

## Terms and Conditions of Sales

### 1. Governing Provisions

These Terms and Conditions of Sale ("**Terms and Conditions**") constitute an offer by Accord Carton LLC, a Delaware limited liability company, or its subsidiary or division identified on the Quotation, Acknowledgment or Invoice provided by Accord Carton Co., ("**Seller**") to provide the products and/or services described in such Quotation, Acknowledgment or Invoice (the "**Products**") to the buyer identified in such Quotation, Acknowledgment or Invoice ("**Buyer**"), subject to the terms, covenants and conditions contained herein. These Terms and Conditions, together with the email, price quotation, order acknowledgement, or other similar form issued by Seller and referencing or relating to these Terms and Conditions (together, this "**Agreement**"), are intended by the parties to be the final expression of their agreement, and are intended also as a complete and exclusive statement of the terms and conditions thereof. Buyer may not modify, change, alter, renounce or waive any term, covenant or condition hereof or any of Seller's rights or remedies hereunder unless an authorized representative of Seller consents thereto in writing. Seller agrees to provide the Products to Buyer only on these Terms and Conditions, notwithstanding any language in Buyer's purchase order, if one exists, or other writing or oral representation previously, simultaneously or hereafter received by Seller purporting to amend, modify or replace these terms, covenants and conditions with any different or additional terms, covenants or conditions or reciting that any action or inaction by Seller constitutes agreement or consent by Seller to such amendment, modification or replacement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any terms used in these Terms and Conditions, the Quotation, Acknowledgment or Invoice. SELLER'S AGREEMENT TO PROVIDE THE PRODUCTS IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

### 2. Buyer's Acceptance

Any offer by Seller is expressly limited to these Terms and Conditions, and any price quotation referencing these Terms and Conditions expires if not accepted by Buyer within ten (10) days after the date of the quotation, unless otherwise stated by Seller in such quotation. Seller may revoke an offer at any time prior to its acceptance by Buyer. If any of these Terms and Conditions are not acceptable to Buyer, Buyer shall promptly notify Seller thereof. Buyer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become the agreement between the parties on the earliest of the following to occur: (i) Seller's receipt of Buyer's purchase order number or a signed copy of the Buyer's acknowledgment of Seller's Quotation, Acknowledgment, Invoice or these Terms and Conditions; (ii) Buyer's payment of any amounts due to Seller; (iii) Buyer's delivery to Seller of any material to be furnished by Buyer; (iv) Buyer's receipt of the Products; or (v) any other event constituting acceptance under applicable law.

### 3. Cancellation or Modification

Buyer may not cancel or modify its order except upon terms accepted in writing by Seller. In the event of such cancellation or modification, Buyer shall fully indemnify, reimburse, and make Seller whole from and against any loss associated therewith. Such indemnity must include recovery of all costs and damages incurred, including normal indirect and overhead charges, and a normal profit. All undelivered Products may be cancelled by Seller, without incurring any liability to Buyer, if production becomes impracticable. Seller reserves the right to make safety changes to Products without Buyer approval to address any actual or potential safety defect in any Products or changes in governmental regulations or standards, notwithstanding any previously accepted open purchase orders. Seller shall provide notice to Buyer of any material change impacting any previously accepted open purchase orders within a reasonable period of time thereafter.

### 4. Quotations and Orders

Written quotations are void unless accepted within 30 days from date of issue. Seller reserves the right to accept or reject Buyer's purchase orders in its sole discretion. Any accepted purchase orders shall be governed by these Terms and Conditions and no additional or different terms in any such purchase order shall be part of the parties' agreement.

### 5. Artwork and Tooling

Buyer shall be charged Engineering Costs for artwork, printing plates, dies and tooling. All such charges shall be invoiced with the first shipment unless otherwise agreed. Artwork, printing plates, dies and tooling shall remain Seller's property. If Buyer, or a third party on behalf of Buyer, provides Seller with incorrect or defective artwork, printing plates, dies and/or tooling and Seller incurs at least 2 hours of downtime as a result thereof, then Seller may charge Buyer \$500/hour for each hour of downtime incurred by Seller up to a maximum of 6 hours. Buyer's order will be pulled from production if such downtime reaches the 6 hour maximum limit.

### 6. Delivery

Buyer may select the mode of transportation, routing and carrier for delivered orders. If Buyer does not provide Seller with shipping instructions, then Seller shall select the mode of transportation for delivered orders. Buyer shall provide Seller with a minimum lead time of 5 days to make shipping arrangements. Seller will use its reasonable business efforts to meet the scheduled dates, but does not guarantee to meet such dates. Time for delivery shall not be of the essence. Failure by Seller to make any shipments by scheduled dates does not constitute a cause for cancellation and/or for damages of any character. In the event of delay in delivery requested by Buyer or caused by Buyer, Seller will store all Products at Buyer's risk and expense.

## **7. Storage**

Unless agreed otherwise in writing, Seller will store Products at no additional charge to Buyer for a maximum of 90 days. Upon expiration of 90 days, Seller shall invoice Buyer the outstanding balance for stored Products. After 90 days, storage fees will be assessed to Buyer each month in an amount equal to \$25 per pallet/per month for the stored Products. In no event will Products be warehoused more than 6 months from the date of production. Presuming Buyer has paid for such, the Products shall be released to Buyer. Should Buyer decline release of the Products, or in the event that Buyer is in arrears on amounts owed to Seller, Seller may elect to dispose of the Products and assess the additional cost to Buyer.

## **8. Risk of Loss; Title; Inspection**

Unless otherwise specified in this Agreement, all shipments of Products for sales to Buyers in the United States are FOB (Incoterms 2020) Seller's facility; all shipments of Products for sales to Buyers outside the United States are EXW (Incoterms 2020) Seller's facility. Regardless of any freight payment by Seller on Buyer's behalf (for which Buyer agrees to reimburse Seller), all risk of loss or damage in transit shall pass to Buyer upon delivery to the Delivery Point ("**Delivery Point**"). Seller assumes no responsibility in connection with the shipment of the Products to Buyer. Title to Products will remain with Seller until Seller receives full payment therefor. Any claims for damage in transit shall be filed by Buyer directly with the carrier. Buyer shall inspect the Products upon receipt and any claims for shortages or other errors must be noted at the time of delivery on all carrier documents and supported by signed documentation. Claims for shortages or other errors must be made in writing to Seller within 10 days after Seller's delivery of the Products to the Delivery Point. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. No Products may be returned to Seller for any reason without Seller's prior written authorization. Partial shipments shall be permitted. Shipments may contain underruns or overruns not exceeding 10%.

## **9. Insurance**

Buyer, shall provide and maintain adequate insurance for Products, covering them from the Delivery Point until Seller has received payment in full for all Products naming Seller as an additional insured, and shall annually provide to Seller a certificate of insurance evidencing compliance with this requirement. All insurance policies must be underwritten by a company with a minimum A.M. Best Rating of A- VII. Certificates evidencing the required coverages must be furnished to Seller prior to the commencement of any work and on an annual basis thereafter, and at any additional times upon Seller's request. Such insurance shall be reasonably satisfactory to Seller and shall provide that it may not be cancelled or modified without prior written notice to Seller. If Buyer fails to maintain the insurance required herein, Seller may, in its sole discretion, purchase such insurance on Buyer's behalf and charge back the cost thereof to Buyer, with a reasonable markup.

## **10. Prices**

All prices, discounts and transportation charges are in U.S. Dollars and are subject to change without notice. If no price is stated on Seller's Quotation, Acknowledgment or Invoice, prices shall be Seller's current prices in effect on the date of acceptance of orders by Seller (or, in Seller's sole discretion, on the date of shipment) as set forth on price lists issued or modified by Seller from time to time. All general or special taxes, duties, fees, freight and insurance costs and any other charges of any nature whatsoever, imposed on, in connection with or measured by any transaction between Seller and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any of the foregoing amounts, Buyer shall reimburse Seller therefor.

## **11. Payment**

Unless otherwise stated in the Quotation, Acknowledgment or Invoice, payment terms are 100% of the order amount due net 30 days from shipment from Seller's facility. Seller reserves the right to require full cash payment in advance or at the time of delivery whenever Seller, in its sole discretion, develops doubt as to Buyer's financial responsibility; Seller will not in such event be liable for non-performance. Terms of payment on all orders are subject to the approval of Seller's credit department. If Buyer does not pay Seller any amount when such amount is due, or if Buyer defaults in the performance of these Terms and Conditions or any Quotation, Acknowledgment or Invoice issued from Seller to Buyer, Seller may, without incurring liability and without prejudice to Seller's other lawful remedies and at Seller's sole option:

(i) terminate Seller's obligations under these Terms and Conditions, and/or any Quotation, Acknowledgment or Invoice issued from Seller to Buyer; (ii) declare immediately due and payable all of Buyer's obligations to Seller; (iii) change credit terms with respect to any further work; (iv) suspend or discontinue any further work until Buyer pays all overdue amounts; and/or (v) repossess the Products. Buyer agrees to reimburse Seller for all costs incurred by Seller in collecting any sums owed by Buyer to Seller, including without limitation, attorneys' fees and costs of proceedings. Buyer agrees to pay, at Seller's discretion, a late payment fee of up to 1.5% per month on all amounts not paid in full when due. Seller reserves the right to require payment in advance or other secured form of payment from time to time.

## 12. Security Interest

As partial consideration for Seller's sale of the Products to Buyer, Buyer hereby grants to Seller and Seller hereby retains a lien and security interest in all Products sold to Buyer now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all Products and materials thereof or any other products bearing any trademark of Seller, returns or repossessions and the proceeds of all of the foregoing, to secure all of Buyer's obligations to Seller under these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer and all other obligations of Buyer to Seller. Buyer agrees to execute such financing statements, continuation statements and other documents and to take such actions as may be required by Seller to evidence or perfect the security interest granted herein and the interest of Seller as the owner of the Products. If Buyer fails to perform any of its duties set forth in these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer, Seller is authorized in Buyer's name or otherwise to take such actions including, without limitation, signing Buyer's name, and Buyer hereby appoints Seller as its attorney-in-fact for such purpose. The security interest granted under this Section constitutes a purchase money security interest under applicable law.

## 13. Limited Warranty

- a. Seller warrants to Buyer that its Products will be free from material defects in workmanship and materials under normal use and service, for a period for 6 months from the date of Seller's delivery of the Products to the Delivery Point (the "**Warranty Period**"). There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, altered Products, failure to follow Seller's instructions or improper storage. **SELLER'S SOLE AND EXCLUSIVE OBLIGATION (AND BUYER'S SOLE AND EXCLUSIVE REMEDY) UNDER THIS WARRANTY SHALL BE, UPON PROMPT WRITTEN NOTICE RECEIVED BY SELLER DURING THE WARRANTY PERIOD OF ANY BREACH, TO EITHER, AT SELLER'S OPTION, REPAIR, CORRECT OR REPLACE WITHOUT CHARGE, F.O.B. SELLER'S FACILITY, ANY DEFECTIVE PRODUCT EXPRESSLY WARRANTED HEREIN BY SELLER AGAINST DEFECTS AND FOUND BY SELLER IN ITS SOLE DISCRETION TO BE DEFECTIVE AND COVERED BY THIS WARRANTY, OR CREDIT BUYER FOR THE PURCHASE PRICE PAID FOR SUCH PRODUCT. SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER'S ACTS OR OMISSIONS OR OTHERWISE. This warranty covers only replacement, correction or repair of defective Products at Seller's main facility and does not include the cost of inspection, removal, delivery or field service travel and living.**
- b. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, provided in connection with, or packaged together with the Products. Third Party Products are not covered by the limited warranty set forth in this Section. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- c. On Products furnished by Seller, but produced or manufactured by others, the written warranty of the manufacturer, if any, will be assigned to Buyer if assignment is reasonably practicable. However, Seller does not adopt or guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer.
- d. Seller makes no representations or warranties whatsoever with respect to any sample Products provided to Buyer, whether paid for or provided without charge, and all sample Products are provided on an AS-IS, WHERE-IS basis. Without limiting the foregoing, Seller makes no warranty that the sample Products comply with any specifications or Buyer requirements, or that the any future Products sold to Buyer will be the same as or similar to the sample Products.

## 14. Limited Liability

Prior to using Products, Buyer or user shall determine the suitability of the Product for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, INDIRECT, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THESE TERMS AND CONDITIONS, THE QUOTATION, ACKNOWLEDGMENT OR INVOICE ISSUED FROM SELLER TO BUYER SHALL BE LIMITED TO THE MONIES PAID BY BUYER TO SELLER FOR THE DEFECTIVE PRODUCT. The remedy described in this section is Buyer's exclusive remedy and is in lieu of any other remedy otherwise available at law or by contract.

## 15. Disclaimer of Warranties

SELLER AND BUYER AGREE THAT THE WARRANTY IN SECTION 13 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS FURNISHED BY SELLER HEREUNDER (INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRINTING OR REPRODUCTION OF UNIVERSAL PRODUCT CODE INFORMATION). SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as a warranty.

## 16. Exclusion of Tort Remedies

All sales of Products hereunder are commercial sales transactions, and the parties intend for them to be governed by Article 2 of the Uniform Commercial Code (as adopted by the state set forth in Section 22 below) and related commercial legal principles. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.

## 17. Product Recalls

Seller expressly retains the right, in its sole discretion, to order and control any recall, repair, replacement or refund program relating to the Products, including if mandated by an order of a governmental agency to correct a manufacturing defect affecting the safety of Products sold. In the event a recall, repair, replacement or refund program is required, (a) Buyer shall fully cooperate with Seller, at Seller's request, in the implementation and administration of any program of recall, repair, replacement or refund, and (b) Buyer shall furnish to Seller such records regarding any program of recall, repair, replacement or refund as Seller shall reasonably request. Subject to the limitations set forth in this Agreement, Seller shall reimburse Buyer for the reasonable and documented out-of-pocket costs and expenses incurred by Buyer in connection with any such recall, repair, replacement or refund program which is caused by Seller's gross negligence, intentional misconduct, or breach of the limited warranties set forth in these Terms and Conditions.

Buyer shall notify Seller in a timely manner of any condition known to it that may affect the safety of the Products, and Buyer shall consult with Seller about any such condition prior to notifying any governmental agency. In no event shall reimbursement under this Section of reasonable and documented out-of-pocket costs include any amounts for lost profits or business goodwill or any other special, consequential, punitive or indirect damages. Nothing in this Agreement shall constitute a waiver or limitation by Seller of any constitutional, statutory, or other right to administrative or judicial review of any request, demand, or order of any governmental agency or body.

## 18. Intellectual Property Ownership

Except for data, information and drawings provided by Buyer, all intellectual property rights, including copyrights, patents, patent disclosures, inventions (whether patentable or not), trade dress, trade names, logos, corporate names, domain names, trademarks, service marks, trade secrets, know-how, specifications, and other confidential information, together with all derivative works and all goodwill associated therewith, and all other rights in and to all the Products, documents, work product, drawings, and other materials (whether or not copyrightable) that are delivered to Buyer under this Agreement or prepared by or on behalf of Seller in the course of performing under this Agreement, shall be exclusively owned or otherwise licensed by Seller. No license, transfer, or assignment of proprietary rights from Seller to Buyer will occur as a result of this Agreement or any order. Buyer warrants that any trademarks Buyer requests Seller to affix to any Products are owned or authorized for use by Buyer. Buyer shall not contest, or assist others in contesting, the validity or ownership of Seller's intellectual property. Buyer grants to Seller a non-exclusive limited license to use samples or photographs of any Products provided by Seller to Buyer hereunder in connection with the marketing and advertising of Seller's goods and services.

## 19. Indemnification

- a. Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, directors, officers, employees, affiliates, agents, successors and assigns (collectively, "**Seller's Indemnified Parties**") from and against any and all direct and indirect claims, demands, actions, liabilities, judgments, damages, losses, fines, penalties, forfeitures, costs and expenses, including, without limitation, reasonable attorneys' fees and costs of proceedings (collectively, "**Damages**"), arising out of, in connection with, resulting from or relating to: (i) breach of these Terms and Conditions and the Agreement with Seller or any law by Buyer or any of Buyer's shareholders, directors, officers, employees, representatives, agents, successors or assigns ("**Buyer's Parties**"); (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties; (iii) losses, damages or injuries caused by, arising out of or relating to the Products or the handling or use of the Products; and/or (iv) any infringements of any patent, trademark, copyright or other intellectual property rights of any other party by the Products either alone or in combination with other products.
- b. Notwithstanding the generality of the foregoing, orders manufactured to drawings, designs or specifications provided by or on behalf of Buyer are executed only with the understanding that Buyer releases and agrees to indemnify, defend and hold harmless Seller and each of Seller's Indemnified Parties from and against any and all Damages sustained by or against any of them, resulting from, in connection with or relating to any action or threatened action concerning: (i) infringement of the patents, trademarks, copyrights or other intellectual property or proprietary rights of any other person or entity; or (ii) injury to person or property, including death, relating to the drawings, designs or specifications provided by or on behalf of Buyer.

## 20. Force Majeure

Notwithstanding anything to the contrary contained herein, Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any whole or partial failure or delay in fulfilling or performing any term of this Agreement, and Seller may implement price increases due to increased costs, when and to the extent such failure, delay or cost increase is caused by or results from, in whole or in part, acts, events or circumstances beyond Seller's reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic, quarantine, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances (whether or not such events are within the reasonable control of Seller); (h) shortage of adequate power or transportation facilities or raw materials (whether or not such events are within the reasonable control of Seller); (i) equipment malfunction or downtime; (j) unforeseen capacity constraints and/or demand increases; and (k) other events beyond the reasonable control of Seller. If any such event renders Seller's timely delivery or performance of any Offering impracticable, at Seller's option, (x) the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay, or (y) Seller will be excused from performance and Buyer shall promptly, upon Seller's request, pay Seller for any Products then completed (whether fully or partly completed).

## 21. Final Written Expression

These Terms and Conditions, the Quotation, Acknowledgment and/or Invoice issued from Seller to Buyer (if any), constitute the final written expression of the terms between Seller and Buyer regarding the Products and, together, are a complete and exclusive statement of those terms. Any negotiations or understandings between Seller and Buyer which are not contained in these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer shall have no force or effect. In the event of a conflict among the provisions of these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer, the order of priority shall be: (i) these Terms and Conditions; (ii) the Quotation; (iii) the Acknowledgment; (iv) the Invoice.

## 22. Governing Law

These Terms and Conditions and the Agreement between Seller and Buyer shall be governed and construed according to the internal laws of the State of Illinois, including, without limitation, the Uniform Commercial Code as adopted in Illinois, without regard to conflict of laws principles. Subject to section 23 below, any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of these Terms and Conditions and the Agreement or the relationship of the parties shall be brought exclusively in a court situated in the State of Illinois. Both parties hereby irrevocably admit themselves to and consent to the exclusive jurisdiction of said court. **ANY ACTION BROUGHT BY BUYER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE DELIVERY OF THE PRODUCTS OR THE COMPLETION OF**

**SERVICES NOTWITHSTANDING ANY STATUTORY PERIOD OF LIMITATION TO THE CONTRARY.**

## **23. Alternative Dispute Resolution**

It is the policy of Seller to attempt to settle all disputes through alternative dispute resolution techniques and to use litigation only as a last resort to settle any dispute, except in the case of collection of past-due accounts or when other circumstances dictate that litigation is advisable. Buyer agrees to make a good faith attempt to settle any disputes arising out of the purchase of the Products by Buyer through the use of alternative dispute resolution before instituting any litigation against Seller.

## **24. Compliance With Laws**

Buyer shall comply with all applicable federal, state and local laws, regulations, orders, and ordinances. Buyer represents and warrants that Buyer is and shall at all times remain in compliance with all laws administered by the U.S. Treasury Office of Foreign Assets Control or any other governmental entity imposing economic sanctions and trade embargoes (“**Economic Sanctions Laws**”) against designated countries, entities, and persons (“**Embargoed Targets**”). Buyer is not an Embargoed Target or subject to any Economic Sanctions Law, and Buyer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver Products or any portion of Products to an Embargoed Target, or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

## **25. Termination**

In addition to any remedies that may be provided to Seller under these Terms and Conditions or applicable law, Seller may terminate this Agreement or any Order, in whole or in part, without liability and with immediate effect upon notice to Buyer for any reason or no reason at all. Without limiting the foregoing, Seller may terminate this Agreement or any Order, in whole or in part, without liability and with immediate effect upon notice to Buyer if Buyer (a) fails to pay any amount when due to Seller, whether or not under this Agreement, (b) has not performed or complied with any term of this Agreement, in whole or in part, or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

## **26. Survival; Statute of Limitations**

The parties’ rights and obligations that by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, compliance with laws, warranties, limitations on liability, confidentiality, and non-solicitation of employees will survive any termination or expiration of this Agreement. Notwithstanding any right under any applicable statute of limitations, to the maximum extent permitted by law, no action, proceeding, litigation, or claim of any type or nature, civil, criminal, administrative, regulatory, or otherwise, and whether at law, in equity or otherwise (collectively, “**Claims**”), based upon or arising in any way out of this Agreement or the Products, may be brought by Buyer more than twelve (12) months after the date of delivery of the applicable Products or, if such Claim does not relate to specific Products, more than twelve (12) months after the cause of action has accrued, and Buyer waives the right to file or otherwise bring any such Claim after the expiration of such period.

## **27. Dunnage Replenishment**

In the event Seller utilizes any returnable dunnage in connection with the transportation of the Products, Seller may invoice Buyer for damaged and/or missing dunnage based upon a periodic reconciliation of dunnage shipments versus dunnage returns. The reimbursed cost for such dunnage shall be Seller’s actual cost to replace such dunnage, plus a reasonable service charge determined by Seller.

## **28. Certain Buyer Obligations**

Buyer shall (a) cooperate with Seller in all matters relating to the Products and provide access to Buyer’s premises, and to such office accommodations and other facilities as Seller requests for the purpose of performing or delivering any of the Products; (b) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that Seller deems necessary in order to complete and provide the Products in accordance with this Agreement; and (c) provide in a timely manner such customer materials or information that Seller requests in order to complete and provide the Products, and Buyer shall ensure that such customer materials and information are complete and accurate in all respects.

## **29. Confidentiality**

If the parties have entered into a non-disclosure and/or confidentiality agreement (the “**NDA**”), the terms of the NDA are incorporated herein by this reference and will control the disclosure of any confidential or proprietary information. If

there is any conflict between the terms of the NDA and this Agreement, the terms of this Agreement will prevail to the extent of the inconsistency. If the NDA expires prior to the termination of this Agreement, the NDA is hereby deemed renewed and extended until the termination of this Agreement. If the parties have not entered into such an NDA, the parties agree that the remainder of this Section will apply. All non-public, confidential or proprietary information of or relating to Seller or Seller's direct or indirect affiliates, customers, and suppliers, including without limitation specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates disclosed by or on behalf of Seller, whether disclosed orally, visually or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" ("**Confidential Information**") is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized by Seller in writing. Buyer agrees to maintain and protect the confidentiality of the Confidential Information, and to not disclose the Confidential Information except as legally required (and then only to the minimum extent legally required), and except to Buyer's employees who are bound by obligations of confidentiality with respect to such Confidential Information at least as stringent as those set forth herein and who have a need to know such Confidential Information for the purpose of fulfilling Buyer's obligations under this Agreement. Buyer shall be responsible for any breach of the confidentiality and non-use obligations set forth herein by such employees. Buyer may only use the Confidential Information in the performance of this Agreement, and may not use the Confidential Information for any other purpose. Buyer shall return to Seller, or destroy, with such destruction certified in writing to Seller, within five (5) days of the earlier of a request from Seller or the termination of this Agreement, all Confidential Information, and all written materials, and copies thereof, including materials stored in electronic media, containing, incorporating, or otherwise based upon, in whole or in part, the Confidential Information. This provision shall survive any termination of this Agreement for any reason, and in the event of any breach or threatened breach of this provision, Seller shall be entitled, in addition to any other remedies and damages, to injunctive relief without the necessity of paying bond and without being required to prove the existence, amount or insufficiency of damages.

### **30. Setoff**

Seller may set off any amount due from Buyer, whether or not under this Agreement, against any amount due Buyer hereunder.

### **31. Solicitation of Personnel**

For so long as there is any order in effect between Buyer and Seller and for twelve (12) months thereafter, Buyer shall not solicit for employment any employee or contractor of Seller with whom Buyer had any contact or who assisted in the provision of any Products to Buyer in connection herewith. Buyer agrees that the duration, scope, and geographical area of the restrictions contained in this Section are reasonable. Upon a determination that any term or provision of this Section is invalid, illegal, or unenforceable, the court may modify this Section to substitute the maximum duration, scope, or geographical area legally permissible under such circumstances to the greatest extent possible to effect the restrictions originally contemplated by the parties hereto.

### **32. Notices**

Any notice relating to this Agreement must be in writing and will be considered given within three (3) days after it is deposited, postage prepaid, with a registered mail service and addressed to the other party at the address given in this Agreement; or, if delivered by hand, when so delivered. Notices to Buyer may be delivered by email to any email address used by an employee of Buyer in communicating with Seller, and will be deemed given when sent to such email address.

### **33. Amendment; Waiver**

No amendment or modification of any term or condition will be valid or binding upon Seller unless approved by Seller in a writing hand-signed by Seller. Unless Seller expressly indicates otherwise in such hand-signed writing, such modification is effective only in that instance and only for the purpose for which it is made and is not to be construed as a modification on any future occasion or of any future order or agreement. Clerical and stenographic errors are subject to correction by Seller. No waiver by Seller of any of the terms of this Agreement is effective unless explicitly set forth in a writing signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Seller may amend the Terms and Conditions from time to time.

### **34. Benefit; No Assignment by Buyer**

These Terms and Conditions and the Agreement is binding upon and inures to the benefit of Buyer and Seller and their respective successors and assigns. Buyer may not assign these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer, or any part thereof, without Seller's prior written consent. Any purported

assignment or delegation in violation of this Section will be void. Seller may assign this Agreement and any of Seller's rights hereunder and delegate any of Seller's obligations under this Agreement. If Seller assigns this Agreement or delegates any obligations under this Agreement (whether in whole or in part), Buyer shall, as relates to such part that was assigned or delegated, release Seller from all liability under this Agreement and hold the assignee solely responsible for performance of all such assigned or delegated obligations.

### **35. Severability**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination will not affect the remainder of this Agreement, which will remain in full force and effect.

### **36. Independent Contractors**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement may be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.

### **37. Interpretation**

Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of this Agreement, or any document drafted or delivered in connection with the transactions contemplated by this Agreement.