

# **TERMS AND CONDITIONS FOR THE ONLINE SALE OF GOODS AND SERVICES**

**1. THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.**

**THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.**

**BY PLACING AN ORDER FOR PRODUCTS OR SERVICES FROM THIS WEBSITE, YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS.**

**YOU MAY NOT ORDER OR OBTAIN PRODUCTS OR SERVICES FROM THIS WEBSITE IF YOU (A) DO NOT AGREE TO THESE TERMS, (B) ARE NOT THE OLDER OF (i) AT LEAST 18 YEARS OF AGE OR (ii) LEGAL AGE TO FORM A BINDING CONTRACT WITH BINDI NORTH AMERICA, INC., OR (C) ARE PROHIBITED FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS, GOODS OR SERVICES BY APPLICABLE LAW.**

These terms and conditions (these "**Terms**") apply to the purchase and sale of products and services through **BINDISWEETSHOP.COM** (the "**Site**"). These Terms are subject to change by BINDI NORTH AMERICA, INC. (referred to as "**us**", "**we**", or "**our**" as the context may require) without prior written notice at any time, in our sole discretion. The latest version of these Terms will be posted on this Site, and you should review these Terms before purchasing any product or services that are available through this Site. Your continued use of this Site after a posted change in these Terms will constitute your acceptance of and agreement to such changes.

These Terms are an integral part of the Website Terms of Use that apply generally to the use of our Site. You should also carefully review our Privacy Policy before placing an order for products or services through this Site (see Section 9).

2. Order Acceptance and Cancellation. You agree that your order is an offer to buy, under these Terms, all products and services listed in your order. All orders must be accepted by us or we will not be obligated to sell the products or services to you. We may choose not to accept any orders in our sole discretion. After having received your order, we will send you a confirmation email with your order number and details of the items you have ordered. Acceptance of your order and the formation of the contract of sale between BINDI NORTH AMERICA, INC. and you will not take place unless and until you have received your order confirmation email and paid the purchase price.

3. Prices and Payment Terms.

(a) All prices posted on this Site are subject to change without notice. The price charged for a product or service will be the price in effect at the time the order is placed and will be set out in your order confirmation email. Price increases will only apply to orders placed after such changes. Posted prices do not include taxes or charges for shipping and handling. All such taxes and charges will be added to your merchandise total and will be itemized in your shopping cart and in your order confirmation email. We are not responsible for pricing, typographical, or other errors in any offer by us and we reserve the right to cancel any orders arising from such errors.

(b) Terms of payment are within our sole discretion and, unless otherwise agreed by us in writing, payment must be received by us before our acceptance of an order. We accept Visa, MasterCard, American Express and Discover for all purchases. You represent and warrant that (i) the credit card information you supply to us is true, correct, and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any.

4. Shipments; Delivery; Title and Risk of Loss.

(a) We will arrange for shipment of the products to you. Please check the individual product page for specific delivery options. You will pay all shipping and handling charges specified during the ordering process.

(b) Title and risk of loss pass to you upon our transfer of the products to the carrier/delivery. Shipping and delivery dates are estimates only and cannot be guaranteed. We are not liable for any delays in shipments.

5. Returns and Refunds.

**WE OFFER NO REFUNDS ON ANY PRODUCTS DESIGNATED ON THIS SITE AS NON-RETURNABLE.**

6. LIMITED WARRANTY.

**THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.**

**WE WARRANT THAT DURING THE WARRANTY PERIOD, THE PRODUCTS PURCHASED FROM THE SITE WILL BE MANUFACTURED AND SOLD IN ACCORDANCE WITH APPLICABLE LAW AND FIT FOR THE ORDINARY PURPOSE FOR WHICH THE PRODUCTS ARE SOLD.**

**WE LIMIT THE DURATION AND REMEDIES OF ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE DURATION OF THIS LIMITED WARRANTY.**

**SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

**OUR RESPONSIBILITY FOR DEFECTIVE PRODUCTS IS LIMITED TO REPLACEMENT OR REFUND AS SET FORTH IN THIS WARRANTY STATEMENT. NEITHER ANY PERFORMANCE OR OTHER CONDUCT, NOR ANY ORAL OR WRITTEN INFORMATION, STATEMENT OR ADVICE PROVIDED BY US OR ANY OF OUR SUPPLIERS, AGENTS OR EMPLOYEES WILL CREATE A WARRANTY, OR IN ANY WAY INCREASE THE SCOPE OR DURATION OF THIS LIMITED WARRANTY.**

(a) Who May Use This Warranty?

This limited warranty extends only to the original purchaser of products and services from the Site. It does not extend to any subsequent or other owner or transferee of the product or any transferee or other beneficiary of the service.

(b) What Does This Warranty Cover?

This limited warranty covers during the Warranty Period (as defined below) defects in materials and workmanship in products and services purchased from the Site.

(c) What Does This Warranty Not Cover?

This limited warranty does not cover any damages due to:

- (i) transportation;
- (ii) storage;
- (iii) improper use;
- (iv) failure to follow the product instructions;
- (v) modifications;
- (vi) combination or use with any products, materials, processes, systems or other matter; or
- (vii) external causes such as accidents, abuse, or other actions or events beyond our reasonable control.

(d) What is the Period of Coverage?

This limited warranty starts on the date of your purchase and lasts until the “best before” date on the packaging of each product (the "**Warranty Period**").

(e) What Are Your Remedies Under This Warranty?

With respect to any defective products during the Warranty Period, we will, in our sole discretion, either: (i) replace such products free of charge or (ii) refund the purchase price of such products. We will also pay for shipping and handling fees to replace the product, if we elect to replace the defective products.

(f) How Do You Obtain Warranty Service?

To obtain warranty service, you must call 800-882-4634 or email our Customer Service Department at CS@bindiusa.com during the Warranty Period.

(g) Limitation of Liability

**THE REMEDIES DESCRIBED ABOVE ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND OUR ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THIS LIMITED WARRANTY. OUR LIABILITY WILL UNDER NO CIRCUMSTANCES EXCEED THE ACTUAL AMOUNT PAID BY YOU FOR THE DEFECTIVE PRODUCT OR SERVICE THAT YOU HAVE PURCHASED THROUGH THE SITE, NOR WILL WE UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS OF PRODUCTION, WORK, DATA, USE, BUSINESS, GOODWILL, REPUTATION, REVENUE OR PROFIT, ANY DIMINUTION IN VALUE, COSTS OF REPLACEMENT GOODS OR SERVICES, OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES, WHETHER DIRECT OR INDIRECT.**

**SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

**THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES DO NOT APPLY TO NEW JERSEY CONSUMERS.**

(h) What can you do in case of a dispute with us?

The informal dispute resolution procedure detailed in Section 12 is available to you if you believe that we have not performed our obligations under this limited warranty or these Terms.

7. Goods Not for Resale or Export. You agree to comply with all applicable laws and regulations of the various states and of the United States. You represent and warrant that you are buying products or services from the Site for your own personal or household use only, and not for resale or export.

8. Intellectual Property Use and Ownership. You acknowledge and agree that:

(a) BINDI NORTH AMERICA, INC. and its licensor(s) are and will remain the sole and exclusive owner[s] of all intellectual property rights in and to each product and service made available on this Site and any related specifications, instructions, documentation or other materials, including, but not limited to, all related copyrights, patents, and trademarks and other intellectual property rights. You do not and will not have or acquire any ownership of these intellectual property rights in or to the products or services made available through this Site, or of any intellectual property rights relating to those products or services.

9. Privacy. We respect your privacy and are committed to protecting it. Our Privacy Policy, [Please see PRIVACY POLICY], governs the processing of all personal data collected from you in connection with your purchase of products or services through the Site.

10. Force Majeure. We will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms, for any failure or delay in our performance under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

11. Governing Law and Jurisdiction. All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New Jersey.

12. Dispute Resolution and Binding Arbitration.

**(a) YOU AND BINDI NORTH AMERICA, INC. ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.**

**ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING IN ANY WAY TO YOUR PURCHASE OF PRODUCTS OR SERVICES THROUGH THE SITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.**

(b) The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Consumer Arbitration Rules (the "AAA Rules") then in effect, except as modified by this Section 12. (The AAA Rules are available at adr.org or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the Agreement is void, voidable or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction. The prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party as provided herein.

(c) You agree to an arbitration on an individual basis. In any dispute, **NEITHER YOU NOR BINDI NORTH AMERICA, INC. WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.** The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

13. Assignment. You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation in violation of this Section 13 is null and void. No assignment or delegation relieves you of any of your obligations under these Terms.

14. No Waivers. The failure by us to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of BINDI NORTH AMERICA, INC.

15. No Third Party Beneficiaries. These Terms do not and are not intended to confer any rights or remedies upon any person other than you.

16. Notices.

(a) To You. We may provide any notice to you under these Terms by: (i) sending a message to the email address you provide or (ii) by posting to the Site. Notices sent by email will be effective when we send the email and notices we provide by posting

will be effective upon posting. It is your responsibility to keep your email address current.

(b) To Us. To give us notice under these Terms, you must contact us as follows: (i) by facsimile transmission to 973-547-9102 (ii) by personal delivery, overnight courier or registered or certified mail to **BINDI NORTH AMERICA, INC., 630 Belleville Tpk., Kearny, NJ 07032, Attn.: Customer Service** ; or by e-mail to CS@bindiusa.com. We may update the facsimile number, our address, or email for notices to us by posting a notice on the Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent. Notices sent by email will be effective when you send the email.

17. Severability. If any provision of these Terms is invalid, illegal, void or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms.

18. Entire Agreement. Our order confirmation, these Terms, our Website Terms of Use and our Privacy Policy will be deemed the final and integrated agreement between you and us on the matters contained in these Terms.