

Advanced Poly Equipment Service Agreement

This Service Agreement is entered into this ____ day of _____, 20__, by and between _____ (“Purchaser”) and Advanced Poly-Packaging, Inc. (“Seller”).

Purchaser and Seller agree as follows:

1. **Standard Service.** Purchaser agrees to schedule, and Seller agrees to provide _____ preventive maintenance visits per year by a qualified technical representative. The qualified technical representative will inspect, service, and perform all necessary and appropriate adjustments as prescribed on the PM Checklist (as described in APPI Operation Manual). Service visits must be scheduled at least thirty (30) days in advance.
2. **Emergency Service.** Seller will also provide necessary emergency service between the prescheduled maintenance visits. Service personnel will make all reasonable efforts to arrive within ____ business day(s) after a request for service, during normal business hours (8:00AM to 5:00PM EST, Monday through Friday, excepting holidays). Seller will make all reasonable efforts to effect necessary service, subject to availability of replacement parts, as quickly as possible. Telephone support shall be available during regular business hours.
3. **Training.** During one of the prescheduled standard maintenance visits, Seller shall provide at no additional charge such assistance and advice, if requested, as may be necessary to assist in the use of the equipment and such maintenance and operator training as it normally provides without charge to users of the equipment.
4. **Fees and Expenses.** The annual fee for the Equipment Service Agreement is \$_____, payable in full upon execution. In addition, emergency service, including telephone support, shall be charged at the rate of \$_____ per hour for service provided during normal business hours. Emergency service provided outside of normal business hours shall be charged at the rate of \$_____.

Any applicable local, state, or federal taxes shall be added to the above charges.

Purchaser shall reimburse Seller for all expenses incurred by the technician in connection with a standard or emergency service call, including airfare, hotel, transportation expenses, and personal expenses. If a prescheduled visit is cancelled by Purchaser, expenses incurred by Seller prior to such cancellation likewise shall be reimbursed as well as any travel cancellation charges.

5. **Term.** This Agreement shall be in force for a period of twelve (12) months from the date of execution and may be renewed annually.

6. **Parts.**

(a) **Provision.** Seller will repair or replace any malfunctioning or failed parts using Purchaser-purchased replacements. Purchaser will have adequate spares or will be willing to order required parts. Parts replaced by Seller may be new, remanufactured, or used, at Seller's option.

(b) **Shipment.** Delivery Time for non-emergency replacement parts is normally 3 business days or less. Delivery time for custom or non-stock replacement parts is normally less than two weeks, but subject to availability. Seller uses UPS or FEDEX and can normally have an emergency order shipped for next day delivery as specified by Purchaser.

7. **Insurance.** Seller's service personnel are insured under the Worker's Compensation laws of the State of Ohio. Seller also maintains liability insurance, and certificates of coverage are available.

8. **Exclusions.** Standard maintenance service shall not include (a) maintenance or repairs attributable to the unauthorized attempt by Purchaser or any other unauthorized person to repair or maintain the Equipment; (b) maintenance or repairs resulting from casualty, catastrophe, or natural disaster (including lightning damage), accident, misuse, neglect or negligence of Purchaser, or causes external to the Equipment such as, but not limited to, failed or faulty electrical power or air conditioning, or any causes other than ordinary use; (c) maintenance or repairs of accessories, attachments or any other devices not identified in the applicable Schedule; (d) repairs resulting from unauthorized changes, modifications or alterations of or to the Equipment; (e) the furnishing of optional accessories or consumable supplies; or (f) installation/removal services.

9. **Working Conditions.** Seller shall have reasonable and free access to all equipment to provide service thereon, and the Purchaser shall provide Seller a safe place in which to perform such service, including working space, heat, light, ventilation, electric current, air, and outlets for the use of Seller's maintenance personnel.

10. **Warranties.** Seller warrants that the services provided under this Agreement will be performed in a timely and workmanlike manner, using only qualified maintenance technicians, familiar with the equipment and its operation. Seller warrants that no liens or encumbrances will result from the performance of the services contemplated hereunder, and that such performance will not create or constitute an infringement of any copyright, trade secret, trademark, patent, invention, or proprietary rights of any third party. Seller makes no other express or implied warranties with respect to this Agreement or the materials and services contemplated hereunder.

11. **Remedies.** Other than as expressly stated herein, the Seller makes and the Purchaser receives no warranty, express or implied, and there are expressly excluded all warranties of merchantability and fitness for a particular purpose. The Seller shall have no liability with respect to its obligations under this Agreement for consequential, exemplary, or incidental damages or for loss of profits or for any other similar damages even if it has been advised of the possibility of such damages, including damage to business or business relations, loss of use of equipment cost of capital, cost of substituted facilities or services, down-time costs, or claims by Purchasers of Purchaser. The Seller shall not be liable for any damages caused by a delay in the furnishing of maintenance services under this Agreement. Seller's liability for breach of warranty, or other covenants of this Agreement, is limited to repairing any item of equipment that is repairable or, at its option, refurbishing, overhauling, rebuilding, or replacing such equipment. Under no circumstances, including in the event of injury to persons or property, shall Seller's liability to Purchaser exceed the amount of the annual fee of the service agreement.
12. **Cancellation.** In the event of any material breach of this Agreement by either party, the other party shall notify the breaching party in writing. If the breach is not cured within thirty (30) days of receipt of such notice, the party not in breach may terminate this Agreement in whole or in part.
13. **Dispute Resolution.** Any disputes that cannot be resolved by the parties shall be submitted to binding arbitration pursuant to the Commercial Rules of the American Arbitration Association. The arbitration proceeding shall take place in Akron, Ohio. Each party shall bear its own costs, any award may be submitted to a court of competent jurisdiction for enforcement.
14. **Force Majeure.** Neither party shall be responsible to the other for loss or damage or failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control, providing that the party alleging excuse hereunder shall notify the other party of the exact nature of the problem, the steps being undertaken to correct it, and the anticipated duration of any interruption.
15. **General Terms and Conditions.**
- a. **Waiver of Breach.** The failure of either party to enforce its rights under this Agreement shall not operate as a waiver of the right to do so at any time in the future.
 - b. **Third Party Beneficiaries.** The parties do not intend that this Agreement benefit or create any right or cause of action in any third person.
 - c. **Subcontracting.** Seller retains the right to subcontract any service described herein to the qualified subcontractor(s) of Seller's choosing. Notwithstanding such subcontracting of service, Seller shall remain fully liable for the faithful performance of its obligations under this Agreement.
 - d. **Transfer.** This Agreement is non-transferable.



Advanced Poly-Packaging, Inc.

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- e. **Entire Agreement.** This Agreement represents the entire understanding of the parties and supercedes all prior proposals, understanding and all other agreements on the same subject matter, oral and written, between the parties. This Agreement may not be modified or altered except by a written instrument duly executed by both parties.
- f. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- g. **Severability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provision shall in no way be affected or impaired thereby.

By signing below, the parties, through their authorized representatives, have indicated the assent to the above terms and conditions.

PURCHASER

SELLER

Name and Title

Name and Title

Date: _____

Date: _____