

TRI-PAC, INC. TERMS AND CONDITIONS OF SALE

1. CONFLICTING TERMS AND CONDITIONS

The following are the terms and conditions of sale (collectively, “Conditions of Sale”) for all products (the “Products”) sold by Tri-Pac, Inc. (the “Company”) to the buyer (“Buyer”). The Conditions of Sale is applicable for any customer with a valid contract manufacturing agreement, expired contract manufacturing agreement and no manufacturing agreement unless an agreement specifically states it’s supersedes Conditions of Sale. Any Company quotation (each, a “Quotation”) or order confirmation (each, an “Order Confirmation”) is an offer subject to and expressly conditioned upon these Conditions of Sale, except to the extent otherwise stated or agreed by the Company in writing. Any provisions, conditions, or terms contained in Buyer’s purchase order (each, a “Purchase Order”) which are in addition to or not consistent with the Company’s offer and these Conditions of Sale, are null and void and not binding on the Company. Buyer and Company agree that these Conditions of Sale are the exclusive terms and conditions of sale between Buyer and Company with respect to the Products, that they apply to all Purchase Orders accepted by Company as provided in Section 2.c below (each, an “Order”) and that they supersede and replace all other prior and contemporaneous quotes, proposals, and other communications and understandings between the parties, whether oral, written, electronic or implied, relating to the subject matter hereof. In the event of any conflict between these Conditions of Sale and Company’s special terms as set out in a Quotation and/or an Order Confirmation and/or any other separate written document issued by Company, the provisions of such special terms shall prevail over the provisions of the Conditions of Sale.

2. PRICES, ORDERS, INVOICES AND PAYMENT

- a. Unless otherwise specified, prices quoted are for the Products only, and do not include any amount for freight, insurance, fees, custom duties, or Federal, State or Local excise, sales, use, service, occupation, gross income, property or similar taxes, all of which are the responsibility of the Buyer. The Company shall have the right to include taxes which may be applicable to the prices for the Products in the event that Buyer does not supply the Company, prior to sale of the Products to Buyer, appropriate sales, use, excise or other applicable tax exemption certificates. Prices quoted are subject to change or cancellation at any time without notice and in any event expire thirty (30) days following the date of the quote, unless otherwise indicated therein or extended in writing by Company.
- b. Company reserves the right to make adjustments to pricing, Product offerings and Product warranties for reasons including, without limitation, changing market conditions, Product discontinuation, Product and raw material unavailability, manufacturer price changes, supplier price changes and errors in quotes or advertisements.
- c. All Purchase Orders are subject to acceptance by Company. Company shall not be bound to sell any Products to Buyer unless Company has accepted a Purchase Order by issuing a written Order Confirmation to Buyer or by shipping Product subject to a Purchase Order.
 - d. Unless otherwise mutually agreed by Buyer and Company in writing, Company invoices shall be due and payable in U.S. Dollars thirty (30) days from the date of Company’s invoice, without deduction, withholding or set-off. If Buyer at any time is delinquent in the payment of any invoice, Company may in its sole discretion, and without prejudice to its other rights, withhold shipment of any Order. Any sum not paid by Buyer when due shall bear interest until paid at a rate of 1.5% per month or the maximum rate permitted by applicable law, whichever is lower. In the event of a payment default, Buyer shall be responsible for all of Company’s costs of collection including, but not limited to, court costs, filing fees and attorneys fees. Partial payments shall be applied in the following order of priority: (i) outstanding invoices (oldest first); (ii) any late payment interest; and (iii) payment of expenses incurred by Company in recovering late payments.
- e. The Quotation is subject to the Company’s current credit policies and practices. The Company reserves the right, in its sole discretion, to approve, disapprove, or change Buyer’s credit limit or to impose credit terms, including without limitation the requirement that Buyer make full or partial advance payment. In the event of a complete or partial failure to pay, the Company may, at its option, revoke any credit extended to Buyer, suspend all shipments under open Orders until Buyer’s account is current, or offset such amount against any payments due or that become due from the Company or its Affiliates to Buyer including without limitation payment due to Buyer.
- f. For good and valuable consideration, the receipt and sufficiency of which Buyer hereby acknowledges, Buyer grants to the Company a security interest and right of possession in and to the Products covered hereby, and all accessions, replacements, proceeds, and products thereto or therefrom, to secure payment of the purchase price of such Products until Buyer makes full payment. Buyer will cooperate in whatever manner necessary to assist the Company in perfecting and recording such security interest.

3. DELIVERY

- a. For shipments within the United States, all Product deliveries are made F.O.B. the Company’s shipping location, freight collect. For international shipments, deliveries are made in accordance with the 2010 Incoterm of the International Chamber of Commerce as set forth in the applicable Quotation. Title and risk of

loss or damage to Products shipped within the United States shall pass to Buyer upon delivery of the Products to the Buyer at the F.O.B. delivery point. For international shipments, title and risk of loss or damage to the Products will pass to Buyer upon delivery of the Products to the applicable Incoterms 2010 delivery point. Should Buyer or its carrier fail to pick up the Products on the scheduled delivery date, the Company reserves the right to invoice Buyer reasonable storage fees for the Products from and after such date. Company may also give Buyer notice of its intent to sell the Products, set a reasonable grace period for pick-up and then sell the Products at a commercially reasonable price without prejudice to its right to claim damages from Buyer for any shortfall resulting from such sale or account to the Buyer for any excess achieved over the price in the Order Confirmation, in both cases having taken into account any charges related to the sale, or rescind the sale after such grace period.

- b. Delivery dates for Products provided by Company are not guaranteed dates for delivery of the Products. Lead times for deliveries, if provided in the Quotation, shall not commence until Buyer has provided Company with all technical information necessary to process the Order and/or set up the means of credit or payment provided for in the Order Confirmation.
- c. Buyer shall arrange for receipt of the Products per the acknowledged and accepted scheduled delivery date noted on the Order Confirmation. Failure to take delivery of Products on the scheduled date will result in a storage fee assessed at a monthly rate of 2.5% of the value of the Products.
- d. Unless otherwise agreed to by Company in writing, the quantity of every Order for Products delivered by Company may be up to five percent (5%) greater or less than the quantity specified in the Order Confirmation, and Company may invoice Buyer, and Buyer shall pay Company, for such greater or lesser quantity accordingly.
- e. Company reserves the right to ship and invoice Orders in installments.
- f. Any claim for short shipment must be made in writing to Company within three (3) days following the date of delivery of the relevant shipment of Products.
- g. Buyer shall accept or reject Products within thirty (30) days following delivery. In the event that Buyer fails to notify Company in writing of rejection and the specific grounds therefor within such time period, Buyer shall be conclusively deemed to have accepted such Products without qualification.
- h. Left Over Inventory – Buyer is responsible for all left over inventory purchased by Company on reliance of Purchase Order from Buyer. Left over inventory can be classified as any raw material, packaging material, branded or unbranded customer material purchased by Company on reliance of Purchase Order or any left over inventory due to supplier minimum order quantity that may exceed Buyer consumption.

4. CHANGE OR CANCELLATION OF ORDERS Upon receipt of the Purchase Order from the Buyer, the Company reserves the right to immediately procure materials and start production. The Buyer shall be liable for any raw materials, components or finished goods purchased or produced at the time of any Purchase Order change or cancellation.

5. PRODUCT SUITABILITY

- a. It is the Buyer’s sole responsibility to (i) choose the Products and define any special or customized technical or packaging specifications for the Products, (ii) ensure that the Products that it orders from the Company are suited for their intended use, (iii) ensure the Products are compatible with the content that the Buyer is to put in the finished packaging and products sold by the Buyer and (iv) ensure compliance with all applicable regulations of the finished products that it markets.
- b. Company may perform tests for compatibility; such testing, however, is not a duty of Company. COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT ANY TESTS BY COMPANY ARE ADEQUATE OR SUFFICIENT FOR BUYER’S PURPOSES, AND BUYER AGREES NOT TO HOLD COMPANY RESPONSIBLE FOR SUCH ADEQUACY OR SUFFICIENCY.

6. WARRANTY

- a. Prototypes, samples and other development Products are sold “AS-IS” and without any representation or warranty, express or implied.
- b. Products sold hereunder are warranted by the Company to be free from defects under normal use and conform to the specifications provided by Company along with the Quotation for the Products or, with respect to orders for Products set out in an Order Confirmation, to Buyer’s written specifications previously accepted by the Company in writing. Unless otherwise agreed upon by the parties in writing, Buyer’s rights under this warranty are extended for a period of one (1) year from and after the date of delivery of the Products to Buyer. Company is not responsible for normal wear and tear of the Products, Buyer’s negligence or any non-conformity or defect in the Products that (i) is created after the Product is shipped by Company, including any non-conformity/defect resulting from Buyer’s negligence, handling, maintenance or failure to properly use, maintain or store the Products; (ii) results from modifications to the Products by Buyer or a third party, or (iii) results from components or materials provided by or on behalf of Buyer. Buyer’s sole and exclusive remedy, and the Company’s sole and exclusive obligation under this warranty, is to at Company’s option, repair, replace or issue to Buyer a credit for the purchase price for any Products sold hereunder with any defect or non-conformity warranted against, provided the Company receives written notice of the defect during the period of warranty and Buyer returns the defective Products to the

Company at a location designated by the Company accompanied by Company's formal written return authorization. If the Company determines that the Product conforms to the Order Confirmation, the Product will be returned at Buyer's expense.

- c. The Company disclaims any and all liability for equipment, materials and software not furnished by the Company which is attached to, or used in conjunction with, the Products and the Company disclaims all liability for operation of the system, if any, of which the Products are a part.
- d. The warranty provided in paragraph 6. b) above is extended by the Company to Buyer only, and is the complete and exclusive warranty for Products manufactured by the Company. Company specifically excludes any warranty of suitability, adaptability or compatibility of the Products with the Buyer's needs for the purposes of manufacturing finished, semi-finished or intermediate products, for the purposes of incorporating the Products into other products. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED. COMPANY ALSO DISCLAIMS ANY WARRANTY OF NON- INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO THE PRODUCTS. This warranty shall not be enlarged and no obligation or liability shall arise out of the Company's rendering of technical advice and/or assistance.
- e. The Buyer represents and warrants that any customized specifications for the Products provided to the Company do not and will not infringe the rights of third parties (including but not limited to any third party Intellectual Property Rights).

7. LIMITATION OF LIABILITY

- a. No action shall be brought for any breach of this agreement more than one (1) year after the accrual of such cause of action.
- b. Buyer's exclusive remedy shall be for damages and Company's maximum liability shall not in any case exceed the purchase price for the relevant Products giving rise to the claim, regardless of whether the claim is based on contract, breach of warranty, negligence (including gross negligence), strict liability, statutory violation, or otherwise, notwithstanding any failure of essential purpose or of any limited remedy. Under no circumstances AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN shall COMPANY OR ITS AFFILIATES be liable for any consequential, incidental, special, punitive, or exemplary damages, lost profits, OR interruption of business losses, costs, or expenses of any kind, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The parties expressly agree that the above limitation on damages is an allocation of risk constituting in part the consideration for this agreement.

8. LICENSES; INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

The sale of the Products furnished hereunder does not convey any license by implication, estoppel or otherwise under any proprietary, patent right or other Intellectual Property Rights (as defined below) of the Company covering the Products or combination of the Products with other elements. Unless otherwise agreed to in writing, the Company retains all title and all rights to Intellectual Property Rights relating to the Products. Except as specifically provide herein, the sale of Products conveys no license to Buyer under any Intellectual Property Rights of the Company. Buyer shall defend, indemnify and hold harmless Company and the entities that control, are controlled by, or are under common control with Company (such entities, "Affiliates"), and its and their directors, officers, employees, successors and assigns from and against any claims, demands, lawsuits, losses, damages, liabilities, costs and expenses (including reasonable fees and disbursements of counsel), and judgments and settlements of every kind that may be made by any third party arising out of or relating to any claim that the specifications, designs, processes or requirements for the Products provided by Buyer infringes or misappropriates any third party Intellectual Property Rights. For purposes hereof, the term "Intellectual Property Rights" mean, collectively, copyright rights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, use and sell), trade secrets, moral rights, right of publicity, authors' rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the laws of the United States, or any other state, country or jurisdiction.

9. CONFIDENTIAL INFORMATION

- a. Unless the Buyer and Company are parties to an existing agreement governing the confidentiality of information to be transferred between the parties (an "Existing Confidentiality Agreement"), in which case the Existing Confidentiality Agreement shall govern the treatment of such information in connection with these Conditions of Sale in lieu of this Section 9, Buyer hereby undertakes for the duration of its relationship with Company and for five (5) years after termination thereof for any reason whatsoever, to keep absolutely confidential and not disclose to any third parties any information or materials of any kind provided by Company to Buyer or its agents verbally, in writing or in any other form including, but not limited to, information or materials of a commercial, financial or legal nature concerning Company, its know-how or its Intellectual Property Rights relating to the design, manufacture, studies, plans, drawings, documents, models, prototypes, objects or other materials relating to the Products, all of which Buyer shall return to Company

upon Company's request.

- b. Confidentiality obligations shall not extend to information that is in the public domain, has become public domain other than by Buyer's breach of confidentiality, that is lawfully received from third parties, or to the extent Buyer is held to disclose information under the law or by governmental or judicial order.

10. IMPORTATION AND EXPORTATION

Buyer shall comply with all applicable export control laws and shall not, directly or indirectly export, reexport, resell, ship, or divert any Product, material, service, technical data, or software furnished hereunder to any person, entity, project, use, or country in violation of the laws or licensing requirements of the United States or any other appropriate national authority. Buyer shall indemnify and hold the Company harmless for any and all claims, demand, cost, fines, penalties, fees, expenses, or losses arising from Buyer's failure, intentional or unintentional, to comply with the foregoing paragraph.

11. ARBITRATION

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, without limitation, statutory, common law, intentional tort and equitable claims) arising from or related to the Products purchased by Buyer from Company, the interpretation of these Conditions of Sale or any Quotation, Order Confirmation or Order entered into in connection herewith or the breach, termination, or validity of these Conditions of Sale of any such Quotation, Order Confirmation or Order, or the relationships which result from these Conditions of Sale or any Quotation, Order Confirmation or Order (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), or Company's or any of its Affiliates advertising or marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF COMPANY, BUYER OR THE THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the rules of the American Arbitration Association. If arbitration is chosen with respect to any Claim, neither Company nor Buyer will have the right to litigate that Claim in court or have a jury trial of that Claim or to engage in pre-arbitration discovery, except as provided in the applicable arbitration rules or by agreement of the parties involved. Further, Buyer will not have the right to participate as a member or representative of any class of claimants pertaining to any claim. Notwithstanding any choice of law provision included in these Conditions of Sale, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. Sections 1-16). The arbitration will take place exclusively in Michigan. Any court having jurisdiction may enter judgment on the award entered by the arbitrator(s). Each party will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY CONTAINED HEREIN, ALL MATTERS PERTAINING TO THE COLLECTION OF AMOUNTS DUE TO COMPANY ARISING FROM PRODUCTS WILL BE LITIGATED IN COURT RATHER THAN THROUGH ARBITRATION.

12. GENERAL

- a. No modifications hereto shall be effective unless they are agreed upon in writing by both parties. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Conditions of Sale or any Quotation, Order Confirmation, Order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties.
- b. The failure of the Company to insist, in any one or more instances, upon the performance of any of the terms or conditions of these Conditions of Sale, or to exercise any right herein, shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right.
- c. No right, interest or obligation these Conditions of Sale may be assigned or delegated by either party without the written permission of the other party.
- d. These Conditions of Sale shall be governed and interpreted in accordance with the laws of the State of Michigan, without reference to principles of choice and conflicts of laws.
- e. Company shall not be responsible for and no liability shall result to Buyer for any delays in delivery or in performance which result in circumstances beyond Company's reasonable control including, without limitation, product unavailability, carrier delays, delays due to fire, flood, storm, severe weather conditions, pandemics, failure of power, labor problems, acts of war, terrorism, embargos, acts of God, shortages of supplies of raw materials or components or acts of any government or agency (each an "Event of Force Majeure"). Company may cancel any Order upon written notice to Buyer should an Event of Force Majeure continue for a period of sixty (60) or more consecutive days.
- f. The Company may exhibit to in any public event such as trade fairs, exhibitions or shows, in any advertising and commercial documents, and to Company investors and potential investors, the Products made for Buyer.
- g. The relationship between Company and Buyer is that of independent contractors and not that of employer/employee, partnership or joint venture.
- h. If any term of these Conditions of Sale is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the validity, legality or enforceability of the other terms and conditions hereof or thereof or the whole of these Conditions of Sale.
- i. This Section and the following Sections shall survive the expiration or termination of these Conditions of Sale: 1, 2a, 2d, 2e, 2f, 3a, and 4 through 12.