

# TERMS AND CONDITIONS OF PURCHASE

**1. APPLICABLE TERMS AND CONDITIONS.** The provisions in the applicable purchase order and these terms and conditions and any document incorporated herein by reference constitute the entire agreement between the Seller (as identified in the purchase order) and Packaging Concepts & Design, LLC as Purchaser. Any acceptance or acknowledgement hereof for any shipment or delivery of the goods or services referred to herein shall constitute assent to said terms and conditions. Any additional or different terms or conditions set forth in the Seller's acceptance, acknowledgment or other communications are objected to by the Purchaser and shall not be effective or binding unless specifically assented to by Purchaser in writing other than by a routine acknowledgment.

**2. EXTRA CHARGES.** No charges of any kind, including without limitation charges for boxing or cartage will be allowed unless specifically agreed to by Purchaser in writing.

**3. TRANSPORTATION.** Transportation charges on goods sold delivered destination must be prepaid whenever possible. No parcel post insurance charges will be allowed unless authorized by Purchaser in writing.

**4. DELIVERY SCHEDULE.** It is the Seller's responsibility to comply with the Purchaser's delivery schedules, but not to anticipate Purchaser's requirements except in regards to any specific forecasts made by the Purchaser. Goods shipped to Purchaser in unreasonable advance of schedule without prior written approval of Purchaser may be returned to Seller at Seller's expense.

**5. DELAYS IN DELIVERY.** Seller will not be liable for damages for delays in delivery due to causes beyond its reasonable control. If Seller, however for any reason does not substantially comply with Purchaser's delivery schedule, Purchaser in addition to remedies provided by law, at its option may either approve a revised delivery schedule or may terminate the order without liability to Seller on account thereof. Purchaser may, at Seller's expense, require shipment by more expeditious method.

**6. WARRANTY.** Seller warrants all materials or services sold and delivered hereunder will conform to the specifications, drawings, samples or other description furnished or specified by Purchaser and will be fit and sufficient for the purposed intended, of good material and workmanship and will be free from defects in material and workmanship. This warranty shall survive any inspection, delivery, acceptance, or payment by Purchaser of the materials or services.

**7. INDEMNIFICATION.** Seller shall indemnify, defend and hold Purchaser and its customers and users harmless from all claims, damages and expenses (including attorneys' fees) arising out of (a) Seller's breach (b) any defect in the goods, (c) the design of the goods (whether or not defective) and (d) errors, omissions, negligence or other wrongful conduct of Seller or its agents or subcontractors. In any matter to which this Section applies, the Purchaser and its customers and users shall have the right to select and retain counsel of their own choosing, all at the Seller's expense, and to participate in the defense.

**8. INSURANCE.** Seller shall at all times carry and maintain insurance coverage in reasonable amounts covering workers compensation, employer's liability, comprehensive general liability (including products/completed operations and blanket contractual liability), and automotive liability. Seller shall also insure all property owned or paid for by Purchaser on Seller's premises (including work in process for which Purchaser has paid, whether or not title has passed) against loss or damage to the full extent of its insurable value, without deductible, at Seller's cost, and to designate Purchaser as the loss payee. Seller shall provide evidence of such coverage to Purchaser upon request.

**9. REJECTIONS.** If any of the goods are found at anytime to be defective in material or workmanship or otherwise not in conformity with the requirements of the order, Purchaser in addition to any other rights which it may have under warranties or otherwise shall have the rights to reject and return such goods at Seller's expense, such goods not to be replaced without suitable written authorization from Purchaser. Buyer's payment of all or any part of the purchase price prior to Buyer's inspection and approval of the goods shall not constitute a waiver of any of Buyer's rights hereunder.

**10. PURCHASER'S PROPERTY.** Unless otherwise agreed in writing all tools, equipment or material of every description furnished to Seller by Purchaser or specifically paid for by Purchaser and any replacement thereof, and any materials affixed or attached thereto shall be and remain the personal property of Purchaser. Such property and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as Property of PACKAGING CONCEPTS & DESIGN and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Purchaser's property and shall not use such property except in filling Purchaser's orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Purchaser. Such property shall be subject to removal at Purchaser's written request, in which even Seller shall prepare such property for shipment and shall redeliver it to Purchaser in the same condition as originally received by Seller, reasonable wear excepted.

**11. CHANGES.** Purchaser shall have the right to make changes in the order in writing but no additional charge will be allowed unless authorized in writing by Purchaser. If such changes affect delivery or the amount to be paid by Purchaser, Seller shall notify Purchaser immediately and negotiate an adjustment.

**12. NON-ASSIGNMENT.** Assignment of this order or any interest herein or any payment due or to become due thereunder without the written consent of Purchaser shall be void.

**13. SET-OFF.** Purchaser shall be entitled at all times to set-off any amount owing at any time from Seller to Purchaser or any of its affiliated companies against any amount payable at any time by Purchaser in connection with this order.

**14. COMPLIANCE.** Seller shall comply with all applicable federal, state, local and foreign laws, regulations, rules and order, and agrees that the production of all goods and the performance of services under this order shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended, and any regulations or orders used thereunder. All invoices must certify compliance with the aforesaid Fair Standards Act in order to be passed for payment. The equal opportunity clause set forth in 41 CFR Section 60-1.4, the employment of handicapped clause set forth in 41 CFR Section 60-741.3, and the employment veterans clause set forth in 41 CFR Section 60-250.3 are hereby expressly incorporated by reference and Seller agrees to comply with same as required by law and/or executive order, and as same may be amended from time to time.

**15. NO CONFIDENTIAL DISCLOSURES BY SELLER.** Any knowledge or information which Seller shall have disclosed or may hereafter disclose to the Purchaser incident to the placing and filling of this order shall unless otherwise specifically agreed upon in writing by Purchaser to be deemed to be confidential or proprietary information, and accordingly shall be acquired free from any restrictions (other than restrictions which may result from a claim for patent infringement) as part of the consideration for this order.

**16. FOR WORK ON PURCHASER'S OR ITS CUSTOMER'S PREMISES.** If Seller's work under the order involves operations by Seller on the premises of Purchaser or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and except to the extent that any such injury is due solely and directly to Purchaser's or its customer's negligence as the case may be, shall indemnify Purchaser against all loss which may result in any way from any at or omission of the Seller, its agents, employees, or subcontractors, and Seller shall maintain such Public Liability, Property, and Employee's Liability and Compensation Insurance as will protect Purchaser from said risks and from any claims under any applicable Workman's Compensation and Occupational Disease Acts.

**17. BANKRUPTCY OR INSOLVENCY OF SELLER.** If Seller ceases to conduct its operations in the normal course of business, (including inability to meet its obligations as they mature) or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller or a receiver for Seller is appointment or applied for or an assignment for the benefit of creditors is made by Seller, Purchaser, may terminate the order without liability except for deliveries previously made and for goods covered by the order then completed and subsequently delivered in accordance with the terms of the order.

**18. APPLICABLE LAW.** This order shall be construed and governed by the laws of the State of Michigan.

**19. WAIVER.** The failure of Purchaser at any time or from time to time promptly to enforce any of the provisions of this order shall not be construed as a waiver of such provision with respect to Seller's act or failure to act which such failure to enforce related, or to any subsequent act or failure to act and Purchaser shall have the right to enforce each and every such provision at any time.

**20. IMPROPERLY ADDRESSED MATERIAL.** With respect to material which fails to arrive at the address designated in this order within a reasonable time from the invoice date because such material was improperly addressed by the Seller, Purchaser may in addition to his other rights under this order, terminate the order without liability to the Seller and require prompt refund of any payments made in advance.

**21. MODIFICATION, WAIVER OR TERMINATION.** Neither this order nor any of its provisions, terms and conditions may be modified, waived or terminated except in writing signed by the party sought to be bound thereby.

**22.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.