



Zest Dental Solutions
Vendor Terms & Conditions

June 29, 2020

TERMS AND CONDITIONS FOR PURCHASE ORDERS, SERVICE AGREEMENTS AND VENDOR AGREEMENTS

1. Definitions. “Agreement” means a written agreement, if any, signed by Zest Anchors, Inc. and Vendor regarding the purchase of Products or Services. “Business Terms” means the Agreement and the PO, collectively and individually, as the context requires. “Zest” means Zest Anchors, Inc. or its affiliates or wholly-owned subsidiaries. “Zest Anchors, Inc. Documents” means the Business Terms and any related policies or documentation that Zest provides Vendor from time to time or that is available to Vendor on Zest’s website. “PO” means a purchase order for Products, which includes these Terms and Conditions for Purchase Orders and any schedules attached to such PO. “Product(s)” means the goods or services, collectively and individually, as the context requires, provided by Vendor under a PO, Service Agreement or Vendor Agreement, together with related packaging, labeling, documentation, transportation and anything else furnished by Vendor with respect to such goods, and any and all deliverables provided by Vendor with respect to such services. “Vendor” means the person or entity to which the PO or agreement has been issued, and its related entities, affiliates, agents, representatives and subcontractors.

2. Agreement for Purchase of Products. All purchases of Products by Zest will be governed by the Business Terms. In the event of a conflict between the PO and an Agreement, the Agreement will control. (For clarity, if the PO does not conflict with the Agreement but does contain additional or more specific terms or provisions than the Agreement, such additional or more specific terms and provisions will continue to apply to Vendor.) If the parties have not executed an Agreement, the PO will control. The Business Terms constitute the complete and final written agreement between Zest and Vendor with respect to the Products or Services and supersede all other agreements and understandings between the parties regarding the Products or Services. No waiver, modification, or amendment of the Business Terms will be valid unless in writing and signed by authorized representatives of both parties, subject to Section 9. All terms of any purchase order or similar document provided by Vendor, including, but not limited to, any pre-printed terms thereon or any terms that appear on or are accessible through Vendor’s websites or apps, that are inconsistent, add to, or conflict with the Business Terms, will be null and void and of no legal force or effect. In addition, neither acceptance by nor delivery to Zest of all or part of the Products ordered, nor payment therefor, will constitute acceptance by Zest of any such different or additional terms and conditions that may be contained in Vendor’s acknowledgment, acceptance, confirmation, invoice, or other writing, regardless of whether Vendor's acceptance of the PO and or Agreement is conditioned upon Zest’s assent

to such terms and conditions. Any written indication of acceptance of the Business Terms, commencement of any work or the performance or shipment of conforming or non-conforming Products under a PO will constitute acceptance by Vendor of the PO and all the Business Terms.

3. No Purchase Requirement. Except as may be set forth in the description of Products purchased on the PO, Zest does not commit or guarantee the purchase of any Products from Vendor, including any minimum quantity or volume.

4. Delivery and Force Majeure; Inspection; Title and Risk of Loss. Vendor will deliver the Product in accordance with the Zest Documents. For Products shipped utilizing Zest's own carrier, risk of loss and title shall pass from Vendor to Zest at the point of pick up by the carrier. For Products for which Zest is the importer of record, (i) risk of loss shall pass from Vendor to Zest F.O.B. port of export, and (ii) title to the Products shall pass from Vendor to Zest upon customs clearance of the Products at the port of entry in the country of final destination ("Customs Clearance"). For Product for which Zest is not the importer of record, title and risk of loss shall transfer to Zest Delivered Duty Paid (D.D.P. - Incoterms® 2010) to a destination specified in the PO and, if the destination is not specified in the PO, such destination shall be deemed to be the Zest distribution center or retail store where such Products are to be delivered. Notwithstanding the foregoing, Zest may at its own option take delivery of all or any part of the Products at Vendor's facility. Time of delivery or performance is of the essence, and Zest's stated delivery or performance date cannot be extended for any reason without prior written approval from Zest, including delays in manufacture or shipment that Vendor cannot control. Vendor will not, however, be liable for any non-performance or delay in performance caused solely by a strike, lockout, riot, war, insurrection, act of God or public enemy, if Vendor immediately notifies Zest of the event and gives Zest a detailed description of the non-performance or delay that will be caused by such event. Zest will then have the right to terminate the Business Terms, without liability to Vendor. Zest will have the right to inspect the Product upon receipt, notwithstanding any payments or acceptance of previously shipped Products, and will, within a reasonable time, notify Vendor of any claim relating to condition, quality, shortages, non-conformance or grade of the Product. Zest's inspection or failure to inspect the Product will not relieve Vendor of any claim related thereto. Unless otherwise agreed in writing, title and risk of loss of all Products will pass to Zest only upon delivery to the specified destination. Vendor will reimburse Zest for any costs, damage or expense incurred by Zest arising or relating from the sale by Zest of any Product that does not conform to Vendor's warranties and the Zest Documents.

5. Price and Payments. Unless otherwise expressly stated in the Business Terms, the price specified in the PO or Agreement includes (i) all taxes and duties of any kind that Vendor is required to pay with respect to the Products (including applicable customs duties), and (ii) all charges for packaging, transportation, storage and insurance. Vendor will submit an invoice to Zest for Products delivered to Zest upon delivery or otherwise in accordance with the Zest Documents. Such invoice will reference the applicable PO if one is issued. Vendor warrants that the prices set forth in the PO are not higher than the lowest prices charged by Vendor to any other customer for the Products with the same quantity commitments. Except as provided in an applicable PO, Zest will not be required to pay any late charge, interest, finance charge or similar charge. Zest's payment of the purchase price does not indicate its acceptance of the Products. Payment terms, including discount periods, will be sixty (60) days from the latest of (i) the scheduled date for delivery or performance; (ii) the actual date of performance or delivery of conforming Products; and (iii) the date of Vendor's invoice. Vendor waives all invoices not delivered to Zest within 180 days of such date.

6. Excess, Installment, and Early Deliveries. If Vendor delivers more Products than Zest ordered, then, unless Zest agrees otherwise in writing, Zest will not have to pay for the excess, unless Products are custom to Zest and do not exceed a 10% overage. Unless Zest agrees otherwise in writing, Vendor will deliver all of the Products in a single delivery and not in installments. Zest's acceptance of a delivery containing less than the required quantity of Products will not relieve Vendor of its obligation to deliver the balance of the ordered Products at the price and on the other terms specified in the PO or agreement unless written approval has been received by Zest. If Vendor delivers the Products before the scheduled delivery date, Zest may, at Vendor's expense and risk, either store them or return them to Vendor. Zest's acceptance of an early delivery will not change the payment terms.

7. Representations and Warranties about Vendor. Vendor represents and warrants to Zest that (i) Vendor has all necessary experience, personnel, qualifications, expertise, authority, licenses and permits to enable it to perform its obligations under the Business Terms, (ii) the Business Terms are the valid and binding obligations of Vendor, enforceable against Vendor in accordance with their terms, (iii) Vendor is a solvent, going concern, and (iv) Vendor has not offered or given, will not offer or give, and will not solicit or accept, any gratuity or thing of value to or from any Zest employee, agent or representative.

8. Representations and Warranties about the Products. Vendor represents and warrants that the Products will: (a) comply with all applicable federal, state, provincial and local laws, rules and regulations or judicial or administrative orders, judgments or decrees governing the Products, including without limitation, their manufacture, packaging, pricing, labeling, sale, use, transportation, importation or exportation, including, without limitation, California's Proposition 65 and other similar laws, rules, regulations, standards, orders and directives, and the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970, as amended; (b) be free from defects in design, workmanship, materials and hazards to life, animal or property; (c) conform to any warranty, description, sample, data, drawing, representation, specification or documentation provided to Zest; (d) be suitable and fit for their intended purpose; (e) not infringe or encroach upon any other party's personal, contractual or property rights, including without limitation, patents, trademarks, trade names, copyrights, rights of privacy, trade secrets and/or other intellectual property rights. Further, Vendor represents and warrants that it is not subject to or bound by any agreement that will or may be violated by the provision of the Products as provided in the applicable PO or agreement. In addition to the representations and warranties herein, Vendor assigns to Zest any manufacturer's indemnities and warranties (both express and implied). Upon Zest's request, Vendor will give Zest certificates of compliance with applicable laws, rules, regulations, standards, orders or directives. Vendor's warranties extend to future performance under a PO with respect to the Products and will survive inspection, tests, acceptance, and payment. Vendor will adhere to Zest's Supplier Code of Conduct in connection with Product delivery or performance under a PO, which Supplier Code of Conduct is available at www.zestdent.com/vendortermsandcontitions.

9. Changes. Notwithstanding Section 2 herein, Zest may at any time, by written notice to Vendor, change the PO or requirements as to (i) designs or drawings of, or specifications for, the Products, (ii) time or place of delivery or performance, (iii) method of packing or shipment, or (iv) the quantity or extent of the Products. If this causes a change in Vendor's cost or time of performance, Zest will consider an equitable adjustment in the price or time for delivery or performance, or both, if Vendor gives Zest a written request justifying an adjustment within 20 days after Zest notifies Vendor of the change. If an adjustment is not agreed upon, Zest may withdraw the change to the PO or Vendor may decline to provide the Products subject to the change.

(a) Change Notification Requirements: The supplier shall notify Zest of any and all intended changes to products supplied under this purchase order agreement prior to their implementation. This is to include, but not be limited to, significant changes to the product in the form of raw materials, raw material vendors, manufacturing processes, manufacturing environment, design changes, testing procedures, or other changes which could potentially affect the product in a negative way (form, fit, function and usability).

10. Zest's Rights. Without limiting other rights and remedies available to it, Zest may, at its option, (i) return nonconforming Products to Vendor, at Vendor's risk and expense, and require Vendor either to give Zest full credit against the price, or promptly to repair or replace the Products at Vendor's risk and expense; (ii) retain the Products and set off losses against any amount due Vendor; or (iii) repair or replace the Products and charge Vendor with the expense. In addition to Zest's rights set out in the Business Terms, Zest has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages resulting from any breach by Vendor. Zest will not lose any right just because it does not exercise it. Zest will have the full statutory period of limitations to bring any action arising out of Zest's agreement with Vendor. A reasonable time for Zest to notify Vendor of any breach is not less than two years from when Zest discovers the breach.

11. Work on Premises. If the PO includes the performance of services or delivery or installation of Products by Vendor, and involves operations by Vendor's employees or subcontractors on Zest's premises, Vendor will: (i) at all times enforce strict discipline and maintain good order among all persons engaged in the activity on such premises and will cause Vendor's employees and subcontractors to comply with all fire prevention and safety rules and regulations in force at the premises and required by law; (ii) keep such premises free from accumulation of waste materials and rubbish caused by its employees or subcontractors and upon completion promptly remove all of Vendor's equipment and surplus materials; and (iii) reimburse Zest for all reasonable costs and expenses incurred by Zest for repairs completed by Zest or its designee if Vendor damages any equipment or property of Zest or causes any damage to any portion of Zest's or its customers' premises, either during or resulting from the delivery or performance of the Products by Vendor. Under no circumstances will Vendor conduct or permit any hazardous activity or handling any hazardous materials at Zest's or its customers' premises without first coordinating the details of such activity or handling with Zest.

12. Services. If the PO or agreement includes the performance of services, (i) Vendor is an independent contractor, and neither Vendor nor any of Vendor's employees or agents will be considered agents or employees of Zest; and (ii) Vendor will furnish, at Vendor's expense, all labor, materials, equipment, transportation, facilities and other items necessary to perform such services. Vendor represents and warrants that any of its employees or agents (including subcontractors) deployed in performing any such services will at all times be lawfully engaged under applicable US immigration laws and regulations.

13. Ownership of Work. Unless otherwise agreed to in writing by Zest, all documents, materials, designs, programs, code, software, specifications, drafts, advice, ideas, suggestions and any other pertinent data, including any derivatives thereof, in whatever form or media, specifically prepared for, produced or resulting from Vendor's provision of the Products ("**Work**") will become the exclusive property of Zest in perpetuity, throughout the universe, in all languages, formats and media, whether now known or hereafter devised or invented. All Work will, to the extent possible, be deemed a "work made for hire" under the federal Copyright Act of 1976, as amended, and all intellectual property rights related to such Work will vest in and be owned by Zest. To the extent that title to any such Work may not, by operation of law, vest in Zest, Vendor irrevocably and exclusively assigns all rights, title and interest in the Work to Zest. This license is in addition to all patent licenses impliedly granted to Zest as a purchaser of the Products.

14. Customs-Trade Partnership Against Terrorism. Zest participates in the US Customs-Trade Partnership Against Terrorism (C-TPAT) and is committed to engaging providers, vendors and consultants who have policies and procedures ensuring supply chain security. Zest requires that all its providers, vendors and consultants make reasonable efforts to have a security program that is in accordance with C-TPAT's minimum security requirements.

15. Indemnity. Vendor will indemnify, defend and hold harmless Zest, its directors, officers, employees, shareholders, agents, subsidiaries, affiliates and representatives ("**Indemnitees**") from and against any and all threatened or actual claims, losses, liabilities, damages, costs or expenses (including attorneys' and experts, fees and costs through all appeals) of any nature whatsoever and whether arising prior to, or after the commencement or termination of the Business Terms ("**Losses**"), arising out of or related to: (a) the Products, including, but not limited to, their manufacturing, packaging, pricing, labeling, sale or use, or any infringement by the Products of third-party intellectual property rights; (b)

Vendor's breach of any provision of any of the Zest Documents; (c) any claim or threatened claim for personal injury, death or property damage or loss of any nature whatsoever arising from or related to any Product; (d) Vendor's violation of any applicable laws or regulations; or (e) any breach by Vendor of any of its obligations or warranties in favor of Zest. Vendor will defend, at its sole cost and expense, the Indemnitees in any action or proceeding arising out of any such Losses by counsel reasonably acceptable to Indemnitees and will promptly pay all costs and expenses arising in connection with such defense including attorneys' fees and expert witnesses' fees through all appeals.

16. Insurance. Vendor will maintain, at its sole cost and expense, during the term of the Business Terms and for at least five years thereafter (or if no such term is specified for at least three years after the date of the PO), the following types and amounts of insurance, with insurers with an A.M. Best rating of at least A- (Excellent), FSC VII, and authorized to conduct business in the United States and Canada:

(a) a commercial general liability policy with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including, but not limited to, coverage for bodily injury, property damage, contractual liability and products liability/completed operations;

(b) an automobile liability policy with limits not less than \$1,000,000 combined single limit;

(c) workers' compensation insurance in the benefit amounts required by applicable law and an employer's liability policy with limits not less than \$1,000,000 per accident or occurrence;

(d) if services are provided under the PO or in connection with goods sold under a PO, a professional liability or errors and omissions policy with limits not less than \$2,000,000 per occurrence and \$5,000,000 aggregate; and

(e) additional to the policies above, a commercial umbrella or excess liability policy with limits not less than \$2,000,000 per occurrence.

Notwithstanding the foregoing, Zest may require Vendor to acquire additional or different insurance types or coverage amounts to the extent commercially reasonable in order to protect both Zest and Vendor from any and all claims and liabilities arising from or related to the PO and the goods or services provided under a PO or agreement. Such policies shall be issued by insurers that are reasonably satisfactory to Zest. Vendor's policies will provide a waiver of subrogation in favor of Zest. Upon Zest's written request, Vendor will name Zest as an additional insured on the policies on a primary and noncontributory basis. Vendor's policies will provide a waiver of subrogation in favor of Zest. Within 10 days after such a request, Vendor will provide Zest with certificates of insurance for the policies required hereunder and send such

certificates to Certificates@zestdent.com. The insurance coverage provided for herein will not act to limit Vendor's liability under the Business Terms.

17. Confidentiality. As a result of its dealings with Zest, Vendor may have access to Zest's Confidential Information. "Confidential Information" is non-public information that, by its nature, ought to be treated as proprietary and confidential or that a reasonable person would conclude is confidential, which is disclosed by Zest, or its subcontractors or agents, to Vendor, orally, electronically or in tangible form. Vendor will not, without the written consent of Zest, its successors or assignees, disclose any Confidential Information to any person, firm, corporation, or other entity for any purpose whatsoever or use such information for any purpose not provided for in the Zest Documents, for a period of two years after it is disclosed. If there is a breach of this Section (either actual or threatened) by Vendor, Zest's remedies at law will be inadequate. Therefore Zest will have the right of specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and Zest's rights and remedies will be cumulative.

18. Publicity/Use of Zest Name. Vendor will acquire no right to use, and will not use, the name "Zest" (either alone or in conjunction with or as part of any other word or name) or any other name, mark, logo, design, product designations or other intellectual property of Zest or any of its related, affiliated or subsidiary companies: (i) in any advertising, publicity or promotion; (ii) to express or to imply any endorsement by Zest of Vendor's products, services or business; or (iii) in any other manner whatsoever (whether or not similar to uses prohibited by [i] and [ii] above) without Zest's express prior written consent, which may be withheld in its sole discretion. The terms of this paragraph will survive the expiration or termination of the Business Terms.

19. Remedies; Set-Off. In addition to the rights and remedies provided in the Business Terms, each party has all of the rights and remedies available to it under the Uniform Commercial Code as adopted in the State of California; provided, however, that Vendor waives against Zest all rights to claim or collect punitive or exemplary, indirect, incidental, special or consequential damages, lost profits or loss of opportunity damages. The exercise of any rights or remedy provided for in the Business Terms will be without prejudice to the right of Zest to exercise any other right or remedy provided in the Business Terms or at law or in equity. All payments to be made by Zest to Vendor pursuant to the Business Terms are subject to set-off, deduction or offset by Zest of all sums due and owing Zest by Vendor.

20. Governing Law/Venue/Jury Trial Waiver. The Zest Documents will be governed and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. In any action or proceeding between any of the parties arising out of or relating to the Zest's Documents (or any of the transactions contemplated thereby), each of the parties: (a) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in San Diego County, California; and (b) agrees that all claims in respect of such action or proceeding will be exclusively heard by such courts. **EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, ANY RIGHT TO TRIAL BY JURY REGARDING ANY SUCH CLAIM.**

21. Data Security. (a) Vendor will comply with all applicable laws, regulations, and codes of practice in connection with the collection, processing, use and storage of data provided by Zest or Zest affiliates, customers, vendors, or other third parties providing data to Vendor under the Business Terms (collectively, "Zest Data"). Vendor will implement and maintain reasonable physical, technical and organizational measures, and safeguards in order to preserve the security and confidentiality of Zest Data against unlawful or unauthorized destruction, processing, disclosure, processing or access to, or accidental damage or loss of Zest Data. Without limiting the generality of the foregoing, where appropriate, and in accordance with industry standards and best practices, Vendor will implement and/or use network management and maintenance applications and tools, and fraud prevention, intrusion detection, and encryption technologies. At a minimum, all Zest data will be encrypted while in transit and will be transmitted using a secure transfer method (e.g., SFTP, HTTPS). Zest has the right to request an SSAE 16 SOC 2 service auditor's report, if applicable, at any time during performance under a PO or the term of an Agreement.

(a) If Vendor or any third party assisting Vendor (i) deliberately or inadvertently collects, uses, or discloses Zest Data in breach of this Section, or (ii) discovers, is notified of, or has reasonable awareness that an unauthorized access, acquisition, theft, disclosure or use of Zest Data has occurred or is likely to occur (each such event, an "Information Security Breach"), then Vendor will immediately notify Zest of such Information Security Breach and, at its own expense, investigate, remediate, and mitigate the effects of the Information Security Breach.

(b) Upon either the written request of Zest, at its discretion, or the expiration or termination of the Business Terms, Vendor will render unreadable or return to Zest, or any third party designated by Zest, within fifteen (15) business days, all copies, duplicates, summaries, abstracts or other representations of any Zest Data, without charge to Zest. For electronic media,

“render unreadable” could include, but is not limited to, degaussing or using a FIPS compliant military-grade wipe program, and for hard-copy material “render unreadable” could include, but is not limited to, cross-cut shredding or incineration.