



COLLECTIVE

PACKAGING CO

STANDARD TERMS & CONDITIONS

Orders and Sales Agreements.

1. All goods (the “Goods”) and/or services (the “Services”) being sold on Seller’s Sales Agreement (“Sales Agreement”), Pre-Order (“Pre-Order”) or Pro forma Sales Order Confirmation Form (“Confirmation”) are expressly conditioned upon Buyer’s acceptance of these Terms and Conditions and are subject to Buyer’s written confirmation prior to acceptance by Seller of any of the foregoing from Buyer.
2. Unless otherwise specified on the Pre-Order, Seller’s price quotation automatically expires thirty (30) days from the date of Seller’s Pre-Order and if Buyer’s desired delivery date for the Goods and/or Services is or becomes greater than (thirty) 30 days from the date of the Pre-Order, Seller may, in its sole discretion, adjust pricing based on decreases or increases (as the case may be) to Seller’s internal and external costs, including, but not limited to, applicable tariffs, surcharges, manufacturer changes, or any other ancillary factors to the cost of the Goods and/or Services subject to the Pre-Order at the time of shipment. Following Buyer’s execution of a Pre-Order, Seller will provide a Confirmation in which that document number will correspond to the applicable Pre-Order number.
3. Unless otherwise specified on the Sales Agreement, Seller’s price quotation set forth in the Sales Agreement automatically expires ninety (90) days from the “Effective Date” designated on the Sales Agreement. Except in instances of force majeure, neither Buyer nor Seller may amend the terms of a Sales Agreement during the ninety (90) day period between the “Effective Date” designated on the Sales Agreement and the expiration date of Seller’s price quotation (the “Locked Order”). By its execution of the Sales Agreement, Buyer consents to Seller purchasing the Goods and performing the Services pursuant to the Locked Order and Buyer is responsible for the payment of all Goods purchased and/or Services performed by Seller pursuant to the Locked Order. Seller may, in its sole discretion, adjust its pricing based on decreases or increases (as the case may be) to Seller’s internal and external costs, including, but not limited to, applicable tariffs, surcharges, manufacturer changes, or any other ancillary factors to the cost of the

Goods or Services subject to the Sales Agreement if the “Effective Date” of the Sales Agreement is greater than ninety (90) days from the date of such price modification. Any Pre-Order or Sales Agreement issued by Seller in response to Buyer’s request for Goods and/or Services shall terminate automatically within seven (7) days of the date thereof if Buyer fails to accept these Terms and Conditions by written confirmation within such time period. These Terms and Conditions shall become part of the agreement between Seller and Buyer created by acceptance of the Seller’s Sales Agreement or Pre-Order, as the case may be, or acceptance by Seller of any purchase order or similar document from Buyer and incorporated by reference therein.

4. Seller has the right, in its sole discretion, to accept or reject any Pre-Order or Sales Agreement. Acceptance of the offer reflected on Seller’s Pre-Order or Sales Agreement, as the case may be, by Buyer is expressly limited to the exact terms contained therein and any attempt by Buyer to alter or omit any of such terms shall be deemed a rejection and a counteroffer. If Seller’s Pre-Order or Sales Agreement, as the case may be, is accepted and Buyer’s order form is used for the purpose, Buyer agrees that any terms and conditions appearing on any document submitted by Buyer which conflict with (i) the terms and conditions contained in the Pre-Order or Sales Agreement, as the case may be, (ii) any quotation submitted by Seller, or (iii) any unexpired master supply agreement between Seller and Buyer are hereby expressly rejected and shall not constitute terms of any sale of Goods or Services by Seller, and the issuance of such purchase order by Buyer shall be deemed to evidence the consent of Buyer to the foregoing. For the avoidance of doubt, these Terms and Conditions will prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller’s fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms and Conditions.
5. These Terms and Conditions supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, whether written or oral, provided, however that the terms and conditions set forth in any unexpired master supply agreement by and between Seller and Buyer that have been designated therein to supersede these Terms and Conditions shall govern. These Terms and Conditions shall apply to all documents heretofore or hereafter submitted by Buyer, whether executed by Seller or not.
6. Buyer agrees that Buyer’s execution of any Pre-Order or Sales Agreement, as applicable, for Goods and/or Services shall constitute a representation that Buyer is solvent.

Payment Terms.

1. The amount of any invoice (the "Invoice") issued in conjunction with the purchase of Goods and/or performance of Services resulting from a Pre-Order or Sales Agreement or Buyer's purchase order is payable as stated on the applicable invoice (the "Payment Terms Period").
2. Should Buyer contest any charge on an Invoice, Buyer must notify the Seller, in writing, within the Payment Terms Period, along with substantiating documentation/ a reasonably detailed description of the dispute. The uncontested balance of the Invoice must be paid within the Payment Terms Period. Buyer will be deemed to have accepted the Invoice if Buyer fails to timely notify Seller of any disputes. Notwithstanding anything to the contrary, Buyer shall continue to perform its obligations pursuant to these Terms and Conditions and any master supply agreement between Buyer and Seller during any such dispute, including, without limitation, Buyer's obligation to pay all due and undisputed Invoice amounts.
3. If Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Seller's other rights, at Seller's option, credit terms may be rescinded and Seller may, in its sole discretion, and without liability or penalty, require payment in advance from Buyer, defer future shipment to or performance of Services for Buyer until Buyer's account is within Payment Terms Period, cancel any previously accepted Pre-Orders or Sales Agreements or purchase orders from Buyer or any combination of the above. No actions taken by Seller under these Terms and Conditions (nor any failure of Seller to act under these Terms and Conditions) constitutes a waiver by Seller of any of its rights to enforce Buyer's obligations under these Terms and Conditions, including, but not limited to, the obligation of Buyer to make payments during the Payment Terms Period.
4. Except for invoiced payments that Buyer has successfully disputed, if an Invoice remains unpaid or only partially paid at month-end and is outside the Payment Terms Period, a monthly late charge equal to one and one-half percent (1.5%) or the maximum amount permitted by applicable law will be applied to the balance outside of Payment Terms Period (to be calculated daily and compounded monthly). Such interest shall continue to accrue after Seller obtains a judgment against Buyer. Payment or accrual of late charges does not defer payment of any bill, extend credit terms, or extend any payment of invoice beyond the original due date. Seller may employ third parties to assist in the collection of past due monies owed. In those cases, Buyer agrees to pay all reasonable collection costs, including, without limitation, attorneys' fees, whether or not litigation has commenced, and all costs of litigation incurred.
5. In addition to all other remedies available under these Terms and Conditions or at law (which Seller does not waive by the exercise of any rights under these Terms and Conditions or, if executed, a master supply agreement between Buyer and

Seller), if Buyer fails to pay any undisputed amounts when due, Seller may (i) suspend the delivery of any Goods and/or performance of any Services under pending or subsequent Pre-Orders or Sales Agreements or purchase orders between Seller and Buyer; (ii) reject Buyer's future Pre-Orders or Sales Agreements or purchase orders; (iii) cancel accepted Pre-Orders or Sales Agreements or purchase orders between Seller and Buyer or (iv) or any combination of the above.

Security Interest in Goods. Buyer hereby grants Seller a security interest in all Goods purchased by Buyer from Seller (including Goods and Non-Conforming Goods) and the proceeds therefrom to secure Buyer's payment obligations under these Terms and Conditions. Seller may file a financing statement for such security interest and Buyer shall execute any such statement or other documentation necessary to perfect Seller's security interest in such Goods.

No Buyer Right to Offset/Recoup. Buyer shall not, and acknowledges that it will have no right, under these Terms and Conditions, any Pre-Order or Sales Agreement, any purchase order, any other agreement, document or law, or any unexpired master supply agreement by and between Buyer and Seller, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller, whether under these Terms and Conditions or otherwise, against any other amount owed (or to become due and owing) to it by Seller, whether relating to Seller's breach or non-performance under these Terms and Conditions, any Pre-Order or Sales Agreement, any purchase order, any other agreement, document or law, or any unexpired master supply agreement by and between Buyer and Seller.

Delivery and Shipping Costs.

1. Unless otherwise specified on the front of the Pre-Order or Sales Agreement and agreed to by both Seller and Buyer, in writing, all costs of delivery shall be charged separately to Buyer.
2. Except as otherwise designated specifically on the Pre-Order or Sales Agreement, pricing will be quoted and designated either F.O.B. Seller's warehouse or manufacturer's plant. Method and route of shipment are at Seller's sole discretion, unless Buyer supplies explicit instructions reasonably in advance of estimated shipment date and which are acceptable to Seller, in its sole discretion, with such acceptance having been communicated in writing to Buyer by Seller.
3. Seller may, in its sole discretion, without liability or penalty, make partial shipment of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of an order.
4. Title and risk of loss shall pass to Buyer upon physical delivery of the Goods to Buyer or upon Seller's tender for delivery to Buyer's specified carrier; provided that if Seller is storing Goods on behalf of Buyer, title and risk of loss for such Goods shall

pass to Buyer upon the occurrence of the earlier of (x) Seller's receipt of payment for such Goods and (y) the date on the invoice for such Goods, even if such Goods continue to be stored by Seller on behalf of Buyer.

5. Any time quoted by Seller for delivery is an estimate only. Seller is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery. No delay in shipment or delivery of any Goods or performance of Services relieves Buyer of its obligations under these Terms and Conditions, including, without limitation, accepting delivery of any remaining installment(s) of Goods.

Inspection and Rejection of Goods/Services. Buyer shall inspect the Goods and/or work product resulting from the Services within three (3) days of receipt ("Inspection Period") of the Goods and/or work product resulting from the Services; Buyer will be deemed to have accepted the Goods and/or work product resulting from the Services unless it notifies Seller, in writing, during the Inspection Period, that Buyer believes some or all of the Goods and/or work product resulting from the Services (i) do not conform to the make/model number, SKU, or UPC listed in the Pre-Order or Sales Agreement or Buyer's purchase order (as applicable) or (ii) do not fully conform to the design specifications provided for in the Pre-Order or Sales Agreement or Buyer's purchase order (as applicable) (collectively, "Non-Conforming Goods/Services"). At the time of such notice, Buyer shall provide to Seller written evidence or other documentation to support the assertion that the Goods and/or work product resulting from the Services delivered are Non-Conforming Goods/Services. If Buyer timely notifies Seller of any Non-Conforming Goods/Services and provides such supporting evidence or documentation, Seller shall determine, in its sole discretion, whether the Goods and/or work product resulting from the Services are Non-Conforming Goods/Services. If Seller determines the Goods and/or work product resulting from the Services are Non-Conforming Goods/Services, it shall, in its sole discretion: (x) replace such Non-Conforming Goods/Services with conforming Goods and/or conforming work product resulting from the Services or (y) refund the invoiced price for such Non-Conforming Goods/Services, together with all shipping and handling expenses incurred by Buyer in connection therewith. Upon Seller's request, Buyer shall ship at its expense and risk of loss, the Non-Conforming Goods/Services to the location specified by Seller. Seller shall not be obligated to refund or replace the Non-Conforming Goods/Services until it has received or inspected the Non-Conforming Goods/Services. All Goods and/or Services made or performed to special specifications in the Pre-Order or Sales Agreement or Buyer's purchase order are deemed to be inspected and accepted before shipment is made and may not be canceled by Buyer. Seller shall not be responsible or liable for the adequacy or performance of design or specifications furnished by Buyer.

BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS ARE BUYER'S EXCLUSIVE REMEDIES FOR DELIVERY OF NON-CONFORMING GOODS/SERVICES. EXCEPT AS PROVIDED HEREIN, BUYER HAS NO RIGHT TO RETURN GOODS OR SERVICES PURCHASED FROM SELLER.

Taxes and Other Exclusions from Price. Unless otherwise specified on the Pre-Order or Sales Agreement (i) if the Goods are manufactured outside of the United States, all duties, import fees, tariffs, customs charges and related expenses of importing the Goods shall be charged separately to, and shall be for the account of Buyer and (ii) in any event, the amount of all present and future sales, revenue, excise, and other taxes applicable to the Goods shall be added to the purchase price and shall be paid by Buyer, or in lieu thereof Buyer shall provide Seller with a tax exemption certificate acceptable to the applicable taxing authorities.

Quantity Variations. Unless otherwise provided on a Pre-Order or Sales Agreement, overruns of up to ten (10%) percent and underruns of up to five percent (5%) of the total amount of printed material product designated on the Pre-Order or Sales Agreement shall conclusively be deemed to constitute fulfillment of the applicable Pre-Order or Sales Agreement, provided that Seller shall invoice Buyer for the amount of Goods actually received by Buyer. These standard and acceptable yield differentials should be taken into account by Buyer and its agents when placing printed material order quantities with Seller.

Cancellation of or Change to Pre-Order/Locked Order.

1. A Pre-Order or Locked Order, as applicable, once placed with and accepted by Seller cannot be cancelled or amended by Buyer without Seller's written consent (which may be withheld in Seller's sole discretion) and then only upon terms that will indemnify Seller against loss, including, but not limited to any costs incurred by Seller prior to or because of such cancellation or change.
2. If Buyer attempts to cancel or change any Pre-Order or Locked Order or purchase order without Seller's consent, without limiting any other remedies available to Seller, Buyer shall pay to Seller within fifteen (15) days of such cancellation or change (i) the contract price, including applicable taxes, for all Goods which have been acquired and/or Services that have been performed (including costs of materials acquired for such Goods and/or Services) on account of such Pre-Order or Locked Order or purchase order prior to Seller's actual receipt of Buyer's notice of cancellation or change, (ii) all costs and other expenses incurred by Seller for uncompleted items, and (iii) a cancellation charge in an amount not to exceed 25% of the purchase price of the applicable order.
3. Seller may, in its sole discretion, without liability or penalty, cancel any order (i) if Seller determines that Buyer is in violation of its payment obligations or has breached or is in breach of (x) these Terms and Conditions or (y) the master supply agreement by and between Seller and Buyer (if one has been previously executed – whether the term of which has expired or not) or (ii) (x) if Buyer is unable to furnish Seller with statements evidencing Buyer's financial condition as Seller may, from time to time, reasonably request; (y) if Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory; or (z)

Buyer fails to immediately disclose to Seller any and all events that may have a material adverse effect on Buyer's business or financial condition.

Seller's Limited Warranties for Services. Seller warrants that it shall perform the Services: (i) in accordance with the terms and subject to the conditions set forth in the respective Pre-Order or Sales Agreement, as applicable; and (ii) in a timely and professional manner in accordance with generally recognized industry standards for similar services.

Manufacturer Warranties Only for Goods. Buyer acknowledges that Seller is an independent distributor or sales agent on behalf of various manufacturers and does not manufacture the Goods. Accordingly, the only warranty provided with respect to the Goods comes from the manufacturer, the terms of which may be obtained from Seller. At the request of Buyer, Seller may provide reasonable assistance to Buyer in processing warranty claims with respect to the manufacturer's Goods.

Limitation of Warranties.

EXCEPT FOR AS EXPLICITLY STATED HEREIN, SELLER, FOR ITSELF, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHETHER AN IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, WARRANTY OF TITLE OR OTHERWISE WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

NOTE: IT IS BUYER'S RESPONSIBILITY TO DETERMINE THE SUITABILITY OF THE GOODS AND/OR SERVICES FOR BUYER'S PRODUCT, AND THE ADEQUACY OF THE MANUFACTURER'S AND SELLER'S WARRANTIES. BUYER AGREES AND ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS EXPLICITLY PROVIDED HEREIN.

Notwithstanding anything to the contrary herein, Seller shall not be liable for a breach of the warranties forth herein if: (i) Buyer makes any further use of such Goods or Services after giving such notice; (ii) the breach arises because Buyer failed to follow Seller's and the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

Limitation on Damages. In no event shall Seller be liable to Buyer for consequential or incidental damages, loss of profit, loss of business, loss of business opportunity or damage to the goodwill or reputation of any party. Seller's liability to Buyer, for any reason, whether for breach of contract, indemnity, tort (including negligence), or otherwise, shall not exceed the price of the Goods and/or Services or portion of such Goods and/or Services which gives rise to the claim and Buyer shall waive any claim for amounts in excess of that amount.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS OR SERVICES IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS OR SERVICES.

No legal action shall be brought by Buyer against Seller for any claim with respect to any Goods or Services sold by Seller to Buyer more than one (1) year after the performance of such Services or delivery of such Goods to Buyer. It is agreed that any cause of action with respect to such Goods will accrue on the date of delivery of such Goods and with respect to such Services will accrue on the date that the work product resulting from the Services is delivered to Buyer.

Indemnification by Buyer. Buyer shall indemnify, defend and save harmless Seller and its representatives, officers, directors, employees, agents, successors and permitted assigns from and against any and all actions, claims, loss, damages, deficiencies, liability (including personal injury claims), costs or expenses (including reasonable legal expenses and attorneys' fees), judgments, settlements, interest, awards, penalties, fines, fees and costs of enforcing any right to indemnification under these Terms and Conditions and the cost of pursuing any insurance providers that relate to, arise out or result from either (a) the modification, alteration or decoration in any way of any Goods or work product resulting from the Services purchased as a result of the Pre-Order, Sales Agreement or purchase order, (b) the improper handling or storage of the Goods or work product resulting from the Services by Buyer or its employees, representatives, agents, assignees or subsequent users, (c) the use of the Goods or work product resulting from the Services for anything other than their accepted commercial purpose, (d) acts of negligence or misconduct or more culpable act or omission by Buyer or its agents, employees or subcontractors (including any recklessness or willful misconduct) in connection with the performance of its obligations under these Terms and Conditions, or (e) failure by Buyer or its agents, employees or subcontractors to comply with any applicable laws.

Cans. All cans are sold on an "As Is" basis. Manufacturer and Seller are not responsible for the taste and smell of the product after the can has been filled. For printed cans, manufacturers require samples of the product that is going into the can for testing purposes. If manufacturer approves the liquid going into the can, any deviation from that formulation needs to be resubmitted for retesting. For cider, sour beer, certain carbonated soft drinks (CSDs) and beers that contain citrus, manufacturers will no longer provide a warranty. Please note that because of the fragile nature of cans and for the need for them to be handled and transported, there is a standard and acceptable 2% yield loss that should be taken into account when placing order quantities.

Brite Can and Sleeved Brite Can Waiver and Release. To the extent that any of the Goods supplied pursuant to the Pre-Order or Sales Agreement are aluminum, unlabeled

beverage cans and can ends (collectively, "Brite Cans") or sleeved Brite Cans (collectively, "Sleeved Brite Cans"), Buyer acknowledges that except as otherwise stated in the Pre-Order or Sales Agreement, Seller does not offer a warranty for the Brite Cans or Sleeved Brite Cans and Seller has not performed any testing on the suitability of the Brite Cans or Sleeved Brite Cans for packaging of Buyer's fluids, as Seller cannot control the formula of Buyer's fluids that will be placed into the Brite Cans or Sleeved Brite Cans, and that Seller has no duty to do so; rather, Buyer alone has the duty to determine the suitability of the Brite Cans or Sleeved Brite Cans to hold Buyer's fluids. Buyer has evaluated any perceived risk and, except as otherwise provided for herein, Buyer expressly, knowingly and voluntarily waives any and all rights it may have against Seller with respect to loss or damage arising after the delivery and acceptance of the Brite Cans or Sleeved Brite Cans to Seller. Buyer hereby releases Seller from and agrees that Seller will not have any direct or indirect responsibility or liability for any physical or economic damage or bodily injury to Buyer, its employees or any such parties, including, but not limited to, the customers of the Buyer and the retail public, arising after the delivery of the Brite Cans or Sleeved Brite Cans to Buyer. Buyer understands that this means that Buyer is waiving unknown claims that are related in any way to or arising from the Brite Cans after the delivery of the Brite Cans or Sleeved Brite Cans to Buyer.

Materials. While Seller and the manufacturer of Goods covered by the Pre-Order, Sales Agreement or purchase order will make commercially reasonable efforts to supply material in accordance with the samples submitted or quoted for, there is no guaranty that the materials will be identical. If sample containers are submitted by Seller to Buyer for approval, Buyer should confirm dimensions by the actual packing thereof prior to the approval by Buyer.

Price. Prices are subject to change without notice. Seller reserves the right to correct prices made in error, with or without notice.

Buyer's Property. Buyer's property when supplied to Seller or the manufacturer of Goods covered by the Pre-Order, Sales Agreement or purchase order will be held or worked on at Buyer's risk. While every care will be taken to secure the best results where materials are supplied by Buyer, Seller assumes no responsibility for imperfect work caused by defects in or unsuitability of materials so supplied by Buyer.

Marketing License. By Buyer's submission of a Pre-Order or Sales Agreement or Buyer's purchase order (or execution of a Separate Agreement with) to Seller, Buyer hereby irrevocably permits, authorizes, grants, and licenses on a non-exclusive basis to Seller and its affiliates, successors, and assigns, and their respective advertising agencies, promotion agencies, and fulfillment agencies, and the employees, officers, directors, and agents of each and all of them, the rights to display, exhibit, transmit, broadcast, reproduce, record, photograph, digitize, and otherwise use, Buyer's name, logos, trademarks, testimonials and all materials created by or on behalf of Seller that incorporate any of the foregoing in perpetuity throughout the universe in any medium or format whatsoever now existing or

hereafter created, including but not limited to, in and on magazines, brochures, and other print publications, electronic, magnetic, and optical media, display, point-of-sale, and other advertising and promotional materials, press releases, and the internet and other digital transmission or delivery methods, on any platform for advertising, public relations, publicity, packaging, and promotion of Seller and its affiliates and their businesses, products, and services, without further consent from or royalty, payment, or other compensation to Buyer.

Compliance with Laws. Buyer shall at all times comply with all laws applicable to these Terms and Conditions, Buyer's performance of its obligations hereunder and Buyer's use or sale of the Goods and/or work product resulting from the Services. Without limiting the generality of the foregoing, Buyer shall (i) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase or use of the Goods and/or work product resulting from the Services and (b) not engage in any activity or transaction involving the Goods and/or work product resulting from the Services, by way of shipment, use or otherwise that violates any law.

Severability. If any term or provision of this Agreement shall to any extent be invalid, illegal or unenforceable, the remainder of this agreement shall not be affected thereby, and each term or provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to be in breach of these Terms of Conditions, for any loss or damage of any kind resulting from delay or inability to deliver when and to the extent that such failure or delay is caused by or results from acts beyond its control, including but not limited to acts of God, acts of Buyer, acts of military or governmental authorities, fires, strikes, labor stoppages or slowdowns, other industrial disturbances, flood, storm, explosion, failure of power, epidemic, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, insurrection or other civil unrest, freight embargoes or blockades in effect on or after the date of the Pre-Order or purchase order or the "Effective Date" of the Sales Agreement, national or regional emergency, shortage or delays in transportation or availability of railcars, court injunction, domestic or foreign government order or requirement, law or actions, inability to obtain necessary labor, fuel, materials, components or services through Seller's usual and regular sources at usual and regular prices or other similar events beyond the reasonable control of the Seller. Seller reserves the right to adjust prices due to delays, shortages or increased costs of materials or transportation.

Non-Assignment. Buyer may not assign any of its rights or delegate any of its obligations under the Pre-Order or Sales Agreement or purchase order without the prior written consent of Seller, which consent shall not be unreasonably withheld. Seller may assign any of its rights or delegate any of its obligations to any person acquiring all or substantially all of Seller's assets. Any purported assignment or delegation in violation of these Terms and

Conditions is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under these Terms and Conditions.

No Third-Party Beneficiaries. These Terms and Conditions and the Pre-Order or Sales Agreement benefits solely the parties to these Terms and Conditions and the Pre-Order, Sales Agreement or purchase order and their respective permitted successors and assigns and nothing in these Terms and Conditions or the Pre-Order, Sales Agreement or purchase order, express or implied, confers on any other person any legal or equitable right, benefit, remedy of any nature whatsoever under or by reason of these Terms and Conditions and the Pre-Order, Sales Agreement or purchase order; provided, that Seller's representatives, officers, directors, employees, agents, successors and permitted assigns shall be designated as third-party beneficiaries of Buyer's indemnity provisions contained herein having the right to enforce such indemnity provisions against Buyer.

Governing Law; Venue. THESE TERMS SHALL BE CONSTRUED UNDER WASHINGTON LAW WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF TO THE EXTENT SUCH PRINCIPLES OR RULES WOULD REQUIRE OR PERMIT THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN THOSE OF THE STATE OF WASHINGTON. BUYER AND SELLER AGREE THAT THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THE SALE OF GOODS OR SERVICES BY SELLER UNDER THESE TERMS AND CONDITIONS. EACH OF THE PARTIES HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS, AND WAIVES ANY OBJECTION BASED ON VENUE OR INCONVENIENT FORUM.

Dispute Resolution.

Mediation. If a dispute between the parties hereto is not resolved within thirty (30) days from the date that either party has notified the other that such dispute exists, then either party may give notice to the other party that the dispute shall be submitted to mediation with a mediator acceptable to both parties, and the parties shall, for a sixty (60) day period from the receipt of such notice, seek in good faith to resolve such dispute in mediation. If the parties are not able to resolve the dispute in mediation, then such dispute shall be referred to binding arbitration, except to the extent that injunctive relief is available to a party hereto.

Arbitration. Any dispute submitted to arbitration pursuant to this Section shall be determined by arbitration in accordance with the rules of the Judicial, Arbitration and Mediation Services (JAMS). The parties shall select a single arbitrator to hear the matter; provided that if the parties are unable to agree, the arbitrator shall be selected by JAMS. The arbitration shall be held in King County, Washington. Any decision made by the arbitrator shall be final, binding and conclusive on the parties and each party to the arbitration shall be entitled to enforce such decision to the fullest extent permitted by law and entered in any court of competent jurisdiction.

Litigation Costs. If any party institutes any legal suit, action, or proceeding against the other party to enforce these Terms and Conditions and/or the terms of a Pre-Order or Sales Agreement, as applicable (or obtain any other remedy regarding any breach of the foregoing), including, but not limited to, contract, equity, tort, fraud, and statutory claims, the prevailing party in a final, non-appealable judgment regarding the suit, action, or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting or defending the suit, action, or proceeding, including reasonable attorneys' fees and expenses, court costs, and costs of mediation, cost of arbitration, even if not recoverable by law (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings)..

Entire Agreement. This Agreement constitutes the entire contract between Buyer and Seller relating to the Goods or Services identified herein. No modifications hereof shall be binding upon Seller unless in writing and signed by Seller's duly authorized representative and no modification shall be affected by Seller's acknowledgement or acceptance of Buyer's purchase order forms containing different provisions. Trade usage shall neither be applicable nor relevant to this Agreement, nor be used in any manner whatsoever to explain, qualify or supplement any of the provisions hereof. No waiver by either party of default shall be deemed a waiver of any subsequent default. Any waiver authorized on one occasion is effective only in that instance and only for the purpose(s) stated and does not operate as a waiver on any future occasion. Neither of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from these Terms and Conditions: (i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or (ii) any act, omission or course of dealing between Buyer and Seller. All waivers shall be in writing and executed by authorized representatives of both Buyer and Seller to be effective. Unless superseded by modified terms and conditions or an unexpired master supply agreement (if any) by and between Buyer and Seller, the terms set forth herein shall apply to all purchases by Buyer.

Confidentiality. Seller and Buyer each agree that from time to time either party may disclose or make available to the other party Confidential Information^[1]. Seller and Buyer each agree that they will (i) protect and safeguard the confidentiality of the other party's Confidential Information with at least the same degree of care as the non-disclosing party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the disclosing party's Confidential Information or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under these Terms and Conditions; and (iii) not disclose any Confidential Information to any person, except to the non-disclosing party's representatives who need to know the Confidential Information to assist the non-disclosing party, or act on its behalf, to exercise its rights or perform its obligations under these Terms and Conditions. The non-disclosing party shall be responsible for any breach of these obligations cause by any of its representatives. At any time, pursuant to the disclosing

party's written request, the non-disclosing party and its representatives shall promptly return or destroy (as directed by the disclosing party in its sole discretion) all Confidential Information and copies thereof.