

**AUTOMATED PACKAGING SYSTEMS, INC.**  
**VENDOR TERMS AND CONDITIONS**

1. **Entire Contract.** The terms and conditions set forth below and on APS's Purchase Order constitute the complete and exclusive statement of the terms of this transaction. All representations, promises, warranties or statements by any agent or employee of Buyer 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 Seller pertaining to the Goods or Services purchased are hereby objected to.** No course of prior dealings between the parties and no usage of the trade are relevant to this transaction. All orders are subject to the approval by Buyer 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 Buyer.**

2. **Prices.** If a specific price for the Goods has been quoted to Buyer by a representative or agent of Seller or if a price previously established by Seller has been set forth for the Goods or Services or on the face of this order, such prices shall be the price of the Goods or Services. Seller warrants that the prices for the Goods and Services are not less favorable than those currently extended to any other customer for the same or like articles or Services in equal or less quantities. In the event Seller establishes or offers a lower price for the sale of such articles or Services in such quantities, either generally or for any one sale to any other customer, from the date of acceptance of this order to the date the Goods or Services are invoiced to Buyer, Seller agrees to reduce the prices hereof correspondingly.

3. **Extra Charges.** No additional charges of any kind, including charges for boxing, packaging or cartage, taxes, import or export duties, excises or other extras, will be allowed unless specifically agreed to in writing in advance by Buyer.

4. **Taxes.** Buyer has furnished to Seller tax exempt certificates or other evidence of exemption and no sales, use or excise taxes are chargeable to Buyer where appropriate.

5. **Delivery.** Deliveries of Goods are to be made both in quantities and at times specified herein. Buyer reserves the right at any time to cancel and void this order or any part thereof without liability if delivery is not made within the time specified on the order, which is of the essence, or within the time mutually agreed upon or if unspecified, within a reasonable time.

6. **Transportation and Packaging.** The Goods will be packaged, marked, shipped and routed in accordance with Buyer's direction and the instructions set out in this order.

7. **Title and Risk of Loss.** Except as otherwise expressly provided herein, title to and the risk of loss on all the Goods shipped by Seller to Buyer does not pass to Buyer

until Buyer's inspection and acceptance of such Goods at Buyer's warehouse or manufacturing facility specified.

8. **Acceptance of the Goods and Inspection.** Acceptance of the Goods takes place at the time when such Goods have been delivered to Buyer and have passed Buyer's inspection and test. Inspection and test of the Goods by Buyer may at Buyer's option be made at Seller's plant and/or the point of destination. Acceptance of all or any part of the Goods by Buyer does not relieve Seller from any of its obligations and warranties hereunder, nor will acceptance of any part of the order bind the Buyer to accept future shipments or deprive Buyer of any rights under the Uniform Commercial Code. No action or failure to act on the part of Buyer will be deemed a waiver of Buyer's rights to cancel or return all or any portion of the Goods because of failure to conform to the order by reason of defects, latent or patent, or other breach of warranty or to make any claim for damages. In no event will payment be deemed to constitute acceptance.

If inspection discloses that any part of the Goods received is not in accordance with Buyer's specification or if any of the Goods fail to meet the warranties contained in Section 10 hereof, Seller, upon notice thereof from Buyer, must promptly correct or replace the same at Seller's expense. If Seller fails so to do, Buyer may cancel this order as to all such Goods and, in addition, may cancel the then remaining balance of this order. After notice to Seller, all such Goods will be held at Seller's risk. Buyer may, and at Seller's direction will, return Goods to Seller at Seller's risk, and all transportation and handling charges, both to and from the original destination, must be paid by Seller. Any payment for such Goods must be refunded by Seller unless Seller promptly corrects or replaces the same at its expense. Return of any defective material by Buyer is not deemed a waiver of any right or remedy which Buyer may have as a result of or in connection with the existence of such defect or defects.

9. **Payment.** Payment shall be made according to the terms set forth on the face of this order. Unless otherwise agreed, invoices shall be paid within 55 days after the receipt of the invoice or of the Goods or Services by Buyer, whichever is later. It is understood that the cash discount period will date from the receipt by Buyer of the Goods or Services or of the invoice, whichever is later. C.O.D. shipments will not be accepted.

10. **Warranties.** Buyer shall have the right to all Buyer's remedies and Seller's warranties to the fullest extent provided under the Uniform Commercial Code, including, but not limited to, warranties of merchantability fitness and fitness for a particular purpose, and such remedies and warranties survive inspection, tests, acceptance and payment.

11. **Indemnification.** Seller will indemnify and hold harmless the Buyer, its successors and assigns, from and against any and all claims, liabilities, costs and expense, including but not limited to court costs, attorney fees, inspector fees or costs of testing arising out of defect in the Goods (including but not limited to the presence of

environmentally-banned substances), arising out of any act or omission of Seller, its agents, employees and subcontractors, and with respect to any recall, inspection, tests, replacement or correction related in whole or in part to a defect or alleged defect in the Goods.

12. **Excess Goods.** Except for customary quantity variations recognized by trade practice, Goods in excess of those specified need not be accepted by Buyer and any such Goods not accepted will be held at Seller's risk. Buyer may, and at Seller's direction will, return such Goods at Seller's risk, and all transportation charges, both to and from the original destination, will be paid by Seller.

13. **Fabrication and Material Commitments.** Unless otherwise authorized in writing by Buyer, Seller must not make commitments for materials nor fabricate in advance of time necessary to permit shipment on delivery dates.

14. **Changes.** Buyer has the right at any time by written notice to cancel, suspend or change from time to time the Goods and Services to be furnished by Seller hereunder.

Upon receipt of such notice, Seller must immediately comply with the notice and adjust operations in connection with this order accordingly. All costs and expenses related to this order and incurred by Seller subsequent to the receipt of such notice are the sole responsibility of Seller.

In the event of cancellation of this order, Buyer shall be responsible and liable only for the price of the Goods and Services accepted prior to such notice plus the actual and reasonable costs incurred by Seller prior to notice of cancellation with respect to the Goods or Services canceled.

In the event of suspension of this order, Buyer shall be responsible and liable only for the price of Goods or Services eventually accepted. Any increase in the price of such Goods or Services is subject to the prior approval of Buyer.

In the event of a modification of this order by Buyer (including, but not limited to a change in the number or design of the Goods), Buyer shall be responsible and liable only for the price of the Goods accepted plus the actual and reasonable costs incurred by Seller to accomplish such modification. Any increase in the price of the Goods resulting from modification of this order is subject to the prior approval of Buyer.

In the event of any cancellation, suspension or modification of this order, Buyer is not responsible for or liable for any costs of production, processing or shipping of the goods apart from the price of Goods accepted as such costs represent a portion of and are included in the price of such accepted Goods, AND BUYER IS NOT LIABLE FOR LOST PROFITS OR CONSEQUENTIAL OR INCIDENTAL DAMAGES.

15. **Default.** Buyer reserves the right, by written notice, to cancel this order without liability to Buyer in the event of (i) insolvency of Seller, (ii) the filing of a voluntary

Petition in Bankruptcy by Seller, (iii) the filing of an involuntary petition to have Seller declared bankrupt, (iv) the appointment of a Receiver or Trustee for Seller, (v) or the execution by Seller of an Assignment for the Benefits of Creditors. If Seller fails to perform or breaches any of the terms, Buyer reserves the right immediately upon such failure of performance or breach and without any liability to Buyer (i) to cancel this order in whole or in part by written notice to Seller, or (ii) after notifying Seller of such failure or breach and of Buyer's intent to exercise such right, to obtain the Goods from another source, with any excess costs resulting therefrom chargeable to Seller. Seller is liable for Buyer's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Seller or of which Seller was informed by Buyer, provided, however, the Seller shall not be responsible for delays or defaults occasioned by fires, Acts of God, war or riots, but in the event of such occurrence, Buyer reserves the right to cancel this order without liability of any kind.

16. **Patent Indemnification.** Except when Buyer supplies all specifications for the Goods, Seller will hold and save Buyer, its successors, assigns, customers and users harmless from loss and/or liability of any nature or kind arising out of or existing because of the infringement or alleged infringement of any patent for or on account of the manufacture, sale or use of any Goods furnished hereunder. Buyer shall notify Seller in writing of any suit filed against it or their customers, on account of any such infringement or alleged infringement, and at Seller's request shall give Seller control of the defense of such suit, insofar as Buyer has the authority to so do, and information and assistance for the same, all at Seller's expense. Buyer and the party against whom suit is brought may be represented by their own counsel in any such suit. In the event that Buyer should be enjoined in such suit or proceeding from using any part of the Goods delivered hereunder, Seller, at its option, must promptly either: (a) secure termination of the injunction or liability, or (b) replace said Goods with non-infringing Goods or modify them to become non-infringing, all at Seller's expense.

17. **Consignment.** Machinery, equipment, patterns, drawings, specifications and samples furnished to Seller by Buyer on other than a charge basis are held by Seller as upon consignment, and upon the completion of this order must be returned to Buyer or otherwise satisfactorily accounted for. Unless otherwise agreed, Seller, at its expense, must insure all such items for the reasonable value thereof against loss or damage of any kind.

18. **Special Tools.** Unless otherwise stated all special drawings, patterns, tools, dies, jigs, machinery and equipment needed by Seller for the performance of the order will be obtained by Seller at its own expense and shall be the property of Seller.

19. **Compliance with Laws.** Seller must, in the performance of work and Services under this order, fully comply with all applicable Federal, State and local laws and regulations, and indemnify and hold Buyer harmless from any costs, loss or liability resulting from Seller's failure of compliance.

20. **Assignment.** Seller shall not assign or transfer this order or any interest therein or monies payable thereunder without the written consent of the Buyer and any assignment or transfer made without such consent is null and void.

21. **Remedies.** The remedies provided Buyer herein are cumulative and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereunder does not constitute a waiver of any other breach.

22. **Ohio Law and Forum.** The laws of the State of Ohio disregarding conflicts of law, govern the terms and provisions of this Contract and the relationship between the parties. Any disputes between the parties will be resolved by the courts having jurisdiction in Summit County, Ohio, and Seller hereby submits to that exclusive jurisdiction and venue.

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