

TERMS AND CONDITIONS

Unless otherwise specifically provided by separate written agreement duly signed by Seller, the Terms and Conditions on face side and specified below constitute the entire agreement between Seller and Buyer and no other Terms or Conditions shall be of any effect. Buyer will be deemed to have assented to all such Terms and Conditions if any part of the described goods is accepted. If Buyer finds any Term and/or Condition not acceptable, Buyer must so notify Seller at once. Any additional or different Terms or Conditions contained in Buyer's order or response hereto shall be deemed objected to by Seller and shall be of no effect.

1. PRICE CHANGES

- (a) Seller may at any time increase its f.o.b. Seller's factory price of any goods ordered pursuant hereto upon thirty (30) days prior written notice to Buyer.
- (b) Buyer shall reimburse Seller for any tax (excluding franchise, net income and excess profit taxes) which Seller may be required to pay on the manufacture, sale, transportation, delivery or use of any goods or the materials required for their manufacture of which affect the cost of such materials.

2. TERMS OF PAYMENT

- (a) If Seller extends credit, invoices shall be due and payable as stated on the face hereof. Extensions of credit may be changed or withdrawn at any time. A late charge of up to 2% per month will be charged on all invoices not paid by the due date thereof.
- (b) If Seller does not or ceases to extend credit, payment terms shall be at Seller's option any type of cash terms or any type of secured transaction terms.
- (c) Cash discounts, if any, shall be allowed according to the terms on the face hereof, provided that there is not past due indebtedness. Such cash discount shall be allowed on the net invoice value of goods for which cash payment is made within ten (10) days from invoice date. "Net invoice value" shall mean the invoice price less returns, allowances, adjustments, prepaid freight, pallet charges, reimbursable expenses prepaid by Seller and less any other charges which do not represent the invoice value of goods.

3. DELIVERY TERMS

- (a) Goods shall be sold and delivered f.o.b. Seller's factory unless otherwise provided on face hereof.
- (b) Buyer shall, subject to Seller's available facilities at the delivery point, determine its desired mode of transportation and notify Seller thereof at least ten (10) days before the requested delivery date. If Buyer fails so to notify, Seller may select any commercial motor carrier. Seller will make deliveries as near as possible to Buyer's requested delivery date(s) but Seller shall not be liable to Buyer for (i) delays or (ii) damage to goods while in transit, irrespective of whether Seller or Buyer determines the mode of transportation.

4. CLAIMS, WARRANTIES AND LIMITATIONS OF LIABILITY

- (a) Any claim for defective materials, imperfect manufacture, shortage of count, or for any other cause is waived unless notice thereof is presented in writing within thirty (30) days after delivery of any shipment with respect to shortages in count and unless notice thereof is presented in writing within sixty (60) days after delivery of any shipment with respect to any other cause. Failure of Buyer to give such notice within such period shall constitute an unqualified acceptance of the containers delivered pursuant to this order and a waiver by Buyer of all claims with respect thereto.
- (b) The Seller and Buyer agree that notwithstanding the form (e.g. contract, tort or otherwise) in which any claim may be asserted or legal or equitable action may be brought against Seller or Buyer, Seller shall in no event be liable for damages which exceed an amount which is equal to the total amount paid or payable to Seller by Buyer pursuant to this agreement for the goods which gave rise to the said claim or legal or equitable action. In no event shall Seller be liable for special or consequential damages or for any indirect damages such as, but not limited to, exemplary or punitive damages. Seller makes no warranties or representation, express or implied, in fact or in law, including the implied warranties of merchantability and fitness for a particular purpose.
- (c) Buyer's exclusive remedy and Seller's sole liability on any claim or legal or equitable action, whether contract, tort, or otherwise, shall be limited to reimbursement of Buyer's actual cost of the goods which gave rise to the said claim or legal or equitable action. However, in no event shall Seller be liable for indemnification of Buyer on account of any claim or legal or equitable action asserted against Buyer for any other or further damages whatsoever, whether direct or indirect.
- (d) Irrespective of Seller's preparation of design or copy of the furnishing of advise or information, (i) Seller shall not be liable to Buyer or to any third party where the preparation, assembly, or manufacture of the goods or the printing or graphic matter therein has been performed in compliance with Buyer's specification, requests and/or approvals, even if the goods or such matter (a) infringes on the property rights of others acquired, without limitation thereof, by usage, registration, copyright, patent, or otherwise, (b) fails to comply with any Federal, State or local law or ordinance or (c) fails to comply with specifications, functionality or any other matter in connections with any universal product code (UPC) place on containers and (ii) Buyer shall

indemnify and hold Seller harmless against any claims or actions arising from allegations of situations described in clause (d)(i) of this sub-paragraph (d) and Buyer shall promptly pay or secure any judgment or recovery and Seller's reasonable costs and expenses, including, but not limited to attorneys fees and court costs incurred in investigation, settling or defending any such claims or actions.

- (e) Seller shall not be liable under any circumstance to Buyer or any other person (i) where the claimed damages result from (A) faulty assembly or closure, or (B) use of components other than those supplied by Seller or (ii) where the goods are not warehoused, handled, used, packed or distributed in accordance with the customary good commercial practices of the trade.
- (f) Buyer may not commence any action under or arising from this agreement unless such action is commenced within one (1) year after the cause of action has accrued.

5. CONTINGENCIES

Seller shall not be liable to Buyer or any other person for any failure or delay in the performance of any obligation under this agreement due to events beyond its control including, but not limited to fire, storm, earthquake, explosion, accident, acts of the public enemy, sabotage, strikes, lockouts, labor disputes, labor shortages, work stoppages, transportation embargoes or delays, failure or shortage of materials, supplies of machinery, acts of God, acts or regulations or priorities of the Federal, state or local governments or branches or agencies thereof, and government contracts or shipments to purchasers to fulfill government contracts. Buyer shall not be liable for delay or failure to take goods as ordered due to any such events, except that Buyer shall be liable for such delay or failure with respect to goods already in transit or specially made or printed goods which are not readily salable without loss to Seller. When the events operating to excuse performance by either party cease, this agreement shall continue in full force until all deliveries have been completed.

6. SPECIALLY MADE AND LITHOGRAPHED GOODS

- (a) If the goods pursuant to this agreement are manufactured and/or lithographed specially for the Buyer, Buyer agrees that should it fail to give Seller shipping instructions for the entire quantity of goods ordered within ninety (90) days from the date of first availability, Seller may access a monthly service charge based on the value of the remaining balance of goods ordered. "Date of First Availability" shall mean the date of first shipment or the date Seller informs Buyer, in writing, that goods ordered are ready for shipment, whichever date is earlier. The rate of such service charge shall not exceed two percent (2%) per month. "Value" shall be calculated based upon Seller's price in effect on the last day of the month for which the service charge is assessed. **Seller may, at its option, ship a greater or lesser quantity, but such difference shall not exceed ten percent (10%) of the quantity ordered**
- (b) Buyer agrees that should it fail to give Seller shipping instructions for the entire quantity of goods ordered with a period of entire quantity of goods ordered within a period of one hundred eighty (180) days from the Date of First Availability, Seller may, at its option, ship and/or invoice Buyer for any specially manufactured and/or lithographed goods which are still on hand at the Seller's price in effect on the date of such shipment or invoice.
- (c) Upon expiration or prior termination of this agreement in whole or in part for any reason, Buyer shall (i) pay for and accept prompt delivery of all completed, specially made or lithographed goods previously ordered at Seller's price in effect at the date of shipment, (ii) pay for and accept prompt delivery of all specially made and lithographed goods in process which Seller at its option completes at Seller's price in effect on the date of shipment and (iii) reimburse Seller for any loss on uncompleted orders which Seller at its option does not complete, including, but not restricted to materials produced or purchased by Seller to complete such orders.
- (d) Buyer agrees to reimburse Seller for its out-of-pocket costs for producing the art and plate work necessary to lithograph the Buyer's special design. Since charges for negatives and printing plates cover labor and expenses only, negatives and plates shall remain Seller's property and in Seller's possession. Upon Buyer's request, Seller will furnish, upon payment, of Seller's out-of-pocket costs by Buyer, duplicates of film positives or negatives.

7. DEFAULTS AND WAIVER

- (a) If Buyer fails with respect to this or any other agreement with Seller to pay any invoice when due or to accept any shipment as schedules, Seller may, without prejudice to other remedies, defer further shipments until the default is corrected or terminate this agreement.
- (b) If Buyer fails to pay outstanding invoice(s), pursuant to N.J.S.A.12A:2 -705, Seller reserves the right to stop delivery and/or repossess merchandise
- (c) Non-course of conduct, nor any delay of Seller in exercising any rights, hereunder shall waive any rights of Seller or modify this agreement.

8. GOVERNING LAW

This agreement shall be construed to be between merchants. The laws of the State of New Jersey shall govern any questions concerning its validity, construction or performance.