

VEGWARE PACKAGING, INC.

TERMS AND CONDITIONS OF SALE

These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Vegware Packaging Inc. ("**Company**", "**Us**", "**Our**") to you ("**Buyer**", "**you**", "**your**"). These Terms and the Order set out the entire agreement between you and us for the sale of the Goods. By placing an Order to purchase Goods from us, you agree to be bound by these Terms and, subject to our acceptance of your Order, that the supply of Goods by us will be subject to these Terms. We consider that these Terms and the Order set out the whole agreement between you and us for the sale of the Goods. Note that most of our customers are businesses and these Terms reflect this.

1. DEFINITIONS

In these Terms, the following terms shall have the following meanings:

"Agreement": any contract between the Company and the Buyer for the sale and purchase of the Goods from the Company.

"Bespoke Products": those Goods included in an Order which are designed specifically for a specific Buyer in accordance with the Order and which are not part of Vegware's standard catalogue.

"Intellectual Property": any patent, copyright, registered design, design right, trade mark, trade name, know how, or other industrial or intellectual property right of similar nature whether unregistered or registered or where registration has been applied for.

"Order": the Buyer's order to purchase Goods from the Company;

"Printed Products": those Goods included in an Order which are printed with material (i.e. trade names, trademarks etc) provided by a Buyer or designed by us in accordance with the Order.

"Terms": the terms and conditions of sale set out in this document.

"Website": the website located at www.vegwareus.com and/ or any replacement, successor or supporting URL.

2. GENERAL

- 2.1 Subject to clause 2.3, these Terms and the content of any Order accepted by us in accordance with these Terms, set out the whole of our agreement relating to the supply of Goods to you and they apply to any Agreement to the exclusion of all other terms and conditions that you may seek to impose or incorporate (including those which you seek to apply under any purchase order, confirmation of order, specification or any other document or which are implied by trade, custom, practice or course of dealing).

- 2.2 Any variations to these Terms (for example specific variations agreed with credit account Buyers) and any representations about the Goods shall have no effect unless expressly agreed in writing by an authorised representative of the Company. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf of the Company which is not set out in the Agreement.
- 2.3 If you are not an Individual, you confirm that you have authority to bind any business on whose behalf you make an order.

3. **ORDER PROCESS**

- 3.1 Please see the appropriate pages at www.vegwareus.com/ordering-delivery/info_5.html for information on how to place an Order.
- 3.2 Note that there will be no contract of any kind between you and us unless and until we actually dispatch the Goods to you. Your Order is an offer to buy Goods from us and it is your responsibility to ensure that the terms of any Order that you submit to us are full, complete and accurate. Nothing that we do or say – including any order acknowledgments sent to you by, or on behalf of, us - will amount to any acceptance of that offer until we actually dispatch the Goods to you. At any point up until then, we may decline to supply the Goods to you without giving any reason (including, without limitation, if any products in your Order are out of stock, your payment is not authorised, you are not eligible to order in accordance with these Terms, the pricing or product description on our Website is incorrect), in which case we will contact you by e-mail.
- 3.3 By placing an Order with us to buy any Goods, you authorise us (and our agents acting on our behalf) to transmit information to third parties or to obtain information about you and/ or any information about any other individuals that you may include in your Order, from third parties from time to time, including but not limited to your debit or credit card number or any relevant credit reports, to authenticate your identity and/ or the identity of any other individuals that you may include in your Order and to carry out credit checks, to validate your credit card, to obtain an initial credit card authorisation and to authorise individual purchase transactions.
- 3.4 Unless otherwise agreed in writing by an authorised representative of the Company, all quotations which we issue shall remain open for period of 30 days unless previously withdrawn. A quotation for the Goods given by us shall not constitute an offer by us capable of acceptance by you or any other party and no Agreement shall come into existence until the Goods are dispatched.

4. DESCRIPTION

- 4.1 The description of the Goods you include in your Order shall be as set out in our quotation or acknowledgment of your Order.
- 4.2 While we take due care in drawing up preparatory materials, all samples, drawings, descriptive matter and specifications provided by us and any descriptions or illustrations contained in our catalogues, brochures or Website – or provided to you directly - are issued for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement and there shall be no sale by sample.

5. PRICE

- 5.1 Unless special terms have been negotiated in writing by an authorised representative of the Company (for example for high volume Buyers or where Printed Products and/ or Bespoke Products are supplied), the price for the Goods shall, subject to clause 5.2, be the price quoted in the catalogue on the Website from time to time. The total price to be paid for Goods, including any applicable taxes and any delivery or shipping costs, will be clearly stated before you are asked to confirm your Order.
- 5.2 While we do our very best to ensure that all prices on our Website are accurate, errors may occasionally occur. If we discover an error in the price of Goods you have included in an Order we will inform you as soon as possible and give you the option of reconfirming your Order at the correct price or cancelling it. We are under no obligation to provide any Goods to you at an incorrect price, even after we have sent you an Order confirmation and/ or delivered the Goods to you, if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mis-pricing. If we are unable to contact you, we will treat the Order as cancelled. If you cancel and you have already paid for the Goods, you will receive a full refund.

6. PAYMENT

- 6.1 Payment for the Goods can be made by the methods shown on our Website at the time you place your Order. If you choose to pay by credit/debit card we will take payment from your card at the time we receive your Order, once we have checked your card details and have confirmed that stock is available. In the event that we take payment from you before the Agreement is formed and thereafter we do not accept your Order, we shall make a full refund of your payment to you. Any Goods on the same Order which we have not been included in a delivery do not form part of that Agreement. All payments shall be due per invoice terms. Any quotation for Printed Products and/ or Bespoke Products will set out the payment terms which will apply to such Agreement.

- 6.2 Time for payment shall be of the essence and no payment shall be deemed to have been received until we have received cleared funds.
- 6.3 All payments outstanding under the Agreement shall become due immediately on termination of the Agreement.
- 6.4 Buyer shall pay interest on all late payments at the lesser of the rate of 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Company for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Company does not waive by the exercise of any rights hereunder), Company shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder
- 6.5 Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Company, whether relating to Company's breach, bankruptcy or otherwise.
- 6.6 If you fail to pay any sum due under the Agreement by the due date:
- (a) we shall be permitted to cancel or suspend delivery of any other Goods ordered by you which have not yet been delivered, including any instalments not yet delivered.

7. **DELIVERY**

- 7.1 Subject to the remainder of this clause 7, your Order will be fulfilled as per the requested delivery option chosen and to the delivery address given when you place your Order. For more details see the appropriate pages at www.vegwareus.com/ordering-delivery/info_5.html.
- 7.2 You shall provide at the delivery address and at your own expense adequate and appropriate equipment and, where necessary, manual labour for unloading the Goods.
- 7.3 We make every effort to deliver goods within the estimated timescales, however, delays can occasionally occur due to unforeseen factors. Time for delivery shall therefore not be of the essence and any liability of Company 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
- 7.4 Where possible, we try to minimize shipping costs and packing materials by consolidating Orders into single cartons and/ or single deliveries.

- 7.5 We are entitled to deliver the Goods in separate instalments. Each instalment shall be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment shall entitle you to repudiate or cancel any other Agreement or instalment.
- 7.6 If for any reason you fail to accept delivery of any of the Goods when they are ready for delivery, or we are unable to deliver the Goods on time because you have not provided appropriate instructions, equipment, documents, licences or authorisations or through any other fault on your part:
- (a) risk in the Goods shall pass to you (including for loss or damage caused by our or our carrier's negligence);
 - (b) the Goods shall be deemed to have been delivered;
 - (c) we may store the Goods until delivery and you shall be liable for all related costs and expenses incurred by us in respect of such storage (including, without limitation, storage and insurance);
 - (d) we shall be permitted to cancel or suspend delivery of any other Goods ordered which have not yet been delivered, including any instalments not yet delivered; and
 - (e) any redelivery costs shall be at your expense.
- 7.7 The Company shall not be liable for any non-delivery of Goods (even if caused by Company's negligence) unless Buyer gives written notice to Company of the non-delivery within five days of the date when the Goods would in the ordinary course of events have been received.

8. PRINTED PRODUCTS AND BESPOKE PRODUCTS

- 8.1 The sale of any Printed Products and/ or Bespoke Products shall be made on the following terms:
- (a) Once a design is finalised, we shall send you an electronic/paper proof of the final Printed Products and/ or Bespoke Products. The electronic/paper proof must be signed by an authorised representative of the Buyer and returned to us by e-mail, fax or standard mail. No supplies of Printed Product and/ or Bespoke Products shall be made until we receive a signed electronic/paper proof.
 - (b) You are under an obligation to check the electronic/paper proof of the final Printed Products and /or Bespoke Products to ensure that it conforms with the specifications for the Printed Products and/ or Bespoke Products. We shall have no liability whatsoever for Goods which conform materially to the signed electronic/paper proof, but which you consider do not conform to specifications.

- (c) Pricing and payment terms for Printed Products and/ or Bespoke Products shall be as per the quotation provided by us.
- (d) We aim to deliver the quantity of Printed Products and/ or Bespoke Products ordered, however, in the event that we deliver a quantity of Goods of up to 10% more or less than the quantity ordered, you shall not be entitled to reject the Goods and shall pay for such goods at the pro rata rate.
- (e) Unless otherwise agreed in writing, all rights to Intellectual Property in Bespoke Products and/or Printed Products (other than trademarks and trade names which you own and any designs which you have paid us to create) shall be retained by us. Where we have produced a design (including a logo) for Printed Products or Bespoke Products (“Design”) and this Design has not been assigned to you for an agreed consideration, we shall retain all Intellectual Property in the Design and your licence to use the Design shall be strictly limited to use on the Bespoke Products and/or Printed Products which you purchase from us.
- (f) You agree to indemnify us against all liabilities, costs, expenses, damages and losses incurred and/ or suffered by Vegware in connection with any claim made for actual or alleged infringement of a third party's Intellectual Property, including trademark, registered design rights, or trade name rights, as a result of inclusion on a Printed Products and/ or Bespoke Products of any material (or part thereof) provided by you and/ or any design specifications requested by you.
- (g) While we are able to warehouse Printed Products and/ or Bespoke Products on your behalf, we are under no obligation to do so. If you wish us to warehouse on your behalf, you should contact us in advance of despatch to arrange pricing and other terms.

9. RISK AND OWNERSHIP

- 9.1 The Goods are at your risk from the date when the Goods are delivered or the date of the first attempted delivery as defined by clause 7.6.
- 9.2 Ownership and/ or title of the Goods shall not, however, pass to you until we have received in full (in cleared funds) all sums due in respect of:
 - (a) the Goods; and
 - (b) all other sums which are or which become due to us from you on any account.
- 9.3 Until ownership of the Goods has passed you shall:
 - (a) hold the Goods in a fiduciary capacity as our bailee;

- (b) store the Goods (at no cost to us) separately from all your other goods or goods of any third party so that they remain readily identifiable as our property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in good condition;
- (e) keep the Goods insured on our behalf for their full price against all risks to our reasonable satisfaction and hold any proceeds of the insurance in trust for us (on our request you shall produce this insurance policy); and
- (f) permit any of our officers, employees, representatives or agents to enter any premises where the Goods may be stored to inspect them, or, where the right to possession has terminated, to recover them.

9.4 Your right to possession of the Goods for which ownership and/ or title has not yet passed to you, shall terminate immediately in the event that:

- (a) you have a bankruptcy order made against you or you make an arrangement or composition with your creditors or are involved in any comparable bankruptcy proceedings; or
- (b) you convene a meeting of creditors, or enter into liquidation except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation; or
- (c) you have a receiver and/or manager, administrator or administrative receiver appointed to your undertaking or your assets or any parts thereof; or
- (d) a resolution is passed or a petition presented to any court for your winding-up; or
- (e) any proceedings are commenced relating to your insolvency or possible insolvency; or
- (f) you permit any execution, whether legal or equitable, to be levied on your property or obtained against you; or
- (g) you are unable to pay your debts or cease to trade; or
- (h) you encumber or in any way charge any of the Goods; or
- (i) at our reasonable discretion we consider your credit status to be unsatisfactory; or
- (j) you fail to observe or perform any of your obligations under the Agreement or any other contract between the Company and the Buyer;

and in the event of such termination of your right to possession, provided that the Goods have not been resold, or irremovably incorporated into another

product, and without limiting any other right or remedy that we may have, we may, at any time, require you to deliver up such Goods to us and if you fail to do so promptly, enter any premises of yours or of any third party where such Goods are stored in order to recover them.

10. RETURNS

10.1 Where Buyer purchases Goods other than Printed Products or Bespoke Products, Buyer shall inspect the Goods within five days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Company in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Company. "**Nonconforming 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.

10.2 If Buyer timely notifies Company of any Nonconforming Goods, Company shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Company exercises its option to replace Nonconforming Goods, Company shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods.

10.3 Any returns of goods, other than non-conforming goods, will be at our sole discretion, and shall be subject to return carriage costs plus a 20% restocking charge over and above the original price paid by Buyer for such Goods.

11. LIMITED WARRANTY AND LIMITED LIABILITY

11.1 **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; [OR (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:**

11.2 **LIMITATION OF LIABILITY:**

- (a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL,**

EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, 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 ONE TIMES THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER or \$25,000, WHICHEVER IS LESS**
- (c) The limitation of liability set forth in this Section shall not apply to (i) liability resulting from Company's gross negligence or wilful misconduct and (ii) death or bodily injury resulting from Company's acts or omissions.

12. INTELLECTUAL PROPERTY

Nothing in any Agreement with you gives you any rights to our Intellectual Property and nothing any Agreement, or our performance of any Agreement, is intended to, or shall be deemed to have the effect of, transferring any of our Intellectual Property (or any part thereof) to you.

13. FORCE MAJEURE

The Company shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Company including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

14. INSURANCE

If you are purchasing Goods from us in the course of a business and/ or you intend for any Goods purchased by you from us to be used by consumers, 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) with financially sound and reputable insurers for any and all liability (however arising) for a claim that the Goods are faulty or defective. Upon Company's request, Buyer shall provide Company with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Company's insurers and Company.

15. TERMINATION

In addition to any remedies that may be provided under these Terms, Company may terminate this Agreement with immediate effect without written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; or (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. GOVERNING LAW & JURISDICTION

16.1 All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware.

16.2 Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the City of Los Angeles and County of Los Angeles, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

17. COMPLIANCE WITH LAWS

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. Company may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods

18. MISCELLANEOUS PROVISIONS

- 18.1 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.
- 18.2 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
- 18.3 Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Company. 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.
- 18.4 Waiver. No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. 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.
- 18.5 Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be 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 in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

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.