

Process Packaging & Control, Inc.

Terms and Conditions of Sale

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES OF PRODUCT BY PROCESS PACKAGING & CONTROL, INC. (“PPC”) ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Orders

(a) Orders. Orders must be in writing and must identify the product to be purchased, billing address, destination and requested delivery date or dates. Blanket purchase orders must specify a date by which all deliveries shall be taken. No order shall be binding upon PPC unless accepted by PPC. Orders shall be deemed accepted by PPC only upon shipment of products or upon delivery by PPC to customer of a written notice of acceptance.

(b) Rescheduling. No orders may be cancelled without the prior written consent of PPC. Customer shall have the right, without cost or liability, to defer any delivery of Products, on a one-time basis per delivery date specified in the original order, for up to 60 days, by providing to PPC written notice thereof at least 60 days prior to the initial delivery date specified in the order. Except as set forth above, no orders may be rescheduled without the prior written consent of PPC.

2. Prices; Payment Terms

(a) Prices. Unless otherwise stated, prices are in U.S. dollars and standard terms are F.O.B. PPC’s facility, Ogden, Utah. All prices will be as specified by PPC, or if no price has been specified or quoted, will be the PPC price in effect at the time of delivery. All prices are subject to adjustment on account of specifications, quantities, shipping arrangements or other terms and conditions that are not part of the original price quotation.

(b) Taxes. All prices are exclusive of all federal, state and local taxes however designated, including, without limitation, excise, sales, value added, transfer and property taxes and customs duties. Customer shall be responsible for the payment of all such taxes (excluding taxes based upon PPC’s possession thereof prior to delivery and taxes on PPC’s net income) or provide to PPC an acceptable certificate of exemption. If any of such taxes are paid by PPC, Customer will reimburse PPC for such taxes promptly upon request.

(c) Terms of Payment. Invoices will be issued by PPC upon shipment and will be directed to the billing address indicated on the purchase order. Invoices are payable thirty days after shipment. All amounts not paid when due will bear interest at the lesser of 18 percent per annum or the maximum rate permitted by law. Customer shall pay or reimburse PPC for all reasonable costs and expenses incurred by PPC in collecting amounts past due hereunder.

3. Shipment

(a) Shipment. Unless Customer provides PPC with written instructions regarding shipment of products, PPC will ship products in accordance with PPC's usual shipping practices. Customer shall be responsible for all costs associated with shipment.

(b) Title; Risk of Loss; Security Interest. Subject to the next sentence, title to and risk of loss of damage for all products will pass to Customer upon delivery to a carrier for shipment. Customer grants to PPC a security interest in all products and proceeds to secure the full payment and performance by Customer of its obligations hereunder.

(c) Unavoidable Delays. All precautions are taken to ensure that all orders arrive complete, on time, and in good condition. PPC is not however responsible for delays caused by any events deemed beyond our reasonable control.

4. Specifications

(a) PPC will provide at no charge two samples for testing and verification of specification. The customer, upon receipt, is responsible for maintaining a sample bag from the approval process for future reference. PPC will not begin production until the customer has approved the sample bag for production in writing.

(b) All products are subject to PPC's standard tolerances for specifications. PPC reserves the right to make substitutions or modifications of any products or in the specifications for products, provided that such substitutions or modifications do not materially affect the performance of the products.

5. Acceptance. Unless Customer promptly delivers to PPC a written notice specifying any claimed defects and deficiencies, products will be deemed to be accepted upon the earlier to occur of (i) 30 days after delivery; or (ii) such time as any production use is made of the product.

6. Limited Warranty

(a) General. Subject to customer properly handling and storing any bags received from PCC and ensuring minimal exposure to outdoor weather elements, PPC then warrants solely to Customer that, for a period of 120 days from shipment, products shall be free from defects in materials and workmanship and shall conform in all material respects to the published specifications. PPC's sole obligation under this warranty shall be to repair or replace products which are defective and which are returned to it during the warranty period. PPC shall have no liability with respect to the contents of any bulk bag.

(b) Exclusions and Limitations. PPC shall have no obligation for damages or defects caused by normal wear and use, misuse, improper or unauthorized use, or causes external to the products. If PPC provides repair services that are not covered by this warranty, then Customer shall pay PPC's costs of providing the repair services at PPC's then prevailing rates. THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS

FOR A PARTICULAR PURPOSE, ALL OF WHICH IMPLIED WARRANTIES (AND ALL EXPRESS WARRANTIES NOT STATED HEREIN) ARE EXCLUDED AND DISCLAIMED.

7. Limitation of Liability

(a) IN NO EVENT WILL PPC BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, RELIANCE OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF MATERIAL, LOSS OF PROFITS, OR LOSS OF USE DAMAGES, EVEN IF PPC HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) CUSTOMER AGREES THAT THE MAXIMUM LIABILITY OF PPC ARISING OUT OF OR IN CONNECTION WITH THE SUPPLY OF PRODUCTS OR THEIR USE, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PURCHASE PRICE RECEIVED BY PPC FOR THE PRODUCT UNDER WHICH SUCH LIABILITY AROSE.

(c) Customer may not bring any suit or action against PPC for any reason whatsoever more than one year after the cause of action accrued.

8. Default; Remedies. If (i) Customer fails to make payment for a delivery hereunder within 15 days after such payment is due; (ii) Customer breaches any other material provision hereof, which breach is not cured within 30 days after notice thereof; or (iii) a custodian or receiver is appointed with respect to any part of Customer's property, a composition, assignment or trust mortgage is made for the benefit of Customer's creditors, or any proceeding under the United States Bankruptcy Code or any other similar law is commenced with respect to Customer, then PPC may, without liability, cancel any or all orders, refuse to make further deliveries and refuse to provide other services (including warranty) hereunder. All remedies contained herein are cumulative and shall be in addition to any and all other rights and remedies available to PPC at law or in equity.

9. Miscellaneous

(a) Notices. Any notices given hereunder shall be in writing and shall be delivered by commercial courier service or mailed by certified mail, return receipt requested. Notices will be deemed effective when received.

(b) Entire Agreement. This is the complete and exclusive statement of the understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings and communications relating thereto. No term or condition of Customer's purchase order or other document provided to PPC which is different from, inconsistent with, or in addition to the terms and conditions set forth herein will be binding upon PPC. These terms may not be modified or amended except pursuant to a written instrument signed by both parties. To the extent that this document may constitute an acceptance, this acceptance is expressly conditioned upon Customer's assent to the terms and conditions set forth herein. If Customer objects to any term or condition set forth herein, this objection must be in writing and received by PPC prior to delivery. Retention or use by Customer of products delivered by PPC will be conclusively deemed assent by Customer to the terms and

conditions set forth herein. Customer shall not condition any acceptance of delivery upon the abrogation or modification of any of the terms and conditions included in this document.

(c) Waiver. The waiver by PPC of a breach of any provision hereof shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of PPC to avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any right, power or privilege.

(d) Governing Law. These terms and the rights and obligations of the parties hereunder shall be governed by and shall be determined in accordance with the laws of the State of Utah as if made in and performed entirely within Utah. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from these terms.

(e) Successors and Assigns. The agreement set forth herein is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns, but Customer may assign or otherwise transfer its rights and duties hereunder only with the prior written consent of PPC, except to the successor to all or substantially all of Customer's assets or business, and only if such assignee agrees in writing to be bound by these terms and conditions.

(f) Force Majeure. If PPC is unable to perform any of its obligations hereunder due to any act of God, fire, casualty, flood, war, strike, shortage or any other cause beyond its reasonable control, and if it uses reasonable efforts to avoid such occurrence and minimize its duration and gives prompt notice to Customer, then PPC's performance shall be excused and the time for its performance shall be extended for the period of delay or inability to perform.

(g) Indemnification. Customer shall defend, indemnify and hold PPC harmless from and against all damages, liabilities, costs and expenses incurred by PPC as a result of or arising out of Customer's activities or its breach of any provision contained herein.

(h) Severability. In the event that any provision contained herein shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and void and severed from this Agreement, and the remainder hereof shall remain in full force and effect.