

**FIRST CHOICE PACKAGING, INC.**

**TERMS AND CONDITIONS OF SALE**

(Three Pages)

These Terms and Conditions govern the sale of all thermoformed packaging, blister cards, package design and tooling, contract packaging, product warehousing and other products and services (such packaging and other services hereinafter referred to as "Products") sold by First Choice Packaging, Inc. ("Seller") to Buyer, including services performed for Buyer on goods supplied by Buyer ("Buyer's Goods") and apply notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other document or communication ("Purchase Order") from Buyer. These Terms and Conditions may only be waived or modified in a written agreement signed by an authorized representative of Seller. Neither Seller's acknowledgment of a Purchase Order nor Seller's failure to object to conflicting, contrary or additional terms and conditions in a Purchase Order shall be deemed an acceptance of such Terms and Conditions or a waiver of the provisions hereof.

1. **ORDERS.** Orders shall be initiated by Buyer issuing a Purchase Order or otherwise placing an order by electronic means acceptable to Seller. Orders shall identify the Buyer's Goods to be serviced, specifications of the Products to be provided or performed, quantity of the Products, the payment terms, the method of shipment and required delivery dates. All orders are subject to acceptance by Seller by either acknowledgment to Buyer or commencement of performance. Once accepted by Seller, orders may only be cancelled or modified by Buyer with the express written consent of Seller. On first time orders, Seller will provide samples showing the contract packaging, package design and other deliverables related to the Products and production of such Products will proceed when approval of the samples is received from the Buyer. All orders are subject to a 10% over or under quantity variance.

2. **PRICES.** Prices shall be as specified by Seller and shall be applicable for thirty (30) days. Notwithstanding the foregoing, prices are based on current labor and material prices and shall be subject to change without notice. Pricing errors, including clerical errors, are subject to correction. Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import duties. If Seller shall be liable for or shall pay any of the foregoing, the same shall be paid by Buyer to Seller in addition to the price of the Products.

3. **TERMS OF PAYMENT.** Payment shall be net thirty (30) days from date of invoice or as otherwise specified by Seller. Buyer agrees to pay the entire net amount of each invoice from Seller pursuant to the terms of each such invoice without offset or deduction. Orders are subject to credit approval by Seller, which may in its sole discretion at any time change the terms of Buyer's credit, require payment in cash, bank wire transfer or by official bank check and/or require payment of any or all amounts due or to become due for Buyer's order before delivery of any or all of the Products. If Seller believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, Seller may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any and all Products provided or performed to date. Buyer agrees to submit such financial information from time to time as may be reasonably requested by Seller for the establishment and/or continuation of credit terms. Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. Any check received from Buyer may be applied by Seller against any obligation owing from Buyer to Seller, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts owing from Buyer to Seller, and the acceptance by Seller of such check shall not constitute a waiver of Seller's right to pursue the collection of any remaining balance. Buyer shall pay interest on any invoice not paid when due from the due date to the date of payment at the rate of one and one-half (1-1/2%) percent per month or such lower rate as may be the maximum allowable by law. If Buyer

fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event Seller shall be entitled to reimbursement for costs of collection and reasonable attorneys fees.

4. DELIVERY AND TITLE. All shipments by Seller are F.O.B. point of origin and all transportation charges shall be paid by Buyer in addition to the price of the Products. Subject to Seller's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss to the Products shall thereupon pass to Buyer. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Seller shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's required delivery dates. Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates. Seller reserves the right to make deliveries in installments. Delivery of a quantity which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.

5. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS. Inspection and acceptance of the Products shall be Buyer's responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by Seller within ten (10) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity, damage or defect to the Products within ten (10) days after delivery. No return of Products shall be accepted by Seller without a Return Material Authorization ("RMA") Number, which may be issued by Seller in its sole discretion. Returned Products must be unopened, in the original shipping containers, complete with all packing materials unless otherwise specified in the RMA. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be damaged or defective, a complete description of the nature of the damage or defect must be included with the returned Products. Seller assumes no responsibility for rejections due to defects in Buyer Goods supplied by Buyer or other conditions beyond the control of Seller. Products not eligible for return shall be returned to Buyer, freight collect.

6. FORCE MAJEURE. The Seller shall not be liable for any expense, loss, or damage by reason of any failure to fulfill its obligations herein or for delays in delivery or non-delivery of any deliverable item or portion thereof, if such failure arises out of causes beyond the reasonable control of the Seller. Such causes may include, but are not limited to, acts of God or of the public enemy; acts of terrorism, acts of government; acts, failures to act, or delays in acting on the part of the Buyer or its agents, fires; floods; epidemics; quarantine restrictions; strikes, labor disputes or labor disruptions; freight embargoes; lack of or inability to obtain materials, equipment, or supplies; riots and civil disorders; thefts; accidents; delays in obtaining licenses or required permits; transportation delays; major equipment breakdown; fuel or energy shortages, interruption or allocations; unusually severe weather; or any other cause, whether similar or dissimilar to those enumerated above. In every case, the time for the Seller's performance shall be extended by a period of time equal to the time lost by reason of such cause or causes. In addition, in the case of acts, failures to act, or delays in acting on the part of the Buyer or its agents, the Seller shall be compensated for any increased costs of performance occasioned thereby.

7. SELLER'S LIMITED WARRANTY. Seller warrants that the Products shall be free from defects in workmanship and conform to the specifications, description and samples supplied by the Seller. SELLER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO (A) THE MERCHANTABILITY OF PRODUCTS, (B) THE FITNESS OF PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER OR THE END-USER, (C) ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE AND (D) CONDITION, DESIGN, QUALITY, DURABILITY OR SUITABILITY OF ANY BUYER GOODS SUBMITTED TO SELLER FOR BUYER'S PURPOSES. Buyer's sole and exclusive remedy for nonconforming Products shall be, at Seller's option, the replacement or repair of the Products, the re performance of the work associated with the Products or refund of purchase price (without interest). No repair, replacement or re performance shall extend any warranty period.

8. LIMITATION OF LIABILITY. Buyer's recovery from Seller for any claim shall not exceed Buyer's purchase price for the Product giving rise to such claim, irrespective of the nature of the claim, whether in contract, tort, warranty, negligence, strict liability or otherwise. Seller shall not be liable for and Buyer shall indemnify and hold Seller harmless from any claims based on Seller's compliance with Buyer's designs, specifications or instructions used in providing the Products.

9. DISCLAIMER OF DAMAGES. Buyer shall not in any event be entitled to, and Seller shall not be liable for indirect, special, incidental or consequential damages of any nature including, without limitation,

business interruption costs, removal and/or reinstallation costs, re procurement costs, loss of profit or revenue, loss of data, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers, even if Seller has been advised of the possibility of such damages. Further, Buyer agrees that Seller shall not be liable or responsible for any claim, loss, damage, liability or expense of any kind or nature caused, directly or Indirectly, by Buyer's Goods or any part thereof or the inadequacy thereof for any purpose, or any defect or deficiency therein, or the use, operation, or storage thereof; or the interruption or loss of the service or use thereof arising from any other reason or cause whatsoever, relating to or concerning customer's goods, or any part thereof.

10. PATENTS. The Seller shall defend any suit or proceeding brought against the Buyer so far as based on a claim that any Product furnished hereunder constitutes an infringement of any United States Patent, if notified promptly in writing and given authority, information and assistance for the defense of the same. In case the item is in such suit held to constitute infringement and the use thereof enjoined, the Seller shall, at its own expense, and at its option, either procure for the Buyer the right to continue using said item, or replace same with a non-infringing item, or modify it so it becomes non-infringing, or remove said item and refund the purchase price. These provisions do not apply when the item is furnished in accordance with designs supplied by the Buyer.

11. CONFIDENTIALITY. The parties acknowledge that in the course of this engagement they will have access to and/or be in possession of Confidential Information of the other. "Confidential Information" shall mean information regarded by that party as confidential, including information relating to its past, present or future research, development or business affairs and any proprietary products, materials or methodologies. Each party shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information of the other to which it may have access hereunder. Access to Confidential Information shall be restricted to those of the party's personnel with a need to know and engaged in a permitted use.

12. OWNERSHIP AND INSURANCE. The Buyer's Goods shall at all times remain the full, unrestricted and unlimited Property of the Buyer. Seller shall hold, move, or make available the Buyer's Goods, or any portion thereof, to Seller or any third parties as designated by Buyer in writing; provided, however, Buyer shall reimburse Seller for costs incurred by Seller to move or warehouse the Buyer's Goods. The Buyer shall maintain casualty insurance on the Buyer's Goods in an amount not less than the value of such goods and shall provide to Seller a certificate of insurance showing the required insurance coverage, and requiring the insurer to notify Seller in writing at least 30 days before the insurance can be cancelled or materially modified for any reason. If Buyer shall fail to maintain the required insurance, Seller may procure insurance on the Buyer's Goods and charge the Buyer for the cost of such insurance.

13. GENERAL; LAW AND VENUE. No rights, duties, agreements or obligations hereunder may be assigned or transferred by either party, by operation of law, merger or otherwise, unless such assignment is in connection with the transfer of all or substantially all of the assignor's business, or upon written consent of the other party. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Ohio excluding any law or principle which would apply the law of any other jurisdiction. All disputes related hereto shall be resolved in court sitting within the State of Ohio, Cuyahoga County and Buyer consents and agrees that jurisdiction, governing law and venue for such proceedings shall lie exclusively within such courts.