



## Standard Purchasing Terms and Conditions

In providing to MM Solutions the good(s) and/or service(s) described in the subject purchase order, Seller agrees that the sale of such good(s) and/or service(s) to MM Solutions will be governed exclusively by these terms, the specific purchase order provisions, and any attachments to said purchase order (taken together, the "Purchase Order" or "Order").

As used herein from time to time, "Buyer" means MM Packaging Products, Inc., a Colorado business corporation d/b/a MM SOLUTIONS ("MM Solutions"), and "Seller" means the Seller of the goods ("Product" or "Products") or services ("Service" or "Services") that are subject of the Order.

- 1. PRICE AND TERMS OF PAYMENT.** To be valid, Seller's invoices must contain the following: the MM Solutions purchase order number and part number, the manufacturer's part number, a full description of the goods/services, the quantity, unit price, the total price, and the delivery address. Valid invoices of Seller will become due for payment by MM Solutions in (30) days unless otherwise indicated on the face of the Order, in the amount shown on the invoice. Payment of invoice will not constitute acceptance of Products and will be subject to adjustment for errors, shortages, defects in the subject goods, or unsatisfactory performance of services or other failure of Seller to meet the requirements of this Purchase Order. All prices quoted in the Agreement shall be fixed prices. Seller warrants that such prices are not in excess of the lowest prices charged by Seller to other similarly situated customers for similar quantities of goods or services of like kind and quality.
- 2. NO MODIFICATION.** No modification of this Agreement or the Order shall be binding unless in writing and signed by an authorized representative of each party.
- 3. PACKAGES AND SHIPPING.** With each shipment, Seller shall include an itemized packing list that contains at a minimum, the following: (a) This order number, (b) part number, (c) the quantity shipped, (d) the product description. The information on the packing list must agree with the information on the invoice. All Products shall be prepared for shipment according to the Buyer's instructions, in a manner that follows sound commercial practice, acceptable to common carriers for shipment at the lowest rate, and adequate to ensure safe arrival. Seller shall be responsible for any loss or damage due to its failure to properly preserve, package, handle before delivery, or pack goods. Buyer shall not be required to assert any claims for such loss or damage against any common carrier involved in delivery. Unless otherwise specified herein, all shipments shall be FOB Buyer's premises set forth in the Purchase Order. Title and risk of loss shall pass to Buyer at the FOB point; provided, however, that the risk of loss shall remain with the Seller as to any Products which are not accepted by Buyer, which are rejected by Buyer, or as to which Buyer's acceptance has been revoked. Compliance with the laws and regulations of the country of origin and the country of destination must be strictly adhered to with respect to international shipments. Buyer and Seller will cooperate in obtaining all necessary approvals, licenses, and other documentation required for such international shipments.
- 4. ACCEPTANCE.** Buyer's payment for Products shall not constitute acceptance thereof. All products are subject to Buyer's inspection and test at Buyer's premises prior to acceptance. Products not rejected by written notification to Seller within thirty (30) days of receipt shall be deemed to have been accepted. Buyer shall have the right to reject or require the replacement or repair, of any Product found to be defective. Defective Product shall be promptly replaced or repaired by Seller, or Buyer can accept such Product with a reasonable reduction in price. If Buyer returns any Products to Seller pursuant to this Section 4, Seller shall bear the entire risk of loss for, and shall pay all costs associated with the shipment of, such Products. Inspection or Acceptance of, or payment for, the Product by Buyer shall not release Seller from any of its obligations, representations or warranties under this Agreement. With respect to any Products that fail to comply with the foregoing warranties, Seller shall accept returns of such Products from buyer and, at Buyer's option (Seller's expense), promptly: (a) repair such Products to make them conforming and return them; (b) replace such Products with conforming Products and ship to Buyer under the terms set forth herein; or (c) refund all amounts paid to Seller for such non-conforming Products. Buyer shall have no liability for any returned Products, and Seller shall bear all liability, responsibility and expenses therefor.
- 5. DELIVERY.** Time is of the essence for the Purchase Order. The terms for the Products shall be as set forth in the Purchase Order. Seller shall furnish sufficient labor, material, services, management, plant facilities and equipment and shall work such hours, including night shift, overtime, weekend and holiday work as may be required to assure compliance with the established delivery dates, all at no additional charge to Buyer. Seller shall be responsible for paying any express delivery or similar charges necessary to meet established delivery dates.
- 6. WARRANTY; SERVICE GUARANTY.** Seller represents and warrants all Product is suitable for the intended purpose and shall be new, not refurbished, merchantable, of good quality, and free from all defects in designs, materials, construction and workmanship. All Products shall strictly comply with specifications, samples, and all other requirements under the Agreement. All Products shall possess all required licenses in relation to the goods and shall remain valid and in place, that the scope of such licenses shall properly cover the intended use of the goods and such licenses shall include the right to transfer and the right to grant sublicenses. All Products shall be free from any and all liens and encumbrances. All Products have been designed, manufactured and delivered, and all Services have been provided, in compliance with all applicable laws, and do not violate or infringe any third party domestic or foreign patent, copyright, trade secret, trademark or other intellectual property rights. All Products are provided with and accompanied by all information and instructions necessary for proper and safe use. These warranties are not exhaustive and shall not be deemed to exclude any warranties set by law, Seller's standard warranties or other rights or warranties that Buyer may be entitled to. These warranties shall survive any delivery, inspection, acceptance, payment or resale of the good, and shall extend to MM Solutions and its customers. Seller guarantees that Services will be performed by trained individuals in a professional workmanlike manner, which individuals shall have appropriate skills, experience and expertise. Seller will promptly re-perform any service that is in breach hereof at no cost.
- 7. INDEMNITY.** Seller shall indemnify Buyer and Buyer's customers and hold them harmless from and against any and all costs, expenses, losses, damages or liabilities (including attorneys' fees) arising from or related to any claim, demand, threat, suit or proceeding regarding any (i) personal injury (including death) and property damage and (ii) any negligent act or omission or willful misconduct of Seller, its employees, representatives, agents or subcontractors relating to this Order; (iii) any actual or alleged infringement of any patent, copyright, trade secret, trademark, registered design, mask work, intellectual property or other third party right arising from or related to the use or sale by Buyer of any Products furnished hereunder (a "Claim"). Buyer shall notify Seller of any such Claim and Seller shall defend or settle, at its own expense, each and every such Claim. If an injunction restricting Buyer's or its customer's rights with respect to any Product is issued or appears reasonably likely to be issued as a result of any such Claim, Seller agrees at its expense, and at Buyer's sole option to promptly either: (a) procure for Buyer the right to continue using such Products; (b) replace such Products with non-infringing Products; (c) modify the Products so that they are non-infringing Products; (d) refund to Buyer the amount paid for such Products.
- 8. INSURANCE.** Seller shall fully insure all Products until full title and control have passed to Buyer. If Seller is performing Services, Seller shall maintain at all times at its expense, comprehensive liability insurance, including product liability insurance, and insurance for personal injury and property damage covering all risks associated with the performance of such Services. Said insurance shall be in a scope and amount necessary to meet the foregoing obligations and shall in no event be less than \$1,000,000.00 coverage per

occurrence, with policies issued by reputable insurance companies qualified to do business in the relevant jurisdictions. Seller will furnish evidence of such insurance promptly to Buyer upon Buyer's request.

- 9. NOTICES.** Any notice, approval or consent required or permitted hereunder shall be in writing, effective only upon receipt by the party being served, and deemed to have been duly given if sent by confirmed e-mail, mailed by registered, certified mail, or delivered by overnight courier service with tracking capabilities to the respective address of parties as set forth in this Purchase Order (or other such addresses a party may designate by (10) days prior written notice).
- 10. SEVERABILITY.** If any part of this Order is found by any competent authority to be invalid or unenforceable, that part will be amended or excised to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Order will remain in full force and effect.
- 11. WAIVER.** The waiver of any term or condition of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition, or as a waiver of any subsequent breach of the same term or condition.
- 12. TERMINATION.** Buyer may terminate this Order on notice with immediate effect if: (a) Seller commits a material breach of this Order and fails to remedy this breach within thirty (30) days of written notice requiring it to do so; or (b) Seller makes an assignment for the benefit of its creditors or a proposal under any applicable bankruptcy or insolvency legislation, is declared bankrupt or insolvent, has a trustee, receiver or receiver manager, liquidator or other officer with similar powers appointed for all or any material part of its property, or is the subject of an order or resolution for its winding up.
- 13. ASSIGNMENT AND SUBCONTRACTING.** Seller shall not assign or subcontract any of its rights in whole or part without Buyer's prior written consent. Any attempted delegation, subcontract or assignment shall be void.
- 14. CONFIDENTIAL INFORMATION.** Subject further to the provisions of any subsequent written confidentiality agreement signed by the Parties, Seller agrees that, except as required to supply Product pursuant to this Order or as otherwise instructed by MM Solutions, Seller shall not use or disclose any confidential information of MM Solutions. Confidential information includes, without limitation, all information designated by Buyer as Confidential; all information or data concerning MM Solutions Products (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to any MM Solutions information assets systems, including but not limited to computers, networks and voice mail; and any other information that is of such a nature that a reasonable person would believe it to be confidential. Any Confidential Information provided hereunder shall be provided "AS IS" with no representation or warranty.
- 15. INTELLECTUAL PROPERTY.** Intellectual Property or "IP" shall mean all inventions, patents, works of authorship, copyrights, trademarks, designs, processes, mask works, trade secrets, domain names, proprietary technical information and other similar proprietary information tangible and intangible, whether or not registered or not registered or registrable. Pre-existing IP means IP conceived or developed prior to or independent of performance of this Order. Buyer and Seller will retain full right, title and interest in and to any Pre-existing IP. Seller will not use any Pre-existing IP in connection with this Order without first obtaining from the owner any rights necessary to enable Seller to fully comply with the terms of this Order. All IP created or developed, if any, in connection with the performance of this Order shall be deemed the sole property of MM Solutions. Any IP provided hereunder shall be provided "AS IS" with no representation or warranty. To the degree any good or service provided hereunder includes an intellectual property component for its use and value, Seller hereby grants a perpetual, nonexclusive, worldwide, paid-up license of the same to MM Solutions and warrants that it has the right to do so.
- 16. PUBLICITY.** Seller shall not, with the advance written approval of MM Solutions, which may be granted or withheld in the sole discretion of MM Solutions, publicly make reference or otherwise disclose that Seller has furnished or agreed to furnish goods/services to MM Solutions under this order or otherwise.
- 17. INDEPENDENT CONTRACTORS.** The relationship between MM Solutions and Seller is one of independent contractors and neither party will at any time or in any way represent itself as being an employee, dealer, agent or other representative of the other party or as having authority to assume or create obligations or otherwise act in any manner on behalf of the other. Each party manages and controls its own assets and business independently, and has ultimate authority over such assets and business. Each party is responsible for all income, FICA, other payroll, and unemployment taxes in accordance with applicable law, and for the filing of all tax returns and associated forms and reports that may be required in connection with such tax obligations.
- 18. LIMITATION ON LIABILITY.** MM Solutions shall not be liable for any consequential, special, or punitive damages, and in no event shall be liable for any loss, cost, expense, or damage to Seller in an amount exceeding fees actually paid to Seller under this Order.
- 19. FORCE MAJEURE.** If the performance by either party hereto is delayed or prevented by an act of God, fire, explosion or other similar circumstances beyond the reasonable control of that party then the due time for performance will be extended by a reasonable period corresponding to the duration of the delay. The Buyer reserves the right to cancel the Order without liability if the delay continues or is expected to continue beyond a reasonable amount of time.
- 20. ENTIRE AGREEMENT.** This Order constitutes the complete agreement between MM Solutions and Seller and supersedes any prior representation, promise or proposal relating to the subject matter hereof unless expressly referenced hereunder. No other document provided by Seller, including Seller's quotation and acknowledgement forms, will be part of the Order, even if referred to, unless specifically agreed to by MM Solutions in writing.
- 21. GOVERNMENT CONTRACTING.** MM Solutions is a holder, contractor, or subcontractor of certain U.S. Government contracts and may be subject to additional statutory, regulatory, and contract requirements as a result. If this Order is issued under a U.S. Government prime contract or a subcontract related to the same, Seller agrees to comply with all applicable statutory, regulatory, and contract requirements. Copies of the applicable contract(s) shall be furnished to Seller upon advance request.
- 22. COMPLIANCE WITH LAW; APPLICABLE LAW.** Seller represents and warrants that all Products and Services were, are, and will be manufactured, sold, priced, and performed in compliance with all applicable law. Colorado Law will govern interpretation of this Order, and the parties submit to the jurisdiction and venue of the courts in Larimer County, Colorado.