

AUTOMATED PACKAGING SYSTEMS, INC.

CUSTOMER TERMS AND CONDITIONS

1. Entire Contract. The terms and conditions set forth below and on the face side of APS's ("Seller") Quotation, Order Acknowledgment and Invoices constitute the complete and exclusive statement of the terms of this transaction. Seller's Quotation, which includes these Terms and Conditions is Seller's formal offer to sell. Buyer's acceptance of the Quotation must be unqualified and unchanged. If the acceptance is unqualified and contains no changes, Seller's Order Acknowledgment forms the written agreement ("Contract"). All representations, promises, warranties or statements by any agent or employee of Seller that differ in any way from the terms and conditions hereof are of no force or effect. **Any additional or contradictory terms contained in any initial or subsequent order or communication from Buyer pertaining to the goods (the "Goods") and/or services ("Services") are hereby rejected.** Goods are packaging materials, machinery and/or machine parts. No course of prior dealings between the parties and no usages of the trade are relevant to this transaction. All orders are subject to the approval by Seller at its offices in Streetsboro, Ohio. **No waiver or alteration of terms herein are binding unless in writing signed by an executive officer of the Seller.** The governing and controlling language of every part of the Contract, shall be the English language as used in the United States of America.

2. Price/Payment. Unless otherwise specifically set forth in writing, all prices for shipments of Goods within the U.S. are F.O.B. Seller's Plant, the price is net and does not include sales, use, excise or similar taxes, whether federal, state or local, which taxes will be paid by Buyer. All international shipments are Ex Works Seller's Plant, and all expenses incurred, in obtaining export licenses and/or other governmental approvals, authorizations and/or inspections, to enable legally permissible export of the Goods from the U.S.A. to any shipping destination designated by Buyer outside of the U.S.A., are borne solely by Buyer, and such expenses are added to a commercial invoice for the Goods. Only a portion of discounts negotiated with freight carriers will be passed through to Buyer. Insurance for the Goods is Buyer's responsibility. Until the purchase price and all other sums due are paid in full, Seller retains a security interest in the Goods described on the face hereof and Buyer authorizes Seller to file UCC financing statements reflecting this lien. Prices stated are subject to change without notice in the event of: (i) alterations in specifications, quantities, designs or delivery schedules; (ii) increase in the cost of fuel, power, material, supplies or labor; and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increase the cost of producing, warehousing, or selling the Goods purchased hereunder.

Unless otherwise agreed in writing, payment must be made in United States dollars.

3. Warranties. Seller warrants that the flexible packaging materials will be free from defects in materials and workmanship for a period of one year, from the date of shipment. Seller warrants that the Parts will be free from defects in materials and workmanship for a period of 90 days, from the date of shipment. For machinery, see separate warranty attached to machinery quotation. This warranty does not apply to normal wear items or component parts made by third parties. Any warranties for third party component parts are, to the extent permitted, passed through to the Buyer. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR SERVICES. SELLER SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS OR FITNESS FOR A PARTICULAR PURPOSE.**

Buyer must report any warranted defect to Seller in writing within 10 days of discovery (but in no event later than 100 days from the date of receipt of the Goods), permit the Seller to inspect the

defective Goods, and if requested by Seller ship the defective Goods, at Buyer's cost, to the Seller. Buyer's sole remedy for any such defect is the repair or replacement of the Goods or credit against future purchases, at Seller's sole option. If Seller determines that the Goods are not defective, upon notice Buyer will pay any required packaging and cost of reshipping to Buyer in advance. In the event Buyer does not authorize and pay for packaging and shipping in advance, Seller may destroy or otherwise dispose of the Goods as it may determine. This warranty does not include labor or shipping costs and it does not include damage due to abuse, accident, misuse, modification, or improper use.

4. Damages; Liability. SELLER DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN. SELLER IS NOT LIABLE FOR LOST PROFITS, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING, DIRECTLY OR INDIRECTLY, IN RESPECT OF SUCH GOODS OR THE USE OR FAILURE THEREOF, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY LOSS INCURRED HEREUNDER SHALL BE AS SET FORTH IN SECTION 3. THE PRICE OF THE GOODS IDENTIFIED HERETO IS CONSIDERATION FOR LIMITING SELLER'S LIABILITY. NO ACTION OR SUIT TO ENFORCE RIGHTS OR REMEDIES ARISING FROM THIS SALE SHALL BE COMMENCED LATER THAN ONE YEAR FROM THE DATE OF RECEIPT OF THE GOODS. SELLER'S LIABILITY FOR ANY CLAIM ASSERTED BY BUYER AGAINST SELLER (WHETHER BASED UPON A THEORY OF CONTRACT OR TORT) DOES NOT EXCEED THE PURCHASE PRICE FOR THE GOODS.

5. Acceptance. Upon Buyer's receipt of shipment, Buyer must immediately inspect the Goods to determine damage due to shipping, and if damage exists, make an appropriate claim with the Carrier. Unless Buyer provides Seller with written notice of any claim for shortages of or damage to the Goods within forty eight (48) hours after receipt of shipment, such Goods will be deemed finally inspected, checked and accepted by Buyer.

6. Title and Risk of Loss. Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to the Carrier, and claims for losses or damage must be made by Buyer directly with Carrier.

7. Credit Terms. All orders and shipments shall at all times be subject to the approval of the Seller's Credit Department. Except in connection with any international sale of Goods, standard terms of credit are net 30 days from date of invoice. Any deviation from standard terms of sale must be approved by Seller in writing.

8. Packaging. If other than standard packaging of Seller is required, Buyer will so specify and pay for any special packaging.

9. Delays. All shipping dates are approximate. Seller will not be liable for any damage, loss or expenses arising out of delays in shipment or other nonperformance of the Agreement caused or imposed by acts of God, Force Majeure, or any other cause or condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option and without liability, cancel all or any portion of this Contract or extend any date upon which any performance hereunder is due.

10. Termination, Cancellation and Changes. Orders cannot be cancelled or modified or shipment delayed after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to conditions then agreed upon which shall indemnify Seller against liability

and expense incurred and commitments made by Seller and which will include profit on work in process and contract value of products or parts completed and ready for shipment.

11. Indemnity. Buyer will indemnify, defend, save and hold harmless Seller, its successors and assigns, from and against all loss, claims, liabilities, damages, charges, costs and expense, including but not limited to court costs, attorney fees and expert fees which may be sustained by Seller, its successors and assigns, on account of economic loss, property damage or injury resulting from the use, sale, transportation, storage, disposal or operation of the Goods by the Buyer.

Buyer will defend, indemnify, save and hold harmless Seller, together with its successors and assigns, against any claims or liabilities for or by reason of the infringement of any third party's intellectual property rights (including but not limited to patent, trademark, trade secret and/or copyright) arising from the manufacture of any of the Goods in accordance with specifications furnished by Buyer or from the sale thereof. Buyer also agrees to indemnify, defend, save and hold harmless Seller, its successors and assigns, against any claims liabilities, damages, charges, costs and expense, including but not limited to court costs, attorney fees and expert fees arising out of the Buyer's choice of artwork or use of caution warnings and all claims involving the size, millage or material of the product.

12. Artwork. Buyer's artwork, drawings and/or blueprints ("Artwork") will be destroyed in the event that no bag orders with that artwork are placed by Buyer for a period of four years.

13. General Conditions.

- A. Clerical errors are subject to correction.
- B. No delay or omission by Seller in exercising any rights or remedy provided for herein constitutes a waiver of such right or remedy and will not be a bar to or a waiver of any subsequent such right or remedy.
- C. This contract is binding upon and inures to the benefit of the successors, and assigns of Buyer and Seller, provided, however, that Buyer may not assign or transfer this contract in whole or in part, except upon the prior written consent of Seller.
- D. If any provision of these Terms and Conditions is held to be unenforceable, the remaining provisions remain in full force and effect.
- E. Over and Under Runs. Seller reserves the right to ship and invoice at the rate for the quantity specified on the order, plus or minus overruns or underruns up to maximum of 5% of such quantity on orders for 1,000,000 units or more; 8% on orders between 999,999 to 300,000; 10% on orders between 299,999 to 125,000; 15% on orders between 124,999 to 75,000; 20% on orders between 74,999 and 25,000; and 25% on orders under 24,999.

14. Ohio Law and Forum. The laws of the State of Ohio, USA, disregarding conflicts of law, govern the terms and provisions of this Contract and the relationship between the parties. Any disputes between the parties must be resolved by the state and federal courts of Summit County, and objections to venue are waived and the parties submit themselves to that exclusive jurisdiction and venue. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this transaction.

15. Survivor. These Customer Terms and Conditions survive the completion, fulfillment, cancellation, termination and/or changes to this Contract.