or the failure or inability of carriers, suppliers, delivery services, or telecommunications providers to provide services necessary to enable Distributor to perform its obligations hereunder. In any such circumstance, Distributor shall notify Customer of such circumstance, and Customer shall have the right to terminate this Agreement if Distributor continues to be unable to perform its obligations hereunder for a period of thirty (30) days.
- 8.9 WAIVER.** No waiver of any term of this Agreement shall be valid unless waived in writing and signed by the Party against whom the waiver is sought. 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 right to require such performance at any time thereafter.
- 8.10 INDEPENDENT CONTRACTORS.** Nothing in this Agreement is intended to create any relationship between Distributor and Customer other than as independent contractors and neither Party, nor any of their employees, staff, agents, officers, or directors shall be construed to be the agent, fiduciary, employee, or representative of the other.
- 8.11 CHOICE OF LAW.** This Agreement and performance of the obligations hereunder, shall be governed by, and construed in accordance with, the laws of the State of California, without regard to the conflicts of laws provision therein. Any dispute arising from this Agreement shall first be addressed by the parties through informal dispute resolution procedures conducted in good faith. If the parties do not resolve the dispute within thirty (30) days of the date of the first dispute resolution meeting, the parties agree to mediate the dispute in a mutually agreed-upon place with a mutually agreed-upon mediator, the costs of which shall be borne equally by the parties. In the event the dispute is not resolved through mediation, the dispute shall be settled by binding arbitration before a single arbitrator in the County of San Diego, California in accordance of the rules of the American Arbitration Association, and the Parties agree that judgment upon the award rendered by the arbitrator shall be entered in a court of competent jurisdiction sitting in the County of San Diego, California.
- 8.12 SURVIVAL.** The confidentiality and indemnification obligations described in this Agreement shall survive the termination of this Agreement. These ongoing obligations shall be binding upon both Parties regardless of the reason for the termination of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, duly authorized, has executed this Agreement, effective as of the date first written below.

Earths Elements Wellness Lifestyle Inc.

(Customer's Name)

By: _____

By: _____

Print
Name: _____

Print
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

**PRODUCT LIST
AND
PRODUCT PRICING**