

GENERAL TERMS AND CONDITIONS

These GENERAL TERMS AND CONDITIONS (these "Terms and Conditions") govern any and all sales of the goods and products by **AGPACK, INC.**, a California corporation ("Seller"), and the customer/buyer ("Customer") under the purchase order, invoice, billing statement, confirmation or other purchase and sale document(s) to which these Terms and Conditions are incorporated by reference (generically referred to as a "Sales Document"). Seller and the customer/buyer ("Customer") are referred to singularly as a "Party" and collectively as the "Parties" on a generic basis. The Sales Documents together with these Terms and Conditions are sometimes referred to as this "Agreement."

1. PRICING; PAYMENTS; TAXES.

1.1. Pricing. Pricing is exclusive, i.e., does not include, taxes, freight, packaging, insurance, handling and all other charges, whether similar or dissimilar, unless otherwise indicated on the Sales Document. Such costs and expenses shall be paid by Customer in addition to the purchase price specified in any Sales Documents.

1.2. Payments. Unless otherwise specified on the applicable Sales Document, payment in full is due and owing within thirty (30) days after the date of the Sales Document is issued or immediately upon delivery of the goods and/or products sold, whichever is earlier. All payments shall be paid in cash, or by cashier's or company check or wire transfer made payable to Seller. Payments shall be made in legal tender of the United States of America, and directed to the payment address or other means specified in the applicable Sales Document. Customer shall make such arrangements for payment as Seller shall from time to time reasonably require and Seller may suspend scheduling, production, shipment or delivery of goods and/or products until such arrangements are made.

1.3. Interest and Late Charges. Customer shall pay to Seller interest on any unpaid amount at either eighteen percent (18%) per annum or the maximum rate permitted by the laws of the State of California, on the first day such amounts first become past due and owing, whichever is less.

1.4. Taxes. To the extent legally permissible, all present and future taxes imposed by any federal, state or local authority that Seller may be required to pay or collect, upon or with reference to the sale, purchase, transportation, delivery, storage, use or consumption of the goods and/or products or services, including taxes upon or measured by the receipts therefrom (except net income and equity franchise taxes) shall be for the account of Customer.

1.5. Assurance of Performance; Right of Offset/Setoff. If Seller reasonably believes that Customer is or may become unable to perform its duties, obligations or responsibilities hereunder, Seller may require that Customer provide Seller with security for, or other assurance of performance, in either case acceptable to Seller. In the event that Customer fails to do so or fails to make payment in full within the time period set forth on the invoice or expressly agreed upon in writing by the Parties, such failure shall constitute a material breach of contract by Customer permitting Seller to suspend scheduling, production, shipment or delivery of goods and/or products under this Agreement or any other contract between the Parties. Seller shall have the right to set off against any monies due Seller hereunder any obligations of Seller or its affiliates to Customer.

2. **LIMITED PURPOSE; NOT FOR RESALE. SUBJECT TO SECTION 6.2, THE GOODS AND/OR PRODUCTS SOLD ARE ONLY INTENDED FOR COMMERCIAL PURPOSES. THE GOODS AND/OR PRODUCTS SOLD ARE NOT INTENDED FOR RESALE.**

3. TITLE; RISK OF LOSS; SHIPPING.

3.1. Title; Risk of Loss. Title to the goods and/or products shall pass to Customer upon Seller's receipt of full payment for the goods and/or products. Notwithstanding anything to the contrary, Seller, in its sole and absolute discretion, shall continue to have the right to goods and/or products, including entering the Customer's delivery point (i.e., real property owned or rented by Customer) to recover the goods and/or products if they are not timely paid for by Customer. Customer specifically acknowledges that even though the goods and/or products may be in Customer's possession, title to the goods and/or products do not pass to Customer unless and until Customer has completed payment for same. Unless and until payment is made in full, Customer shall not be considered the owner of the goods and/or products, title shall remain fully vested in Seller, and Customer shall be considered solely a bailee of the goods and/or products that are in its possession. Risk of loss shall pass to Customer upon tender of delivery of the goods and/or products at the delivery point specified on the Sales Contract and

at such point, Customer shall be considered a bailee of such goods and/or products until Customer has made payment in full for the goods and/or products, at which point title to the goods and/or products shall pass to Customer. The Parties acknowledge and understand that tender of delivery can be made to Customer, Customer's agent or representative, or Customer's carrier/shipper and upon delivery, all risk of loss or damage to the products shall pass to the Customer.

3.2. Time of Shipment and Shipping; Delivery Dates. Each shipment is a separate sale. Seller reserves the right to ship all or any part of the goods and/or products from any shipping point to the delivery point specified on the first page of this Agreement. All delivery dates are approximate and subject to availability of transportation.

3.3. Incidental Transportation and Storage Charges. Any charges at the delivery point for handling, spotting, storing, switching and/or other accessorial services, and demurrage, shall be for Customer's account. Seller shall have the right to assess a storage and handling charge for goods and/or products left in Seller's possession after notification to Customer that the goods and/or products are available to ship.

4. SECURITY INTEREST. Seller retains a purchase money security interest under Division 9 of the California Commercial Code concerning security interests in personal property in the goods and/or products sold until payment in full has been made. In the event of default by Customer under this Agreement, and in addition to the rights under Section 3.1, Seller shall have all the rights and remedies of a secured creditor under the laws of the State of California, including, but not limited to Division 9 of the California Commercial Code. Customer agrees to execute such financing statements and other documents as Seller may request in order to perfect Seller's security interest in the goods and/or products sold.

5. INDEMNIFICATION. Customer shall indemnify, hold harmless and defend Seller for use and/or resale of the goods and/or products sold under this Agreement where such goods and/or products sold are subsequently used in the creation of any product(s) which are in turn to be sold by Customer or otherwise introduced into the stream of commerce.

6. INSPECTION; LIMITED EXPRESS WARRANTIES; LIMITATION OF LIABILITY; EXCLUSIVE REMEDY; FORCE MAJEURE/EXCUSED PERFORMANCE.

6.1. Inspection. Customer (or its agent, representative and/or carrier/shipper) shall have the right to inspect the goods at the delivery point under Section 3.1 before accepting them. Customer's (or its agent, representative and/or carrier/shipper) taking of delivery of the goods and/or products sold at the delivery point shall be deemed an acceptance of the goods and/or products sold as conforming to this Agreement. Customer's (or its agent, representative and/or carrier/shipper) inspection or failure to inspect shall not delay payment.

6.2. Limited Express Warranties; Disclaimer of Other Warranties. Seller warrants title to the goods and/or products sold. Seller also warrants that all goods shall conform to any descriptions on this Agreement of the goods and/or products sold provided by Seller to Customer. Customer acknowledges and agrees that Seller is not the manufacturer of the goods and/or products sold, and Sellers makes no agreements, covenants, guaranties, representations or warranties with respect to the good and/or products sold. Customer is not relying on any representation of Seller concerning quality, usefulness or other attribute of the goods and/or products sold. **NO DESCRIPTIONS OTHER THAN THOSE IN THIS AGREEMENT SHALL BE DEEMED A WARRANTY BY DESCRIPTION OR OTHERWISE HAVE ANY LEGAL EFFECT. IF EXAMPLES WERE EXHIBITED TO CUSTOMER, SAME WERE FOR GENERAL INFORMATIONAL PURPOSES ONLY AND SHALL NOT BE DEEMED A WARRANTY BY SAMPLE OR MODEL OR OTHERWISE HAVE ANY LEGAL EFFECT. THE WARRANTIES IN THIS AGREEMENT CONCERNING GOODS AND/OR PRODUCTS SOLD ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL**

OR WRITTEN, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. SELLER DOES NOT WARRANT THE GOODS AND/OR PRODUCTS SOLD TO ANY THIRD PARTY FOR ANY PURPOSE OR USE WHATSOEVER.

6.3. Option to Replace. Seller has the option, at its sole and absolute discretion, to replace any goods and/or products sold which fail to meet the limited express warranties in Section 6.2, provided Seller is promptly notified of any defect and such goods and/or products sold are returned to Seller within three (3) days after delivery. Replaced goods shall be returned to Customer, freight prepaid and insured by Seller. Seller may charge at its standard rates for any handling of such goods and/or products. THIS SECTION 6.3 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THE LIMITED WARRANTIES.

6.4. Limitation of Liability; Waiver of Consequential, Incidental, Indirect or Special Damages. THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER' BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, OR OTHERWISE WITH RESPECT TO GOODS AND/OR PRODUCTS SOLD, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF GOODS AND/OR PRODUCTS SOLD. IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY ANY THIRD PARTY. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS CUSTOMER'S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

6.5. Exclusive Remedy. In the event a court of competent jurisdiction determines that Sections 6.2, 6.3 and/or 6.4 are invalid and Seller should be found liable for loss or damage, Seller's liability shall be limited to the amount of the purchase price for same actually paid, if any, for the goods and/or products as liquidated damages and not as a penalty. Because of the nature of the goods and/or products sold, it is impractical and extremely difficult to determine the actual damages, if any, which may result from failure on the part of Seller to perform its duties, responsibilities and responsibilities under this Agreement. Such liquidated damages is the exclusive remedy for any failure of the goods and/or products, and this Section 6.5 shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to a person or property from the performance or nonperformance of any duty, obligation or responsibility of Seller from the negligence, active or otherwise, of Seller, its agents, representatives or employees.

6.6. Force Majeure/Excused Performance. All matters herein notwithstanding, any delay or failure in the performance by Seller of its duties, obligations or responsibilities under this Agreement shall not be a breach of this Agreement and Seller shall not be liable to Customer for any such delay or failure if such failure or delay arises out of, is caused by or results from acts beyond Seller' reasonable control, including without limitation, acts of God, acts of any government body or unit, acts of materialmen or subcontractors, accidents, breakdowns, compliance with or other actions taken to carry out the intent and purpose of any applicable laws or regulations, drought, explosion, fires, floods, frost, interruption of utility services, labor disputes, mechanical breakdown, sabotage, shortages and/or delays in obtaining suitable equipment, facilities, labor, material, parts and/or transportation, temporary or permanent plant shutdown, terrorism, transportation strikes, vandalism, or any similar or dissimilar cause beyond Seller's reasonable control. Also, and if due to a such force majeure or excusable performance event, Seller is unable to produce sufficient goods and/or products to meet all demands from all of its buyers, including, without limitation, Customer, Seller shall have the right to allocate production among its buyers in any manner that Seller may determine, acting reasonably. This Section 6.6 is to be applied in conjunction with California Commercial Code Section 2615; provided, however, that in the event of a conflict, this Section 6.6 shall control, govern and otherwise take precedence.

7. TERMINATION OR CANCELLATION; LIMITATION OF ACTIONS.

7.1. Termination by Seller. In addition to any other remedies available to Seller at law, in equity or under this Agreement, Seller may terminate any contract with Customer in the event that: (i) Customer breaches or fails to perform its duties, obligations or responsibilities under this Agreement; (ii) Customer ceases to carry on its business substantially as such business is conducted on the date of this Agreement and such change in circumstances modifies Seller's duties, obligations or responsibilities or impairs either Party's ability to discharge its duties, obligations or responsibilities under this Agreement; (iii) Customer suffers voluntary or involuntary bankruptcy, reorganization, liquidation receivership or similar proceedings; (iv) Customer generally becomes unable to pay its debts as they become due; or (v) a force majeure or excused performance event under Section 6.6 continues for a period of more than thirty (30) days.

7.2. No Cancellation by Customer: Customer may not cancel an order for goods and/or products once placed with Seller.

7.3. Limitation of Actions. ANY ACTION BY CUSTOMER AGAINST SELLER FOR BREACH OF THIS AGREEMENT OR BREACH OF WARRANTY OR FOR ANY OTHER CLAIM, WHETHER IN TORT OR CONTRACT, MUST BE COMMENCED WITHIN ONE YEAR (1 YR.) OF THE DELIVERY OF THE GOODS AND/OR PRODUCTS SOLD.

8. MISCELLANEOUS.

8.1. Remedies Cumulative. No right or remedy herein conferred upon or reserved to Seller are intended to be exclusive of any other right or remedy herein or by law, provided that each will be cumulative and in addition to every other right or remedy given herein or now, or hereafter, existing at law or in equity.

8.2. Waiver. A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other condition, covenant, provision or term of this Agreement.

8.3. Attorneys' Fees and Costs. In the event of any arbitration or action at law or in equity between the Parties to enforce or interpret this Agreement, the non-prevailing Party to such litigation shall pay to the prevailing Party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred therein by such prevailing Party and, if such prevailing Party shall recover judgment in any such action or proceedings, such costs, expenses and attorneys' fees and disbursements may be included in and as a part of such judgment. The prevailing Party shall be the Party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. If no costs of suit are awarded, then the prevailing Party shall be determined by the court or the arbitrator, as applicable.

8.4. Notices. All notices, demands, or other communications that either Party desires or is required or permitted to give or make to the other Party under or pursuant to this Agreement (collectively referred to as "notices") shall be addressed or faxed to or personally served on the Parties at their respective addresses set forth in the applicable Sales Documents and shall be made or given in writing and shall either be: (i) personally served; (ii) sent by registered or certified mail, postage prepaid; (iii) sent by telex or facsimile ("fax"); or, (iv) sent by a nationally recognized overnight delivery service or courier. Notices given pursuant to this section shall be deemed to have been delivered to the other Party at the following times: (a) for notices personally served, on the date of hand delivery to the other Party or its duly authorized employee, representative, or agent; (b) for notices given by registered or certified mail, on the date shown on the return receipt as having been delivered to and received by the other Party; (c) for notices given by fax, on the date the notice is faxed to the other Party; provided, however, that notices given by fax shall not be effective unless either (i) a duplicate copy of such faxed notice is promptly given by first-class mail, postage prepaid, and addressed as provided above, or (ii) the sending Party's facsimile equipment is capable of providing a written confirmation of the receiving Party's receipt of such notice; provided further, however, any notice given by fax shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a nonbusiness day; or, (d) for notices delivered by overnight courier, on the next business day after same has been deposited with the courier as evidenced by the receipt provided by such courier to the Party giving notice. A Party may change its designated agent, address, or fax number given above, or designate additional addresses or fax numbers for notice purposes, by

giving notice to the other Party in the manner set forth above, provided that any such address change shall not be effective until five (5) days after the notice is delivered or received by the other Party.

8.5. Entire Agreement; Modification. This Agreement (which specifically consists of the applicable Sales Document(s) and these Terms and Conditions) contains all of the agreements of the Parties with respect to the matters contained herein, and supersedes all prior agreements, representations or understandings pertaining to any such matter. Except as provided below, this Agreement only may be amended or modified by an agreement in writing signed by duly authorized representatives of each of the Parties. Notwithstanding the foregoing, Seller reserves the right to amend or modify, or submit new Terms and Conditions, and if Seller so elects, such modified Terms and Conditions shall automatically apply to any goods and/or products ordered after the adoption of such amended or modified Terms and Conditions. In the event of a conflict between these Terms and Conditions and any other Sales Document(s), invoice, order, proposals, purchase order, quotes, release, requests for quotes or other document expressly made a part of this Agreement and signed by all of the Parties, the conditions, provisions and terms of the signed document shall prevail. Customer's placement of an order or release for, or taking delivery of, any goods and/or product sold by Seller to Customer that are the subject of this Agreement shall constitute acceptance of the Seller's offer under these Terms and Conditions and Seller hereby objects to and rejects any and all additional or different terms proposed by Customer, whether contained in Customer's order, proposal, purchase order, release, requests for quotes, shipping release form, related correspondence or any other documents including emails. All proposals, quotes, request for quotes, purchase orders, negotiations, representations and other communications, if any, made prior and with reference hereto are merged herein.

8.6. Construction. The captions of this Agreement's articles and sections do not in any manner define their scope, meaning or intent. All exhibits or documents referred to in this Agreement are deemed to be incorporated by reference as if fully set forth at length. Unless the provisions of this Agreement or the context require otherwise, the definitions set forth throughout this Agreement shall govern this Agreement's construction and interpretation. Whenever any reference is made to any law, such reference shall apply to all amendments and additions thereto heretofore or hereafter made. The present tense includes the past and future tenses, and the future tense includes the present tense. The masculine, feminine or neuter gender shall be deemed to include the other. The singular or plural number shall be deemed to include the other. The Parties acknowledge that each Party and its counsel, if applicable, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. The English language version of this Agreement shall control in the event of any disagreement over any translation. The time in which any act under this Agreement is to be done shall be computed by excluding the first (1st) day and including the last day. If the last day of any time period shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Unless preceded by the word "business," the word "day" shall mean a "calendar" day. The phrase "business day" shall mean a day which is not a Saturday, Sunday or a federal and/or State of California bank holiday.

8.7. Severability. If any condition, covenant, provision or term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect. However, unless such stricken condition, covenant, provision or term goes to the essence of the consideration bargained for by a Party, the remaining terms, provisions, covenants and conditions of this Agreement shall continue in full force and effect, and to the extent required, shall be modified to preserve their validity.

8.8. Assignment; Source of Production. Notwithstanding Section 8.9, Seller may sell, assign, transfer, convey or encumber this Agreement or any right or interest herein or hereunder. Customer shall not assign, convey encumber, sell or transfer this Agreement or any right or interest herein or hereunder without Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion. Seller reserves the right, exercisable in its sole and absolute discretion, to source production of the goods and/or products sold hereunder from facilities other than its own.

8.9. Binding Effect. Subject to Section 8.8, this Agreement shall inure to and for the benefit of and be binding upon each Party's respective parent, subsidiary or affiliated organizations, agents, attorneys, beneficiaries, custodians, directors, employees, heirs, independent contractors, joint venturers, members, officers, partners, predecessors, representatives, servants, stockholders, successors, and all others acting for, under, or in concert with it, present and future.

8.10. No Third Party Beneficiary. This Agreement is made for the sole benefit of the Parties and their respective successors and permitted assigns and no other person or persons shall have any right of action hereon.

8.11. No Partnership or Joint Venture Created. The Parties' relationship is that of a seller and a buyer, and this Agreement is not intended to nor does create a partnership or joint venture or relationship between the Parties.

8.12. Further Action. The Parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Agreement.

8.13. Governing Law; Venue. This Agreement shall be construed, enforced, governed by, interpreted and performed pursuant to the internal laws, and not the law of conflicts, of the State of California applicable to agreements, contracts and understandings made and to be performed in such state. The Parties additionally agree that this Agreement is made and to be performed in Kern County, California, and therefore that the only proper venue for any litigation shall be the Kern County Superior Court, Metropolitan Division.

8.14. Time of the Essence. Time is of the essence in the performance of the Parties' respective duties, obligations, and responsibilities under this Agreement.

8.15. Separate Counterparts; Electronic Signatures. To the extent applicable, this Agreement may be executed in counterparts (including by facsimile, e-mailed portable document format file or other electronic means), all of which shall constitute one document, and that by the signature(s) hereto, the Parties further agree that facsimile, e-mailed portable document format file or other electronic means signatures shall be effective for all purposes.

8.16. Warranties of the Parties. Each Party understands, acknowledges, agrees, represents and warrants to the other Party that it has received independent legal advice from its attorneys with respect to the advisability of entering into this Agreement or has intentionally elected not to seek the advice of counsel and has carefully reviewed and considered the terms and conditions of this Agreement, that it is empowered to execute this Agreement, and that its execution of this Agreement is free and voluntary.

8.17. Authority of the Parties. Where required in this Agreement, the Parties shall deliver documentation which authorizes the transaction contemplated herein and which further evidences the authority of the individuals or officers who are empowered to execute and carry out the terms of this Agreement.

8.18. Effective Date. This Agreement shall become effective as of the date on which Customer places an order for goods and/or products as provided in the applicable Sales Document(s).

8.19. Terms and Conditions. Standard terms and conditions unless otherwise agreed to in writing shall be that merchandise will be invoiced and delivered after 90 days in our warehouse. After 90 days all material is subject to warehousing surcharges.