



## TERMS AND CONDITIONS

**All shipments and deliveries of Seller's product are subject solely to the following terms and conditions. Any previous terms and conditions, including those in any Purchase Order or other documents submitted by Buyer, are rejected.**

**SHIPMENTS AND PAYMENTS.** All shipments and deliveries hereunder shall be subject to the approval of the Arkansas Glass Container Credit Department. If Buyer fails to make any payment in accordance with the terms and provisions hereof, the Seller, in addition to its other rights and remedies, may defer shipments or deliveries hereunder until receipt of satisfactory security of cash before shipment.

**PRICES.** If Seller shall make an error in computing product pricing, prices shall be subject to correction. Seller's invoice may be subject to energy surcharges, additional line-items (appropriate fees or charges) as necessary to address special handling, and/or sales, use, or similar taxes which may be applicable. Seller reserves the right to change published pricing as necessary to adequately reflect significant changes in manufacturing costs and market conditions.

**DELIVERY, FREIGHT, TITLE, RISK OF LOSS AND TAXES.** All products are delivered Ex Works (INCOTERMS), Jonesboro, Arkansas. Seller will make commercially reasonable efforts to deliver glass containers in quantities as close as practical to those described on Seller's Sales Confirmation document. For shipments of product outside of the continental United States, buyer is responsible for and shall pay directly to the appropriate authority or agency any and all taxes and duties related to the sale, purchase, import, or export of product including but not limited to sales tax, goods and service tax, and harmonized sales tax, or any similar tax that may apply.

**FORCE MAJEURE.** "Force Majeure" means the occurrence of unforeseen circumstances beyond a party's reasonable control which cannot be avoided by the exercise of due diligence (including the expenditure of a reasonable sum of money) and does not result from such party's negligence or intentional misconduct, including, but not limited to, act of war, natural disaster, strikes, lockouts, fires, floods, riots, freight embargoes or transportation delay, shortage of labor, inability to secure fuel, materials, supplies or power, or significant increase in the costs thereof, acts of God or of the public enemy, and any existing or future laws or acts of the federal, state, or local government that prohibits or prevents performance. It shall not be deemed default hereunder and neither Buyer nor Seller shall be liable for a failure to perform hereunder arising from a Force Majeure event. To the extent that, and so long as the obligations of either party are affected by any such Force Majeure event, such obligations shall be suspended for a reasonable period of time. Buyer's sole remedies for an event of Force Majeure shall be an extension of time within which Seller is allowed to deliver the product. A Force Majeure event does not excuse or suspend any obligation of either party to pay money in a timely manner for product actually delivered or other liabilities actually incurred, that arose before the occurrence of the Force Majeure event causing the suspension of performance.

### **WARRANTIES AND REMEDIES.**

**THESE EXPRESS WARRANTIES SHALL BE IN LIEU OF ALL OTHER PRODUCT QUALITY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.**

**A. Seller warrants, subject to the disclaimers stated herein, that at the time of delivery of product to Buyer that the delivered goods or services shall:**

- 1. Meet Seller's manufacturing specifications and Seller's acceptable quality levels; and**
- 2. Will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended.**

**B. Seller specifically disclaims any warranty or liability for:**

- 1. Foreign substances of any kind in the product which reasonably could have been introduced by either Seller, Buyer, Buyer's Agent or Customer;**
- 2. Any breach of warranty unless the product is thoroughly cleaned by Buyer or its customer prior to filling, is filled under sanitary conditions and in accordance with good manufacturing practices as required or recommended by the Food and Drug Administration and the product is suitably sealed with an appropriate closure immediately after filling;**
- 3. Any defect or breach of warranty which appears more than one (1) year from the date of delivery of the product and;**
- 4. Any losses due to product filling temperatures that exceed a maximum differential of 90 degrees (f) between the surface temperature of the glass container and that of its intended packaged contents;**
- 5. Any losses due to internal contents pressure that exceed one (1) standard atmosphere or require testing for either positive or negative pressures during the packaging process.**

**C. In the event of an alleged breach of any of the above warranties, Buyer shall furnish Seller notice of any such breach of warranty within a reasonable time, not to exceed five business days after discovery of such breach. As Buyer's exclusive remedy for an actual breach of warranty, the purchase price thereof shall be credited to the Buyer's account.**

Seller shall be given an opportunity to conduct an adequate investigation of all claims of breach of this section both by inspection at the Buyer's place of business or at the sole discretion and expense of Seller, at the Seller's place of business or other place of Seller's choosing.

**INDEMNITY.** Buyer shall indemnify and hold Seller and its Parent companies, subsidiaries and affiliates and their respective officers, directors, employees and agents harmless from any damages, losses, and expenses resulting from any claim, lawsuit or proceeding arising from any act or omission of Buyer or from Buyer's failure to comply with any of these terms and conditions, and from any damages, losses and expenses arising out of or in connection with a third party claim that a product infringes any patent, copyright, trade mark right, trade secret, mask work right or other proprietary right of any third party to the extent that such claim is attributable to Seller's incorporation of designs or materials provided by Customer into the Product. This obligation shall survive the termination or non-renewal of this Agreement.

Subject to the disclaimers and limitation of liability contained herein, Seller shall indemnify and hold Buyer and its parent companies, subsidiaries and affiliates and their respective officers, directors, employees, and agents harmless from any damages, losses, and expenses (excluding attorney's fees) resulting from any claim, lawsuit or proceeding arising from any act or omission of Seller or from Seller's failure to comply with any of the terms and conditions of this Agreement, and from any damages, losses and expenses (excluding attorney's fees) arising out of or in connection with a third party claim that a product, material or component provided or procured by Seller or Seller's manufacturing process infringes any patent, copyright, trade mark right, trade secret, mask work right or other proprietary right of any third party; provided, however, that Seller will have no liability under this section to the extent such infringement is attributable to the incorporation of designs or materials provided by Buyer into the product. This obligation shall survive the termination or non-renewal of this Agreement.

**LIMITATION OF LIABILITY.** In no event shall Seller be liable to Buyer or any third party for loss of profit, loss of business, loss of business opportunity, loss of market share, damage to the goodwill or reputation of any party or its products, or for any special, indirect, incidental, punitive, exemplary or consequential damages however caused and under any theory of liability whether based in contract (including indemnity, breach of warranty or representation of other breach of contract), tort (including negligence), or otherwise. The foregoing limitations shall apply regardless of whether such party has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy stated herein.

Buyer hereby agrees that, prior to providing any Product to any other commercial entity or party, Buyer shall obtain such party's agreement to the limitations set forth herein and an acknowledgement that Seller is a third-party beneficiary to such agreement for the purposes of such limitation. Buyer further agrees to fully indemnify Seller for any and all claims made by such third-party commercial entity or party made against Seller seeking of the excluded losses of damages set forth above.

**NON-ASSIGNMENT.** Neither the underlying agreement nor any interest therein may be assigned by Buyer, whether by operation of law or otherwise, without the prior written consent of Seller, which consent shall not be unreasonably withheld.

**APPLICABLE LAW.** The laws of the state of Arkansas shall apply to the interpretation and enforcement of this agreement, and jurisdiction over any disputes lies solely in the federal and state courts in Craighead County, Arkansas.

**AMENDMENTS.** No amendment or other modification of this agreement is binding upon the parties unless it is in writing and executed by a duly authorized representative of each party.