



YOUR CLEAR CHOICE FOR PREMIUM PACKAGING SOLUTIONS

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## STANDARD TERMS & CONDITIONS

### Quotations

All quotations for the goods (the "Goods") set forth on Seller's Quotation or Order Acknowledgement Form are subject to confirmation prior to acceptance by Seller of any order made in response hereto. Seller's quotation automatically expires thirty (30) days from the date of Seller's Quotation or Order Acknowledgement Form and is subject to termination by notice within that period. These Terms and Condition shall become part of the agreement between Seller and Buyer created by acceptance of the Seller's Quotation or Order Acknowledgement Form, or acceptance by Seller of any purchase order or similar document from Buyer and incorporated by reference therein.

### Acceptance

Acceptance of the offer reflected on Seller's Quotation or Order Acknowledgement Form by Buyer is expressly limited to the exact terms contained herein and any attempt by Buyer to alter or omit any of such terms shall be deemed a rejection and a counteroffer. If Seller's Quotation or Order Acknowledgement Form is accepted and Buyer's order form is used for the purpose, it is expressly understood and agreed that the terms and conditions herein set forth shall prevail insofar as the same may in any way conflict with the terms and conditions set forth in such purchase order form of Buyer, and the issuance of such purchase order by Buyer shall be deemed to evidence the consent of Buyer to the foregoing.

### Payment Terms

The amount of any invoice (the "Invoice") issued in conjunction with the purchase of Goods resulting from Seller's Quotation or Order Acknowledgement Form or Buyer's purchase order is payable in full within thirty (30) days of the Invoice date (the "Payment Terms"). Seller also offers Buyer a 1% discount off the Invoice amount if Buyer's payment is received by Saxco within ten (10) days of the Invoice date. Should Buyer contest any charge on an Invoice, Buyer must notify the Seller in writing within the Payment Terms period; the balance of the Invoice must be paid within the Payment Terms. At Seller's option, credit terms may be rescinded if, in Seller's sole judgment, the Buyer's financial condition doesn't warrant continuation of the extension of credit. In these cases, Seller may require payment in advance. In the event that an Invoice remains unpaid or only partially paid at month-end and is outside the Payment Terms, a late charge equal to one and one-half percent (1.5%) will be applied to the balance outside of Payment Terms. Payment or accrual of late charges does not defer payment of any bill, extend credit terms, or extend any payment of invoice beyond the original due date.

### Delivery and Shipping Costs

Unless otherwise specified on the front of Seller's Quotation or Order Acknowledgement Form, all costs of delivery shall be charged separately to the Buyer and will be F.O.B. the plant of the manufacturer producing the Goods described on Seller's Quotation or Order Acknowledgement Form. Method and route of shipment are at Seller's discretion, unless the Buyer supplies explicit instructions which are acceptable to Seller. All shipments are insured at Buyer's expense and made at Buyer's risk. If any of the Goods ordered by Buyer are still in the factory warehouse or Seller's warehouse after ninety (90) days from the required date, Seller reserves the right, at its option to (1) charge Buyer for the full sales price of the Goods and remit to Buyer any cullet value from destroying the Goods, or (2) repack the Goods and charge Buyer for the cost of labor and materials required to re-pack the Goods and to resell the Goods to another customer of Seller.

### Taxes and Other Exclusions From Price

Unless otherwise specified on the front of Seller's Quotation or Order Acknowledgement Form (i) if the Goods are manufactured outside of the United States, all duties, import fees, tariffs, customs charges and related expenses of importing the Goods shall be charged separately to, and shall be for the account of Buyer and (ii) in any event, the amount of all present and future sales, revenue, excise, and other taxes applicable to the Goods shall be added to the purchase price and shall be paid by Buyer, or in lieu thereof Buyer shall provide Seller with a tax exemption certificate acceptable to the applicable taxing authorities.

**Quantity Variations**

Any shortage or surplus, charged pro rata, in the Goods covered by Buyer's purchase order in response to Seller's Quotation or Order Acknowledgement Form, which does not exceed ten percent (10%) (rounded to the nearest full pallet quantity) of the quantity covered by such purchase order, will be considered compliance in full with the terms of such purchase order.

**Cancellation**

An order by Buyer in response to Seller's Quotation or Order Acknowledgement Form once placed with and accepted by Seller cannot be cancelled without Seller's consent (which may be withheld in Seller's sole discretion) and then only upon terms that will indemnify Seller against loss.

**Manufacturer Warranties Only**

Buyer acknowledges that Seller is an independent distributor or sales agent on behalf of various manufacturers and does not manufacture the Goods. Accordingly, the only warranty provided with respect to the Goods comes from the manufacturer, the terms of which may be obtained from Seller. SELLER, FOR ITSELF, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHETHER AN IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, OR OTHERWISE. NOTE: IT IS BUYER'S RESPONSIBILITY TO DETERMINE THE SUITABILITY OF THE GOODS FOR BUYER'S PRODUCT, AND THE ADEQUACY OF THE MANUFACTURER'S WARRANTY. At the request of Buyer, Seller may provide reasonable assistance to Buyer in processing warranty claims with respect to the manufacturer's Goods.

**Limitation on Damages**

In no event shall Seller be liable to Buyer for consequential or incidental damages, and in any event, Seller's liability to Buyer, for any reason, whether for breach of contract, indemnity, injury to person or property, or otherwise, shall not exceed an amount equal to the aggregate payments from Buyer actually collected during the trailing six month period prior to the date the claim is made by Buyer.

**Indemnification by Buyer**

Buyer shall indemnify, defend and save harmless Seller from and against any claims, loss, damages, liability (including personal injury claims), costs or expenses (including reasonable attorneys' fees) that arise from either (a) the modification, alteration or decoration in any way of any Goods purchased as a result of Seller's Quotation or Order Acknowledgement Form, (b) from the improper handling or storage of the Goods by Buyer, or (c) the use of the glass containers for anything other than as expressly set forth in writing on Seller's Quotation or Order Acknowledgement Form or, if there is nothing set forth on Seller's Quotation or Order Acknowledgement Form, for anything other than still wine if the Goods involve wine bottles and distilled liquor if the Goods involve liquor bottles.

**Sketches, Plates and Engravings**

All designs, sketches and original work not provided by Buyer will remain the property of Seller or the manufacturer of the Goods reflected herein. Unless written arrangements are made to the contrary, all type may be distributed and lithographic, photogravure or other work effaced immediately after an order is executed. If arrangements are made to the contrary, they shall include rental payments unless another specific arrangement has been made.

**Dies and Molds**

Dies, molds, tools, printing plates, negatives, blocks and engravings provided by Seller or the manufacturer of the Goods covered by Seller's Quotation or Order Acknowledgement Form shall remain the property of Seller, whether or not a charge is imposed on Buyer in respect of them. Seller shall advise Buyer of when normal wear and tear has made major maintenance or tool replacement necessary for continued satisfactory production. A charge may be made in connection with the cost of such maintenance or replacement and the tools concerned will remain the property of Seller.

**Buyer's Requirements, Printing and Construction.**

Alterations from original copy on and after first proof, including alterations in style or construction will be charged extra. Proofs of all work may be submitted for Buyer's approval and no responsibility will be accepted for any errors in proofs which may be approved by Buyer. Buyer shall be wholly responsible (in respect of copyright, trademark, design, all common law and statutory right and otherwise whatsoever) for any matter of work which Buyer instructs Seller to print or perform and for any design, sketch, drawing, painting, construction work or other thing which he supplies and or instructs Seller to supply or execute and for all claims by third parties arising therefrom and Buyer shall keep Seller and the manufacturer of Goods covered by Seller's Quotation or Order Acknowledgement Form indemnified against all proceedings, claims, costs, expenses and liability whatsoever in respect thereof.

**Status of Pallets**

Pallets supplied will be billed to Buyer. Pallets are non-returnable unless Seller's Quotation or Order Acknowledgement specifies that the pallets are returnable, in which case pallets are returnable at Buyer's expense. If returnable pallets that are memo billed are not returned within 60 days, Purchaser will be billed for the cost of the pallet. Pallet costs are subject to adjustment on 30 days notice.

**Materials**

While Seller and the manufacturer of Goods covered by Seller's Quotation or Order Acknowledgement Form will make commercially reasonable efforts to supply material in accordance with the samples submitted or quoted for, there is no guaranty that the materials will be identical. If sample containers are submitted by Seller to Buyer for approval, Buyer should confirm dimensions by the actual packing thereof prior to the approval by Buyer.

**Price**

Prices are subject to change without notice.

**Buyer's Property**

Buyer's property when supplied to Seller or the manufacturer of Goods covered by Seller's Quotation or Order Acknowledgement Form will be held or worked on at Buyer's risk. While every care will be taken to secure the best results where materials are supplied by Buyer, Seller assumes no responsibility for imperfect work caused by defects in or unsuitability of materials so supplied by Buyer.

**Assistance and Advice**

Upon request, Seller at its discretion will furnish as an accommodation to Buyer such technical advice or assistance as is available in reference to the Goods. Seller assumes no obligation or liability for the advice or assistance given or results obtained, all such advice or assistance being given and accepted at Buyer's risk.

**Severability**

If any term or provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this agreement shall not be affected thereby, and each term or provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

**Force Majeure**

Seller shall not be liable for loss or damage of any kind resulting from delay or inability to deliver on account of causes beyond its control, including but not limited to acts of God, acts of Buyer, acts of military or civil authorities, fires, strikes, flood, epidemic, war, riot, delays in transportation or car shortages, or inability to obtain necessary labor, materials, components or services through Seller's usual and regular sources at usual and regular prices.

**Governing Law; Venue**

THESE TERMS SHALL BE CONSTRUED UNDER CALIFORNIA LAW WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. ANY ACTION BROUGHT TO ENFORCE OR INTERPRET ANY PART OF THE AGREEMENT BETWEEN SELLER AND BUYER OR THE RIGHTS OR OBLIGATIONS OF THE PARTIES SHALL BE BROUGHT EXCLUSIVELY IN THE SUPERIOR COURT OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, OR TO THE EXTENT FEDERAL JURISDICTION EXISTS, IN THE FEDERAL COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. EACH OF THE PARTIES HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS, AND WAIVES ANY OBJECTION BASED ON VENUE OR INCONVENIENT FORUM.

**Dispute Resolution**

Mediation. If a dispute between the parties hereto is not resolved within thirty (30) days from the date that either party has notified the other that such dispute exists, then either party may give notice to the other party that the dispute shall be submitted to mediation with a mediator acceptable to both parties, and the parties shall, for a sixty (60) day period from the receipt of such notice, seek in good faith to resolve such dispute in mediation. If the parties are not able to resolve the dispute in mediation, then such dispute shall be referred to binding arbitration, except to the extent that injunctive relief is available to a party hereto.

Arbitration. Any dispute submitted to arbitration pursuant to this Section shall be determined by arbitration in accordance with the rules of the Judicial, Arbitration and Mediation Services (JAMS). The parties shall select a single arbitrator to hear the matter; provided that if the parties are unable to agree, the arbitrator shall be selected by JAMS. The arbitration shall be held in Contra Costa County, California. Any decision made by the arbitrator shall be final, binding and conclusive on the parties and each party to the arbitration shall be entitled to enforce such decision to the fullest extent permitted by law and entered in any court of competent jurisdiction. The arbitrator shall have the discretion to award recovery of fees and costs to the prevailing party.

**Entire Agreement.** This Agreement constitutes the entire contract between Buyer and Seller relating to the Goods or services identified herein. No modifications hereof shall be binding upon Seller unless in writing and signed by Seller's duly authorized representative and no modification shall be affected by Seller's acknowledgement or acceptance of Buyer's purchase order forms containing different provisions. Trade usage shall neither be applicable nor relevant to this Agreement, nor be used in any manner whatsoever to explain, qualify or supplement any of the provisions hereof. No waiver by either party of default shall be deemed a waiver of any subsequent default. All waivers shall be in writing to be effective. The terms set forth herein shall apply to all purchases by Buyer.