

## TERMS AND CONDITIONS OF PURCHASE

1. **GENERAL.** This writing constitutes an offer or counteroffer by Amcor Rigid Packaging USA, LLC (“Purchaser”) to purchase from Seller, under the terms and conditions herein, the Goods/Services (as defined below) set forth in Purchaser’s purchase order, or the parties Memorandum of Understanding or Supply Agreement (each a “Sales Document” and together with these Terms and Conditions of Purchase, the “Agreement”). “Goods/Services” as used herein shall mean the goods, products, equipment, materials, parts, assemblies, drawings, documents or services provided by Seller covered under the Agreement. Additional capitalized terms used throughout these Terms and Conditions of Purchase have the meaning set forth in the applicable Sales Document.

attached thereto. No shipping insurance charges are permitted unless authorized by Purchaser in writing. Any excess charges resulting from the use of unauthorized transportation will not be reimbursed by Purchaser. Seller shall release rail or truck shipment at the lowest valuation permitted in governing tariff or classification.
2. **ACCEPTANCE OF OFFER.** This writing is not an acceptance of any offer made by Seller. All sales by Seller to Purchaser are expressly limited to, and made conditional upon, Seller’s acceptance of these Terms and Conditions of Purchase. All terms and conditions, if any, proposed by Seller are hereby rejected. No such additional or different terms and conditions will be of any force or effect, unless specifically agreed to in writing by Purchaser. The Agreement, including all items incorporated by reference, constitutes the final and entire understanding between Purchaser and Seller with respect to the Goods/Services and no agreement or other understanding purporting to add to or modify the Agreement will be binding unless agreed to in writing by the parties.
3. **PRICE TERMS**
  - (a) Terms. The Goods/Services will be delivered to Purchaser at the price(s) set forth in the Agreement. Seller represents that the Prices set forth in the Agreement are complete, and no additional charges of any type will be added without Purchaser’s written consent.
  - (b) Discounts. If applicable, all discount periods set forth in the Agreement will be computed from the date Purchaser receives a final invoice for the Goods/Services. Cash discounts will be based on full amount of invoice less freight charges and taxes.
  - (c) Invoices and Payment. Seller shall not issue any invoices prior to Seller’s delivery of the Goods/Services. Seller shall state all state and federal excise, sales and use taxes separately on the invoice.
  - (d) Transportation Charges. Seller shall state all transportation charges with respect to which Seller is entitled to receive reimbursement separately on the invoice with the applicable freight bill receipt
4. **DELIVERY**
  - (e) Duty Drawback Rights. Seller shall inform Purchaser of the existence of any customs duty rights that are transferrable from Seller to Purchaser, and upon Purchaser’s request, shall transfer such rights to Purchaser and supply any necessary documents to Purchaser required to obtain such duty drawback.
5. **INSPECTION AND ACCEPTANCE OF GOODS/SERVICES.** Seller shall perform inspections and tests necessary to determine that the Goods/Services
  - (a) Transportation. All Goods/Services shall be packaged using best commercial practices to prevent damage and deterioration. Seller shall reimburse Purchaser for all expenses incurred due to improper packaging. Seller shall route shipments in accordance with Purchaser’s instructions.
  - (b) Risk of Loss. Shipment will be performed as required by the Agreement. If a shipment of Goods both originates and ends within the United States and the Agreement specifies “FCA (location)” delivery term, title and risk of loss pass at the specified FCA (location). If the Agreement specifies an Incoterm as the applicable delivery term, risk of loss for the Goods/Services shall pass as defined by such Incoterm (as published by the International Chamber of Commerce).
  - (c) Shipping Releases. All shipments and deliveries shall be in accordance with the quantities and schedules stated in the Agreement. Time is of the essence in performance of the Agreement. Seller shall not make advanced, late, short or excess deliveries without Purchaser’s approval. Purchaser is not obligated to pay for or accept excess quantities, materially untimely or under shipments and such shipments may be returned at Seller’s expense and risk. If Purchaser elects to accept any delivery that does not conform to the schedule or quantity terms of the Agreement, a handling charge may be charged by Purchaser.
  - (d) Delays. Seller will promptly notify Purchaser of any (i) known or anticipated delay or failure to meet any specifications of the Agreement or (ii) delays Seller believes to be caused by Purchaser’s failure to meet any of its obligations under the Agreement.

conform to the requirements of the Agreement. Acceptance of Goods/Services shall be subject to inspection or testing by Purchaser to the extent practical at reasonable times and places. No inspection, test, delay or failure to test or failure to discover any defect shall relieve Seller of any of its obligations or impair Purchaser's rights or remedies under the Agreement. Payment by Purchaser shall not constitute final acceptance. Defective Goods/Services will be returned at Seller's risk and expense at full invoice price, plus transportation charges, if any, and no replacement of defective Goods/Services shall be made unless agreed to in advance by Purchaser. Purchaser may reject and return any portion of any shipment of Goods/Services, which may be defective or fail to comply with applicable specifications, without invalidating the remainder of the order.

6. **CHANGES.** Purchaser may request changes to the delivery schedule, quantities, place of delivery, packaging, shipping instructions and specifications, subject to Seller's approval, which shall not be unreasonably withheld. Any request change that affects the price of the Goods/Services, delivery schedules or Seller's ability to perform under the Agreement will be subject to an equitable adjustment. Seller shall immediately notify Purchaser if an adjustment is anticipated by Seller. Seller shall deliver to Purchaser, no later than thirty (30) days after Purchaser's change request, a claim for a commercially reasonable equitable adjustment and any requested documentation supporting such claim.

#### 7. TERMINATION

(a) **Convenience.** Purchaser may terminate the Agreement, in whole or in part, for any reason upon ten (10) days' advance written notice to Seller. Purchaser shall compensate Seller for all Goods/Services produced and/or performed as of the effective date of the termination, unless agreed to otherwise in writing. Seller shall provide Purchaser with a settlement claim, which sets forth all costs for Goods/Services produced and/or performed as of the effective date of the termination, no later than thirty (30) days after the effective date of the termination.

(b) **Cause.** Purchaser may terminate the Agreement immediately if any of the following events occur: (i) Seller fails to comply with any requirement or obligation under the Agreement, and fails to cure such requirement or obligation within thirty (30) days of Purchaser's notice to Seller of such compliance failure; (ii) Seller violates any applicable laws, regulations, statutes, ordinances, rules, orders, judgments, decrees or permits applicable to produce and/or perform the Goods/Services (collectively, "Laws"); (iii) Seller becomes insolvent, files for bankruptcy, liquidates, or makes any assignment for the benefit of creditors; or (iv) a receiver is appointed for Seller's property. Upon such termination, Purchaser will be relieved of all its duties and obligations under the Agreement, including without limitation, its obligation to pay Seller for Goods/Services produced and/or performed but not

accepted by Purchaser.

#### 8. WARRANTIES

(a) **Express Warranties.** Seller expressly warrants that, when the Goods/Services are provided, and for a period of one (1) year following Purchaser's acceptance of the Good/Services (the "Warranty Period") that all Goods/Services (i) will conform to all specifications, drawings, instructions, descriptions and/or statements on containers or labels; (ii) will be free from defects in workmanship and material and shall be new and of the highest quality; (iii) will be delivered with title free and clear of any liens and encumbrances; (iv) will be merchantable; (v) will be adequately packaged, marked and labeled; (vi) will be performed by Seller in a competent, workmanlike manner and in accordance with industry standards; (vii) will be manufactured in compliance with all applicable Laws, and (viii) will be performed in a safe manner, and in accordance with all workplace safety policies or instructions provided by Purchaser.

(b) **Survival.** These warranties shall survive any inspection, test, delivery, acceptance, use and payment by Purchaser and shall inure to the benefit of Purchaser, its successors, assigns, customers and the users of Purchaser's products. Purchaser's approval of Seller's design, material, process, drawing, specifications or the like shall not be deemed a waiver of the warranties set forth in this Section 8.

(c) **Non-Conforming Product Remedy.** If Purchaser breaches any of the express warranties set forth in this Section 8 during the Warranty Period, Purchaser may, at Purchaser's option: (i) retain the non-conforming Goods/Services in whole or in part with an appropriate adjustment in the price for such Goods/Services; (ii) require Seller to repair or replace the non-conforming Goods/Services at Seller's sole expense, including all transportation and installation costs; or (iii) receive a refund for the price of the Goods/Services, including any applicable transportation costs.

9. **PURCHASER'S PROPERTY.** Unless otherwise agreed to in writing, all tools, equipment, documents, or other material in the Seller's possession, which were furnished or paid for by Purchaser shall at all times be and remain the personal property of Purchaser. Seller shall properly maintain and secure Purchaser's property at all times. Seller shall not commingle Purchaser's property with the property of Seller or of any third party or move Purchaser's property from Seller's premises without Purchaser's prior written approval. Seller assumes risk of loss or damage of Purchaser's property while in Seller's possession. Purchaser may enter Seller's premises at all reasonable times to inspect its property and Seller's records related thereto. Seller agrees to only use Purchaser's property when performing Seller's obligations under the Agreement.

10. **ADVERTISING.** Neither party shall disclose to the public or advertise in any way that the parties have agreed to do business with each other without the other party's prior written consent.

11. INDEMNIFICATION.

- (a) Infringement. Purchaser may return any Goods/Services and immediately terminate the Agreement for cause where a claim is made that Purchaser's sale or use of the Goods/Services infringes any alleged patent, design, trade name, trademark, copyright or other intellectual property right of a third party. Seller shall indemnify, defend and hold harmless, Purchaser and its customers against any and all liability, loss or expense, including costs and reasonable attorneys' fees, arising out of any third party intellectual property right or unfair competition claim related to the Goods/Services.
- (b) Product Indemnity. Seller shall indemnify, defend and hold harmless Purchaser and its customers against any and all recalls, product withdrawals, claims, demands, liability, suits at law or in equity, loss or expense, including reasonable attorneys' fees, by reason of Seller's breach of any representation, warranty, Laws, obligation or requirement under the Agreement, including claims resulting from injury, illness and/or death caused by use of the Goods/Services, unless caused by the sole negligence or misconduct of Purchaser.
- (c) Defense of Claim. In the event of any such action or claim under this Section 11, Purchaser shall notify and tender the action to Seller, and Seller shall defend the action at its sole cost and expense. Purchaser shall provide reasonable assistance to Seller in any defense, as the Seller may request, at Seller's expense. If Seller fails to assume such defense, Purchaser may defend the action in the manner it deems appropriate, and Seller shall reimburse Purchaser for all costs incurred in such defense, including payment of any settlement or judgment.

12. COMPLIANCE WITH LAWS. Seller shall comply with all Laws, including without limitation, (a) the Fair Labor Standards Act of 1938, as amended, (b) paragraphs (1) through (7) of Section 202 of Executive Order 11246 issued in 1965, as amended by Executive Order 11375 of 1967, and all rules and regulations pursuant thereto, (c) the provisions of the affirmative action clause entitled "Employment of the Handicapped" contained in the regulations concerning Affirmative Action Obligations of Contractors and Subcontractors, 41 CFR 60-741.3, issued pursuant to the Vocational Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974, (d) the regulations providing for Veteran's Employment Emphasis Under Federal Contracts, 41 CFR 60-250.4, (e) the Vietnam Era Veterans Readjustment Assistance Act of 1974, Public Law 93- 508, as it amends 38 USC 2012 of the Vietnam Era Readjustment Assistance Act of 1972, (f) the Age Discrimination in Employment Act of 1967 as amended in 1978, and all rules and regulations issued pursuant thereto.

13. INSURANCE. Seller shall maintain insurance coverage in

amounts not less than the following: (a) Worker's Compensation – Statutory Limits for the state or states in which the Agreement is to be performed (or evidence of authority to self-insure) (b) Employer's Liability of \$250,000; (c) Comprehensive General Liability (including Products/Completed Operations of \$1,000,000 per person, \$1,000,000 per occurrence (personal injury) and \$1,000,000 per occurrence (property damage). Seller shall name Purchaser as an additional insured on such policies. At Purchaser's request, Seller shall furnish endorsed certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Seller. Such certificates shall provide that Purchaser will receive thirty (30) days' prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of insurance coverage and the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Agreement.

- 14. LIMITATION OF LIABILITY. In no event shall Purchaser be liable to Seller for any consequential, indirect, punitive or special damages.
- 15. REMEDIES. Purchaser's rights and remedies shall be cumulative and in addition to any other rights or remedies provided by law or equity. A waiver by Purchaser of any right or remedy shall not affect any rights or remedies subsequently arising under the same or similar clause.
- 16. ASSIGNMENT. Neither party may assign its rights and/or obligations under the Agreement to any third party without the express written consent of the other party.
- 17. CONFIDENTIALITY. All terms and conditions of this Agreement and all Confidential Information belonging to Purchaser disclosed or obtained as a result of this Agreement shall remain confidential and shall not be disclosed to any third party or used by the Seller for any reason (other than in furtherance of its obligations hereunder) without Purchaser's prior written consent. This provision shall survive the termination of this Agreement. For purposes of this Agreement, "Confidential Information" means any commercial, financial, marketing, technical or manufacturing information, or any intellectual property, owned or controlled by Purchaser, or any other information that Seller should reasonably conclude is confidential, in any form or medium, whether disclosed orally, electronically or in writing, together with any reproductions of such material in whole or in part in any form or medium. Seller agree that any breach of this Section 17 will result in irreparable harm with no adequate remedy at law and that injunctive relief is therefore appropriate to enforce the terms of this Section.
- 18. GOVERNING LAW; VENUE. The Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan. All disputes involving the Agreement shall be adjudicated exclusively in the Circuit Court for the County of Washtenaw, State of Michigan, or the U.S. District Court for the Eastern District of Michigan.