



# Advanced Poly-Packaging, Inc.

1331 Emmitt Road • Akron, OH 44306 • 1-800-754-4403 • fax 330-785-4010 • www.advancedpoly.com

## GENERAL TERMS & CONDITIONS OF BUSINESS

These General terms and conditions supersede all previous General terms and conditions of APP.

### 1. DEFINITIONS

'Company' means Advanced Poly-Packaging, Inc. (APP).  
'Customer' means the customer of the Company.  
'Contract' means any contract for the sale of goods by the Company to the Customer.  
'Goods' means any goods forming the subject of this contract including parts and components of or materials incorporated in them or as detailed overleaf.  
'Price' means the price as quoted by the Company.

### 2. QUOTATION

Quotations by the Company unless otherwise stated in them shall be open for acceptance within 30 days of the date of the quotation. To be binding on the Company all quotations must be signed by a duly authorized representative of the Company. In addition to the General terms and conditions specified herein, additional terms quoted apply to this order, and shall become part of these General terms and conditions.

### 3. EXISTENCE OF CONTRACT

No contract shall come into existence until the customer's purchase order has been received and an acknowledgment has been issued by the Company. These conditions shall be incorporated in the Contract to the exclusion of any terms and conditions stipulated or referred to by the Customer. No variation or amendment to these terms and conditions shall be valid unless committed to writing and signed by an authorized representative of the Company.

### 4. PRICES

The Price for the Goods is FOB Akron, OH and excludes packing, insurance and freight costs. The Price invoiced is calculated in respect of the quantity of Goods actually delivered irrespective of the quantity in respect of which any quotation was issued. The Company shall have the right to adjust its price for any increase in the price of materials, parts, labor, transport, travel, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract. Price changes shall take effect on the date of the service on the customer of the notice of the change.

### 5. PAYMENT

All invoices are payable in US Dollars within 30 days of the date of the Company's invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all. Without prejudice to any other rights of the Company if the Customer fails to pay the invoice price by the due date the Customer shall pay interest (2% per month) on any overdue amount from the date of which payment was due to the date of actual payment and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount. Where a Contract provides for delivery of Goods by installments, each installment shall be charged for as a separate Contract. If the Customer shall default in payment of any such installment the Company may withhold or suspend further deliveries until payment has been made and need not resume deliveries until arrangements have been made for future payments which are acceptable to the Company or may rescind the Contract for breach thereof without prejudice to its right for full compensation.

### 6. TITLE

Company shall transfer only such title or rights in respect of the Goods as the Company has and if the Goods are purchased from a third party shall transfer only such title or rights as that party has and has transferred to the Company. Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and shall not pass to the customer until the amount due under the invoice for them (including interest and costs) has been paid in full. Until title passes the Customer shall hold the Goods as Bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company. The Company may at any time before title passes and without any liability to the Customer: Repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and for that purpose enter any premises of or occupied by the Customer. Until title passes the entire proceeds of sale of the goods shall be held in trust for the Company and shall be held in a separate designated account and not mingled with other moneys or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money. The Company may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer.

### 7. RISK, DELIVERY AND PERFORMANCE

The Goods are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent whoever pays its charges) at the Company's premises or other delivery point agreed by the Company. Risk in the Goods passes when they are delivered in accordance with the above clause. The Company may at its discretion deliver the Goods by installments in any sequence. Where the Goods are delivered by installments, no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods. The Company shall be deemed to have complied with a Contract by delivery of a quantity of plus or minus 10% of the quantity ordered (except for minimum orders which is plus or minus 25%). The manufacturing standards and tolerances generally accepted within the flexible package industry shall apply to the Contract. Any dates quoted by the Company for delivery of the Goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates. If the Customer fails: To take delivery of the Goods or any part of them on the due date; and to provide any instructions or documents required to enable the Goods to be delivered on the due date. The Company may on giving written notice to the Customer store or arrange for the storage of the Goods and on the service of the notice: Risk in the goods shall pass to the Customer, delivery of the Goods shall be deemed to have taken place; and the Customer shall pay to the Company all costs and expenses including storage, any redelivery and insurance charges arising from its failure. The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

### 8. CLAIMS NOTIFICATION

Any claim that any Goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Company within 7 days of their delivery. Any alleged defect shall be notified by the Customer to the Company in 7 days of the delivery of the Goods or in the case of any defect which is not reasonably apparent on inspection within 7 days of the defect coming to the Customer's attention and in any event in the following periods: for Goods manufactured by the Company 6 months from the date of delivery; for second-hand Goods or Goods manufactured or reconditioned by the Company no period is applicable unless otherwise specified in the Contract; and for Goods not of the Company's manufacture the warranty period given by the manufacturer.

Any claim under this condition must be in writing and must contain the quantity suspected, full details of the claim including the part numbers, lot numbers and order numbers of any allegedly defective Goods. The Company shall be afforded reasonable opportunity and facilities to investigate any claim made under this condition. Customer shall follow all instructions regarding Company's return policies and promptly return any Goods which are the subject of any claim. All returned goods must be packed to protect the goods. The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions and any other return policies.

### 9. SCOPE OF CONTRACT

Under no circumstances shall the Company have any liability of whatever kind for: Any defects resulting from wear and tear, accident, improper use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or neglect or from any instructions on materials provided by the Customer; any Goods which have been adjusted, modified or repaired except by the Company or in accordance with the manufacturers recommendations; the suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose of conditions were known or communicated to the Company; any substitution by the Company of any materials or components not forming part of any specification of the Goods agreed in writing by the Company; any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the goods and not to form part of the Contract or be treated as representation; any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or any variations in the quantities or dimensions of any Goods or changes of specifications or substitutions of any materials or components if the variation or substitution does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.

### 10. EXTENT OF LIABILITY

The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any way out of or in connection with the performance or purported performance of or failure to perform the Contract except: the death or personal injury resulting from the Company's negligence; and as expressly stated in these conditions. If the Customer establishes that any Goods have not been delivered, have been delivered damaged or do not comply with their description the Company shall, at its option, replace with similar Goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit to their invoice value or repair any damaged Goods. If the Company establishes that any Goods are defective the Company shall, at its option, replace with similar Goods or repair any defective Goods, allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture, assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company. The delivery of any repaired or replacement Goods shall be at the Company premises or other delivery point specified in the original Goods. Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other part of the Goods and no set off or other claim should be made by the Customer against or in respect of such other or other part of the Goods. No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Goods by any person except the Company. In no circumstance shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods. In relation to electronic communications, the Company shall have no liability in respect of any interception, corruption, loss, destruction or late or incomplete arrival of any electronic communication or any infection by virus or other items of a destructive nature. The Company shall have no liability for indirect, special or other consequential damages (including loss of profits) whether in contract, tort (including negligence or otherwise), even if the Company has been informed of the possibility thereof.

### 11. GENERAL

The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other document with the Company or becomes insolvent, has an administration receiver appointed of its business or is compulsory or voluntarily wound up or the Company bona fide believes that any of those events may occur and in the case of termination may forfeit any deposits paid. If the Goods are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall compensate to the Company in full on demand all claims, expenses and liability of any nature in connection with them including any claim, whether actual or alleged, that the design or specification infringes the right of any third party. Except for any which is expressly agreed to be included in the Goods, all tools, patents, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information, patentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company.

### 12. CANCELLATIONS

The Company reserves the right to charge a cancellation fee of 50% of the total invoice value if written cancellation for any Goods or services is not received within five days after receipt of the order. Advanced Deposits on machinery are not refundable.

### 13. FORCE MAJEURE

The Company shall not be liable for any failure in the performance of any of its obligations under the Contract caused by factors outside its control.

### 14. LAW AND JURISDICTION

These terms and conditions shall be governed by Ohio laws and the Customer consents to the exclusive jurisdiction of the Ohio Courts in all matters regarding it.

### 15. NOTICES

The notice given under these terms and conditions shall be in writing and may be served: Personally or by registered or recorded delivery mail; Facsimile transmission; Each party's address for service of the notice shall be the address mentioned overleaf or such other address specified by notice to the other. A notice shall be deemed to have been served: if it was served in person, at the time of service; it was served by post 48 hours after it was posted; served by Facsimile transmission at the time of transmission, or sent via email. If you are unclear as to the meaning of these terms and conditions or if you are in any way doubtful or unclear about their effect you should contact the Company immediately to discuss the position before the Company proceeds with any matter on your behalf.