

## DIVERSIFIED SPORTS, INC. TERMS AND CONDITIONS

- 1. Applicability.** These terms and conditions of sale (these “**Terms**”) govern the sale and/or rental of the goods and equipment (the “**Goods**”) described on the reverse side of these Terms (the “**Invoice**”) by Diversified Sports, Inc., a Washington corporation (“**Seller**”) to the customer identified thereon (“**Buyer**”). These Terms and the Invoice are collectively referred to herein as the “**Agreement**.”
- 2. Delivery.** The Goods will be delivered in accordance with the timelines set forth between the parties. Seller shall not be liable for any delays, loss or damage in transit. Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the address identified on the Invoice (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point, and Buyer shall be responsible for any and all additional carrier-imposed fees including, but not limited to, “Residential Delivery”, “Lift Gate”, “Redelivery”, or other costs and expenses associated with delivery of the Goods.
- 3. Title and Risk of Loss.** Title to purchased Goods passes to Buyer upon delivery of the Goods at the Delivery Point. Risk of loss for the Goods passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the Purchase Price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer hereby authorizes Seller to file a financing statement and/or undertake any other action necessary to perfect Seller’s security interest and lien in and to the Goods.
- 4. Inspection; Returns.** Buyer shall inspect the Goods upon receipt for damage and missing items and Buyer will be deemed to have accepted the Goods unless Buyer notifies Seller in writing within two (2) days of delivery of any nonconforming Goods and furnishes written evidence or other documentation as required by Seller. With Seller’s prior written authorization, Buyer may return Goods in new and unused condition within thirty (30) days of delivery provided, however, Buyer shall pay a restocking charge equal to twenty percent (20%) of the purchase price for all Goods returned. No returns will be accepted after thirty (30) days of delivery. Buyer shall ship, at its expense and risk of loss, any returned Goods to Seller. Buyer shall be responsible for all inbound and outbound shipping charges arising under this Agreement, and Buyer shall not be reimbursed or refunded for any shipping costs or expenses.
- 5. Return of Rented Goods.** Buyer shall promptly ship and return, at Buyer’s sole cost and expense, all rented Goods to Seller within the timeline and to the location(s) as set forth by Seller. All rented Goods shall be returned to Seller in substantially the same condition as existed when received by Buyer. For any rented Goods returned to Seller that are damaged, destroyed, lost, or otherwise impaired upon to delivery to Seller, whether due to Buyer’s actions or otherwise, Buyer shall, at Seller’s election, either purchase and deliver to Seller a substantially similar replacement for such rented Goods or pay Seller for any decrease in value for such rented Goods.
- 6. Price; Payment.** Seller shall sell and/or rent the Goods, as applicable, to Buyer at the price(s) set forth on the Invoice, including all related sales tax, shipping costs, and other expenses (the “**Purchase Price**”). Buyer shall pay the Purchase Price to Seller on or before the date set forth on the Invoice (the “**Payment Due Date**”) by wire transfer, check, or cash. If the Purchase Price is not paid within thirty (30) days of the Payment Due Date, Buyer shall pay Seller an additional two percent (2%) compounding financing fee on the Purchase Price. Buyer shall reimburse Seller for all costs incurred in collecting or seeking to collect any payments required hereunder, including, without limitation, attorneys’ fees and expenses.
- 7. No Warranties. THE GOODS SOLD HEREUNDER ARE SOLD AND/OR RENTED AS-IS. SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE GOODS, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**
- 8. Limitation of Liability. IN NO EVENT SHALL SELLER 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 SELLER 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 SELLER’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 PURCHASE PRICE FOR THE GOODS SOLD HEREUNDER. The limitation of liability set forth above shall not apply to liability resulting from Seller’s gross negligence or willful misconduct.**
- 9. Indemnification.** Buyer shall indemnify, defend, and hold harmless Seller and Seller’s officers, employees, representatives, and agents (each an “**Indemnified Party**”) from and against, any losses, damages, and liabilities suffered, incurred or sustained by an Indemnified Party or to which an Indemnified Party becomes subject, resulting from, arising out of or relating to any claim of loss or damage resulting from the Goods and the use thereof.
- 10. Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 11. Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted 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 or circumstances beyond the reasonable control of Seller 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, lockouts, strikes or other labor disputes (whether or not relating to either party’s 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.
- 12. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
- 13. Relationship of the Parties.** Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 14. Governing Law; Severability.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.