



# Reseller Terms and Conditions

By purchasing products manufactured by Pineapple Grove Designs LLC (“PGD”) with the intent to resell said products to an end user, purchaser (RESELLER) agrees to the following terms and conditions as a condition of the purchase of said products to said purchaser. RESELLER agrees that the following terms and conditions are incorporated into, and an integral and enforceable part of, any Order Acknowledgement, Purchase Agreement, Sales Order or other binding instrument of said purchase.

PGD and RESELLER agree for Reseller to resell some of PGD’s Marine Restoration Products (“Products”) to End Users on a nonexclusive basis.

This Agreement consists of this introduction and the terms and conditions that follow which sets forth the entire agreement and understanding between PGD and RESELLER with respect to the subject matter thereof, and supersedes and replaces all prior oral and written agreements, discussions and understandings between PGD and RESELLER with respect to the subject matter hereof. Neither PGD nor RESELLER shall be bound by any conditions, inducements or representations other than as expressly provided for herein. If the provisions in any Reseller Order Acknowledgement and this Agreement conflict, the provisions of this Agreement shall govern and control to the extent of such conflict, unless a provision in the Reseller Order Acknowledgement is expressly agreed to by PGD, in which case and only to the extent expressly agreed, the Reseller Order Acknowledgement shall govern.

## TERMS AND CONDITIONS

- 1. DEFINITIONS.** As used in the Agreement, and in addition to any other terms defined herein, the following terms have the following meanings:
  - “End User” means an entity to whom the Reseller resells the Products, entity not being an affiliated, subsidiary or associated entity of the Reseller.
  - “Order Date” means the date a Reseller Order Acknowledgement is executed by a representative of PGD.
  - “Order Quotation” means a binding estimate of projected costs for Products to be provided by PGD.
  - “Pineapple Grove Designs LLC” means Pineapple Grove Designs, Pineapple Grove, Reef Cells, CXO ART, Coral Restoration Lab and any other divisions designated as “doing business as” of Pineapple Grove Designs LLC.

“Products” means specific products offered for sale to Reseller which are sold by PGD. Only products identified in the published addendum labeled “Marine Products for Sale to Resellers” are available for resale by Reseller.

“Quotation Date” means the date an Order Quotation is executed by a representative of PGD.

“Reseller Order Acknowledgement” means a PGD sales order executed between PGD and RESELLER for Products provided to Reseller by PGD.

“Third Party” means an entity other than RESELLER that provides material and or services to RESELLER and is not an affiliated, subsidiary or associated entity of RESELLER.

## **Term of Agreement**

This Agreement shall become effective as of the effective date noted above and shall continue to remain in effect until terminated by either PGD or RESELLER. Either PGD or RESELLER may terminate this Agreement by providing sixty (60) days written notice. In the event of a breach of this Agreement by either PGD or RESELLER, this Agreement may be terminated without written notice.

## **Reservation of Rights.**

PGD hereby grants unto RESELLER a revocable, non-exclusive, and non-assignable right to sell specific PGD products as identified herein to End Users. PGD reserves all rights to sell any of its Products in any market whatsoever, and no rights granted to RESELLER herein shall be construed as limiting PGD’s right to sell its products directly to any customer for whatever price PGD determines to be appropriate.

## **Cross License of Copyright Material**

PGD Products are protected by US Patent, US Copyright, US Trademark and proprietary ingredients and methods of manufacture. PGD and Reseller herein declare they have a separate and collective interest in promoting and marketing PGD Products to End Users. PGD and Reseller therefore hereby mutually agree to license to each other the limited use of certain copyright material (Material) as described herein. PGD and Reseller hereby agree to grant each other a non-exclusive right to use said Material, in whole or in part, and to incorporate said Material, in whole or in part, into other works. All right, title and interest in said Material, including without limitation, any copyright, shall remain with the respective Owner.

## **Description of Copyright Material Subject to this License Agreement**

Copyright Material owned by PGD and licensed to RESELLER shall include all Material in electronic, digital, or print form which are exhibited in a file labeled “Marine Products for Sale to Resellers” which is located online at reefcells.org and elsewhere. Additionally, also included is copyright Material which is in its physical form such as works of art, reef modules, habitat and

coral restoration products and custom creations fabricated by PGD and which are located or exhibited on dry land or in a submerged environment.

Copyright Material owned by RESELLER and licensed to PGD include all Material in electronic, digital, or print form that record, portray, illustrate, replicate, describe, derive from, in any way represent or include PGD Material, Products and Works as described above.

### **Limited Use of Copyright Material**

Licensed copyright Material which is published, exhibited, or distributed by either PGD or RESELLER, in any form, and on all occasions shall be identified as the property of the respective owner each time said Material is published, exhibited or distributed. Neither PGD nor RESELLER shall license any of the other's Material to a third party without the written permission of the owner of the Material. Licensors warrant and represent that each owns all right, title and interest in and to their respective Material. Licensor reserves unto itself all rights of every kind and nature except those specifically granted to Licensee herein. LICENSEE SHALL IDENTIFY LICENSOR AS THE OWNER OF ANY COPYRIGHT MATERIAL ON EVERY OCCASION WHEN SAID MATERIAL IS PUBLISHED, EXHIBITED, OR DISTRIBUTED.

### **No Warranty**

PGD's intent is to provide products that meet or exceed the requirements of each Reseller Order Acknowledgement. However due to the custom aspects of each project some allowances may be made due to material availability and or fabrication and logistics variables. It is the responsibility of RESELLER to inspect all fabricated Products prior to shipping. Once released to an independent carrier or shipping company, Products are understood to be approved by RESELLER "As-Is." PGD makes no further warranties regarding any Products sold to RESELLER. PGD HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PGD and RESELLER agree that PGD shall not be liable for incidental or consequential damages of any kind.

### **Pricing**

PGD Products are manufactured on an as-needed basis. Some Products are custom designed to meet specific project requirements. As such, PGD pricing is subject to fluctuating material costs and project requirement variables. A PGD Order Quotation is therefore project specific and time sensitive. Unless otherwise noted, the terms and conditions in an Order Quotation shall be honored for a period of 30 days from the Order Quotation date.

PGD desires to provide RESELLER with sufficient flexibility to respond to the needs and budget of the End User. Therefore, RESELLER may quote and resell any PGD Product, as identified herein, for whatever price RESELLER determines to be most appropriate for a particular customer and marketplace. To provide post Reseller Order Acknowledgement customer

service, RESELLER agrees to copy to PGD all sales and purchase order information including customer contact, project scope and resale pricing produced by RESELLER. PGD desires to be a premiere source of marine habitat restoration and enhancement products and accessories. PGD enjoys one-to-one contact with its customers and RESELLER agrees to maintain that relationship as of primary importance. RESELLER agrees to use commercially reasonable efforts to market PGD products and agrees to operate in a manner that would enhance this customer relationship by forwarding to PGD any requests, suggestions, compliments and or complaints it receives from End Users about PGD Products.

### **Ordering and Shipping**

All requests to purchase made by RESELLER shall be responded to in the form of an Order Quotation. No quoted prices shall be binding unless memorialized in an Order Quotation. The terms and conditions of the Order Quotation shall be honored by PGD for a period of 30 days from the Quotation Date. Reseller Order Acknowledgement shall expire after 30 days from Order Date unless, prior expiration, Reseller Order Acknowledgement is executed by RESELLER and any required deposit is received by PGD.

All Orders are shipped via common carrier or independent shipping service. All orders must be shipped during the period identified in the Reseller Order Acknowledgement. Any delayed release of Products to carrier or shipping service caused by RESELLER shall be the responsibility of Reseller. Said release delay shall incur predetermined storage fees to be identified in Reseller Order Acknowledgement.

### **Payment Methods**

All orders shall be payable in US dollars by check, wire transfer, ACH, Credit Card or PayPal. A 3% processing fee is added to any payment made by Credit Card or PayPal. Unless otherwise prearranged with PGD in writing, all Orders must be paid in full before Products are shipped. Credit Card Holds or Security Payment Bonds may be used when post shipping payment terms are requested.

### **Interpretation and Forum Selection**

This Agreement and the rights and obligations of PGD and RESELLER shall be governed by, construed, and interpreted under, the laws of the State of Florida. To the extent either PGD or RESELLER files suit to enforce this Agreement or the subject matter thereof, PGD and RESELLER irrevocably consent and submit to the exclusive jurisdiction and venue of the courts of the State of Florida, Palm Beach County, for the purposes of any suit, action, or proceeding arising out and permitted by this Agreement and irrevocably waive, to the fullest extent permitted by law, any objection to the laying of venue of any such suit or action in Palm Beach County, Florida.

### **Force Majeure**

PGD shall not be liable for delays or failure in its performance hereunder caused by any act of God, war, acts of terrorism or attempted acts of terrorism, strike, labor dispute, work stoppage, fire, act of government, or any other cause, whether similar or dissimilar, beyond the control of PGD.

### **Confidentiality**

PGD and RESELLER agree that confidential and proprietary information shared between the PGD and RESELLER shall not be disclosed to other entities or Third Parties. This Agreement shall be mutual, whereas, PGD and RESELLER shall be prohibited from disclosing confidential and proprietary information that is to be shared between PGD and RESELLER. For the purpose of this Agreement, the term "Confidential Information" shall include, but not be limited to, documents, records, information and data (whether verbal, electronic or written), drawings, models, prototypes, apparatus, sketches, designs, schedules, product plans, marketing plans, technical procedures, manufacturing processes, analyses, compilations, studies, samples, formulas, methodologies, formulations, product developments, patent applications, know-how, experimental results, specifications, and other business information of either PGD and RESELLER and their respective affiliates, employees, officers, owners, agents, consultants or representatives, in the course of their work contemplated in this Agreement, regardless of whether such Confidential Information has been expressly designated as confidential and proprietary.

Confidential Information does not include information generally available to the public and any copyright Material herein licensed.

### **No assignment**

RESELLER may not assign, delegate, or otherwise convey this Agreement or any of its rights and obligations hereunder, to any person, entity, thing or Third Party without the prior written consent of PGD. Any such attempted assignment without consent shall be void.

### **Entire Agreement**

This Agreement constitutes the sole and entire agreement between PGD and RESELLER with respect to the subject matter hereof and supersedes any prior or contemporaneous letter of intent, agreement or understanding, whether written or oral, if any, between PGD and RESELLER with respect to such subject matter. THERE ARE NO ORAL AGREEMENTS CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT. Each signatory to this Agreement represents, warrants and covenants that he or she has the corporate authority to enter into this Agreement for and on behalf of their principal and to bind such principal to the terms and conditions of this Agreement for and on behalf of the principal, and PGD and RESELLER understand that this Agreement is being executed based on the representation that each signatory to this Agreement has the authority to fully bind the respective principals to this Agreement.

**Severability**

If any court finds any provision of this Agreement to be invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of PGD and Reseller.

**Indemnification**

PGD and RESELLER agree that PGD has no control over or responsibility for any damage that may be caused to PGD Products by a shipping company or any damage that may be caused by RESELLER's negligent acts, errors, or omissions or those of RESELLER's agents, contractors, subcontractors, or assignees. RESELLER agrees to indemnify and hold harmless PGD, including PGD's officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorney fees, to the extent such claims, losses, damages, or expenses are caused by the negligent acts, errors, or omissions of RESELLER or those of their agents, contractors, subcontractors, or assignees.