



# General Terms and Conditions

**1. Parties.** "We" and related terms and "SETTERSTIX" refer herein to Setterstix Inc., a Delaware corporation; "you" and related terms and "Purchaser" herein refer to any person or entity purchasing or offering to purchase Goods from SETTERSTIX. The goods and services delivered or to be delivered by SETTERSTIX to Purchaser are herein referred to as the "Goods."

**2. Acceptance.** The terms and conditions of sale and delivery herein set forth (the "Terms and Conditions"), together with the terms set forth on the credit application, if applicable (available at SETTERSTIX's website, [www.setterstix.com](http://www.setterstix.com)) shall constitute the sole and exclusive agreement between SETTERSTIX and Purchaser with respect to any transaction between SETTERSTIX and Purchaser. Mere issuance of a form by or on behalf of Purchaser containing different or additional provisions shall not constitute a specific objection. An order shall not be effective until SETTERSTIX shall have accepted it in writing. SETTERSTIX's acceptance of Purchaser's order shall not constitute an acceptance of printed provisions on any form supplied by Purchaser which are different from or additional to any term hereof, unless specifically accepted in writing by an authorized officer of SETTERSTIX, and such different or additional provisions are hereby expressly rejected.

**3. Orders.** A contract shall not be established except upon our written confirmation of an order. We shall be entitled to assume (a) acceptance of these Terms and Conditions (b) any additional terms and conditions set forth in our acknowledgment of order and (c) confirmation of your order, upon acceptance of the delivered goods or your compliance with our request for payment in advance or your having a letter of credit issued for our benefit. Should Purchaser require amendments to be made to its order subsequent to our confirmation of the same, no such amendment shall be effective unless we agree to such amendment in writing; we may, at our discretion, refuse to accept all or part of any such request.

**4. Suspension and Cancellation.** Upon doubt of Purchaser's financial solvency or creditworthiness, we shall be entitled to suspend performing our contractual obligations. If Purchaser does not provide adequate assurance and/or adequate security to support the payment of any outstanding order within the time specified by SETTERSTIX, SETTERSTIX may thereupon cancel any open order and, without limiting the generality of the foregoing, shall not be obligated to deliver any of the ordered Goods and shall be entitled promptly to be indemnified and held harmless by Purchaser from and against any losses, damages, liabilities, costs and expenses incurred and suffered by SETTERSTIX in connection with the suspension and/or cancellation of any order (including without limitation lost profits and costs incurred to manufacture the Goods ordered from us and otherwise fill the order).

**5. Prices and Delivery.** Written price quotations issued by SETTERSTIX expire thirty (30) days from the date of issuance and may be withdrawn by written notice at any time during this period, unless the relevant offer shall have been accepted in writing by Purchaser. Unless specified otherwise by SETTERSTIX in writing, prices are F.O.B. (as defined by New York law) SETTERSTIX's factory. Whenever possible, SETTERSTIX will ship in accordance with Purchaser's instructions. If a carrier and/or a method of shipment and/or routing are not specified, SETTERSTIX will exercise its professional judgment in selecting a carrier, the method of shipment and/or routing, as the case may be, in order to deliver the Goods to Purchaser's address indicated by Purchaser (the "Purchaser's Site"). SETTERSTIX shall not be responsible for any other costs and expenses in connection with the transportation from the point of origin to the Purchaser's Site, including without limitation, transport insurance and charges incurred at the point of destination such as any costs of storage, unpacking, assembly, installation or any other work, services or expenses performed or incurred at Purchaser's Site. In any case, the risk of loss and damage shall pass over to Purchaser once the Goods have been put into the possession of the carrier at the point of origin.

**6. Time for Delivery.** Any delivery dates furnished by SETTERSTIX to Purchaser are estimates only and do not bind SETTERSTIX to ship or deliver the Goods on the dates indicated unless specifically so stated by SETTERSTIX in writing to be binding. SETTERSTIX reserves the right to make partial shipments and to submit separate invoices to Purchaser for each such partial shipment. If Purchaser defaults in its obligations in regard to any partial shipment, SETTERSTIX may suspend any additional shipments unless and until Purchaser cures such default, and shall have such other remedies set forth herein. Binding delivery dates are subject to change for any cause which interferes with SETTERSTIX's production, supply, transportation or installation of the Goods (whether or not caused or contributed to by SETTERSTIX's negligence or fault), including, but not limited to, any event of force majeure. If SETTERSTIX fails to comply with designated, binding or other delivery dates, makes partial shipments, or fails to perform its obligations in accordance with any time limits, SETTERSTIX shall not incur any liability whatsoever for any direct, indirect, consequential, incidental, special, exemplary or punitive damages (including claims for loss of profits, revenue, time, ingredients or products) which may be incurred by Purchaser or any other person or entity. Title to the Goods sold hereunder shall pass from SETTERSTIX to Purchaser at the time when the risk of loss and damages passes in accordance with the applicable shipping term as described in the last sentence of Section 5.

**7. Force Majeure.** In the event of delay due to severe weather, war, riots, labor or industrial disputes, energy or other raw material shortages, transportation problems, accidents, administrative measures or disruptions in SETTERSTIX's or one of its affiliates' or direct or indirect supplier's businesses or some other cause beyond SETTERSTIX's control, the time for any delivery shall be extended accordingly and SETTERSTIX shall not incur any liability whatsoever for any direct, indirect, consequential, incidental, special, exemplary or punitive damages (including claims for loss of profits, revenue, time, ingredients, products or Purchaser's or any other person's or entity's claims arising out of or relating to changes in delivery dates, partial shipments or untimely performance) which may be incurred by Purchaser or any other person or entity. Upon the occurrence of a force majeure event, SETTERSTIX may, at its sole discretion, elect, by a written notice to Purchaser, to cancel the order and determine not to ship some or all of the Goods.

**8. Storage.** Should Purchaser fail to accept Goods upon delivery by SETTERSTIX on or within ten (10) business days of the delivery date set forth in the order acknowledgment or as otherwise agreed in writing, we shall be entitled to make arrangements for the storage of the Goods and be entitled to charge Purchaser for the Goods as well as for all storage costs plus a handling and administration charge of up to one thousand U.S. Dollars (\$1,000) .

**9. Taxes.** Except as otherwise provided by law, Purchaser shall be solely responsible to pay all income, sales, excise, or other taxes due in connection with any sale hereunder. If Purchaser claims an exemption from any tax, Purchaser shall submit the relevant exception certificate to SETTERSTIX with the written order acknowledgement.

**10. Specifications.** The specifications contained in our order confirmation shall be authoritative in determining our obligations regarding the quality of Goods. Insofar as the order specifications make reference to specifications contained in brochures or other printed or other materials (e.g., on our website, [www.setterstix.com](http://www.setterstix.com)), such specifications shall be deemed merely to be examples, and shall not be binding upon us.

**11. Inspection.** Purchaser shall diligently examine the delivered Goods and shall notify SETTERSTIX of any damage to the Goods without delay upon Purchaser's receipt of the Goods.

**12. Limited Warranty.** SETTERSTIX warrants that the Goods shall substantially conform to the specifications established by SETTERSTIX in regard to the Goods under normal use and service. If any failure to conform substantially to any specification is reported to SETTERSTIX in writing within thirty (30) days after the date of receipt of the Goods by Purchaser and to the extent that any substantial non-conformance cannot be detected by a reasonable and customary inspection, such report shall be made promptly and within twelve (12) months after the date of shipment of the Goods to Purchaser; provided that the Goods have been stored and handled in accordance with SETTERSTIX's recommendations and/or guidelines, particularly storage indoors and without exposure to high humidity. Purchaser will not be entitled to a warranty claim merely on the grounds of non-conformance of the Goods' optical characteristics; Purchaser must also demonstrate that the Goods' functionality was compromised. SETTERSTIX, upon being satisfied of the existence of such non-conformity, shall correct the same, at its sole election, by delivering to Purchaser replacement of such number or quantity of the Goods as shall have a non-conformity within a reasonable period of time (which may exceed sixty (60) days). Purchaser shall separate non-conforming Goods from conforming Goods, and Purchaser shall be deemed to have accepted the conforming Goods. If SETTERSTIX is unable or unwilling to correct such non-conformity by delivering replacement Goods, whether due to the nature of such non-conformity, or for any other reason, SETTERSTIX shall, at its sole election, reduce the purchase price accordingly or grant Purchaser a credit against future purchases. SETTERSTIX shall in no event be required to refund any part of the purchase price. The warranty set forth in this paragraph shall apply not only to the Goods but also to any replacement Goods. This warranty shall not cover any damage or defect caused by or resulting from (i) alterations or modifications to the Goods, (ii) negligence, accident, abuse, misuse, improper, unsuitable or abnormal usage or storage of the Goods, (iii) failure to conform strictly to SETTERSTIX's instructions in connection with the use, transportation or storage of the Goods, (iv) defects due to specifications supplied by Purchaser, (v) exposure of the Goods to unreasonable temperatures or other environmental conditions, or (vi) storage and usage past specified product life. Ordinary wear and tear shall not be considered a defect in workmanship or materials. The foregoing shall be Purchaser's sole and exclusive remedies, and the liability of SETTERSTIX hereunder is expressly limited to replacement of nonconforming Goods or the grant of a credit, as the case may be. SETTERSTIX SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSON FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE PAID BY PURCHASER AND SETTERSTIX SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSONS, WHETHER BY WAY OF INDEMNIFICATION OR CONTRIBUTION OR OTHERWISE, FOR INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST REVENUE, LOST PROFITS, LOST TIME, LOST INGREDIENTS OR LOST PRODUCTS), WHETHER ARISING FROM DEFECTIVE WORKMANSHIP OR MATERIALS OR DESIGN, BREACH OF WARRANTY, DELAYS IN DELIVERY OR FROM ANY OTHER CAUSE WHATSOEVER, INCLUDING THE NEGLIGENCE OF SETTERSTIX OR ANY ENTITIES CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH SETTERSTIX. THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, AND THE WARRANTIES OR MERCHANTABILITY OR FITNESS FOR PURPOSE OR OTHERWISE, EXPRESS OR IMPLIED, ARE EXCLUDED. Any claim by Purchaser shall be made in writing, shall describe the full Lot Number and Inspector Number of any defective Good, all relevant facts in sufficient detail (including all relevant documents) and shall be delivered to SETTERSTIX no later than thirty (30) days after Purchaser becomes aware of any alleged defect, and Purchaser shall substantiate its claim by sending samples of any defective Good. SETTERSTIX's warranty obligation is limited to the original Purchaser of Goods. Damage incurred in transit from the point of origin to Purchaser's Site or occasioned by accident, negligence, abuse or alteration is not included in this warranty. SETTERSTIX warranty applies only to SETTERSTIX Goods. The warranty against defects only encompasses defects existing at the time of delivery. The warranty does not cover material supplied by Purchaser. We shall be entitled to charge Purchaser for the costs and expenses incurred in examining the Goods in the event of an unjustified claim of defects.

**13. Return Policy.** SETTERSTIX shall not accept for return any Goods (i) that are special ordered, (ii) that are printed, (iii) that are closeout or final sale, or (iv) if such Goods' packaging or shipping materials (e.g., shipping carton) were opened. No Goods shall be returned without SETTERSTIX's prior written consent and any return must be made within fifteen (15) days after delivery to Purchaser. To obtain SETTERSTIX's consent (and a return authorization number), contact SETTERSTIX's customer service department at [nan@setterstix.com](mailto:nan@setterstix.com) or (716) 257-3451. Goods which SETTERSTIX consents to have returned shall be shipped by Purchaser at Purchaser's risk and expense, freight prepaid, to SETTERSTIX's manufacturing plant or such other location as SETTERSTIX may designate, and are subject to a restocking fee (typically, twenty percent (20%) of the price payable by Purchaser for the relevant Goods). If SETTERSTIX ships to Purchaser the wrong item due to an error on SETTERSTIX's behalf, SETTERSTIX will pay the return shipping cost and waive the restocking fee. SETTERSTIX shall have no obligation to refund or credit Purchaser for any returned Good until SETTERSTIX has received and inspected the returned Goods and made a determination.

**14. Changes and Cancellation.** Orders may not be changed or cancelled, in whole or part, without prior written consent by SETTERSTIX, which consent SETTERSTIX may or may not grant at its sole discretion. Changes may effect delivery dates. SETTERSTIX reserves its right to charge Purchaser for expenses incurred as a result of changes or any cancellation requested by Purchaser.

**15. Terms of Payment.** All sales are "cash in advance" unless (i) Purchaser establishes credit upon submission of a Credit Application (available at SETTERSTIX's website, [www.setterstix.com](http://www.setterstix.com)), (ii) Purchaser pays by credit card or (iii) agreed to by SETTERSTIX in writing. Upon default on the part of Purchaser to pay on time, Purchaser shall pay to SETTERSTIX, subject to any further damages we may incur, interest on all outstanding sums at the rate of two percent (2%) per month (or, if lower, the highest legally permissible rate). All payments should be effected such that payment is credited on the date that payment shall be due. All banking and other charges in connection with any payment shall be paid by Purchaser.

**16. Copyrights and Designs.** We shall retain the ownership and copyright of all documentation delivered to or shared with Purchaser, including but not limited to all illustrations, drawings, sketches and collections, which are to be promptly returned to us upon request and all copies which cannot be returned shall be destroyed and, upon request, Purchaser shall certify such destruction. We shall also have all rights relating to forms, prototypes and technical solutions relating to the Goods. Purchaser shall not be entitled to make or have made Goods by

reverse engineering or otherwise using our Goods, or parts thereof, as a prototype or model. This prohibition includes the manufacture of such reverse engineered goods, whether independently or with or through an agent or a third party, as well as the direct or indirect participation in the distribution of such reverse engineered goods. ANY VIOLATION OF ANY PART OF THIS SECTION SHALL BE A WILLFUL VIOLATION OF COPYRIGHT LAWS which may entitle SETTERSTIX to collect statutory and other damages as well expenses, including attorneys' fees, from Purchaser.

**17. Indemnity.** Purchaser shall indemnify, defend, reimburse and hold SETTERSTIX harmless from and against all costs, losses, liabilities, damages and expenses (including attorneys' fees and expenses), arising out of or resulting from (i) any breach by Purchaser of any of its obligations hereunder or (ii) any actual or threatened claim, demand, action or proceeding initiated by any third party arising out of or resulting from an act or omission of Purchaser.

**18. Dispute Resolution.** These Terms and Conditions shall be governed by the laws of the State of New York, without reference to its conflicts of law principles; provided, however, that the parties hereto expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sales of Goods. Each of SETTERSTIX and Purchaser hereby irrevocably consents that (i) any action, suit or other legal proceeding arising out of or relating to any transaction hereunder may be brought in any federal or state court within the County of New York, State of New York, (ii) consents to the jurisdiction of such courts in any such suit, action or proceeding, waives any objection which it may have to the laying of venue of such suit, action or legal proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum, (iii) service of process may be accomplished using any of the methods described in Section 20 hereof, (iv) any judgment may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law and (v) nothing in this Section 18 shall affect the right of SETTERSTIX to serve legal process in any other manner permitted by law or affect the right of SETTERSTIX to bring any suit, action or proceeding against Purchaser or its property in any court of any jurisdiction. EACH OF SETTERSTIX AND PURCHASER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION HEREUNDER. In connection with any controversy hereunder, each party shall be responsible for its attorneys' fees and disbursements and all court and related costs and expenses, except that if SETTERSTIX shall be the prevailing party in any such controversy SETTERSTIX shall be entitled to reimbursement of attorneys' fees and disbursements and all court and related costs and expenses from Purchaser.

**19. Confidentiality.** Purchaser agrees that all specifications, data and other technical, financial or other non-public information furnished by SETTERSTIX to Purchaser constitute the sole and exclusive property of SETTERSTIX, are furnished solely for the purpose of SETTERSTIX's performance hereunder, shall be held in strict confidence by Purchaser and may not be copied, made accessible to third parties or used without SETTERSTIX's prior written consent. Purchaser shall promptly return all such information and all copies thereof (in whatever format, including electronic, digital, hard copy or other medium) to SETTERSTIX upon SETTERSTIX's request or, if such delivery is impossible, destroy such information and certify such destruction to SETTERSTIX in writing. Such request may be made at any time prior to or after delivery of any Goods. The obligations of Purchaser hereinabove set forth shall survive cancellation or completion of any order.

**20. Notices.** Any notices given hereunder shall be in writing and shall be deemed given: (i) upon delivery, if by hand; or (ii) after one (1) business day, if sent between destinations within the continental United States, or two (2) business days, if sent between the continental United States and any other jurisdiction, if sent by tracked air courier (e.g., UPS, DHL, Airborne or FedEx). All notices to SETTERSTIX hereunder shall be given to Setterstix Inc., 261 S. Main St., Cattaraugus, NY 14719, and all notices to Purchaser shall be given to such address as indicated in the relevant purchase order or order acknowledgment, or at such other address (or to such other person's attention), as shall be specified by like notice by the relevant party.

**21. Definition.** Purchaser acknowledges and agrees that (i) it shall be a "merchant" within the meaning of the Uniform Commercial Code, as in effect from time to time in the State of New York (the "UCC") and (ii) any transaction between SETTERSTIX and Purchaser shall be deemed to be "between merchants" within the meaning of the UCC. Purchaser further acknowledges and agrees that it has the skill and knowledge of a merchant in the Goods, particularly in that it has a legal and/or purchasing department, business personnel or other agents who are familiar with the business practices involved in that transaction contemplated hereby or otherwise equipped to handle such a transaction.

**22. Miscellaneous.** The invalidity or unenforceability of any one or more of the terms and conditions of this form shall not affect the validity or enforceability of the remaining provisions hereof. The failure or omission of SETTERSTIX to insist upon strict performance of any term or condition hereof or to exercise any right hereunder shall not be deemed to be a modification of any term or condition hereof or a waiver or relinquishment of the future performance of any such term or condition, nor shall such failure or omission constitute a waiver of the right of such party to insist upon future performance by the other party of any such term or condition. This document may be amended from time to time by SETTERSTIX upon notice to Purchaser, and any such amended version shall supersede any and all prior versions thereof.