

## TERMS AND CONDITIONS OF SALE

**1. EXCLUSIVE GOVERNING PROVISIONS.** The sale of all goods and services by the seller (the "Company") to the purchaser shall be subject to and governed exclusively by these terms and conditions of sale (the "Conditions"). The Company's acceptance of any order or other offer by the purchaser (whether in writing, by telephone or otherwise) for any goods or services shall be conditioned upon the purchaser's assent to these Conditions. Such assent shall be deemed given upon the earlier of: (i) the purchaser's acceptance of these Conditions pursuant to a credit application containing or referencing these Conditions; (ii) the purchaser ordering goods or services from the Company based on a Company quotation or proposal containing or referencing these Conditions; or (iii) five (5) days after the purchaser's receipt of these Conditions as contained or referenced in a Company sales order acknowledgement, bill of lading, invoice or any other writing (including, without limitation, electronic correspondence), unless, prior to the expiration of such five (5) day time period, the purchaser rejects these Conditions in their entirety (specifically referencing these Conditions) by delivering written notice thereof to the Company. No additional or different conditions, whether contained in a purchase order or any other communication from the purchaser (whether written or oral and whether previously given or later asserted), shall be binding upon the Company unless specifically agreed to in writing by an executive officer of the Company. The failure of the Company to object to any such additional or different conditions shall not be a waiver of these Conditions or an acceptance of such additional or different conditions. No modification or amendment of, or addition to, these Conditions or any order accepted by the Company by the purchaser shall be binding unless in writing and signed by an executive officer of the Company.

**2. PAYMENT TERMS; LATE FEE.** The purchaser shall not retain or withhold from the Company any sum stated on any invoice for any reason whatsoever. The purchaser's payment obligation is in no way contingent upon the purchaser's receipt of payment from any party. Each invoice rendered by the Company to the purchaser shall be deemed correct and binding upon the purchaser unless the Company shall receive a written statement of objection within ten (10) days after such invoice is rendered. Interest shall accrue on all amounts remaining unpaid after the due date at the lesser of: (i) one and one-half percent (1½%) per month, or (ii) the maximum lawful rate. If the Company refers an invoice to an attorney or other party for collection, the purchaser shall pay on demand all the Company's expenses of collection including, without limitation, reasonable attorneys' fees and costs including fees and expenses of any expert retained by the Company.

To the fullest extent permitted by law, the Company reserves the right at any time to suspend credit or to change the payment or credit terms provided herein or elsewhere when, in the Company's sole determination, the financial condition or business prospects of the purchaser so warrant. In such a case, in addition to any other rights herein or by law provided, adequate assurances of the purchaser's ability to perform its obligations to the Company, such as a cash payment by the purchaser or satisfactory security from the purchaser, may be required by the Company before shipment. Without precluding the use of other forms of assurances, the Company may accelerate the due date of payment under any invoice or order. Failure to pay any invoice in full by its stated due date shall automatically cause all other invoices to the purchaser to be immediately due and payable irrespective of their terms, and the Company may withhold all subsequent deliveries until all amounts due the Company by the purchaser have been paid in full. Acceptance by the Company of less than full payment shall not act as a waiver of any of its rights.

**3. TAXES.** The Company's prices do not include sales, use, manufacturer's, retailer's, occupation, excise, VAT or any similar or other tax, fee, duty, tariff, or other charge imposed by any governmental authority on any transaction between the Company and the purchaser. The purchaser shall furnish evidence of any sales tax exemption and shall warrant the validity and accuracy thereof. In all events, any such tax, fee, duty, tariff, or other charge, even if initially advanced by the Company or by any export-import

broker, shall be the sole obligation of, and shall be promptly paid by, the purchaser.

**4. ERRORS.** All stenographic or clerical errors are subject to correction by the Company.

**5. ASSIGNMENT.** No purchase order or rights of the purchaser thereunder or elsewhere, or any obligation of the purchaser to the Company, may be assigned by the purchaser without obtaining the Company's prior written consent in each instance, which consent may be withheld in the Company's sole discretion. The Company may assign its rights and obligations hereunder in whole or in part on one or more occasions without obtaining the consent of or giving notice to the purchaser.

**6. DELIVERY; RISK OF LOSS; RIGHT TO INSPECT; NOTICE OF DEFECTS.** Shipping and delivery dates are approximate and are not guaranteed. It is agreed that the term "F.O.B." is a price term only. All risk of loss or damage in transit shall pass to the purchaser upon the goods being placed into the possession of a carrier for shipment; provided, however, that the purchaser shall have the right to inspect the goods upon tender by the Company or the carrier at the time of unloading the goods. The purchaser of the goods has the right and duty to notate damaged goods on the waybill or other receipt upon the devanning of the goods unto the purchaser's platform at destination. If no such notation is made by the purchaser at devanning, the parties agree that they may infer, and rely on such inference, that there was no visible proof of damage to goods prior to being loaded at origin or during the transportation of the goods to the purchaser. The failure of the purchaser to inspect any particular shipment within ten (10) days after tender to the purchaser shall constitute a waiver of the purchaser's rights to inspect that shipment and shall constitute an acceptance of such goods. All claims for shortages, defects or other non-conformities in goods delivered shall be made in writing by the purchaser to the Company within ten (10) days after their tender to the purchaser. Failure to notify the Company in writing of any claim within ten (10) days after tender to the purchaser shall constitute an irrevocable acceptance of the goods and an admission by the purchaser that the goods comply fully with all terms, conditions and specifications of the corresponding order.

The purchaser shall fully specify and send notice of all claimed defects and other non-conformities to the Company within such ten (10) day period. The failure to specify any defect or other non-conformity shall constitute a waiver by the purchaser of that defect or other non-conformity. If the purchaser makes any such claim on any tender of goods, the purchaser shall reship a sample of such goods to the place designated by the Company, by express courier, within two (2) days after receipt of an order to reship from the Company. The purchaser expressly waives its right to a security interest in the goods under Section 2-711 of the Uniform Commercial Code or under any other law.

**7. DISCLAIMER OF WARRANTIES.** ANY DESCRIPTION OF THE GOODS OR SERVICES CONTAINED ON ANY QUOTATION, PURCHASE ORDER, SALES ORDER ACKNOWLEDGEMENT, BILL OF LADING OR SALES INVOICE IS FOR THE SOLE PURPOSE OF IDENTIFYING THEM AND DOES NOT CONSTITUTE A WARRANTY THAT THE GOODS OR SERVICES SHALL CONFORM TO THAT DESCRIPTION. THE USE OF ANY SAMPLE OR MODEL IN CONNECTION WITH A SALE OF GOODS OR SERVICES IS FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A WARRANTY THAT THE GOODS OR SERVICES WILL CONFORM TO THE SAMPLE OR MODEL. THE COMPANY AND ITS SUPPLIERS MAKE NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY GOODS OR SERVICES SOLD BY THE COMPANY TO THE PURCHASER. THE COMPANY AND ITS SUPPLIERS MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED.

**8. TESTING.** The purchaser assumes all responsibility for testing the compatibility and capacity of their products with goods sold by the Company.

**9. TRADE PRACTICES.** For each order of goods, purchaser agrees that there may be a variance of actual quantity delivered of plus or minus ten percent (10%). Prices for all goods and services are subject to customary adjustments, including, without limitation, adjustments based on changes in energy and raw material costs and are dependent on price in effect at time of shipment. Ship dates and lead times are subject to receipt of approved specifications from the purchaser.

**10. CONFIDENTIALITY.** In connection with the offer for sale and the sale of goods and services to the purchaser, the Company may disclose to the purchaser confidential business information of the Company, including, but not limited to, prices of goods or services and the names of the Company's suppliers of goods or services. The purchaser agrees to maintain the confidentiality of this information and not to disclose any of the information to third parties and not to use this information for any purpose unrelated to the sale of goods and services pursuant to these Conditions.

**11. ARBITRATION; JURISDICTION AND VENUE.** EXCEPT FOR DISPUTES RELATING TO THE COLLECTION OF AMOUNTS DUE FOR PRODUCTS DELIVERED HEREUNDER, ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE PRODUCTS SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, PROVIDED THE PARTIES HEREBY AGREE THAT, WHERE LESS THAN \$250,000.00 IS AT ISSUE IN ANY SUCH DISPUTE, CONTROVERSY, OR CLAIM, THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR. ALL SUCH ARBITRATION PROCEEDINGS SHALL TAKE PLACE IN ST. LOUIS COUNTY, MISSOURI, U.S.A. IN THE EVENT THERE IS ANY LITIGATION RELATING TO THIS PARAGRAPH REQUIRING ARBITRATION OR ANY OTHER MATTER THAT IS FOUND NOT TO BE SUBJECT TO ARBITRATION, THEN THE PARTIES IRREVOCABLY AGREE THAT JURISDICTION AND VENUE IN ANY SUCH LAWSUIT SHALL PROPERLY (BUT NOT EXCLUSIVELY) LIE IN THE CIRCUIT COURT FOR ST. LOUIS COUNTY, MISSOURI, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, AND THE PARTIES IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN SUCH COURT AND HEREBY WAIVE ANY OBJECTION THAT SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH ACTION.

**12. ATTORNEYS' FEES.** IN CONNECTION WITH ANY ARBITRATION OR LITIGATION ARISING FROM THE SALE OF GOODS OR SERVICES BY THE COMPANY TO THE PURCHASER, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS' FEES AND EXPENSES FROM THE NON-PREVAILING PARTY AS PART OF THE SAME ARBITRATION OR LITIGATION; PROVIDED, HOWEVER, IF A PARTY PREVAILS ON SOME, BUT NOT ALL, OF ITS CLAIMS, SUCH PARTY SHALL BE ENTITLED TO RECOVER AN EQUITABLE AMOUNT OF SUCH FEES, COSTS AND EXPENSES, AS DETERMINED BY THE APPLICABLE ARBITRATOR OR COURT COMMENSURATE WITH ITS DEGREE OF SUCCESS AGAINST THE NON-PREVAILING PARTY.

**13. RETURNS FOR CREDIT.** In no event are goods to be returned to the Company, including but not limited to the Company's warehouse, affiliate, manufacturer, agent, or otherwise, without in each instance obtaining the Company's prior written permission. The Company reserves the right to refuse any goods returned for credit without such prior written permission. Unless otherwise indicated by the Company, all goods shall be returned F.O.B. point of delivery and all risk of loss or damage in transit shall not pass to the Company until delivery thereto. The amount of credit given to the purchaser by the Company shall be fixed by the Company in its sole discretion.

**14. PROCEDURES IN EVENT OF DEFECT OR BREAKAGE IN GLASS GOODS.** If any glass goods sold by the Company exceed pre-established breakage limits as agreed to in writing by the Company and the purchaser (if any), the purchaser shall take the following actions: (i) Immediately cease filling and notify the Company of such breakage levels. The purchaser shall provide all appropriate information, including but not limited to, problem area of line where failures are occurring, quantities involved, video jet code or manufacturing date and shift, truck number, and other information requested by the Company. The purchaser shall retain, or shall cause its filler to retain, sufficient samples of defective glass goods and promptly supply such glass goods to the Company and the manufacturing plant, if instructed by the Company, for additional testing by the Company (to be conducted in the Company's discretion); (ii) Switch to a different production hour, shift or date if advised to do so by the Company; (iii) After discussion with the Company per subsection (i) above, the purchaser may continue to fill glass goods in accordance with agreed upon extra inspection and/or reduced speeds and pursuant to its agreement with the Company; and (iv) Continue to monitor line performance and/or filled glass goods if the purchaser continues to fill glass goods pursuant to discussions with the Company.

**15. CLAIMS FOR BREAKAGE.** No returns for credit subject to Section 13 above and no claims for defective glass goods, or glass goods exceeding previously agreed to breakage limits subject to Section 14 above, shall be valid unless the purchaser: (i) has provided prompt and immediate notification of all such problems to the Company; (ii) follows written direction of the Company as deemed necessary in the Company's discretion to minimize loss of goods; (iii) collects information such as pallet tags and any other supporting data, including representative samples of the problem and provides same promptly to the Company; and (iv) accumulates and provides full details of all costs to support claims to the Company, as requested by the Company. All claims for breakage of glass goods will be limited to glass cost only.

**16. RECONDITIONED GOODS.** Without limiting any other terms and conditions set forth herein, for each order of reconditioned or recycled industrial drums, totes, or other bulk containers (collectively, "Reconditioned Goods"), the purchaser acknowledges and agrees that: (i) to the extent Reconditioned Goods are sourced from the Company's affiliate, TricorBraun Industrial Services LLC ("TBIS"), (a) the Conditions shall apply to, and shall be enforceable by, TBIS as the "Company", (b) TBIS shall be solely liable for any claim of any kind relating to Reconditioned Goods, and (c) the purchaser shall hold the Company (as sales representative) harmless from and against any claim of any kind relating to Reconditioned Goods; and (ii) Reconditioned Goods are sold "AS IS" and "WITH ALL FAULTS."

**17. INDEMNIFICATION AGAINST PATENT INFRINGEMENT.** If any goods sold by the Company are not part of the Company's standard line offered by it in the usual course of the Company's business, but are produced in accordance with the purchaser's specifications, requirements, designs or other request, the purchaser shall indemnify and hold the Company and its successors and assigns harmless from and against all losses, damages and expenses, including, without limitation, attorneys' fees and costs including the fees and expenses of any expert, arising out of any claim or demand in the nature of patent infringement, trade dress infringement, unfair competition or the like asserted against the Company and/or its successors and assigns, and shall defend any such claim or demand at its sole expense, provided that the purchaser shall not consent to the entry of any judgment or enter into any settlement or compromise with respect to any such claim or demand without the Company's prior written consent. This indemnification applies to the initial adjudication, in whatever forum, and all subsequent appeals or other proceedings with respect thereto.

**18. MARKETING AND PRODUCT CLAIMS.** In the event the purchaser provides marketing or other product claims for use by the Company in providing the goods ("Claims"), the Company may, but is not obligated to, provide certain feedback as to such Claims, including without limitation, as to the validity and/or legality of such Claims under applicable law. Any such feedback provided by the Company shall be for informational purposes only

and shall not constitute legal advice. The purchaser agrees to exercise its own independent business judgment in making any such Claims and in the consideration of any such feedback, including without limitation, whether to have such Claims or feedback evaluated by legal counsel. The Company shall not be liable to the purchaser or any third party in connection with any such Claims and the purchaser shall indemnify the Company for any losses or damages arising therefrom.

**19. FORCE MAJEURE.** ALL ORDERS ARE SUBJECT TO, AND THE COMPANY SHALL NOT BE RESPONSIBLE OR LIABLE FOR, ANY DELAY OR OTHER FAILURE TO PERFORM BY THE COMPANY DIRECTLY OR INDIRECTLY CAUSED BY OR RESULTING FROM THE FOLLOWING FORCE MAJEURE EVENTS: ANY FOREIGN OR DOMESTIC EMBARGOES, SEIZURES, ACTS OF GOD, INSURRECTIONS, WARS, CONTINUANCES OF WAR, DELAYS IN OR THE LACK OF AVAILABILITY OF GOODS, MATERIALS, INGREDIENTS OR COMPONENTS FROM THE COMPANY'S SUPPLIERS, DELAYS IN TRANSPORTATION, STRIKES, FIRES, FLOODS, EXPLOSIONS OR OTHER ACCIDENTS, ACTION BY ANY GOVERNMENTAL AUTHORITY, INCLUDING WITHOUT LIMITATION THE ADOPTION OR ENACTMENT OF ANY LAW, ORDINANCE, REGULATION, PROCLAMATION, RULING OR ORDER, DIRECTLY OR INDIRECTLY INTERFERING WITH OR RENDERING MORE BURDENSOME THE PROCUREMENT, PRODUCTION, MANUFACTURE OR DELIVERY OF GOODS AND SERVICES HEREUNDER, OR ANY ACT OR EVENT BEYOND THE COMPANY'S CONTROL EITHER OF THE FOREGOING NATURE OR OF ANY OTHER KIND, NATURE OR DESCRIPTION. IN ALLOCATING THE RISK OF DELAY OR FAILURE OF PERFORMANCE UNDER THESE CONDITIONS, THE COMPANY AND THE PURCHASER HAVE NOT TAKEN INTO ACCOUNT THE POSSIBLE OCCURRENCE OF ANY OF THE EVENTS LISTED IN THE FOREGOING SENTENCE OR ANY SIMILAR OR DISSIMILAR EVENTS BEYOND THE COMPANY'S CONTROL, IRRESPECTIVE OF WHETHER SUCH LISTED, SIMILAR OR DISSIMILAR EVENTS WERE FORESEEABLE AS OF THE DATE OF THE PURCHASER'S ASSENT TO THESE CONDITIONS.

**20. APPLICABLE LAW.** The terms of these Conditions shall be interpreted, and the rights and obligations of the parties hereto shall be governed and determined by, the Uniform Commercial Code and the other internal laws of the State of Missouri and shall not be governed in whole or in part by the United Nations Convention on Contracts for the International Sale of Goods. Whenever the term "Uniform Commercial Code" is used herein, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Missouri as effective and in force on the date of a sale of goods or services by the Company to the purchaser to which these Conditions apply. Whenever a term defined by the Uniform Commercial Code is used in these Conditions, the definition contained in the Uniform Commercial Code shall determine its meaning as used herein.

**21. PURCHASER'S REPRESENTATION OF SOLVENCY.** The purchaser represents, by placing any purchase order for goods or services or by accepting tender of goods, that the purchaser is not insolvent as that term

is defined in Section 1-201 of the Uniform Commercial Code. If the purchaser becomes insolvent before tender or delivery of the goods, the purchaser shall so notify the Company in writing. Any failure to notify the Company in writing shall be construed as a reaffirmation of the purchaser's solvency at the time of delivery.

**22. INTERPRETATION; PAROL EVIDENCE; TRADE USAGE.** Except as otherwise agreed in writing by the parties, these Conditions are intended by the parties as a final expression of their agreement and are intended as a complete and exclusive statement of the terms and conditions of sale with respect to any sale of goods or services by the Company to the purchaser. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in these Conditions. Acceptance or acquiescence in a course of performance rendered under these Conditions shall not be relevant to determine the meaning of these Conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity for objection. If any provision of these Conditions shall be unenforceable, then such provision shall be null and void but the remainder of the Conditions shall remain in full force and effect. The paragraph headings herein are for convenience only and shall not be deemed to limit or otherwise modify the terms hereof. This document shall be construed and interpreted without regard to any presumption against the party who drafted the document.

No agent, employee or representative of the Company has any authority to bind the Company to any affirmation, representation or warranty concerning the goods or services sold by the Company, and unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included in these Conditions it shall not be enforceable by the purchaser.

**23. LIMITATIONS OF LIABILITY.** THE COMPANY'S LIABILITY FOR ANY CLAIM OF ANY KIND, INCLUDING ANY SUCH CLAIM RELATING TO THE COMPANY'S OR ITS SUPPLIERS' NEGLIGENCE, OR FOR ANY LOSS OR DAMAGE RESULTING FROM ANY CONTRACT FOR SALE OF GOODS OR SERVICES OR FOR THE PERFORMANCE OR BREACH THEREOF OR RELATING TO THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, REPAIR, OPERATION OR USE OF ANY GOODS, SHALL IN NO EVENT EXCEED THE PRICE ALLOCABLE TO THE GOODS OR SERVICES OR UNIT THEREOF WHICH GIVES RISE TO ANY SUCH CLAIM, LOSS OR DAMAGE. IN NO EVENT SHALL ANY PENALTY OR LIQUIDATED DAMAGES CLAUSE OF ANY DESCRIPTION BE EFFECTIVE AND BINDING UPON THE COMPANY UNLESS SPECIFICALLY APPROVED IN WRITING BY AN EXECUTIVE OFFICER OF THE COMPANY. IN NO EVENT SHALL THE COMPANY OR ITS SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AS THOSE TERMS ARE DEFINED IN SECTION 2-715 OF THE UNIFORM COMMERCIAL CODE.

*Terms and Conditions of Sale (v. 05.2024)*