

## **Terms and Conditions of Sale with PCG GLOBAL TRADE as Seller**

1. THESE TERMS AND CONDITIONS GOVERN ALL SALES OF GOODS OR SERVICES BY SELLER TO BUYER. SELLER AGREES TO SUPPLY THE ORDERED GOODS OR SERVICES ONLY UPON THE TERMS AND CONDITIONS CONTAINED HEREIN. SELLER'S ACCEPTANCE OF BUYER'S ORDER AND AGREEMENT TO DELIVER THE ORDERED GOODS IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS SET FORTH BELOW. IN THE EVENT BUYER'S PURCHASE ORDER INCLUDES TERMS AND CONDITIONS THAT DIFFER FROM OR ARE IN ADDITION TO THE FOLLOWING, SUCH TERMS AND CONDITIONS ARE EXPRESSLY REJECTED BY SELLER AND ARE NULL AND VOID.

2. As used herein, "Buyer" refers to the party who submits a Purchase Order, which is confirmed by and made subject to these Terms and Conditions. "Seller" means PCG GLOBAL TRADE (d/b/a name for PCG PACKAGING, LLC). and "Purchase Order" means the purchase order, electronic order or any other order submitted by Buyer.

3. Buyer's submission of a purchase order to Seller shall constitute an offer to purchase goods and/or services from Seller subject to these Terms and Conditions. Seller's acceptance shall create a binding contract subject to these Terms and Conditions. No terms and conditions set out in Buyer's purchase order or elsewhere shall apply to the extent that they differ from or are in addition to these Terms and Conditions unless such terms and conditions are set forth in an agreement signed by both Seller and Buyer that references and specifically amends these Terms and Conditions.

4. Except as provided below in this section, prices are based on labor, freight and material costs prevailing at the time of Seller's confirmation. Prices are exclusive of all applicable fuel surcharges unless specifically specified as included in quote. All taxes, including sales, use, excise or any other taxes, assessments or charges imposed by federal, state, local or foreign governments on the manufacture, sale, shipment, import, export, or use of the goods shall be paid by Buyer, unless Seller expressly states in writing otherwise. Terms of payment shall be in accordance with Seller's invoice or applicable published sales policy statements. If Seller's invoice contains a prompt payment discount, Buyer must deduct such discount amount from its timely payment of the invoice or be forever barred from claiming such discount. If Seller deems itself insecure with Buyer's ability to pay any invoice, Seller reserves the right to either withhold shipments, or impose or revise Buyer's credit limits.

5. Unless otherwise specified in Seller's confirmation, all deliveries of goods other than equipment are FOB Buyer's facility. Title will pass to Buyer upon delivery to Buyer's facility. All delivery dates are approximate, and Seller shall not be responsible for any damages of any kind resulting from any delay. Buyer agrees to accept partial or pro rata deliveries as full performance in the event Seller cannot fulfill an entire order. Seller shall not be liable for any default or delay in performance if caused directly or indirectly, by acts of God; war; force of arms; fire; flood; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay in transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material or equipment used in the manufacture of the goods; failure of any party to

perform any contract with Seller relative to the production of the goods; or from any cause whatsoever beyond Seller's control.

6. All of the goods furnished hereunder are furnished by suppliers to Seller. To the extent that such suppliers provide warranties, and to the extent Seller is permitted to do so, Seller will assign all such warranties to Buyer. Seller will provide all reasonable assistance to Buyer in obtaining the benefits of such warranties. No warranty is effective if (i) the goods are not stored or handled appropriately, (ii) the defect resulted from damages occurring after delivery, (iii) the defect was not reported to Seller within thirty (30) days after delivery, or (iv) the defect is observable at the time of delivery is not reported upon delivery. IN NO EVENT WILL SELLER PROVIDE ANY WARRANTY OTHER THAN BY ASSIGNMENT AS DESCRIBED ABOVE, WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

7. SELLER'S LIABILITY TO BUYER ON ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE, WITH RESPECT TO THE GOODS OR SERVICES DELIVERED HEREUNDER, SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE PART OF THE GOODS OR SERVICES THAT GIVES RISE TO THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE, OR LOSS OF USE OF THE GOODS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED, EVEN THOUGH SELLER MAY HAVE BEEN NEGLIGENT, AND BUYER INDEMNIFIES AND HOLDS SELLER HARMLESS FROM ANY AND ALL SUCH CLAIMS OF DAMAGE BY BUYER OR OTHERS.

8. Any action for any loss or damage with respect to the goods or services delivered by Seller hereunder must be commenced by Buyer within one year from the date of invoice.

9. To the maximum extent allowed by law, Buyer must defend, indemnify, and hold harmless Seller, its employees, officers, directors, and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Seller, its agents, officers, directors, or employees may incur or be obligated to pay as a result of (i) Buyer's negligence or willful misconduct, (ii) use, ownership, modification, maintenance, transfer, transportation, or disposal of the goods; (iii) any infringement or alleged infringement of the intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the goods ordered by Buyer; and (iv) Buyer's violation or alleged violation of any federal, state, county, or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging, and labor practices. Buyer hereby waives and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled.

10. After confirmation by Seller, Buyer's Purchase Orders may not be subject to cancellation by Buyer except with Seller's express written consent. Returns must be approved by Seller in writing and are subject to restocking and transportation fees. Any returned goods must be in resalable condition, unopened and with the sale receipt or invoice. Custom orders or specialty goods cannot be returned.

11. Upon request, Seller in its discretion may furnish as an accommodation to Buyer technical advice or assistance regarding the goods ordered by Buyer. Seller assumes no obligation or liability for the advice or assistance given or results obtained, which shall be at Buyer's sole risk.

12. All of Buyer's tooling, goods and other property in Seller's possession shall be fully insured by Buyer, and Buyer releases Seller from all liability for loss or damage to such materials caused by Seller's negligence or otherwise. After one year upon completion of any order requiring the use of such materials, Seller may use or dispose of such materials without liability to Buyer.

13. Buyer must provide and maintain Commercial General Liability Insurance, including Products and Completed Operations coverage, on an "occurrence" basis in the amount of \$1,000,000. Buyer shall furnish to Seller certificates of insurance showing the above referenced coverages and providing for at least thirty (30) days prior written notice of cancellation or modification and naming Seller as an additional insured.

14. Buyer agrees it will not copy, nor permit anyone else to copy, any goods or parts thereof, or any pattern, plan, drawing, specification, instruction, or depiction thereof, without written approval of Seller, and that it will not knowingly, directly or indirectly, violate or infringe upon, or contest the validity of any patent, license, or other right of Seller pertaining to any of said goods. Where any goods are manufactured from patterns, plans, drawings, or specifications furnished by Buyer, Buyer shall indemnify Seller against and save Seller harmless from all loss, damage and expense arising out of any suit or claim against Seller for infringement of any patent, trademark, copyright or other right because of Seller's manufacture of such goods or because of the use or sale of such goods by any person. The terms of any Seller Software License Agreement submitted to Buyer with the goods are incorporated herein by reference.

15. To secure payment of all sums due hereunder or otherwise, Seller shall retain a security interest in the goods delivered hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney-in-fact to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest. Seller is relying upon Buyer's representation of solvency and if Seller at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, or if Buyer shall fail to make payment when due which payment is not cured within ten (10) days after receipt of notice of the same from Seller, Buyer shall be in material breach hereof and Seller may, without liability to Buyer, withhold performance hereunder, change the payment terms and/or repossess goods theretofore delivered. Title to the goods covered by this contract shall remain in Seller until payment in full is received. In extending any credit hereunder, Seller may charge Buyer finance, service or late charges in an amount not greater than allowed by law, and if Buyer fails to pay according to the terms of this contract, Seller may make such charges and may also collect the amount unpaid with Buyer being liable to Seller for all costs of collection including attorney's fees.

16. Buyer shall not use or disclose any of Seller's trade secrets or confidential information, whether or not designated as such, except as required in connection with the use or resale of the goods.

17. The confirmation and these Terms and Conditions constitute the entire agreement between Buyer and Seller relating to the ordered goods or services. No modifications shall be binding upon the Seller unless in writing signed by Seller's duly authorized representative. No modification of the confirmation or these Terms and Conditions will be effected by the acknowledgment or acceptance of other shipping instruction forms or any other document containing terms and conditions at variance with or in addition to these Terms and Conditions, all such varying or additional terms being deemed invalid. No waiver by Seller or default by Buyer shall be deemed a waiver of any subsequent default. The invalidity, illegality, or unenforceability of any one or more provisions hereof shall in no way affect or impair the validity, legality, or enforceability of the remaining provisions hereof, which shall remain in full force and effect. This agreement shall be governed by the laws of the state of Tennessee, without giving effect to its principles of conflicts of law.