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ORDER AGREEMENT

1. **ACCEPTANCE; ORDER CONSTITUTES ENTIRE AGREEMENT** – This Order constitutes Buyer's offer and may be accepted by 32 Degrees ("Seller") only in accordance with the terms hereof. Any acceptance herein of an offer of Seller, or any confirmation herein of a prior agreement between Buyer and Seller, is expressly made conditional on Seller's assent to the additional or different terms contained herein. This Order may be accepted by Seller by shipment of goods hereunder. Dispatch of Seller's acknowledgement form or other written document will also act as an acceptance if it agrees with this Order with respect to the description, amount, price and time of delivery of the goods ordered. Notwithstanding any waiver in any instance, or any oral agreement, or any instructions, terms and conditions that may be contained in any quotation, acknowledgement, invoice or other written document of Seller, no addition to, waiver for the future or modification of, any of the provisions herein contained shall be of any force or effect unless made in writing and executed by Buyer. Seller retains the discretion to reject any order.

2. **CHANGES** – Buyer shall have the right at any time prior to shipping to make changes in this Order by written notice to Seller, and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller's costs or time of performance of this Order, Seller shall notify Buyer immediately and negotiate an adjustment.

3. **PRICE** – If this Order is not priced it shall not be filled at prices higher than those last quoted and charged Buyer for the same articles. Charges for shipping and handling shall be paid by Buyer. Goods are purchased on a delivered basis. If Buyer is paying by check and such check is returned to Seller because of insufficient funds, Buyer shall be required to pay an NSF fee to Seller in the amount of \$35.00 for each such returned check.

4. **MINIMUM ORDERS** – A \$200.00 minimum purchase is required.

5. **PAYMENT TERMS** – First time Buyer is required to pay Seller in advance via credit card. Seller reserves the right to grant thirty (30) days terms to Buyer in good standing, in which case, the entire balance is due within thirty (30) days from date of shipment. Any unpaid balance not paid within thirty (30) days of the date of shipment of the order will be subject to a finance charge of 15% per annum on any unpaid balance. The finance charge will be assessed every thirty days the unpaid balance remains outstanding.

6. **SHIPPING** – Seller reserves the right to route all shipments. Delays in shipment shall be reported immediately by Seller to Buyer. Every package or other shipping unit, bill of lading, shipping memorandum and invoice must be marked with Buyer's Purchase Order Number if a Purchase Order Number is supplied.

7. **TIME OF THE ESSENCE** – Time of shipment and of other aspects of performance hereunder is of the essence of this agreement.

8. **DELIVERY/TITLE** – Unless otherwise agreed, delivery shall be F.O.B. point of destination and title shall pass to Buyer upon acceptance at the final delivery point. Risk of damages or loss following shipment and prior to acceptance by Buyer shall be the responsibility of Seller.

9. **RIGHT OF INSPECTION AND REJECTION** – Products supplied by Seller shall be received subject to Buyer's inspection and approval within seven (7) days after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at Seller's expense. All returns are subject to Seller's pre-authorization. No material or equipment returned to Seller as defective shall be replaced except upon Buyer's formal authorization.

10. **ASSIGNMENT** – Neither this Order nor any interest therein nor any claim arising hereunder shall be transferred or assigned by Seller without the prior written consent of Buyer. Buyer may transfer or assign the benefits of this agreement, in whole or in part, including without limitation the Seller's warranty, without the approval of Seller.

11. **GOVERNING LAW/JURISDICTION/COST RECOVERY** – This Order, and the rights and obligations of the parties thereto, shall be determined in accordance with the laws of the Commonwealth of Massachusetts. In the event that litigation is necessary to resolve any dispute concerning this Agreement or the products sold to Buyer and listed herein, such actions shall be brought in the trial

courts of the Commonwealth of Massachusetts in the County of Worcester. The Buyer waives any objection to this venue selection provision. Furthermore, if action is necessary to enforce the terms of this Agreement, the non-prevailing party shall pay all costs and fees of such action incurred by the prevailing party including costs of collection and reasonable attorneys fees.

12. **WARRANTY** – Seller warrants that all goods furnished pursuant to this Order will be free from defects in material or workmanship and will be in conformity with the requirements of this Order if any, and reasonably fit for the purpose for which the products are intended, i.e. clothing, and Seller further warrants that such goods or services will be merchantable and fit for the purpose for which they are sold, and where design is Seller's responsibility, will be free from defects in design. Buyer's approval of Seller's design or material shall not be construed to relieve Seller of the warranties set forth herein.

13. **PATENT INDEMNITY** – Seller agrees to indemnify, save harmless and defend Buyer from and against any and all suits, claims, damages, costs, and attorney's fees arising out of or in connection with any infringement or claimed infringement of any United States patent, trademark or copyright in the manufacture, use or sale of the product or materials furnished under this Order. In case said product or material is in such suit, or in final adjudication elsewhere, held to constitute infringement, and the use thereof is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using said product or material, or at the option of Buyer either replace same with equally efficient noninfringing product or material, or modify it without impairing its efficiency so it becomes noninfringing, or remove said product or material and refund the purchase price and the delivery costs thereof.

14. **COMPLIANCE WITH LAWS** – Seller, in the performance of this Order, unless exempt, shall comply with all applicable state and federal laws governing the manufacture and distribution of the product.

15. **TERMINATION** – Buyer, by written notice, may terminate this order, in whole or in part. In the event this order is terminated as a result of Seller's default, the Seller shall be liable for all damages allowed in law or equity. If this order is terminated for the convenience of Buyer, Seller will be compensated to the extent that items have been accepted by Buyer prior to the effective date of termination. Other than to this extent, Buyer shall not be liable to Seller for any damages on account of its failure to accept all of the items ordered.

16. **CONFIDENTIALITY/TRADE SECRETS** – All product specifications, product designs, materials, data and other information furnished by Seller, or its agents, to Buyer in connection with this order remain the exclusive intellectual property of Seller and shall be treated by the Buyer as proprietary and shall not be disclosed or used, outside the limitation of this order, without prior written approval of the Seller.

Purchases of Buyer. In addition, the purchase of the Seller's product does not authorize the Buyer to use the name of or make reference to Seller for any purpose in any releases for public or private dissemination, nor shall the Buyer divulge or use in any advertisement or publication any designs, specifications, data, or other information pertaining to or relating to this usage without prior written approval of the Seller.

Notwithstanding anything to the contrary contained herein, the Buyer is granted a limited license to use Seller's name, trademark, and images of Seller's products for the purpose of advertising Seller's product to the general public. This license is limited to the period of time Buyer is actively selling Seller's product.

17. **CANCELLATIONS** - We will not accept cancellations on ASAP and As Ready orders. Orders placed ahead of season must be cancelled at least 30 days prior to shipping date. Refused orders and late cancellations will be charged 20% restocking fee in addition to all shipping and handling charges.

18. **AUTHORITY** – Buyer acknowledges that the signatory to this Order Form has full authority to bind the Buyer to the terms and conditions hereof, and Buyer hereby irrevocably waives lack of authority as a defense in any legal proceedings concerning the enforceability of this Agreement.