

BALANCEWORX, INC.'S TERMS AND CONDITIONS

1. These Terms Control. BALANCEWORX, INC.'S ("**BALANCEWORX**") SALE AND/OR PROVISION OF GOODS AND/OR SERVICES TO A THIRD PARTY ("**YOU**") IS MADE SUBJECT TO AND CONDITIONED ON YOUR ACCEPTANCE OF THESE TERMS. BALANCEWORX DISCLAIMS, OBJECTS TO, REJECTS, AND SHALL NOT BE BOUND BY, ANY OTHER TERMS, REPRESENTATIONS, WARRANTIES, AGREEMENTS OR UNDERSTANDINGS (WHETHER WRITTEN, ORAL OR IMPLIED), RELATING TO BALANCEWORX'S SALE AND/OR PROVISION OF GOODS AND/OR SERVICES; PROVIDED, HOWEVER, THESE TERMS MAY BE AMENDED, MODIFIED, WAIVED, TERMINATED, SUPERSEDED OR CONTRADICTED ONLY BY A WRITTEN INSTRUMENT THAT SPECIFICALLY REFERS TO THESE TERMS AND IS SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF BALANCEWORX. **BY PURCHASING AND/OR ACCEPTING GOODS AND/OR SERVICES FROM BALANCEWORX YOU AGREE TO BE BOUND BY THESE TERMS UNLESS OTHERWISE SPECIFICALLY AGREED BY BALANCEWORX PURSUANT TO THE PRECEDING SENTENCE.**

2. Independent Contractors. You and Balanceworx are independent contractors. Neither party shall have the power to direct or control the day-to-day activities of the other party, to create or assume any obligation on behalf of the other party, and neither party shall be deemed to be a partner, joint venturer, or employer/employee, of the other party.

3. Payment. Payment terms are as set forth in the applicable Balanceworx acknowledgement of an order for goods or services; if no terms are so provided, Balanceworx will send invoices for all goods and/or services provided, including any shipping costs, and you shall pay each invoice in full within thirty (30) days of receipt.

4. Shipment. Goods will be shipped FOB Origin and you will be ultimately be responsible for all shipping costs, which may be paid by Balanceworx upfront and invoiced to you as provided above.

5. Cancellation. All orders are final and may not be cancelled once acknowledged by Balanceworx, unless otherwise agreed by Balanceworx in writing.

6. Compliance with Laws. You must comply with all applicable laws in your use the goods and/or services provided by Balanceworx.

7. Intellectual Property

7.1. License. Balanceworx hereby grants to you and your affiliates a revocable, worldwide, sublicensable, limited license to use the intellectual property of Balanceworx incorporated into the goods provided by Balanceworx ("**Balanceworx IP**"), including any trademarks, tradenames, patents, and copyrights, in connection with the marketing and sale of goods purchased from Balanceworx pursuant to these Terms. You agree that you will not use the licensed Balanceworx IP in a manner likely to diminish its commercial value or the goodwill of Balanceworx, and that you will not use or permit the use of any Balance IP likely to cause confusion with Balanceworx's trademarks and tradenames.

7.2. No Transfer of IP. Except for the limited license expressly granted in the foregoing section 7.1, or unless otherwise provided by an agreement made in accordance with section 1, neither these Terms nor Balanceworx provision of goods or services shall be construed as a license or transfer of any intellectual property rights of Balanceworx.

7.3. No Infringement. Balanceworx warrants that its trademarks and tradenames, as well as the goods sold to you by Balanceworx under these Terms, do not violate or infringe upon the intellectual property rights on any third party.

8. Restrictive Covenants. You acknowledge that you may receive Balanceworx's Confidential Information (defined below) in connection with Balanceworx's provision of goods and/or services. As consideration for the disclosure of such information, the rights and obligations provided for in these Terms, and Balanceworx provision of the goods and/or services to you, you agree to the following restrictive covenants, which you acknowledge are reasonable in scope and necessary to protect Balanceworx's interests.

8.1. Non-Disclosure. During and after the term of this Agreement, you agree to hold Balanceworx's Confidential Information in strict confidence and not to disclose it to any third party other than your employees and advisors who need to know it in order to assist in the performance of these Terms and who agree to be subject to non-disclosure covenants equivalent to these Terms. As used in these Terms, "**Confidential Information**" means trade secrets and any other confidential or proprietary information or know-how of Balanceworx, except that which is (a) in the public domain or becomes generally known in the industry through no fault or breach of these Terms; (b) obtained from a third party that was lawfully in possession of such information and entitled to disclose such information; (c) previously known or independently developed by you prior any dealings with Balanceworx; or (d) required to be disclosed by court order or law, provided that Balanceworx has been given reasonable advance notice of the request for production of the information and an opportunity to seek a protective order or similar ruling limiting its disclosure.

8.2. Non-Solicitation. During your relationship with Balanceworx and for one (1) year after, you agree that it you will not solicit or encourage any employee, contractor, vendor, or customer of Balanceworx to terminate their relationship with Balanceworx.

9. Representations and Warranties.

9.1. By You. You represent and warrant to Balanceworx that you have full capacity and ability to agree to and perform these Terms; that your purchase or acceptance of the goods and/or services will not violate any laws or the rights of any third parties; that you will not use the goods or services to violate any laws or rights of any third parties; and that you will inspect the goods and/or services upon receipt, immediately notify Balanceworx of any defects; and that you will exercise ordinary care and observe all specifications and instructions of Balanceworx or the manufacturer in your use, maintenance, and handling of the goods.

9.2. By Balanceworx. Balanceworx represents and warrants to you that Balanceworx has full capacity and ability to agree to and perform these Terms and that Balanceworx's sale and provision of goods and/or services to you will not violate any laws or the rights of any third parties.

9.3. Additional Balanceworx Limited Warranty for Goods. Unless a different warranty period is given in a written Balanceworx acknowledgment of an order or in an agreement made by Balanceworx pursuant to section 1 of these Terms, Balanceworx (a) expressly warrants that for a period of 12 months from the date of fab sign-off that goods will be free of defects in material and workmanship; and (b) will honor additional supplier warranties on parts included in goods sold to you by Balanceworx. Defective products must be returned to Balanceworx. The exclusive remedy for a breach of the limited warranty made under this section 9.3 is that Balanceworx will, in its sole discretion, repair or replace the defective part or good, or refund the purchase price paid for the defective good. This limited warranty does not apply to any damage or defect caused by misuse, misrepair, or mishandling of the goods (unless by an employee or agent of Balanceworx).

9.4. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, SUPPLIER PROVIDES THE GOODS AND/OR SERVICES "AS IS"; MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ITS GOODS AND SERVICES; AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. Indemnification.

10.1. By You. You agree to indemnify, defend, and hold harmless, Balanceworx and its owners, employees, and agents, from and against all claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees (all "*Claims and Liabilities*"), which arise from: (a) the breach of these Terms, including representations and warranties made in these Terms, by you; (b) any representation or warranty made by you (or your employees or agents) that was expressly disclaimed by Balanceworx; or (c) your (or your employees' or agents') alteration, modification, misuse, or mishandling of any goods provided by Balanceworx.

10.2. By Balanceworx. Balanceworx agrees to indemnify, defend, and hold harmless, you and your owners, employees, and agents from and against all Claims and Liabilities, which arise from any breach of these Terms, including representations and warranties made in these Terms, by Balanceworx, except as limited by sections 9.3-9.4 & 11.

11. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, (A) IN NO EVENT WILL BALANCEWORX BE RESPONSIBLE OR LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING FROM GOODS OR SERVICES PROVIDED TO YOU, UNDER ANY LEGAL THEORY INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE OR STRICT LIABILITY; AND (B) BALANCEWORX'S AGGREGATE LIABILITY IN CONNECTION WITH ITS PROVISION OF GOODS OR SERVICES SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU TO BALANCEWORX FOR GOODS OR SERVICES.

12. Insurance. You shall obtain and maintain comprehensive general liability and product liability insurance coverage sufficient to cover your potential liabilities under these Terms and arising from your sale and use of goods provided by Balanceworx. You agree to provide a certificate of insurance upon request by Balanceworx.

13. Assignment; Binding Effect. These terms shall be binding on, and inure to the benefit of, the parties and their respective successors and assigns.

14. No-Reliance. You expressly disclaim reliance on any and all representations, warranties, agreements, and understandings, which are not specifically set forth in writing in these Terms or any agreement made in accordance with section 1.

15. Severability. If any of these Terms is held to be unenforceable under applicable law such provision shall be reformed to be enforceable and, as much as possible, to reflect the original intent of these Terms. If such reformation is not possible, then the unenforceable provision shall be excluded from these Terms and the remaining provisions shall remain in full force and effect.

16. Governing Law and Venue. Balanceworx provisions of goods and/or services is conditioned upon and subject to these Terms, which shall be governed by and construed in accordance with the laws of the STATE OF TEXAS (without regard to conflict of laws principles). You further agree that the exclusive forum and venue for any litigation arising out of or relating to these Terms or Balanceworx's sale or provision of goods and/or services shall be the courts with jurisdiction to hear such suits in TRAVIS COUNTY, TEXAS.