

FIREDISC, INC. DEALER TERMS AND CONDITIONS AGREEMENT

1. FD SCOPE.

- 1.1 **General.** This Dealer Agreement is entered into between FIREDISC, INC. ("FD") and the Dealer ("Dealer"). An authorized FD Dealer is an entity which has been qualified, approved, and authorized to (i) purchase FD Products (the "Products"), and (ii) display, promote and sell FD Products to end users, only at Dealer's Authorized locations, all in accordance with the Terms and Conditions set forth herein, as revised from time to time (collectively the "Agreement"). The designation as an authorized FD Dealer is non-transferable.
- 1.2 **Related Obligations.** Dealer agrees:
 - i. Except as otherwise authorized by FD in writing, to only purchase FD products from FD or its authorized representative.
 - ii. That no exclusive rights are given to the Dealer by this Agreement.
 - iii. That it will not dispute or otherwise disparage the quality or reputation of FD or its Products or participate in any misleading or deceptive statements.
 - iv. That all Dealer advertising of FD Products will comply with applicable MAP pricing, as communicated to Dealer by FD from time to time.
 - v. That Dealer will not extend any warranty of FD products, on its or FD behalf, other than the standard FD product warranty, as issued by FD from time to time.
- 1.3 **Showroom Display.** Dealers will be required to display all FD Products, as authorized and directed by FD. Showroom Display requirements and additional terms are set forth on Exhibit A attached hereto. Dealer Terms and Conditions regarding Showroom Display are subject to revision by FD at any time.

2. TERM

- 2.1 **Termination.** This Agreement shall be effective as of the date executed by FD and Dealer, and shall continue in effect until terminated as follows:
 - 2.1.1 Immediately, if Dealer
 - 2.1.1.1 becomes insolvent, or the subject of a bankruptcy petition or other creditor proceeding.
 - 2.1.1.2 engages in felony criminal activity or crime involving moral turpitude, or any other activity which is detrimental to FD or FD Products in the marketplace.
 - 2.1.1.3 experiences a change of control whether by sale of substantially all its assets, merger, consolidation, or other transfer.
 - 2.1.1.4 a change in the persons principally responsible for Dealer's management
 - 2.1.1.5 defaults in any payment(s) due to FD for a period of thirty (30) days or more,
 - 2.1.1.6 trades, directly or indirectly, in grey market products, or otherwise trades in FD Products in violation of its obligations under this Agreement.
 - 2.1.2 Without cause at any time, on thirty (30) days prior written notice by one party to the other.
 - 2.1.3 Notwithstanding the above, FD reserves the right to immediately discontinue servicing Dealers that do not abide by this Agreement.
- 2.2 **Effect of Termination.** On termination of the Agreement, FD may, in its sole discretion, cancel or deliver any of Dealer's outstanding FD Product orders. Any amounts owed by the Dealer to FD shall become immediately due and payable, and the Dealer shall immediately discontinue promotion of FD Products and use of FD trademarks or other images and material. Those obligations under this Agreement which are continuing by nature (e.g. obligations of non-disparagement, confidentiality, payment of outstanding obligations) shall continue in full force and effect upon termination.

3. PURCHASE TERMS.

- 3.1 **Purchase Orders.** All FD Product orders by Dealer shall be subject to the terms and conditions of this Agreement and shall only be placed on a customer generated purchase order or a FD Order Form (in the event non-complying Dealer orders are placed, the terms and conditions of such orders, other than to the extent of identifying quantities of FD Products which FD has otherwise confirmed or shipped, are void and have no effect).FD
 - 3.1.1 **Price.** Dealer shall purchase the Products from FD at the prices (the "Prices") set forth in FD's published price list in force as of the date of Dealer's purchase order. 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 Dealer. The Dealer shall be responsible for all such charges, costs, and taxes; provided, that, Dealer shall not be responsible for any taxes imposed on, or with respect to, FD's income, revenues, gross receipts, personnel or real or personal property or other assets.
 - 3.1.2 **Right to Accept or Reject.** FD has the right, in its sole discretion, to accept or reject any Purchase Order. FD may accept any Purchase Order by confirming the order (whether by written confirmation, invoice or otherwise) or by delivering such Products, whichever occurs first. No Purchase Order is binding on FD unless accepted by FD as provided in this Agreement.





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- 3.1.3 Cancellation of individual Transactions.** FD may, without liability or penalty, cancel any individual transaction if Dealer is in violation of its payment obligations or is in breach of this Agreement. Dealer shall have no right to cancel or amend any Purchase Order submitted by it.
- 3.2 Shipping.** FD may, in its sole discretion, without liability or penalty, make partial shipments of FD Products to the Dealer. Each shipment will constitute a separate sale, and the Dealer shall pay for the units shipped whether such shipment is in whole or in partial fulfillment of a Purchase Order.
- 3.2.1 Method of Shipment.** Unless the Dealer expressly selects the method of shipment in the Purchase Order or in a separate writing, FD shall select the method of shipment. Method of shipment shall be determined based on the FD Price List completed and reviewed by Dealer. If Dealer (FOB) Freight/Free On-Board Origin collect is selected, then Dealer will supply its preferred Third-Party carrier with the account number, route, and method of shipment, which will be subject to approval by FD, in its sole discretion. If FD (FOB) Freight/Free On-Board Destination prepaid is selected, the order shall be shipped by a preferred carrier selected by FD, in its sole discretion.
- 3.3 Delivery.** All orders shall specify a preferred ship date. Notwithstanding the prior sentence, any delivery date quoted by FD is an estimate only. FD is not liable for or for any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery.
- 3.3.1 Inspection.** Dealers shall inspect FD Products within 15 days of receipt of the Products and either accept or, if such Products are nonconforming or excess products, reject such products. Dealer will be deemed to have accepted the Products unless it notifies FD in writing during the inspection period and furnishes such written evidence or other documentation as reasonably required by FD. FD If the Dealer timely notifies FD of any nonconforming or excess products, FD shall determine, in its sole discretion, whether the Products are nonconforming or excess products. If FD determines that the Products are nonconforming or excess products, it shall, in its sole discretion:
- 3.3.1.1** if such Products are nonconforming products, (i) replace such nonconforming products with conforming Products, or (ii) refund the price for such nonconforming products, together with all shipping and handling expenses incurred by Dealer in connection therewith; or
- 3.3.1.2** if such Products are excess products, refund the price for such excess products, together with all shipping and handling expenses incurred by Dealer in connection therewith. Such refund shall be subject to a 20% restocking fee.
- 3.3.1.3** No returns will be accepted unless accompanied by a FD return authorization number (RA).
- 3.3.2 Exclusive Remedy.** DEALER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN Section 3.3.1 ARE DEALER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING OR EXCESS PRODUCTS.
- 3.3.3 Title and Risk of Loss.** Title to Products ordered under any individual transaction passes to Dealer upon delivery of such Products. Risk of loss to all Products ordered under any Purchase Order passes to Dealer upon receipt by Dealer.
- 3.4 Payment Terms.** Dealer agrees to make payments to FD pursuant to invoice terms which are Net 30 days from the invoice date, unless otherwise agreed by FD. All invoices are payable in US dollars by check or wire to:
- FIREDISC, INC.
25145 Star Lane
Suite 1103
Katy, TX 77494
(281) 206-2678
customerservice@firedisccookers.com
- 3.4.1 Past Due Payments.** For any past due invoices, Dealer agrees to pay a late fee of one and one half percent (1-1/2%) per month on amounts due. The Dealer shall pay or reimburse FD for all costs and expenses incurred by FD in the collection of any amounts due hereunder including, without limitation, the costs of any court proceedings or arbitration and attorney's fees. In addition to all other remedies available under this Agreement or at Law (which FD does not waive by the exercise of any rights under this Agreement), if Dealer fails to pay any undisputed amounts when due under this Agreement, FD may (a) suspend the delivery of any Products, (b) reject Dealer's Purchase Orders (c) cancel accepted Purchase Orders, or (d) terminate this Agreement pursuant to Section 2.1.

4 GENERAL TERMS.

- 4.1 Confidentiality.** During the term of the Agreement, and always thereafter, Dealer and its staff shall maintain in confidence all proprietary or confidential information related to FD Products or FD business, which shall include any information which is not generally available to the public or is otherwise deemed by FD to be proprietary or confidential, and which shall include, without limitation, the terms of this Agreement.
- 4.2 Intellectual Property.** Dealer acknowledges that FD is the owner of various products, patents, registered trademarks, logos and designs from time to time in connection with the development, manufacture, marketing and sale of FD Products, and the goodwill associated therewith ("Intellectual Property"), and agrees



not to contest the validity or ownership of the Intellectual Property or any applications or registrations thereof, and shall not at any time apply for or obtain the registration of any FD Intellectual Property, or do anything or allow anything to be done which might in any way impair FD rights in and to the Intellectual Property. Dealer also agrees to immediately notify FD if it becomes aware of any potential infringement of any FD Intellectual Property and to not use any Intellectual Property in any manner without FD prior written consent.

- 4.3 Indemnification.** FD agrees to indemnify and hold Dealer harmless from any third-party claim or liability involving alleged FD Product design or manufacturing defects, intellectual property right infringement, or false advertising, to the extent due to FD actions or failures to act or related to FD failure to perform its obligation under this Agreement. Dealer agrees to indemnify and hold FD harmless from any injuries or damage that Dealer or its staff may suffer at any time while testing, using, selling or preparing for sale any FD Products, due to Dealer's failure to perform its obligations under this Agreement, or otherwise due to Dealers or its staffs' actions or failures to act.
- 4.4 Limitation of Liability.** IN NO EVENT SHALL FD BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY DEALER OR COULD HAVE BEEN REASONABLY FORESEEN BY DEALER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 4.5 Minimum Advertised Price Policy.** The Dealer covenants that it shall and shall cause each of its employees and agents to, comply with FD's Minimum Advertised Price (MAP) Policy (herein referred to as "MAP" and attached hereto as Exhibit "B"). The Dealer acknowledges that it has reviewed the MAP and hereby warrants, covenants, and agrees to perform in strict compliance with the MAP.
- 4.6 Miscellaneous.**
- 4.6.1 Superiority of Agreement over Dealers Purchase Order.** This Agreement is expressly limited to the terms of this Agreement. The terms of this Agreement prevail over any terms or conditions contained in any other documentation and expressly exclude any of Dealer's general terms and conditions contained in any Purchase Order or other document issued by Dealer. In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order or any other document issued by Dealer, the terms of this Agreement prevail.
- 4.6.2 Entire Agreement.** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, representations, or understandings between them relating to the subject matter. Except as otherwise set forth herein, this Agreement may only be modified or amended only by written agreement of the parties. FD
- 4.6.3 Choice of Law and Venue.** The parties agree that this Agreement shall be governed by the laws of the State of Texas, without regard to conflicts of the law principles. Furthermore, Dealer hereby agrees that the venue for all litigation and proceedings pursuant to, involving, arising out of, or relating to this Agreement shall lie solely within Harris County, Texas.
- 4.6.4 Severability.** The provisions of this Agreement are severable, and should any provisions be void, unenforceable, or invalid, such provision shall not affect any other portion of this Agreement.
- 4.6.5 Waiver.** Waiver of any right, obligation, or breach must be in writing and shall not be construed as continuing waiver of or consent to any subsequent breach of this Agreement.
- 4.6.6 Assignment.** Dealer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of FD. FD may assign any of its rights or delegate any of its obligations to any person, Affiliate or to any Person acquiring all or substantially all of FD's assets. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.
- 4.6.7 Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
- 4.6.8 Definitions.** Terms which are capitalized shall have the meaning attributed to them, as applicable, in the Terms and Conditions, the Dealer Agreement or the applicable FD Products, Prices and Terms.
- 4.6.9 Force Majeure.** FD shall not be liable or responsible to Dealer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) Law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any Governmental Authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "Force Majeure Event").



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EXHIBIT A
(Showroom Display Requirements)

1. The Dealer is required to display a minimum of one (1) cooker however, it is recommended that dealer display a minimum of three (3) cookers.
2. The Dealer is required to stack a minimum of three (3) cooker boxes. However, we have found that stacking more boxes helps drive more attention to the cookers.
3. It is recommended that the Dealer display a minimum of one (1) disassembled cooker to show product versatility.

