

TSS Industrial Packaging, LLC
Terms of Sale

1. **Applicable Terms.** The “Terms of Sale” listed below are the exclusive terms and conditions governing any Agreement between Buyer and TSS Industrial Packaging, LLC (“Seller”) for the sale and purchase of industrial packaging supplies and any miscellaneous products relating thereto (“Products”). The term “Agreement” as used herein means any quotation, purchase order, acknowledgement, and/or invoice together with any attachment thereto and any document expressly incorporated by reference. Buyer must dissent to these Terms of Sale in writing to Seller within five (5) days of receipt thereof of a copy of the Terms of Sale or Buyer will be deemed to have assented to the Terms of Sale. In any case, Buyer’s acceptance of the Products shall constitute acceptance of these Terms of Sale.

2. **Shipping and Delivery.** Shipping and delivery dates are good faith estimates only. In no event shall Seller be liable to Buyer for any loss or delay in delivery due to acts of governmental authority, laws or regulations, strikes, fires, floods, earthquakes, severe weather, epidemics, quarantine restrictions, war, riot, wrecks, delays in transportation, inability to obtain necessary labor or materials from usual sources, and/or any other causes beyond the reasonable control of Seller. In the event of any delays in delivery due to such causes, the date of delivery shall be deferred for a period equal to the time lost by the reason of delay. Unless otherwise agreed in writing by Seller, delivery of the Products will be made F.O.B. point of manufacturing and/or warehousing. Upon and after delivery, risk of loss or damage to the Products shall be Buyer’s risk.

3. **Quotation and Price.** Unless otherwise stated in writing by Seller, all prices included in any quotation by Seller shall be exclusive of shipping and handling, insurance, taxes, license, fees, customs duties and any other charges related thereto. Buyer agrees to pay all such charges; provided that, if Seller, in its sole discretion, chooses to pay any such charges, Buyer shall reimburse Seller therefor in full upon demand. All quoted prices contained in an Agreement shall remain in effect for thirty (30) days from the date of such Agreement. Seller reserves the right to revise the prices in any Agreement for any reason with thirty (30) days advance notice to Buyer.

4. **Payment.** Unless otherwise agreed upon in writing by Seller, all payments are due and payable in U.S. dollars within thirty (30) days from the date of the Agreement (the “Due Date”). No discounts may be taken unless specified on the face of the Agreement. Any payment received from Buyer may be accepted and applied by Seller against any obligation owing by Buyer on the books of Seller, without discharge of the remainder of any obligation, regardless of any condition, provision, or statement appearing on or relating to Buyer’s payment. On any Agreement not paid in full by the Due Date, Buyer shall incur a service charge of eighteen percent (18%) per annum of the outstanding balance, but in no event shall such interest rate exceed such maximum interest rates applicable under law. Buyer also agrees to pay all costs of collection, including, but not limited to, reasonable attorney’s fees and legal costs.

5. **Credit and Default.** Seller may at any time, and in its sole discretion, limit, alter or cancel the credit of Buyer, and as a consequence may declare payment due immediately in cash before delivery of any unfilled portion of the Agreement. Buyer represents and warrants to Seller that it is solvent at the time of the Agreement and Buyer hereby makes a continuing representation and warranty of its

solvency at the time of each tender or delivery. Upon any default or breach by Buyer of any Agreement with Seller, or if Buyer shall become insolvent, call a meeting of its creditors, make a general assignment for the benefit of its creditors, or if a bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or on behalf of Buyer, Seller may cancel any Agreement (or any part thereof) with Buyer (with Buyer remaining liable for damages); defer any shipments hereunder; declare all outstanding balances owed under any Agreement immediately due and payable; sell all or any part of the Products covered by any Agreement with Seller at a public or private sale (Buyer is responsible for the costs and expenses of such sale and any deficiency and Seller shall have the right to become the purchaser of such Products at such sale); and obtain damages from Buyer equal to ten percent (10%) of the Agreement price to cover Seller's costs of reselling and additional overhead. All rights and remedies of Seller under the Agreement shall be nonexclusive, cumulative, and in addition to all other rights and remedies of Seller under any other Agreement or applicable law.

6. Security Interest. Buyer hereby grants Seller a continuing security interest in all Products. Said security interest shall secure Seller for all existing or future obligations of Buyer to Seller, however arising, and the security interest may, at Seller's option, be set off against any and all obligations of Buyer.

7. Warranty. ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Limitation of Liability. Buyer's remedies under the Agreement shall be limited to the sums paid by Buyer to Seller for the Products. In no event shall Seller be liable for consequential, special, punitive, indirect or incidental damages or loss of profits arising out of a delay or failure of delivery, defects in the Products, or under any other theory of recovery in law, equity or otherwise. Seller shall not accept, assume or take any responsibility or liability to indemnify or defend any other person or entity against any loss, damage or injury regardless of any language purported to be expressed or implied. Buyer agrees to indemnify Seller against any claims of third persons for injuries or damages resulting in whole or in part for fault of Buyer in the manufacture or sale of the finished product made from the Products covered in the Agreement.

9. Technical Advice. Seller may, upon Buyer's request, furnish technical advice, without charge, with respect to the Products sold hereunder to the extent that Seller has such advice conveniently available. However, it is expressly understood by Buyer that Seller is under no obligation to furnish technical advice and it is further understood by Buyer that such advice is given by Seller and accepted by Buyer at Buyer's sole risk. Under no circumstances shall Seller be responsible for or liable to Buyer for the advice or assistance given or the result thereof.

10. Cancellations and Returns. All Products delivered hereunder shall be deemed accepted by Buyer, and Buyer's right to cancel, reject, or claim damages shall expire, unless Buyer sends a written notice of a defect or nonconformity to Seller within ten (10) days of delivery of Products; provided that Buyer may only reject Products for failure to meet the Products specification. Within thirty (30) days of receipt of written notice of defects in Products, Buyer shall make the Products

available for inspection by Seller at a place designated by Seller and without cost to Seller. Failure to do so constitutes acceptance and waiver of all claims for defects. Seller, at its discretion, may examine and accept such Products for return or make allowances agreeable to both parties. If the Product is accepted for return, Seller shall issue Buyer a credit memo for the amount of the return in full satisfaction of all claims of Buyer. Buyer must use the credit memo within ninety (90) days of the date of issuance. If said credit memo is not used within the time period mentioned above, the credit memo shall expire. The Agreement is not subject to cancellation unless approved in writing by Seller, at Seller's sole discretion. When approved in writing by Seller, Buyer may cancel the Agreement and/or return unwanted Products within thirty (30) days of delivery. Buyer shall pay a twenty-five percent (25%) restocking charge on any cancelled or unwanted Products. However, where custom goods are involved, Buyer shall be responsible for all related work in progress; however, Seller shall take all reasonable steps to mitigate damages upon receipt of a written cancellation notice from Buyer.

11. Applicable Law and Consent to Jurisdiction. All matters arising out of the Agreement or related documents shall be governed, construed, and interpreted according to the laws of the State of Tennessee. Buyer hereby consents to personal jurisdiction in the State of Tennessee and agrees to any actions, suits and proceedings which may be brought in any state or federal court in the State of Tennessee. Buyer also irrevocably waives any and all rights to object to such jurisdiction for all matters arising out of the Agreement, the Terms of Sale, or any other related document arising out of or relating thereto. Buyer further irrevocably waives any claim that any such action, suit or proceeding brought in such court has been brought in an inconvenient forum.

12. Miscellaneous. This Agreement shall inure to the benefit of Buyer and Seller and their respective successors and assigns. No rights of Buyer under, or arising out of, the Agreement may be assigned without the express written consent of Seller. The Agreement contains the entire and only agreement between Seller and Buyer with respect to the subject matter therein and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products, and any prior course of dealings or usage of the trade not expressly incorporated herein. No change, modification, or waiver of these Terms of Sale shall be binding upon Seller unless signed in writing by Seller. No waiver by either party of any default shall be deemed a waiver of any subsequent default. Any facsimile or electronic communication of the Agreement or these Terms of Sale shall be binding upon the parties as if it was an original copy thereof.