

## TERMS AND CONDITIONS

### 1. DEFINITIONS:

"Buyer" as used herein means the Intrawest entity identified in the Order and its related entities including Copper Mountain, Inc., Intrawest/Winter Park Operations Corporation, Intrawest Retail Group, Inc., Copper Events Marketing, Inc., Intrawest Hospitality Management, Inc., Inn at Stratton Mountain, Liffline Lodge, Mountain Creek Ski Resort, Sandestin Golf and Beach Resort, Seaside C.R.A., Snowshoe Mountain Resort, Stratton Corp., Stratton Mountain, Stratton Resort, Zephyr Mountain Lodge and Intrawest Shared Services, Inc.

"Buyer's Authorized Procurement Representative" means the person or persons authorized by Buyer to alter, modify or change the terms of this Order.

"Seller" means the party with whom Buyer is contracting and includes any reference to "vendor," "subcontractor," "contractor," or "supplier."

"Purchase Order" or "Order" means the instrument of contracting to which these Terms and Conditions are appended, including all documents, exhibits, and attachments referenced therein, including these Terms and Conditions.

**2. ACCEPTANCE:** Seller has read this Order and understands it to be the complete agreement between Buyer and Seller with respect to subject of the Order. Seller's written acceptance or acknowledgment of this Order, or Seller's shipment of goods, performance of services or commencement of work under this Order shall be only upon the terms and conditions contained herein. Any and all terms and conditions proposed by Seller which are different from or in addition to the terms and conditions of Buyer's Purchase Order are hereby deemed to be material alterations, shall not become a part of this Order and are superceded and replaced by the terms of this Order. Any modifications or changes to this Order shall be made only in accordance with this Article and Article 5 below.

**3. SHIPPING, BILLING AND PAYMENT:** Seller agrees: (a) to properly pack, mark and ship goods in accordance with the requirements of Buyer and involved carriers in a manner to secure lowest transportation cost and meet delivery times; (b) to route shipments in accordance with Buyer's instructions; (c) to make no charges for handling, packaging, storage, transportation or drayage of goods unless otherwise stated in this Order, (d) to properly mark each package with this Order number, and where multiple packages comprise a single shipment, to consecutively number each package; (e) to include the Order number on each packing slip, invoice and any other communication related to this Order; and (f) to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions and carrier's requirements. The packaging, labeling and shipping of all HAZARDOUS SUBSTANCES, including DANGEROUS OR EXPLOSIVE MATERIALS, must conform with all applicable international, federal, state and local laws and regulations. The marks on each package and identification of the goods on packing slips, bills of lading and invoices shall be sufficient to enable Buyer to easily identify the goods purchased. Seller shall promptly render, after delivery of goods or performance of services, correct and complete invoices referencing the Purchase Order number to Accounts Payable. Payment for goods and/or services and required documentation, shall be in accordance with the terms of this Order. Time for payment shall not begin until correct and complete invoices are received, and Seller's cash discount privileges to Buyer shall extend until payment is due.

**4. DELIVERY SCHEDULES:** (a) Time is of the essence in the performance of this Order. Deliveries shall be made by Seller at such times and places and of such items and quantities as specified in the Buyer's delivery schedules. Strict adherence to Buyer's stated Schedules is a material condition of this Order. Further, Buyer shall have no obligation to pay for goods delivered to Buyer which are delivered after the delivery date or at a location other than specified by Buyer. If goods are delivered after the delivery date, Buyer will not accept Order and will return to Seller at Seller's sole cost. Orders where quantities and/or delivery schedules are not specified, Seller shall deliver goods in such quantities and at such times as Buyer may subsequently direct. (b) Unless otherwise provided for on the face hereof, goods covered by this Order shall be delivered to Buyer FOB Buyer's facility at the address specified on the face hereof, and title to goods covered hereunder shall pass to Buyer upon delivery of such goods at Buyer's designated facility. Seller shall be responsible for all risk of loss or damage until such passage of title. (c) If it appears to Seller that a delivery schedule cannot be met, Seller shall promptly notify Buyer of the causes thereof, the action being taken to mitigate such cause of non-delivery, when on-schedule status will be regained, and at Seller's expense, Seller shall take whatever reasonable action is necessary with or without Buyer's request, to meet such schedules or to recover to the maximum extent possible any delay in meeting such schedules. Such reasonable action by Seller shall include, but not be limited to, expedited shipment. Buyer acknowledges and agrees that certain changes in delivery schedule are market dependent and are normal and anticipated in the course of business. (d) If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller shall, at Buyer's option (i) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method, (ii) allow Buyer to reduce its payment of Seller's invoices by such difference, or (iii) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.

**5. CHANGES:** Buyer reserves the right at any time to direct Seller to make changes within the general scope of this Order with respect to (a) designs or specifications and/or (b) place of inspection, delivery or acceptance. Seller agrees to promptly make such changes and other changes as provided for in Article 3 and elsewhere, and avoid unnecessary related costs. Any difference in price or time of performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. This Order may only be changed or modified by a Purchase Order amendment issued by Buyer. No adjustment of any kind shall be afforded to Seller with respect to changes made necessary by Seller's fault including defects in goods or services.

**6. INSPECTION AND QUALITY CONTROL:** Buyer's inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance.

**7. NON-CONFORMING GOODS:** (a) Buyer may reject and hold at Seller's risk and expense subject to Seller's reasonable disposal instructions, goods which do not conform to applicable specifications, drawings, samples or descriptions or which are defective in material, workmanship or design. To the extent Buyer rejects goods as non-conforming: the quantities of such goods under this Order will automatically be reduced by the number of non-conforming items unless Buyer notifies Seller in writing otherwise. Seller shall not replace quantities so reduced without a new Order or schedule from Buyer, and Buyer is not responsible for payment to Seller for rejected non-conforming goods. However, payment by Buyer for non-conforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects. (b) Without limiting any other

rights Buyer may have, Buyer may, upon rejection and at its option, require Seller (i) to repair or replace at Seller's expense any goods or items which fail to meet the requirements of applicable specifications, designs, drawings, samples, descriptions or other requirements of this Order, or (ii) to refund the price which may have been paid by Buyer for any such goods.

**8. FORCE MAJEURE:** Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, riots, natural disasters, wars, sabotage, work stoppages, slowdowns, power failures, or court order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days. During the period of such delay by Seller, Buyer, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by Buyer and at the price set forth in this Order. If requested by the Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Buyer may immediately cancel this Order without liability.

**9. WARRANTY:** Seller expressly warrants that all goods or services covered by this Order will conform to the specifications, drawings, samples, or descriptions furnished to and by Buyer, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use and expressly warrants that all goods covered by this Order which have been selected, designed, manufactured, or assembled by Seller, based upon Buyer's stated use, will be fit for the particular purposes intended by Buyer.

**10. TOXIC SUBSTANCES, MSDS, INGREDIENTS DISCLOSURE AND SPECIAL WARNINGS AND INSTRUCTIONS:** (a) Seller warrants that each chemical substance delivered under this Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 (B) of the Toxic Substance Control Act (Public law 94-469). (b) Seller shall submit to , Buyer prior to and with each shipment, Material Safety Data Sheets prepared in accordance with the OSHA Hazardous Communication Standard, 29 CFR 1919.1200. (c) If requested by the Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (i) a list of all ingredients in the goods purchased hereunder; (ii) the amount of one or more of the ingredients; and (iii) information concerning any changes in or additions to such ingredients. Should Seller not have immediate access to this information, Seller shall delay shipment until such time as Seller has contacted the Party which does have the information, and is able to obtain it and furnish it as requested to Buyer. (d) Prior to and with the shipment of the goods purchased hereunder, Seller agrees to furnish to Buyer sufficient warning and notice in writing (including appropriate labels on goods, containers and packing) of any hazardous material which is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise such care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the goods, containers and packing shipped to Buyer.

**11. CANCELLATION FOR DEFAULT:** Buyer reserves the right to cancel this Order, in whole or in part, without liability to Buyer, if Seller (a) refuses or fails to deliver the goods or services or any installment thereof strictly within the time specified herein or any extension thereof granted by Buyer in writing, (b) fails to comply strictly with any provision of or repudiates this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, or (c) suspends its business or becomes insolvent or comes under the protection of any law relating to bankruptcy, insolvency or relief of debtors. If Buyer requests adequate assurance of performance, Seller shall provide same within ten (10) business days.

**12. PATENT INDEMNITY, TRADEMARKS, TRADE SECRETS AND COPYRIGHTS:** Seller agrees: (a) to defend, hold harmless and indemnify Buyer, its successors, affiliates, parent company and customers against all claims, demands, proceedings, losses, suits, damages, liability and expenses (including reasonable attorney's fees) arising out of or based upon any claim for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, trade secret, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered from Seller, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; (b) to waive any claim against Buyer under the Uniform Commercial Code or otherwise, in any way related to any claim described in (a) above; (c) should the manufacture, use or sale of the goods or services ordered be made the subject of any such suit or claim as described in (a) above, Seller agrees, at its own expense, to procure for Buyer the right to continue the use of such goods or services, or replace them with substantially equivalent non-infringing goods or services, or to modify the goods or services so they become non-infringing; and (d) to grant to Buyer a worldwide, non-exclusive, royalty-free, irrevocable license to repair or have repaired the goods ordered hereunder.

### 13. TECHNICAL INFORMATION DISCLOSED:

**13.1 By Buyer:** (a) Unless otherwise provided herein or authorized by Buyer in writing, Seller shall protect as proprietary and keep confidential all proprietary information including, but not limited to, designs, processes, drawings, specifications, reports, data, and other technical or business information and the features of all parts, equipment, tools or fixtures and other items furnished or disclosed to Seller by Buyer. Seller shall use such disclosed proprietary information, documents or items only in the performance of this Order and except as may be required by law shall not disclose such to any third party without Buyer's prior written consent. Upon completion or termination of this Order, Seller shall, at Seller's expense, make such disposition of all such proprietary information, documents or items as directed by Buyer. (b) Seller agrees that all proprietary information, as described in (a) above, including all rights to patents, trademarks, copyrights, mask works, trade secrets, and other related proprietary information shall be the sole and exclusive property of Buyer.

**13.2 By Seller:** (a) Notwithstanding any document marking to the contrary, any information which Seller may have disclosed or may hereafter disclose to Buyer incidental to the placing and filling of this Order shall not, unless otherwise specifically agreed upon in a written Nondisclosure Agreement between the parties, be deemed to be confidential or proprietary information, and accordingly, Buyer shall not be liable for any use or disclosure thereof (other than liability which may result from a claim by Seller for patent infringement by Buyer). (b) Buyer agrees that all proprietary information, as described in (a) above, including all rights to patents, trademarks, copyrights, mask works, trade

secrets, and other related proprietary information shall be the sole and exclusive property of Seller.

**14. INDEMNIFICATION:** In the event Seller, its officers, employees, agents, suppliers or subcontractors at any time enter Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller shall defend, indemnify and hold Buyer, its officers, employees and agents, harmless from and against any claim, suit, loss, and expense (including reasonable attorney fees) or any liability whatsoever for any damage to the property or injuries (including death) to Buyer, its employees or any other person, including Seller's employees, arising from or as a result of the performance, actions or omissions of Seller, except for claims arising from the sole and exclusive negligence of Buyer. Seller shall take all precautions, special or otherwise, and shall be responsible for compliance with all local, state and federal safety laws in the performance of the work hereunder.

**15. INSURANCE:** Seller shall furnish Buyer with certificates of insurance evidencing insurance for the types and in the amounts required by Buyer before the commencement of work on Buyer's premises. All such insurance certificates shall provide that such insurance shall not be cancelled or amended without thirty (30) days prior written notice to Buyer. All insurance policies shall be with insurance companies reasonably satisfactory to Buyer. Insurance shall be maintained for a period specified by Buyer or if no period is specified as long as work on the premises occurs.

**16. REMEDIES:** The rights and remedies reserved to Buyer in this Order shall be cumulative, and additional to all other or further remedies provided in law or equity.

**17. COSTS IN LITIGATION/ARBITRATION:** In any action or proceeding to enforce the provisions of this Order, the prevailing party shall recover its costs and expense as well as reasonable attorneys fees, court costs, arbitrator fees and expert witness fees, such fees to be set by the judge or arbitrator and included in any award or judgment entered in such action or proceeding.

**18. SETOFF:** In addition to any right of setoff provided by law, all amounts due Seller shall be considered net of indebtedness of Seller to Buyer and its subsidiaries; Buyer may deduct any amounts due or to become due from Seller to Buyer and its subsidiaries from any sums due or to become due from Buyer to Seller.

**19. ADVERTISING, PUBLICITY:** The Supplier will not refer to or use the names, trademarks, or products of Buyer or any other Buyer affiliate or parent company in connection with any publicity or promotional activities without prior written permission of Buyer. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this Order and shall not be required to make further payments except for conforming goods shipped prior to cancellation.

**20. GOVERNMENT COMPLIANCE:** Seller will comply with the Fair Labor Standards Act of June 30, 1938 (USC 201-209) as amended. Seller agrees to comply with all Federal, state and local laws, executive orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under this Order.

**21. EQUAL OPPORTUNITY:** During the term of this Order, Seller and its employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex or national origin by curtailing or refusing to furnish accommodations, facilities, services or use privileges offered to the public generally. During the term of this Agreement Seller shall at all times act in full compliance with Title VII of the Civil Rights Act of 1964 and will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

**22. NO IMPLIED WAIVER:** The failure of a party at any time to require performance by the other of any provision of this Order shall not affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any provision of this Order constitute a waiver of any succeeding breach of the same or any other provision.

**23. NON-ASSIGNMENT:** Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent.

**24. RELATIONSHIP OF PARTIES:** Seller and Buyer are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party an authority to assume or to create any obligation on behalf of or in the name of the other.

**25. GOVERNING LAW:** This Order is to be construed and governed in accordance with the laws of the State of Colorado, excluding its choice of law rules. Jurisdiction and venue for any suit between the parties hereto arising out of or connected with this Order, or the goods or services furnished hereunder, shall be in the State of Colorado, or the courts of the state where the Seller's principal place of business is located, as Buyer may elect. The United Nations Convention on the International Sale of Goods does not apply to this Order.

**26. SEVERABILITY:** If any term of this Order becomes invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and all other provisions of this Order shall remain in full force and effect.

**27. ARBITRATION:** To the fullest extent permitted by Colorado law and all claims, disputes and controversies between or among the parties to this Purchase Order (and their respective employees, officers, directors, attorneys, assigns and other agents) relating to this Purchase Order and its negotiation, execution, performance, modification or payment shall be submitted to binding arbitration. Such arbitration shall proceed in Denver, Colorado, shall be governed by Colorado law including, without limitation the provisions of CRS 13-22-20 et seq. and 13-21-102(5) and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any decision on the merits of any claim or portion thereof rendered by arbitrators shall be made by way of a written opinion in which the reasons for the decision are explained. Judgment upon the award rendered by the arbitrator and may be entered in any court having jurisdiction. Nothing in the preceding paragraph, nor the exercise of any right to arbitrate hereunder, shall limit the right of any party hereto to obtain provisional or ancillary remedies such as replevin, injunctive relief or attachment from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding. The institution and maintenance of any action for such judicial relief, or pursuit of provisional or ancillary remedies, or exercise of self-help remedies shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration, including those claims or disputes arising from exercise of any such judicial relief, or pursuit of provisional or ancillary remedies, or exercise of self-help remedies.