

General Terms and Conditions for the Sale of Goods

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Kinsbrae Packaging or its affiliates (collectively, the "**Seller**") to the purchaser (the "**Buyer**") named on the sales order, sales confirmation or invoice issued by the Seller. Notwithstanding anything herein to the contrary, if a written contract signed by both the Buyer and Seller is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The applicable sales order, sales confirmation or invoice (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall arrange delivery, at Buyer's expense, of the Goods to the location the Buyer identifies in advance in writing to the Seller (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods once they are delivered to the Delivery Point. Buyer shall be responsible for all shipping costs, insurance while in transit and unloading costs and provide equipment and labour reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfilment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-Delivery.

(a) The quantity of any instalment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in 3 are Buyer's exclusive remedies for the non-delivery of Goods.

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to five percent (5)% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms. Delivery shall be made Free on Board (FOB). Seller shall make delivery in accordance with the terms on the face of the Sales Confirmation, though all costs of shipping, and all risks to Goods in transit, are to the account of the Buyer.

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon shipment of the Goods from the Seller's location. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the *Personal Property Security Act* (Ontario).

7. Amendments and Modifications. These Terms may only be amended or modified in a written agreement which specifically states that it amends these Terms and is signed by an authorized representative of each party.

8. Inspection and Rejection of Non-Conforming Goods.

(a) Buyer shall inspect the Goods upon receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Non-Conforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Non-Conforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Non-Conforming Goods, Seller shall, in its sole discretion, (i) replace such Non-Conforming Goods with conforming Goods, or (ii)

credit or refund the Price for such Non-Conforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Non-Conforming Goods to Seller's facility located at 20 Heroux Devtek Dr., Cambridge, Ontario. If Seller exercises its option to replace Non-Conforming Goods, Seller shall, after receiving Buyer's shipment of Non-Conforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in **Section 8(b)** are Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under **Section 8(b)**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") agreed to in advance in writing by the Buyer and Seller.

(b) All Prices are exclusive of all harmonized sales tax, goods and services tax, provincial sales tax, value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; *provided that*, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

10. Payment Terms.

(a) Unless otherwise specified in writing on the sales order, sales confirmation or invoice (each as issued by the Seller), the Buyer shall pay all invoiced amounts due to Seller within twenty (20) days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer, direct deposit or cheque and in Canadian dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 26.6% per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, legal fees on a full indemnity basis. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. Limited Warranty.

(a) Seller warrants to Buyer that for a period of one (1) month from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will be free from material defects in material and workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(a), SELLER MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) CONDITION OR WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 11(d) and Section 11(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate *provided that*, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(g) THE REMEDIES SET FORTH IN SECTION 11(f) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(a).

12. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER or TEN THOUSAND DOLLARS (\$10,000), WHICHEVER IS LESS.

(c) The limitation of liability set forth in Section 12(b) shall not apply to (i) liability resulting from Seller's gross negligence or wilful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. Insurance. During the term of this Agreement and for a period of two years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than two million (\$2,000,000) with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with ten (10) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

14. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

15. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of non-payment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising,

any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, tsunami, fire, earthquake, explosion; (c) epidemics, pandemics; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) government order, law or actions; (f) embargoes or blockades in effect on or after the date of this Agreement; (g) national or regional emergency; (h) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; (i) shortage of adequate power or telecommunications or transportation facilities; (j) failure of any governmental or public authority to grant a necessary licence or consent; and (k) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within twenty (20) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this 18, the other party may thereafter terminate this Agreement upon ten (10) days' written notice.

19. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

23. Choice of Forum. Any legal suit, action, litigation or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, shall be instituted in the courts of the Province of Ontario located in the Regional Municipality of Waterloo, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Each party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

24. Notices. Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (other than routine communications having no legal effect) (each, a "**Notice**") in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). Notices sent in accordance with this Section will be conclusively deemed validly and effectively given: (a) on the date of receipt, if delivered by personal delivery, or by a nationally recognized same day or overnight courier (with all fees prepaid); (b) upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment), if delivered by email; or (c) on the third day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

25. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: 13 (Insurance), 14 (Compliance with Laws), 17 (Confidential Information), 22 (Governing Law), 23 (Choice of Forum) and this 26 (Survival).