

## KEGTRON TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE (“TERMS AND CONDITIONS”) CONSTITUTE THE ENTIRE AGREEMENT BETWEEN WALZER, LLC dba KEGTRON (“KEGTRON”) AND THE CUSTOMER WITH RESPECT TO THE SALE OF ALL GOODS (“PRODUCTS”) BY KEGTRON TO CUSTOMER. SUCH TERMS AND CONDITIONS ARE EXCLUSIVE, AND KEGTRON REJECTS ANY AND ALL TERMS AND CONDITIONS PROPOSED BY CUSTOMER. ANY ADDITIONAL OR DIFFERENT TERM PROPOSED BY CUSTOMER SHALL BE DEEMED MATERIAL, IS OBJECTED TO, AND IS HEREBY REJECTED UNLESS SPECIFICALLY ACCEPTED IN WRITING BY KEGTRON. ACCEPTANCE OF THE PRODUCTS INDICATES CUSTOMER’S ACKNOWLEDGEMENT OF AND ASSENT TO THE TERMS AND CONDITIONS.

1. **PRICES AND PAYMENT.** All prices exclude delivery charges and taxes. Payment is due from the Customer no later than the time Customer’s order is placed. Kegtron does not provide credit. If Customer’s payment fails after Customer’s order has been placed (e.g., an order paid with a credit card is charged back), Kegtron shall cancel the order and have no further obligation to Customer relative to that order. Further, Kegtron may charge a penalty of up to \$25.00 for such payment failure.
2. **ORDERS.** All orders are subject to acceptance by Kegtron. Except as provided in these Terms and Conditions, orders accepted by Kegtron may be canceled until shipment, and are noncancelable after shipment. Kegtron may cancel any order or portion thereof without liability on its part in the event of Customer’s default of any terms herein or upon material adverse change in Customer’s financial condition, in Kegtron’s sole discretion.
3. **DELIVERY AND ACCEPTANCE.** Kegtron will make commercially reasonable efforts to ship product(s) ordered by Customer as soon as practicable. In the event of Kegtron’s failure to ship such product(s) within 30 days of its receipt of Customer’s order, Customer’s sole remedy and Kegtron’s exclusive liability shall be to refund any prepayment made by Customer for the applicable product(s). All product(s) shall be deemed accepted by Customer upon their delivery.
4. **SHIPMENT AND RISK OF LOSS.** Kegtron will ship product(s) according to its standard commercial practice. All shipments of product(s) will be made EXW (Incoterms 2010) Kegtron authorized facility, unless otherwise agreed to in writing by both parties. If special packing or shipping instructions are agreed by Kegtron, charges for such packing and/or shipping will be billed separately to Customer.
5. **LIMITED PRODUCT WARRANTY**
  - 5.1 Kegtron warrants that each Kegtron Smart Keg Monitor sold to Customer is free from defects in materials and workmanship, for a period of one (1) year from the date of shipment, and that each Kegtron Pro Smart Keg Monitor sold to Customer is free from defects in materials and workmanship, for a period of two (2) years from the date of shipment (“Warranty”). The Warranty is expressly limited to repair or replacement of the goods, or refund of the purchase price, at Kegtron’s sole option. The Warranty shall not cover damage or defects to the goods caused by accident or misuse, or caused by negligence or willful misconduct of Customer and/or its personnel or agents.
  - 5.2 The foregoing limited warranty applies only to Customer and not to indirect purchasers or users or other third parties. No other warranties, other than as set forth herein are made by Kegtron with respect to its products. This warranty is not transferable except with the prior written consent of an authorized representative of Kegtron. Before returning product(s) under the Warranty, Customer must contact Kegtron, provide the serial number(s) of the products(s) to be returned, and obtain a Return Material Authorization (“RMA”) from Kegtron. Kegtron shall provide a shipping label or labels to Customer to allow the Customer to return product(s) to Kegtron at Kegtron’s expense.
  - 5.3 EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 7, ALL PRODUCTS, SERVICES, AND ANY OTHER MATERIALS PROVIDED BY KEGTRON ARE PROVIDED ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY. KEGTRON EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY THAT IS NOT EXPRESSLY SET FORTH IN THIS SECTION AND FURTHER ACKNOWLEDGES THAT IT HAS NOT PURCHASED PRODUCTS OR SERVICES IN RELIANCE ON ANY WARRANTY OR REPRESENTATION BY ANY PERSON OR ENTITY EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SPECIFICALLY SET FORTH HEREIN.

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 As between the parties, Kegtron (or its licensors) retains ownership of all patents and other intellectual property rights in the product(s) and related designs, data, and materials. The product(s) are offered for sale and sold on the condition in every case that such sale does not convey any license, express or implied, under any patent or other intellectual property right of Kegtron, and all such rights are reserved.
- 6.2 Customer will not modify, alter, reproduce, reverse engineer, or disassemble the product(s), including their component hardware, firmware and software, without Kegtron's prior written consent, unless permitted by law in Customer's jurisdiction.

## 7. INDEMNIFICATION

- 7.1 In the event of a claim brought by a nonaffiliated third party against Customer alleging that Kegtron's manufacture and sale of the product(s) infringes any issued and valid patent, or any utility model, industrial design, copyright, trade secret, mask work or trademark, Kegtron may modify the affected product(s), procure any necessary license, or replace the affected product(s), at Kegtron's sole discretion. If Kegtron determines in its sole discretion that none of these alternatives are reasonably available, and provided that Customer returns at Customer's expense each affected product in accordance with Kegtron's standard RMA procedures, Kegtron will refund the amount actually paid by Customer for the affected product(s) if the refund is requested within one year after Delivery of the applicable product(s). This Section 7.1 states Kegtron's entire liability and Customer's sole and exclusive remedy for intellectual property infringement claims and actions.
- 7.2 Kegtron shall indemnify and hold Customer harmless from and against all claims, losses, damages or injuries (including reasonable attorneys' fees) arising out of the use of Kegtron's products or any defects in Kegtron's products, except for claims, losses, damages or injuries arising from Customer's negligence or willful misconduct.

8. **LIMITATION OF LIABILITY.** THE REMEDIES EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. KEGTRON SHALL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, NOR FOR ANY LOSS OF BUSINESS, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST SALES OR GOODWILL, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE PRODUCTS OR THESE TERMS AND CONDITIONS, EVEN IF KEGTRON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. KEGTRON'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE PRICE PAID BY CUSTOMER FOR THE PRODUCTS TO WHICH THE APPLICABLE CLAIM RELATES. KEGTRON AND CUSTOMER ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION HEREIN.

## 9. GENERAL.

- 9.1 Kegtron will not be liable for performance delays, or for nonperformance, due to causes beyond its reasonable control.
- 9.2 These Terms and Conditions of Sale will be governed by the laws of the State of California without regard to any conflict of laws principles that would require the application of the laws of a different jurisdiction. The parties consent to the exclusive jurisdiction and venue of any court of general jurisdiction in Santa Clara County, California, and the United States District Court for the Northern District of California, for any and all actions associated with any dispute arising in connection with these Terms and Conditions.
- 9.3 The failure by Kegtron to enforce at any time any of the provisions in these Terms and Conditions will in no way be construed as a waiver of such provisions. Kegtron's failure to object to provisions contained in any communication from Customer will not be deemed a waiver of any provision herein. All of the terms and conditions herein are separate and severable. Any changes in these Terms and Conditions must be agreed in writing by Kegtron before becoming binding.
- 9.4 These Terms and Conditions constitute the entire agreement between Kegtron and Customer, and supersede any previous communications, representations or agreements between the parties relating to the product(s).