

TERMS AND CONDITIONS GOVERNING SALES

1. GOVERNING PROVISIONS. Merlin Packaging Technologies, Inc. ("Merlin") is offering to provide the goods and/or services described herein (the "Products") to the buyer to which this offer is addressed ("Buyer"), subject to the terms and conditions set forth herein (the "Agreement"). Buyer may not modify, change, renounce or waive any term or condition hereof without Merlin's express written consent. Merlin agrees to provide to Buyer the Products and Buyer accepts the Products only on the terms of this Agreement. Buyer may not amend, modify or replace the terms of this Agreement in any agreement of purchase order (oral or written), if one exists, or other writing or oral representation previously or hereafter received by Merlin purporting to amend, modify or replace the terms of this Agreement with any conflicting, different or additional terms or reciting that any action or inaction by Merlin constitutes agreement or consent by Merlin to such amendment, modification or replacement.

2. ACCEPTANCE. Buyer shall be deemed to have made an unqualified acceptance of this Agreement, and the terms and conditions herein, on the earliest to occur of the following: (a) Merlin's receipt of a copy of this Agreement signed by Buyer; (b) Buyer's payment of any amounts due under this Agreement; (c) Buyer's delivery to Merlin of any material to be furnished by Buyer; (d) Buyer's receipt of the Products; or (e) any other event constituting acceptance under applicable law.

3. CANCELLATION OR MODIFICATION. Buyer may not cancel or modify its order except upon terms accepted by Merlin in writing. In the event of any cancellation or modification, Buyer shall compensate Merlin for all costs and damages resulting therefrom, including, but not limited to, out-of-pocket expenses and lost profit.

4. TAXES. Buyer shall pay any tax (including sales tax), duty, custom, inspection or testing fee or any other fee or charge imposed on, in connection with or measured by the transaction between Merlin and Buyer in addition to the prices quoted or invoiced.

5. SCHEDULES; DELAY. Merlin shall not be liable to Buyer for delays in delivery due to state of war, riot, civil disorder, fire, strikes, work slowdowns, accidents, actions of government or civil authority, delay in transportation, energy failure, equipment breakdown, delay of suppliers, inability to obtain necessary labor, materials or manufacturing facilities, acts of God or any causes beyond the control of Merlin. Buyer's exclusive remedy for such delays, and for Merlin's inability to deliver for any reason, shall be rescission of the affected order.

6. SECURITY. If, during performance of this Agreement, Buyer's financial condition does not justify the terms of payment specified, Merlin may (a) demand, before proceeding with delivery of Products, full or partial payment in advance, satisfactory security or guaranties that invoices will be promptly paid when due or (b) at its option and without prejudice to other remedies, defer delivery of the Products or cancel this Agreement.

7. WARRANTIES AND REMEDY.

(a) Products In Original Packaging. IF BUYER IS PURCHASING PRODUCTS IN THEIR ORIGINAL PACKAGING, THE ONLY WARRANTY AVAILABLE TO BUYER AS TO THE PRODUCTS SHALL BE ANY MANUFACTURER'S WARRANTY WHICH MAY APPLY AND MERLIN MAKES NO INDEPENDENT WARRANTIES.

(b) Repackaged Products. If Buyer is purchasing Products which have been repackaged, causing the original manufacturer's seal to be broken, Merlin warrants that the Products will be free from defects in materials and workmanship for a period of one year. Buyer must make claims for defects in writing within 10 days after discovery of such defects. Buyer's failure to make such claim within the one-year period or within 10 days after discovering a defect shall constitute Buyer's irrevocable acceptance of the Products and Buyer's acknowledgement that the Product fully complies with the terms and conditions of this Agreement. Merlin shall repair or replace, at its expense, and Products proved to be defective within the one-year period. Such warranty satisfaction shall be available only if: (i) Merlin is notified in writing within 10 days after discovery of an alleged defect; (ii) the defect has not been caused by Buyer's misuse, neglect or alteration or by physical environment; and (iii) the manufacturer's shelf life of the Product (as indicated on the Product's packaging) has not expired when the alleged defect is discovered. MERLIN'S SOLE OBLIGATION AND BUYER'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO REPLACEMENT OR REPAIR OF DEFECTIVE PRODUCTS.

8. NO LIABILITY FOR OTHER OBLIGATIONS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. MERLIN SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS (WHETHER THE PRODUCTS ARE IN ORIGINAL PACKAGING OR HAVE BEEN REPACKAGED) OR MERLIN'S UNDERTAKINGS, ACTS OR OMISSIONS. IN NO EVENT SHALL MERLIN BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

9. DISCLAIMER OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. MERLIN AND BUYER AGREE THAT THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MERLIN HEREBY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty.

10. ASSIGNMENT. Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party, provided however, Merlin may assign, without Buyer's consent, this Agreement or its interest herein to any affiliate or to any corporation succeeding to Merlin's business. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Merlin and Buyer and their successors and assigns.

11. GOVERNING LAW. The internal laws of the State of Ohio shall govern the rights and obligations of Merlin and Buyer under this Agreement.

12. MISCELLANEOUS. Merlin reserves the right to correct clerical or similar errors relating to price or any other term shown in this Agreement. The failure of Merlin to insist, in any one or more instances, upon performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition.

13. ENTIRE AGREEMENT. THIS CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ANY NEGOTIATIONS OR UNDERSTANDINGS BETWEEN MERLIN AND BUYER WHICH ARE NOT CONTAINED IN THIS AGREEMENT AND ANY AND ALL PURCHASE ORDERS, CORRESPONDENCE OR STATEMENTS THAT CONFLICT WITH, DIFFER FROM OR MODIFY THIS AGREEMENT SHALL HAVE NO FORCE OF EFFECT.

14. PRICE; TERMS. Merlin shall have no obligation to ship product to Buyer unless Buyer shall have paid for such order of products in full prior to the time of delivery.

15. SHIPPING; INSURANCE. Buyer shall pay for all costs of shipping. Buyer shall fully insure all materials delivered to Buyer from F.O.B. shipping point.