

## TERMS AND CONDITIONS OF SALE

I. **Payment.** Customer agrees to pay Rise Right, LLC dba Emerald Elements (“EE”) immediately at the time of delivery of the goods to Customer’s designated location for receipt of the goods described in the accompanying invoice (the “Goods”). Customer’s order is subject to rejection or acceptance in EE’s sole discretion. Notwithstanding anything herein to the contrary, EE may, in its sole discretion, extend credit terms to Customer.

II. **Warranties Disclaimer.** EE DISCLAIMS ANY AND ALL WARRANTIES OR CONDITIONS OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR AGAINST INFRINGEMENT, WHICH ARE EXPRESSLY EXCLUDED. EE SPECIFICALLY DOES NOT WARRANT THE ACCURACY OR SUFFICIENCY OF ANY ADVICE OR RECOMMENDATIONS GIVEN TO BUYER IN CONNECTION WITH THE SALE OF GOODS HEREUNDER.

III. **Title and Risk of Loss.** Title and risk of loss pass to Customer upon delivery of the Goods to Customer’s designated place of receipt. Customer assumes all risk, responsibility, and liability related to its re-sale of the Goods, whether incorporated into other products or re-sold as is.

IV. **Limitation of Liability.** IN NO EVENT SHALL EE BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL EE’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO EE FOR THE GOODS SOLD HEREUNDER.

V. **Compliance with Laws, Rules, and Regulations.** Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these Terms and Conditions.

VI. **Indemnification.** Customer shall indemnify, defend, and hold harmless EE and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, for any claim arising from or related to: (a) Customer’s acts or omissions; (b) Customer’s breach of these Terms and Conditions; or (c) Customer’s breach of any other agreement entered into between it and EE.

VII. **Acknowledgment** of Binding Nature. These Terms and Conditions constitute a binding contract between EE and Customer. Customer acknowledges agreement and acceptance of these Terms and Conditions by placing an order with EE.

VIII. **Entire Agreement.** These Terms and Conditions constitute the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

IX. **Governing Law.** These Terms and Conditions and all matters arising out of or relating thereto shall be governed by and construed in accordance with the laws of Minnesota without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction.

X. **Force Majeure.** EE shall not be liable for any damages resulting from: any delay or failure of performance arising from any cause not reasonably within Seller's control; accidents to, breakdowns or mechanical failure of machinery or equipment, however caused; strikes or other labor troubles, shortage of labor, transportation, raw materials, energy sources, or failure of usual means of supply; fire; flood; war, declared or undeclared; insurrection; riots; acts of God; or priorities, allocations or limitations or other acts required or requested by Federal, State or local governments or any of their sub-divisions, bureaus or agencies. EE may, at its option, delay performance hereunder for any period reasonably necessary due to any of the foregoing.

Rise Right, LLC d/b/a Emerald Elements