

## GUARDIAN CONE TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE CONTAIN VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

YOU ARE REQUIRED TO ACCEPT THESE TERMS BEFORE PURCHASING THE PRODUCT FROM SELLER, AND BY PLACING AN ORDER FOR THE PRODUCT, YOU ARE BOUND BY THESE TERMS.

THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

These terms and conditions of sale ("**Terms**") apply to the purchase and sale of Guardian Cone products and any successor products (the "**Product**"), and constitute a legally binding agreement between the individual ("**Customer**" or "**you**") using [www.site2020.com](http://www.site2020.com) (the "**Site**") and/or purchasing the Product and Site 2020 USA Inc. (the "**Seller**"). The Terms are subject to change by Seller without prior written notice at any time, in Seller's sole discretion. The latest version of these Terms will be posted on this Site, and you should review these Terms at <https://site2020.com/products/guardian-cone/> before purchasing the Product.

**1. Acceptance; No Other Terms.** When prompted by email by Seller, Customer must follow the appropriate steps to accept the Terms and purchase the Product. If Customer does not indicate its acceptance of such Terms, Customer will not be able to purchase the Product. All purchases of the Product from Seller are subject to Customer's acceptance of these Terms. These Terms prevail over any of Customer's general terms and conditions of purchase, which are hereby rejected. Fulfillment of Customer's order does not constitute acceptance of Customer's terms, nor does it modify or amend these Terms.

**2. Orders.** Each order for the Product received by Seller is subject to acceptance by Seller and these Terms as well as any other terms set forth on the Site. Seller may reject any such order for any reason, in its sole discretion. After Customer submits an order, Customer may receive one or more email messages that such order has been (a) received by Seller, (b) accepted by Seller and/or (c) shipped by Seller. If the Product is unavailable or the order is otherwise not accepted by Seller, Customer will be so notified in an email message.

**3. Information.** In submitting an order for the Product, Seller may collect data and other information from Customer and Customer's computer; provided, however, that Seller will not collect any data or other information relating solely to the credit card used by Customer to pay for the Product. All data and other information relating solely to a credit card used by Customer to pay for the Product may be collected and used by one or more third-party vendors.

**4. Sale.** In submitting an order for the Product that is accepted by Seller, Customer purchases from Seller the Product, subject to these Terms. Customer must provide Seller with complete and accurate information in submitting any such order. The Product is intended for commercial use by workers on commercial worksites operated by Customer or Customer's affiliates only, and is not authorized for resale.

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## 5. Prices; Payment.

(a) All prices for products are subject to change without notice. The price for the Product will be the price in effect at the time the order is placed. Unless otherwise expressly stated, prices do not include taxes or charges for shipping and handling. Seller is not responsible for pricing, typographical, or other errors in any offer by Seller reserves the right to cancel any orders arising from such errors.

(b) Customer must pay for the Product, plus all other amounts becoming due hereunder, by using a valid credit card or other payment methods expressly offered by the Seller that Customer is authorized to use. You represent and warrant that (i) the credit card or other payment information you supply to use is true, correct, and complete; (ii) you are authorized to use the credit card for the purchase; (iii) charges incurred by you will be honored by your credit card company; and (iv) you will pay charges incurred by you at the posted prices, including all applicable taxes (if any). Customer's credit card will not be charged for the Product until the time of shipment.

**6. Shipping.** In submitting an order for the Product, Customer will have options for shipping, and unless otherwise provided expressly on the Site, Customer will be charged for shipping as set forth on the Site. All risk of loss to the Product being shipped on behalf of Seller transfers to Customer upon actual delivery to Customer. Any dates posted on the Site for shipping or receiving the Product are only estimates and Seller is not responsible for any failure of Customer to receive such Product, on or before such dates.

**Return Policy.** If Customer is not satisfied with the Product ordered by Customer and Customer is located in the United States, Customer may return the Product to Seller for any reason within 30 days after the Product is received by Customer for a complete refund of the price plus taxes paid by Customer (not including any charges for shipping and processing & handling charges). After such 30-day period, Customer may only return the Product in accordance with the Limited Warranty. Additional instructions for returning the Product will be provided to Customer along with the Product or can be found at <https://site2020.com/products/guardian-cone/>

## 7. Limited Warranty.

(a) Seller warrants to Customer that for a period of one year from the date of shipment of the Product by the Seller, that such Product will be free from defects in material and workmanship.

**(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCT, INCLUDING WITHOUT LIMITATION ANY (b) WARRANTY OF MERCHANTABILITY; (c) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WARRANTY OF COMPLIANCE WITH RESPECT TO STATE OR LOCAL LAW; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

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**8. Account.** In submitting an order for the Product, Customer may establish an account with Seller that is accessible using a user name and password chosen by Customer. Customer's user name and password must comply with whatever protocol is from time to time established by Seller for user names and passwords, and must not be disclosed by Customer to third parties. Customer (a) is responsible for maintaining the confidentiality of Customer's user name and password, and (b) must immediately notify Seller in writing of any loss, or any unauthorized access, disclosure or use, of Customer's user name or password. Seller will not have any liability to Customer or any third party arising from Customer's failure to keep Customer's user name or password confidential and may at any time, in its sole discretion and without notice to Customer, terminate or temporarily disable Customer's access to such account. In addition, Seller may rely on any use of Customer's user name or password, whether by Customer or any third party, as having been authorized by Customer, unless (a) Customer previously notified Seller in writing of any loss, or any unauthorized access, disclosure or use, of Customer's user name or password, (b) Seller has had a reasonable opportunity of not less than five days to act on such notice and (c) Seller's acting on such notice would have clearly avoided any third-party use of such account that was not authorized by Customer.

**9. Taxes.** Seller shall be responsible for all duties and clearances owed to, or required by, Canada and the United States with respect to the import and export of the Product under these Terms. All sales and use taxes, plus any other federal, state, county or local duty, surcharge, tax, tariff or other government-imposed fee (except for any tax on the income of Seller) assessed or payable upon an order for the Product or otherwise relating to these Terms shall be payable by Customer, even if such government-imposed fee is not collected by Seller at the time an order for the Product is submitted to Seller.

**10. Limitation of Liability. THE REMEDIES DESCRIBED IN THESE TERMS ARE YOUR SOLE AND EXCLUSIVE REMEDIES AGAINST SELLER. SELLER WILL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY WITH RESPECT TO THE PRODUCT, THESE TERMS OR OTHERWISE FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES. EXCEPT IN THE CASE OF ANY GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY SELLER, IN NO EVENT WILL ANY LIABILITY OF SELLER WITH RESPECT TO THE PRODUCT, THESE TERMS OR OTHERWISE EXCEED THE LESSER OF (A) ALL DIRECT DAMAGES ACTUALLY INCURRED BY CUSTOMER OR (B) THE ACTUAL AMOUNT PAID BY CUSTOMER TO SELLER FOR THE PRODUCT (NOT INCLUDING ANY CHARGES FOR SHIPPING). THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF ANY THEORY OF LIABILITY (INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT), EVEN IF THE POSSIBILITY OF ANY DAMAGES SHOULD HAVE BEEN FORESEEN BY SELLER, AND EVEN IF ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.**

**SOME JURISDICTIONS DO NOT ALLOW THE LIMITATIONS OR EXCLUSIONS OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

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**11. Severability.** Whenever possible, each provision of these Terms will be interpreted in such a manner as to be effective and valid under applicable law. If, however, any such provision is prohibited by or invalid under such law, it will be deemed modified to conform to the minimum requirements of such law, or if for any reason it is not deemed so modified, it will be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder of such provision, or any other provision of these Terms, being prohibited or invalid.

**12. Governing Law.** All matters arising out of or related to these Terms are governed by and construed in accordance with the internal laws of the state of New York without giving effect to any choice or conflict of law provision or rule (whether of the state of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the state of New York.

**13. Dispute Resolution.**

**(a) YOU AND SITE 2020 USA INC. ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR LIMITED IN ARBITRATION.**

**(b) ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND SELLER ARISING FROM OR RELATING IN ANY WAY TO YOUR PURCHASE OF THE PRODUCT, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.**

(c) The arbitration will be administered by the American Arbitration Association ("**AAA**") in accordance with the Commercial Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by this Section 14. (The AAA Rules are available at [adr.org](http://adr.org) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section. Seller will be responsible for the AAA filing fee of any such proceeding.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or these Terms are void, voidable or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction.

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If you prevail on any claim that affords the prevailing party attorneys' fees, the arbitrator may award reasonable fees to you under the standards for fee shifting provided by law. You may elect to pursue your claim in small claims court rather than arbitration, if you provide Seller with written notice of your intention to do so within 60 days of your purchase. The small claims court proceeding will be limited solely to your individual dispute or controversy.

(d) You agree to an arbitration on an individual basis. In any dispute, **NEITHER YOU NOR SITE 2020 USA INC. WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.** The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

(e) If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

**14. Insurance.** During the term of this Agreement and for a period of three (3) years thereafter, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$5,000,000.00 with financially sound and reputable insurers. Upon Seller's request, Customer shall provide Seller with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Customer shall provide Seller with ten (10) days' advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

**15. Compliance with Law.** Customer shall comply with all applicable laws, regulations and ordinances in connection with its business and ownership, operation and use of the Product. Customer shall maintain in effect all licenses, permissions, authorizations, consents and permits necessary to carry out its obligations under these Terms, including without limitation, its obligation to comply with all laws, regulations and ordinances as set forth in the immediately preceding sentence. Customer shall comply with all export and import laws of Canada and the United States involved in the sale of the Product under these Terms, except that Seller will be responsible for all import and export duties and clearances owed to, or required by, Canada and the United States.

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**16. Notices.** Customer must send all notices to Seller relating to the Product or these Terms to info@site2020.com. Any such notice will be effective upon actual receipt by Seller. Seller may send notices to Customer through e-mail, regular mail or a general posting on the Site. Any such notice will be effective (a) immediately upon Seller's sending such notice to the address it has in its records for Customer in the case of e-mail, (b) five days after Seller's sending such notice to the address it has in its records for Customer in the case of regular mail, and (c) immediately upon Customer's entering the Site after such notice is posted on the Site.

**17. Waivers.** No failure of Seller to exercise, and no delay by Seller in exercising, any right or remedy under these Terms shall be a waiver of such right or remedy. No waiver of any such right or remedy shall be effective unless made in a writing signed by Seller, and specifically referring to each such right or remedy being waived.

**18. Third-Party Beneficiaries.** There are no third-party beneficiaries of these Terms, and no provision of these Terms can be enforced or relied upon by any third party.

**19. Miscellaneous.** These Terms (a) inure to the benefit of, and is binding upon, Customer and Seller and each of Customer's and Seller's successors and assignees, except that Customer may not assign any of Customer's rights or obligations under these Terms without first obtaining the written consent of Seller, and (b) constitute the entire agreement between Customer and Seller with respect to the subject matter of these Terms, and supersede all prior oral and written proposals, representations, understandings and agreements. Any attempt by Customer to assign to a third party any right or remedy hereunder will be null and of no effect. Seller may, in its sole discretion, assign or otherwise transfer to a third party (including, but not limited to, an affiliate of Seller) these Terms or any order for the Product. To the extent there is any conflict or inconsistency between any provision of these Terms and any provision contained on the Site, the former will control.