

## Terms and Conditions

These terms and conditions (hereinafter referred to as "Standard Terms") are incorporated by reference into any and all orders, whether placed online, by telephone, by email or through another method (hereinafter referred to as the "Order") between any person or entity (hereinafter referred to as the "Client") and Splash Tents, Inc., a Texas corporation. In the event of a conflict between these Standard Terms and the written order confirmation (hereinafter referred to as the "Order Confirmation"), the Standard Terms shall govern. These Standard Terms and the Order Confirmation are collectively referred to herein as the "Agreement."

**1. Terms of Payment.** (a) All Orders must be fully paid at the time the Order is accepted unless otherwise stated in writing in the Order Confirmation by Splash Tents, Inc. Splash Tents, Inc. reserves the right to delay shipment of any Order until the Client has paid Splash Tents, Inc. in full. All amounts paid by the Client are non-refundable. Splash Tents, Inc. may from time to time apply any payment, regardless of whether the Client designated the payment for the Order or another order or any other purpose, to any outstanding amounts due by Client.

If Client provides a debit card or credit card, Splash Tents, Inc. may place a hold on the card for the amount of the order (and any discounts for payment by check or wire transfer may be removed and the amount of the discount added to the amount due by the Client). Client should request that the hold on the card be released, and Splash Tents, Inc. may delay releasing the hold until Splash Tents, Inc. is satisfied that funds paid by the Client are good and do not need to be returned. If Splash Tents, Inc. has a credit card or debit card on file and the payment is not made, Splash Tents, Inc. may, in its sole discretion, charge any outstanding amounts due against the credit card or debit card (and any discounts for payment by check or wire transfer may be removed and the amount of the discount added to the amount due by the Client). Client should be aware that financial institutions may take additional time to release the hold on the card.

(b) Amounts unpaid by Client after thirty (30) days shall bear interest at the rate of one-and-one-half percent (1.5%) per month (or the highest rate permitted by law, if less) until paid in full. In the event of any failure by Client to make payment, Client will be responsible for all expenses (including, without limitation, attorneys' fees and court costs) incurred or accrued (regardless of whether or not such expenses are in-house or out-of-pocket) in collecting such amounts plus administration charges. Splash Tents, Inc. shall have a lien upon all goods pursuant to the Order or otherwise sold by Splash Tents, Inc. to the Client until Splash Tents, Inc. has been paid in full, regardless of whether such goods are in the Client's possession. In the event Splash Tents, Inc. stops a shipment in route to Client due to non-payment, the Client shall be responsible for the costs of shipment, return shipment and any other costs for stopping the shipment. In the event Client's check is dishonored for non-payment, the Client shall pay an additional \$30 NSF fee (which fee may be increased from time to time without prior notice). Remedies for non-payment set forth herein are in addition to those remedies available at law or equity.

- 2. Delivery Dates.** All references to shipping and delivery dates, including, without limitation, “Ship Date” and “In Hand Date” are estimates, and Splash Tents, Inc. is not responsible or liable if the Client does not receive the Order by the date promised.
- 3. Cancellation.** In view of the nature of the business, Orders are not cancellable. In the event that Splash Tents, Inc., in its sole discretion, agrees to cancel an Order at the request of the Client, the cancellation of the Order will only be accepted on condition that any costs, charges (including, without limitation, rush charges) and expenses already incurred, are reimbursed to Splash Tents, Inc. The minimum cancellation fee is 20% of the value of the Order.
- 4. Risk of Loss.** The risk of loss for all items purchased from Splash Tents, Inc. passes to the Client upon delivery to UPS or other carrier. Client is responsible for requesting and obtaining any required insurance for shipping. If any items are damaged during shipping, Client shall promptly notify Splash Tents, Inc. and shall promptly make a claim against the carrier. It is Client’s responsibility to inspect all deliveries and note any damages or shortages on the delivery receipt when signing. When shipping an Order, Splash Tents, Inc. may, in its sole discretion, require or not require the carrier to obtain a signature for delivery confirmation.
- 5. Customer Reference/Logo.** Unless otherwise agreed to in writing by Splash Tents, Inc., Client grants Splash Tents, Inc. a license to use Client’s name, logo and word mark in connection with Splash Tents, Inc.’s satisfied customer list, testimonials and other similar uses.
- 6. Taxes and other charges.** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature imposed by any governmental authority, on or measured by the transaction between Splash Tents, Inc. and Client shall be paid by Client in addition to the prices quoted or invoiced. If Client is exempt from a tax, Client shall provide Splash Tents, Inc. at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge. In the event Splash Tents, Inc. is required to pay any such tax, fee or charge (regardless of whether such tax, fee or charge is imposed before or after the sale), Client shall indemnify and reimburse Splash Tents, Inc. for any such tax, fee or charge and any penalties or associated fees or expenses.
- 7. Warranty; Disclaimer.** (a) Except as provided in section (b) below, SPLASH TENTS, INC. MAKES NO WARRANTY WITH RESPECT TO ANY MATTER INCLUDING, WITHOUT LIMITATION, THE GOODS DELIVERED PURSUANT TO THIS AGREEMENT, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, TITLE, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY REPRESENTATION OR WARRANTY REGARDING THE PERFORMANCE, AVAILABILITY OR FUNCTIONALITY OF ANY ASPECT OF THE SERVICES OR DELIVERABLES HEREUNDER. Some of our manufacturers (such as INTERNATIONAL E-Z UP®, INC.) provide a warranty subject to their terms and conditions, but Splash Tents, Inc. is not responsible for any such warranty.
- (b) Splash Tents, Inc. generally does not provide any warranty. However, if set forth in writing by Splash Tents, Inc. in the Order Confirmation, Splash Tents, Inc. may provide a limited warranty or extend the

limited warranty of the manufacturer, subject to the following terms (or, if more restrictive, the terms of the limited warranty of the manufacturer being extended): Splash Tents, Inc. warrants, on a limited basis subject to the limitations in this paragraph, to the original retail purchaser that the products in the Order are to be free from defects in material or workmanship for a period set forth in writing in the Order Confirmation (which in no event will exceed five (5) years) from the date of original purchase. This warranty applies only for normal and expected uses, as determined by Splash Tents, Inc. Defects are limited to any defect which is a result of the manufacturing process. Splash Tents, Inc.'s obligation and liability under this warranty is limited to the repair or replacement (at its option) of the product or its parts, after its own review and examination. Before returning any part or product to Splash Tents, Inc. or its designated representative, Client must contact Splash Tents, Inc. to obtain specific return shipping instructions. All shipping costs must be prepaid by the Client, and Splash Tents, Inc. is not responsible for products damaged in transit. This warranty shall be void as to any product which has been altered or modified in any manner. This warranty does not apply to damages caused by wind, rain, or other forces of nature, nor to accidental, negligent or deliberated damage of the product, nor to use of the product that does not conform with the product instructions and/or appropriate procedures, nor from damage resulting from shipping or transportation. This warranty does not cover normal wear and tear. This express warranty is provided in lieu of all other warranties, expressed or implied. The warranty set forth in this Section (b) shall only apply if the warranty is set forth in writing in the Order Confirmation and if the length of the warranty exceeds the length of the warranty provided by the manufacturer (if the length of the warranty stated on the Order Confirmation is the same as the manufacturer, then Splash Tents, Inc. is only providing notice of the warranty and the Client shall only have recourse against the manufacturer to enforce the warranty).

**8. Inspection.** Client shall inspect the Order promptly after receipt and shall notify Splash Tents, Inc. in writing of any missing items within three (3) days of receipt of the Order and any other claims, including, without limitation, warranty claims, within thirty (30) days after Client discovers or should have discovered the facts upon which the claim is based. Failure of Client to give such written notice shall constitute a waiver of such claim.

**9. Limitations of Liability.** In the event that Splash Tents, Inc. fails to deliver any goods or services in accordance with the applicable Order, or in the event of any other failure, technical or otherwise of such goods or services, or for any other breach, negligence, claim, damage, loss or liability of Splash Tents, Inc., the entire liability of Splash Tents, Inc. and the exclusive remedy of Client shall be limited to price of the Order, which may only be used as a credit against a future purchase. IN NO EVENT SHALL SPLASH TENTS, INC. BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, EVEN IF SPLASH TENTS, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL SPLASH TENTS, INC.'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM EXCEED THE AGGREGATE AMOUNT OF THE ORDER. Without limiting the foregoing, Splash Tents, Inc. shall have no liability for any failure or delay resulting from any governmental action, regulation, fire, wind, hail, flood, insurrection, earthquake, power failure, riot, explosion, embargo,

strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, shipping delays, work slowdown, force majeure event or any other condition affecting production or delivery in any manner. Splash Tents, Inc. is only obligated to use commercially reasonable efforts to provide the goods described in the Order and is subject to availability and delays. Splash Tents, Inc. hereby disclaims any liability for any and all injury or loss or damage to any person or property to the fullest extent permitted by law, and the Client agrees to indemnify Splash Tents, Inc. for any claims by a third party for any such injury or loss or damage. Client acknowledges that Splash Tents, Inc. has entered into this Agreement in reliance upon the provisions in this section titled "Limitations of Liability" and that the same is an essential basis of the bargain between the parties.

**10. Set-up.** Client must evaluate each location for set up and determine securing and anchoring method and devices appropriate for the conditions. Some soils or conditions require different staking or securing than what may be provided with the Order. Since weather is unpredictable, Client and anyone using the products must use good judgment, common sense and knowledge of local conditions.

**10. Non-Recourse.** Client agrees that it shall have no recourse or other claim, whether in contract, tort or otherwise, against any past, present or future director, officer, employee, agent, affiliate or representative of Splash Tents, Inc. The sole recourse of Client in the event of a claim shall be against Splash Tents, Inc.

**11. Miscellaneous.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter of the Order and supersedes all prior or contemporaneous agreements and understanding, whether written or oral, relating to the Order. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to principles of conflicts of law. Any dispute arising out of or relating to this Agreement (whether in contract or tort), or the negotiation, execution, termination, performance or nonperformance including, without limitation, any representation or warranty (which, for the avoidance of doubt, is disclaimed herein except as provided in Section 7(b)) in connection with this Agreement or as inducement to enter into this Agreement, shall be brought exclusively in the federal or state courts located in Collin county in the State of Texas, the jurisdiction and venue of which the parties irrevocably consent to for this purpose. Client agrees to service of process by mailing a copy of any such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Client's address that is available to Splash Tents, Inc., in addition to any other service of process permitted by law. The foregoing sentence shall not limit the ability of Splash Tents, Inc. to enforce a judgment against the Client in any other jurisdiction. This Agreement may be amended only by a writing (excluding email) executed by a duly authorized representative of each party. No employee, officer or other representative is authorized to verbally amend the terms of this Agreement, and the Client agrees not to rely on any verbal statements. If any provision contained in this Agreement is determined to be invalid, illegal or unenforceable in any respect under any applicable law, then such provision will be severed and replaced with a new provision that most closely reflects the original intention of the parties, and the remaining provisions of this Agreement will remain in full force and effect.