

EXCEL PACKAGING CORP.

STANDARD TERMS AND CONDITIONS OF SALE

1. GENERAL: BINDING EFFECT; NOTICE: These are the terms and conditions for the purchase of goods ("Goods") from Excel Packaging Corp. ("Excel Packaging") by any purchaser ("Purchaser").

1.1 No additional terms, different terms, exclusions or modifications shall be effective against Excel Packaging Corp. without the express written consent of an authorized officer of Excel Packaging. Any attempt by Purchaser to add, exclude or modify these terms (including by way of submitting a purchase order with standard purchase terms) shall be deemed to be material, is objected to and will be of no effect.

1.2 Any and all contracts between Excel Packaging and Purchaser shall be deemed to include these terms (all contracts collectively, the "Agreement").

2. PURCHASE ORDERS: Purchaser agrees to be subject to these terms and conditions in their entirety upon award of a purchase order to Excel Packaging. All purchase orders must be commitments with a definitive price and quantity. No purchase order, whether or not submitted in response to a quotation by Excel Packaging, shall be binding until acceptance by Excel Packaging and no such acceptance shall be deemed an agreement to be bound by any terms other than the terms hereof.

2.1 All orders are subject to credit approval by Excel Packaging, rejection or modification due to required delivery date or raw material availability, and minimum order quantities.

2.2 No lead times are guaranteed unless otherwise stated in writing by Excel Packaging.

2.3 Prices in quotations are effective for 30 days unless otherwise stated in writing by Excel Packaging.

2.4 For existing purchase orders, Excel Packaging may change its prices at any time upon written notice, unless otherwise agreed to in writing. Any temporary surcharge imposed on Excel Packaging will be passed on to Purchaser during the period of time the surcharge is in effect.

2.5 Unless otherwise stated in writing, quoted prices do not include: (i) printing cylinders; (ii) art charges; (iii) freight; (iv) warehousing and handling fees; (v) brokerage fees; (vi) upcharges; (vii) any applicable excise, value-added, sales, use or similar taxes; (viii) insurance; or (ix) tooling of any kind.

3. PAYMENT: Unless otherwise agreed to by Excel Packaging in writing, payment terms are net thirty (30) days from date of invoice in United States Dollars. All terms are based on credit approval. Any sales not on credit must be paid in advance by cash or credit card. If Purchaser purchases Goods through any intermediary ("Intermediary"), the term "Purchaser" herein shall include such Intermediary as necessary. Purchaser agrees that Excel Packaging shall be entitled to make credit decisions concerning sales to the Intermediary in Excel Packaging's discretion, including a refusal to sell.

3.1 Excel Packaging, as necessary to protect its interest in receiving payment for Goods, shall be a third party beneficiary of any purchase contract between the Intermediary and Purchaser. If Excel Packaging sells Goods to the Intermediary as an accommodation to Purchaser, Purchaser shall remain liable to Excel Packaging for the Goods to the extent that the Intermediary fails or refuses to pay Excel Packaging and Purchaser waives all suretyship defenses.

3.2 If Purchaser renders payment to Excel Packaging in a manner purported to serve as payment in full of an invoice, Excel Packaging's acceptance of such payment shall not act as an accord and satisfaction and shall be without prejudice to Excel Packaging's right to pursue additional payment of such invoice and other remedies at law or in equity.

3.3 Purchaser shall not have a right of set off or offset of any kind. All indebtedness outstanding after the due date shall be subject to a late fee of 1.5% per month (18% annually), unless such rate exceeds the highest rate permitted by law, in which event the rate shall be highest permissible by law.

3.4 Purchaser agrees to pay Excel Packaging's legal fees, expenses and other costs in the event Excel Packaging pursues collection or other enforcement efforts. Excel Packaging shall have the right to terminate this Agreement, any purchase order, to stop Goods in transit, and to suspend further performance under every Agreement in the event Purchaser fails to make any payment when due.

3.5 Purchaser agrees that each purchase order ("P.O.") constitutes a representation that it is both solvent and not a debtor in any insolvency, bankruptcy, or restructuring proceeding. In the event of insolvency, Excel Packaging's invoice shall constitute a demand for reclamation of the Goods identified on the invoice under Section 2-702 of the Uniform Commercial Code (the "UCC" and Section 546(c) of the United States Bankruptcy Code. Purchaser agrees to promptly notify Excel Packaging in case of insolvency, waives any defenses to Excel Packaging's right of reclamation to the Goods identified in Excel Packaging's invoice and shall promptly return possession of such Goods to Excel Packaging.

4. RISK OF LOSS, INDEMNITY, CLAIMS: Purchaser agrees to promptly inspect all Goods as received, and any rejection or claim based on nonconformity must be made in writing no later than ninety (90) days after delivery for nonconformities reasonably discoverable on inspection, and no later than twelve (12) months after delivery for latent nonconformities. If Purchaser fails to give such

written notice within the applicable time period(s) stated above, the Goods will be deemed accepted, will not be subject to revocation of acceptance, and Purchaser will be deemed to have absolutely waived any claim for defects, including under the Limited Warranty set forth below.

4.1 If Purchaser gives written notice within the applicable time periods set forth above, Purchaser will give Excel Packaging reasonable opportunities to inspect and test the Goods that are the basis for any claim. As a condition for replacement, refund or credit, Excel Packaging will be entitled to the return of the nonconforming Goods in the same condition as when they were received. No claim against Excel Packaging shall be made or allowed for Goods returned without Excel Packaging's prior written consent and a return Goods authorization number that Excel Packaging will issue.

4.2 All claims for loss or damage during transit must be made against the carrier by notation on the freight bill or delivery receipt.

5. OVERRUNS AND UNDERRUNS: Unless otherwise provided on Seller's Purchase Order Acknowledgement, overruns or underruns of up to ten percent of the total amount of Goods purchased under the Agreement shall conclusively be deemed to constitute fulfillment of the Agreement.

6. INSPECTION AND ACCEPTANCE: Purchaser agrees to promptly inspect all Goods as received, and any rejection or claim based on nonconformity must be made in writing no later than ninety (90) days after delivery for non-conformities reasonably discoverable on inspection, and no later than twelve (12) months after delivery for latent non conformities. If Purchaser fails to give such written notice within the applicable time period(s) stated above, the Goods will be deemed accepted, will not be subject to revocation of acceptance, and Purchaser will be deemed to have absolutely waived any claim for defects, including under the Limited Warranty set forth below.

6.1 If Purchaser gives written notice within the applicable time periods set forth above, Purchaser will give Excel Packaging reasonable opportunities to inspect and test the Goods that are the basis for any claim. As a condition for replacement, refund or credit, Excel Packaging will be entitled to the return of the nonconforming Goods in the same condition as when they were received. No claim against Excel Packaging shall be made or allowed for Goods returned without Excel Packaging's prior written consent and a return Goods authorization number that Excel Packaging will issue.

6.2 All claims for loss or damage during transit must be made against the carrier by notation on the freight bill or delivery receipt.

7. LIMITED WARRANTY/LIMITATION OF DAMAGES: All Goods are sold on the condition that Purchaser will examine and test packaging prior to the initial use to determine whether the Goods meet Purchaser's requirements. Purchaser's P.O. for Goods acts as confirmation of such examination and testing. During the claim periods set forth above under "Inspection and Acceptance", Goods are warranted to: (i) be substantially free from defects in material and workmanship when sold subject to all time limitations and storage conditions and (ii) comply with Excel Packaging's published specifications within stated tolerances, but it shall be Purchaser's responsibility to assure that such specifications and tolerances will fulfill Purchaser's requirements regardless of whether Excel Packaging has notice of such requirements. EXCEL PACKAGING MAKES THIS LIMITED WARRANTY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, COURSE OF DEALING, USAGE OF TRADE OR NON INFRINGEMENT OR OTHERWISE ASIDE FROM THE LIMITED WARRANTY ABOVE AND THE DESCRIPTION OF THE GOODS. Excel Packaging's liability for breach of contract, breach of warranty, strict liability, product liability, recall liability, negligence or any other cause or theory is limited to, at Excel Packaging's option, replacement of defective goods or credit of the purchase price. Under no circumstances will Excel Packaging be responsible for loss of use, lost profits, interruption of business, cover or for any special, incidental, indirect, or consequential damages regardless of whether arising from breach of contract, warranty, tort, or otherwise, regardless of whether Excel Packaging has or has not been advised of the possibility of such damages or other damages. This limited warranty is void with regard to any goods altered, misused, not stored properly, or subject to neglect or accident. Excel Packaging shall not be responsible to Purchaser under this limited warranty for fit or other compatibility problems when the goods are used with products of another manufacturer. All oral and written advice provided by Excel Packaging relating to the Goods is subject to the foregoing disclaimer of warranties and limitation of damages provision.

8. INDEMNIFICATION: Purchaser shall hold harmless and indemnify Excel Packaging from and against any expenses, claims or causes of action (including Excel Packaging's attorney's fees and expenses) as a result of (i) death, bodily injury, personal injury or property damage arising out of Purchaser's marketing, advertising, sale, distribution or use of the goods (including any claims or causes of action based on items for which or with which the goods are used) except to the extent caused solely by Excel Packaging's own gross negligence; (ii) Purchaser's violation of any applicable law or standard in the marketing, advertising, labeling (or improper or inadequate labeling), sale, distribution or use of the goods or the items with which or for which the goods are used; (iii) any alleged patent, trademark, trade dress, copyright, trade secret or other IP infringement based on Purchaser's samples, mock-ups or specifications; (iv) any illegal, false, misleading or deceptive information that Purchaser instructs Excel Packaging to print on or otherwise apply to or use with the goods; and (v) any environmental pollution, contamination or damage (including, in addition to the above, fines and penalties to the extent allowed by law, clean-up and other remedial or containment costs and legal, technical or similar fees and expenses) arising out of such pollution, contamination or damage to the environment or natural resources occurring in connection with Purchaser's use of any Goods regardless of cause, including Purchaser's negligence, strict liability, or other act or omission. Purchaser represents and warrants to Excel Packaging that custom Goods ordered based on Purchaser's samples, mockups or specifications do not infringe any trade dress, copyright, trade secret or other IP rights of others or any letters patent granted by any country. Excel Packaging reserves the right (but shall have no duty) to discontinue deliveries of any goods, the manufacture, sale or use of which might: (i) infringe any trade dress, copyright, trade secret, patent or other IP rights; or (ii) violate any foreign, federal, state or local law, regulation or order.

9. FORCE MAJEURE: If Excel Packaging is prevented from or delayed in performing by a force majeure event, it shall not be liable or responsible for its failure to timely perform, but shall perform as soon as possible after the force majeure event ceases. Force majeure includes, but is not limited to, events beyond Excel Packaging's control that affect production or transportation, such as acts of God, acts of war (whether an actual declaration thereof is made or not), acts of government, terrorism, riots, labor strikes, labor lockouts, interruption in telecommunication transmissions or product transportation, material shortages, delays or sudden severe increases in material prices or other costs, accident, fire, water damage, flood, earthquake, windstorm, other natural disasters or catastrophes, and compliance by Excel Packaging with any order, action, direction or request of any governmental officer, department, agency, authority, or committee thereof. A force majeure event shall also include Supplier's suspension of operation or closure of a facility that produces Goods because the operation of, or Goods from, that facility fails to comply with, or becomes uneconomical because of compliance with, any applicable law or governmental regulation, order, decree or request. This provision is intended to be interpreted to expand rather than limit the application of the Section 2-615 of the UCC, as adopted by the law of the applicable jurisdiction set forth in the governing law provision in the Agreement, or if there is no such agreement or provision, as adopted in the State of California.

10. CONFIDENTIAL INFORMATION: All nonpublic information conveyed by Excel Packaging or viewed by Purchaser at an Excel Packaging facility including Excel Packaging's prices, costs, discounts, inventions, planned and existing products (which may also be subject to Excel Packaging's intellectual property rights), packaging, customers and distributors as well as information regarding Excel Packaging's business or finances and production methods or processes, know-how and concepts used by Excel Packaging, is proprietary and confidential ("Confidential Information"). Purchaser agrees that it will not use any such Confidential Information for any other purpose than the performance of the Agreement or disclose any such Confidential Information to others and will advise its employees and agents of the secrecy of such Confidential Information and take all other steps necessary to protect the Confidential Information. Purchaser shall not copy, decompile, reverse engineer or otherwise duplicate the Goods or any part of any Goods or copy, misuse or misappropriate any Confidential Information belonging to Excel Packaging. Excel Packaging's logo and brand names belong to Excel Packaging and are protected by trademark and other laws; Purchaser agrees that it will not use or permit any other person to use such logo or brand names without Excel Packaging's prior written consent which may be withheld for any reason. Excel Packaging shall be entitled to all legal and equitable rights and remedies available under state and federal law and otherwise to protect its Confidential Information, trademarks, trade secrets and intellectual property of all kinds (all of which may be referred to hereafter as "IP"). Confidential Information shall not include information that: (i) was known to Purchaser before receipt from Excel Packaging; (ii) is or becomes publicly available through no fault of Purchaser; (iii) is rightfully received by Purchaser from a third person not bound by a duty of confidentiality; or (iv) is disclosed by Purchaser with Excel Packaging's prior written approval.

11. TAXES: Prices of Goods are exclusive of all applicable federal, state, local and VAT taxes. Purchaser agrees to pay (or reimburse Excel Packaging) for all taxes however designated, arising out of the sale imposed under the authority of any federal, state, local or foreign taxing jurisdiction, upon receipt of a sales invoice for the amount of the tax.

12. CANCELLATION: In the event of a full or partial cancellation of any purchase order, Purchaser is responsible for all costs incurred up to and including the time of cancellation. This includes all costs expended and committed for raw materials, work in process, finished Goods, labor, supplies, administrative costs, outside services or consultants, and any other costs associated with performance of any P.O.

13. RETURNS: All returns must be approved, in advance, in writing in the form of an authorization number (either RGA or RMA). Excel Packaging receiving cannot accept returned Goods without this prior authorization and the respective number. Goods must be returned in good condition for appropriate analysis and potential rework. No Goods may be returned and no credit will be given for Goods after the expiration of 364 days from the date such Goods were received by Purchaser, or 364 days from the date Excel Packaging makes such Goods available for shipment to Purchaser, in the case of Goods held by Excel Packaging at Purchaser's request.

13.1 No credit will be given for Goods claimed to be defective that were consumed by Purchaser and commercially sold or otherwise used in commercial applications.

14. STORAGE: Purchaser is solely responsible for storing the Goods in a warehouse environment at ambient storage suitable for flexible plastic packaging films. Such storage temperatures should not exceed 95°F, and the humidity should not exceed 60%. Excessive or prolonged exposure to heat and/or humidity may lead to performance or quality issues for the Goods. EXCEL PACKAGING IS NOT RESPONSIBLE FOR DAMAGE TO THE GOODS OR QUALITY OR PERFORMANCE ISSUES RESULTING FROM IMPROPER STORAGE.

15. SHIPPING AND DELIVERY: Any dates quoted by Excel Packaging for delivery of any products are estimates only, and unless stated in writing, Excel Packaging will not be liable for any charges resulting from either late or early delivery of products from the date quoted no matter the cause. Excel Packaging reserves the right to ship overruns and underruns as previously communicated in writing, or in the absence of specific terms, those that are customarily and commercially reasonable and acceptable in the industry, and to invoice Purchaser therefore.

15.1 Unless otherwise specifically agreed by the parties in writing, all shipments are FOB Long Beach, CA.

15.2 Goods in transit are at Purchaser's risk. Purchaser shall be fully responsible to pay directly or to reimburse Excel Packaging for carrier detention charges incurred as a result of delays not caused by Excel Packaging. If purchase prices include a freight component, prices will be adjusted, with notice, in the event of a change in freight rates or the imposition of any surcharge.

15.3 In the case of international sales, unless otherwise agreed in writing, Purchaser shall be fully responsible: (i) to provide Excel Packaging the ultimate destination and identity of the end-user in writing, prior to shipment; (ii) to pay all duties, taxes, fees, customs, and other charges imposed by any government or local authority; and (iii) for compliance with applicable legal requirements for exportation and importation of Goods.

16. MODIFICATION: The Agreement may be modified only by written instrument signed by both Purchaser and Excel Packaging.

17. MISCELLANEOUS: Excel Packaging may terminate the Agreement immediately on Purchaser's bankruptcy or other insolvency. The Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns but is non-assignable by Purchaser without Excel Packaging's express written consent. Nothing contained in the Agreement shall be construed to make the parties partners or joint venturers. Any waiver(s) of Purchaser's noncompliance with these terms shall not be binding on Excel Packaging with respect to any continuing or subsequent noncompliance. Excel Packaging reserves the right to display samples of any Goods it produces, decorated or undecorated. To the extent necessary to preserve Excel Packaging's rights, all terms of the Agreement shall survive acceptance of and payment for Goods sold as well as cancellation, termination or expiration of the Agreement. There shall be no third party beneficiaries of the Agreement unless the parties specifically identify such beneficiaries in writing. Section headings are inserted for convenience and do not add to or detract from the Agreement. The Agreement may be amended or altered only in a written document executed by both parties. Excel Packaging shall not be contractually bound to any provision except as agreed in a writing executed by an authorized officer of Excel Packaging. The invalidity of any provision of the Agreement shall not affect the force or validity of the remaining provisions. In the event that Excel Packaging has possession of a mold or other equipment owned by Purchaser, Excel Packaging's maintenance and repair obligations shall be limited to those to which it has expressly agreed in writing. Excel Packaging shall be entitled to recover its reasonable attorney's fees and expenses in the event it is the prevailing party in any litigation to enforce the Agreement.

18. LANGUAGE: The parties hereto acknowledge that they have expressly required that this document and all deeds, documents or notices relating thereto to be drafted in the English language.

19. ARBITRATION: ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), Excel Packaging's advertising, or any related purchase SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY THE NATIONAL ARBITRATION FORUM (NAF) under the Code of Procedure of ARBITRATION-FORUM.COM (the "Code") in effect at the time the claim is filed the Code and if any In-person Hearing is required, it shall be held in Los Angeles, California. Judgment on the award rendered by the arbitrator(s) may be entered by any court having jurisdiction. Each party shall bear its own cost of any legal representation, discovery, or research required to complete arbitration.

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