

## TERMS AND CONDITIONS GOVERNING SALES

**1. GOVERNING PROVISIONS.** KITPACKERS, LLC or its affiliates(s) ("Kitpackers") as identified on the Quotation, Acknowledgment, Invoice, online order form or other commercial document provided by Kitpackers ("Commercial Document") offers to provide the goods and/or services described in such Commercial Document (the "Products") to the buyer to which this offer is addressed ("Buyer"), subject to the terms and conditions set forth herein and in such Commercial Document (together, the "Agreement"). Kitpackers' agreement to provide to Buyer the Products, and Buyer's purchase of the Products, is expressly limited to the terms of this Agreement. Buyer may not amend, modify or replace the terms of this Agreement with any conflicting, different or additional terms previously or hereafter received by Kitpackers, even if such terms recite that any action or inaction by Kitpackers constitutes agreement or consent by Kitpackers to such amendment, modification or replacement. If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein including, without limitation, all additional terms contained herein. Kitpackers objects to and rejects any additional, different or varying terms proposed by Buyer, unless an authorized officer of Kitpackers expressly accepts such terms in a signed writing. Any proposal of additional, different or varying terms by Buyer shall not operate as a rejection of Kitpackers' offer, and Kitpackers' offer shall be deemed accepted without such additional, different or varying terms.

**2. ACCEPTANCE.** Buyer shall be deemed to have made an unqualified acceptance of this Agreement, and the terms and conditions herein, on the earliest to occur of the following (a) Kitpackers' receipt of a copy of this Agreement, or any agreement incorporating this Agreement, signed by Buyer (with scanned or facsimile signatures treated as original signatures); (b) Buyer's order of Products after receiving notice of this Agreement; (c) Buyer's payment of any amounts due under this Agreement; (d) Buyer's delivery to Kitpackers of any material to be furnished by Buyer; (e) Kitpackers' delivery of the Products; (f) Buyer's failure to notify Kitpackers to the contrary within ten days of receipt of this Agreement; or (g) any other event constituting acceptance under applicable law. Written quotations are void unless accepted within 45 days from date of issue. Other Kitpackers publications are maintained as sources of general information and are not quotations or offers to sell. For purchases made by Buyer on Kitpackers' website, Buyer is deemed to have accepted this Agreement by clicking the checkbox reading "I have read and agree to the Terms and Conditions" on the final checkout page in the website shopping cart. Kitpackers is deemed to have accepted the Agreement upon shipment of the Products.

### **3. ORDERS; CANCELLATION OR MODIFICATION; RETURNS.**

**(a) Orders.** Buyer shall ensure that its orders are received by Kitpackers not less than 20 working days before the requested delivery dates. Kitpackers shall have the right to accept or reject purchase orders in its sole discretion. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Agreement, whether or not the order or change order so states. Minimum order quantity is \$100 per order or blanket release (\$50 for purchases made by Buyer on Kitpackers' website). Kitpackers shall use commercially reasonable efforts to provide Buyer with reasonable notice if a Product for which Kitpackers has accepted an order has or becomes obsolete, discontinued or otherwise unavailable or, in Kitpackers' reasonable determination, materially modified (whether by Kitpackers or its vendor). Buyer agrees that Kitpackers is not obligated to provide any specific amount of notice and Kitpackers shall have no liability for such obsolescence, discontinuation, unavailability, modification or resulting order cancellation by Kitpackers, other than to refund to Buyer any amounts received by Kitpackers from Buyer with respect to such Products that are not delivered to Buyer.

**(b) Cancellation or Modification.** Buyer may not cancel or modify its order except upon terms accepted by Kitpackers in writing, as cancellation and modification requests are subject to Kitpackers receiving vendor approval. In the event of any cancellation or modification, Buyer shall compensate Kitpackers for all costs and damages resulting there from, including, but not limited to, out-of-pocket expenses and lost profits and the fees and charges imposed by Kitpackers' suppliers.

**(c) Returns.** No Products may be returned to Kitpackers without its prior, written authorization and Products may be returned only on the terms or conditions specified in such authorization. Returned Products must be of current manufacture, unused, in resalable condition, and securely packed to reach Kitpackers without damage. Any cost incurred by Kitpackers to put Products in first class condition will be charged to Buyer. All Product returned to Kitpackers shall be subject to a 25% or greater restocking charge (depending on vendor restock policies) with a minimum restocking charge of \$40.00, plus the costs of freight, packaging, insurance and any import or export costs.

### **4. DELIVERY.**

**(a) Generally.** Unless previously agreed by Kitpackers and Buyer in writing, for shipments within the United States, Kitpackers shall deliver the Products F.O.B. Kitpackers' facility (the "Facility"). "F.O.B." shall be interpreted in accordance with the Uniform Commercial Code as adopted in the State of Wisconsin. For international shipments,

unless otherwise provided in Kitpackers' Commercial Document. Kitpackers shall deliver the Products FCA the Facility in accordance with INCOTERMS 2020 of the International Chamber of Commerce, as amended from time to time. Buyer shall pay for all costs of shipping. All risk of loss, damage or delay, and title to Products, shall pass from Kitpackers to Buyer upon delivery at the Facility. Partial shipments shall be permitted and Buyer shall pay for them pro rata. Buyer shall accept overrun and/or under runs not exceeding 10% of quantity ordered, to be paid for or allowed pro rata. Buyer shall fully insure all Products from time of Kitpackers' delivery hereunder until Kitpackers is paid in full therefor. For purchases made by Buyer on Kitpackers' website, delivery shall be pursuant to the web order terms and Kitpackers has no obligation to ship Product to Buyer unless Kitpackers has accepted the order and Buyer had paid for such Products in full prior to the time of delivery.

**(b) Delivery Dates.** All delivery dates are approximate. Delivery dates given by Kitpackers are based on prompt receipt of all necessary information regarding the order. Kitpackers will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Kitpackers to meet any delivery date does not constitute a cause for cancellation and/or for damages or penalties of any kind. Time for delivery shall not be of the essence.

**(c) Delivery Delays.** Any delay in delivery due to causes beyond Kitpackers' reasonable control, or due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions; (b) failure to arrange for pickup; (c) failure to supply or approve necessary data in a timely manner; (d) requested changes; or (e) failure to provide documents required for Kitpackers to effect delivery, Kitpackers will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon Kitpackers' demand.

**(d) Claims.** Claims for shortages or other errors must be made in writing to Kitpackers within ten days after Kitpackers' delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Buyer shall, promptly upon delivery, open, inspect and test all Products and report any discrepancy in writing to Kitpackers.

**5. PRICES; TAXES.** Unless prices are stated in Kitpackers' Commercial Document, prices shall be the higher of Kitpackers' most recent quote to Buyer, prevailing market price, Kitpackers' list price, or the last price charged by Kitpackers to Buyer for the Products. Kitpackers may from time to time increase prices for the Products, effective on notice to Buyer, in response to increases in the prices of raw or other supplied products or materials. Without limiting the foregoing, for a purchase order which contemplates delivery of Products (either in whole or in part) more than 30 days after the date of such purchase order, Kitpackers reserves the right to increase prices for Products delivered more than 30 days after the date of the purchase order. Kitpackers shall give Buyer verbal or written notice of any price increase at the time that Kitpackers is made aware of such increase and its effective date. Unless otherwise stated in Kitpackers' Commercial Document, prices are in U.S. Dollars, as delivered at the Facility. Buyer shall pay or reimburse Kitpackers for any tax (including sales tax but not including taxes on Kitpackers' income), duty, inspection or testing fee or any other fee or charge imposed on, in connection with or measured by the transaction between Kitpackers and Buyer in addition to the prices quoted or invoiced.

**6. TERMS OF PAYMENT.** Unless otherwise stated in Kitpackers' Commercial Document, payment terms are as follows. If Buyer resides in the United States, payment terms are net 30 days from Kitpackers' invoice date if Kitpackers approves credit. If Buyer resides outside the United States, Buyer shall pay Kitpackers by irrevocable Letter of Credit, including such provisions as are determined by Kitpackers at time of quote. All banking and other charges for any Letter of Credit are the responsibility of Buyer. Credit terms are subject to the approval Kitpackers' credit department and may be changed at any time and from time to time by Kitpackers in its sole discretion. For purchases made by Buyer on Kitpackers' website, payment may be made in U.S. dollars via Paypal Accounts, VISA, MasterCard, American Express and Discover. Payment is due and payable upon clicking the "Place Order" button on the website. Payment does not constitute Kitpackers' acceptance of the order. Kitpackers' declination of an order shall be deemed remedied by a refund of payment to Buyer within 30 days.

## **7. SECURITY.**

**(a) Generally.** If, during performance of this Agreement, Kitpackers determines in its discretion that Buyer's financial condition does not justify the terms of payment specified, Kitpackers may (a) demand, before proceeding with delivery of Products, full or partial payment in advance, satisfactory security or guaranties that invoices will be promptly paid when due or (b) at its option and without prejudice to other remedies, defer delivery of the Products or cancel this Agreement. Buyer agrees to reimburse Kitpackers for all costs and fees including, (but not limited to) attorneys' fees and repossession fees, incurred by Kitpackers in collecting any sums owed by Buyer to Kitpackers. Buyer agrees to pay a late payment charge of 1-1/2% per month (or, if less, the maximum amount allowable by law)

on all amounts not paid in full when due, payable on Kitpackers' demand. Buyer shall not set off amounts due to Kitpackers against claims or other amounts.

**(b) Security Interest.** In partial consideration for Kitpackers' sale of Products to Buyer, Buyer hereby grants to Kitpackers and Kitpackers hereby retains a security interest in all Products sold to Buyer and documents relating to such Products now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all inventories of the Products (or any other product bearing any trademark or trade name of Kitpackers or its affiliates or suppliers), returns or repossessions and the proceeds, including insurance proceeds and proceeds from products in which the Products were an input, of all of the foregoing, together with the additions and accessions thereof, to secure all of Buyer's obligations to Kitpackers under this Agreement and all other obligations of Buyer to Kitpackers. Buyer agrees to execute financing statements, continuation statements and other documents evidencing the security interest in the Products, and to take such actions as may be required by Kitpackers to evidence or perfect the security interest granted herein. With respect to such statements and documents, Kitpackers is authorized in Buyer's name or otherwise to take such actions as are permitted under this Agreement or applicable law, including, without limitation, signing Buyer's name, and Buyer hereby appoints Kitpackers as its attorney-in-fact for such purpose.

#### **8. LIMITED WARRANTIES AND REMEDY; DISCLAIMER OF OTHER WARRANTIES AND LIMITATION OF DAMAGES; BUYER'S OBLIGATIONS.**

**(a) Products in Original Packaging and not Manufactured by Kitpackers. IF BUYER IS PURCHASING PRODUCTS IN THEIR ORIGINAL PACKAGING AND NOT MANUFACTURED BY KITPACKERS, THE ONLY WARRANTY AVAILABLE TO BUYER AS TO THE PRODUCTS SHALL BE ANY MANUFACTURER'S WARRANTY WHICH MAY APPLY AND KITPACKERS MAKES NO INDEPENDENT WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).** Kitpackers does not adopt, guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer. Buyer assumes all liability with respect to the Product, its transport, use, misuse, storage and disposal.

#### **(b) Repackaged Products and Kitpackers' Products.**

(i) Repackaged Products. If Buyer is purchasing Products not manufactured by Kitpackers, but repackaged by Kitpackers, causing the original manufacturer's seal to be broken, Kitpackers warrants to original user only that the Products will be free from material defects in materials and workmanship attributable to the repackaging process under normal use and service for the shelf life of the Product as described in the technical data sheet, but no event longer than one year from the date of Kitpackers' delivery of such Product hereunder. Kitpackers is not the manufacturer and Buyer assumes all liability with respect to the Product, its transport, use, misuse, storage and disposal.

(ii) Kitpackers' Products. If Buyer is purchasing Products manufactured by Kitpackers, Kitpackers warrants to original user only that the Products will be free from material defects in materials and workmanship under normal use and service for the shelf life of the Product as described in the technical data sheet, but no event longer than one year from the date of Kitpackers' delivery of such Product hereunder.

(iii) Limitations and Remedies. There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow Kitpackers' instructions or improper installation, storage or maintenance. Kitpackers makes **NO WARRANTY** regarding Product compliance with Buyer's or its representative's needs, specifications, instructions or requirements. Buyer must make claims for defects in writing within 10 days after discovery of such defects. Buyer's failure to make such claim within the warranty period and within 10 days after discovering a defect shall constitute Buyer's irrevocable acceptance of the Products and Buyer's acknowledgement that the Products fully comply with the terms and conditions of this Agreement. Kitpackers may require Buyer to return to Kitpackers all Products subject to the claim. Kitpackers shall repair or replace, at its expense, any covered Products proved to Kitpackers' reasonable satisfaction to be defective within the warranty period. Such warranty satisfaction shall be available only if: (i) Kitpackers is notified in writing within 10 days after discovery of an alleged defect; (ii) the defect has not been caused by Buyer's misuse, neglect or alteration or by physical environment; and (iii) the manufacturer's shelf life of the Product (as indicated on the Product packaging) has not expired when the alleged defect is discovered. **KITPACKERS' SOLE OBLIGATION AND BUYER'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS DETERMINED BY KITPACKERS IN ITS REASONABLE DISCRETION TO BE COVERED BY THIS LIMITED WARRANTY.** Notice of any warranty claim or request for warranty service should be sent to Kitpackers at the following address: Kitpackers Corporation, W129 N10825 Washington Drive, Germantown, Wisconsin 53022, Attention: Customer Service. Any assistance Kitpackers provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the

warranty. Kitpackers will not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for those incurred with Kitpackers' prior written permission.

This warranty gives Buyer specific legal rights, and Buyer may also have other rights which vary from state to state.

**(c) NO LIABILITY FOR OTHER OBLIGATIONS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES.** KITPACKERS SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR STATUTE OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR THEIR USE (WHETHER THE PRODUCTS ARE IN ORIGINAL PACKAGING OR HAVE BEEN REPACKAGED OR MANUFACTURED BY KITPACKERS) OR KITPACKERS' UNDERTAKINGS, ACTS OR OMISSIONS. KITPACKERS WILL NOT, TO ITS KNOWLEDGE, SELL PRODUCTS OR PARTS TO BUYER THAT ARE COUNTERFEIT, BUT KITPACKERS IS NOT OBLIGATED TO TAKE SPECIFIC STEPS TO ASCERTAIN THE AUTHENTICITY OF PRODUCTS OR PARTS IT PROCURES FROM VENDORS. IN NO EVENT SHALL KITPACKERS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR LOST PROFITS (WHETHER DIRECTLY OR INDIRECTLY INCURRED) EVEN IF KITPACKERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY OR ANY OTHER REMEDY IN THIS AGREEMENT. KITPACKERS' AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS AGREEMENT SHALL BE LIMITED TO THE MONIES PAID TO KITPACKERS FOR THE RELEVANT PRODUCT(S), EXCEPT WITH RESPECT TO (i) LIABILITY RESULTING FROM KITPACKERS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (ii) DEATH OR BODILY INJURY RESULTING FROM KITPACKERS' ACTS OR OMISSIONS IN BREACH OF THIS AGREEMENT OR IN VIOLATION OF APPLICABLE LAW. Buyer agrees that Kitpackers has no post-sale duty to warn Buyer or any other party about any matter or, if such duty exists, Kitpackers satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post-sale duty to warn its customers and indemnifies Kitpackers against any Damages (as defined in section 11) in connection with such duty or failure to warn.

Some states do not allow the exclusion or limitation of incidental and consequential damages, so the above limitation or exclusion may not apply to Buyer.

**(d) Retains.** Kitpackers has no obligation to retain Product samples and Buyer accepts all responsibility for obtaining and retaining any required or desired retains or samples. If Buyer requests in writing that Kitpackers obtain and maintain a sample, and if Kitpackers agrees to do so, Buyer will pay Kitpackers' associated costs.

**(e) Buyer's Obligations.** Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and under Buyer's operating conditions, and Buyer shall assume all risk and liability whatsoever in connection therewith. Buyer agrees to test and evaluate samples to ensure compliance with all specifications, quality requirements and other requirements of Buyer's application. Kitpackers does not guaranty the accuracy of information given and recommendations made as to suitability of Products for Buyer's application or operating conditions. Nothing shall be construed to imply the nonexistence of any relevant patents or to constitute a permission, inducement or recommendation to practice any invention covered by any patent without authority from the patent owner. Buyer agrees to familiarize itself with and comply with all laws and regulations now or hereafter in effect and applicable to the purchase, transport, use, supply, storage, sale, offer for sale, lease and/or disposal of the Products ("Laws") including, without limitation, to the extent applicable, the U.S. Foreign Corrupt Practices Act and all other antibribery laws, all U.S. antiboycott laws, the U.S. Export Administration Act and all regulations thereunder and all laws relating to exports or re-exports of Products. If Buyer or its affiliates, agents or representatives engages a freight forwarder or similar service provider, Buyer shall provide Kitpackers with copies of freight forwarder (or similar) records regarding Product exports promptly upon request. Buyer shall promptly notify Kitpackers in writing if Buyer receives notice of or otherwise has reason to believe that a violation of U.S. export law has occurred or is likely to occur. Buyer assumes all risk with respect to Product compliance with applicable Laws (including without limitation all Environmental Laws in any jurisdiction). Buyer acknowledges that certain Products have restrictions on who can purchase, transport, use, supply, store, sell, offer for sale, lease and/or dispose of (the "Actions") the Product and on how and where such Actions may take place. Buyer agrees to be responsible for determining who may take such Actions and how and where such Actions may take place after Kitpackers' delivery hereunder, and further agrees to ensure that its customers comply with such requirements. Buyer shall maintain records pertaining to the Product's sale and use and Buyer's and its customers' compliance with applicable Environmental Laws, and Buyer shall make such records available to Kitpackers on demand. "Environmental Laws" means all applicable federal, state and local laws including rules of common law, statutes, rules, regulations, codes, ordinances, binding determinations, orders, permits, licenses, injunctions, writs, decrees or rulings of any governmental authority, and other governmental restrictions and requirements

relative to or that govern or purport to govern air quality, soil quality, water quality, sub-slab vapor and indoor air quality, wetlands, natural resources, solid waste, hazardous waste, hazardous or toxic substances, pollution or the protection of employee health and safety, public health, human health or the environment, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Emergency Planning and Community Right-to-Know Act, and the Toxic Substances Control Act, as each of these laws have been amended from time to time, and any analogous or related statutes and regulations, regulations of the U.S. Environmental Protection Agency, and regulations of any state department of natural resources, state environmental protection agency, and air quality management district or consortium now or at any time hereafter in effect.

**(f) Patent Infringement and Defects in Buyer's Specifications.** Orders manufactured to specifications, drawings, designs or descriptions provided by or for Buyer are executed only with the understanding that Buyer hereby agrees to indemnify and hold harmless Kitpackers from any and all Damages (as defined in section 11) sustained by Kitpackers, resulting from any action or threatened action against Kitpackers for (a) infringement of the patents or proprietary right of any other person, or (b) injury to person or property, including death, relating to defects in specifications, drawings, designs or descriptions provided by or for Buyer.

**9. DISCLAIMER OR LIMITATION OF OTHER WARRANTIES. KITPACKERS AND BUYER AGREE THAT THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS WARRANTIES. KITPACKERS HEREBY DISCLAIMS ALL OTHER EXPRESS WARRANTIES. FOR COMMERCIAL PRODUCTS, ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. FOR CONSUMER PRODUCTS, ALL WARRANTIES IMPLIED BY LAW, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY LIMITED TO THE PERIOD OF THE WARRANTY STATED ABOVE FOR THE RELEVANT PRODUCT.** Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Buyer.

#### **10. CONFIDENTIAL INFORMATION; TRADEMARKS.**

**(a) Confidential Information.** Buyer acknowledges that all trade secrets and Confidential Information (as defined below) which may be disclosed to it by Kitpackers or its affiliates shall at all times, both during and after expiration or termination of this Agreement for any reason, remain the exclusive property of Kitpackers or its affiliates or Suppliers and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by Kitpackers or its affiliates to Buyer orally or in writing, or acquired by Buyer through observation, regarding Kitpackers' or its affiliates' or suppliers' products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usages and requirements, financial information, business plans, strategies and future business relationships, engineering data, design information and engineering and shop drawings, with the exception of such information which Buyer can demonstrate by competent written evidence: (i) was already part of the public domain at the time of the disclosure by Kitpackers or its affiliates; (ii) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); or (iii) is received (after the disclosure by Kitpackers or its affiliates) by Buyer from a third party who did not require Buyer to hold it in confidence and did not acquire it directly or indirectly from Kitpackers or its affiliates under a continuing obligation of confidence. Except as necessary to perform its duties under this Agreement, Buyer shall not use or disclose any of such Confidential Information or Kitpackers' or its affiliates' trade secrets, but shall care for such confidential information and trade secrets using at least the same degree of care given its own confidential information and trade secrets. Upon expiration or termination of this Agreement for any reason, Buyer shall, within 15 days, surrender to Kitpackers all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible and intangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of Kitpackers' or its affiliates' or suppliers' property. Buyer shall be permitted to destroy rather than return all analyses, extracts, and summaries prepared by Buyer which contain Confidential Information, and such destruction shall be certified in writing to Kitpackers by an authorized officer of Buyer who has supervised such destruction. Buyer's obligations of non-use and non-disclosure of Kitpackers' and its affiliates' trade secrets will survive for so long as such trade secret constitutes a trade secret or for five years, whichever is longer. Nothing in this Agreement shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Kitpackers with broader protection than that provided herein.

**(c) Trademarks.** Any use of Kitpackers' or its affiliates' or suppliers' trademarks or other intellectual property shall be subject to Kitpackers' prior written approval in each instance and such restrictions as Kitpackers may, in its sole discretion, impose from time to time. Buyer agrees that neither it nor its affiliates will seek to register any trademark, service mark, or trade dress owned by Kitpackers or its affiliates or suppliers, and if Buyer or any of its

affiliates does obtain such a registration, Buyer or its affiliate shall immediately assign and do hereby assign the same to Kitpackers or its designee. Buyer acknowledges and agrees that Kitpackers or its affiliates or suppliers own all right, title, and interest in and to its trademarks. Except as otherwise agreed by Kitpackers, Products sold by Buyer shall bear Kitpackers' or its affiliate's or supplier's trademark, and Buyer shall not remove or efface such trademark. Buyer shall not sell Products unless Kitpackers has granted Buyer the right to do so. Buyer will not repackaging the Products or resell Products without Kitpackers' prior written consent, which consent may be withheld by Kitpackers in its sole discretion. Any use of Kitpackers' or its affiliates' or suppliers' trademarks in advertisements or promotion must be preapproved in writing by Kitpackers. Buyer and its affiliates agree to take all steps which Kitpackers may from time to time consider to be necessary to perfect or protect Kitpackers' or its affiliates' or suppliers' rights in its trademarks including, without limitation, executing all necessary assignments, declarations, and other documents requested by Kitpackers from time to time. Upon expiration or termination of this Agreement for any reason, Buyer and its affiliates shall take such steps and execute such documents as Kitpackers requests to cause Kitpackers or its affiliates or suppliers to own all rights in its trademarks and to terminate any rights Buyer may have to use such trademarks. Buyer shall inform Kitpackers promptly of any potential or actual infringement of any of Kitpackers' or its affiliates' or suppliers' trademarks and shall provide all assistance and information required by Kitpackers, at Kitpackers' expense, in connection with any such infringement.

**11. INDEMNIFICATION.** Buyer hereby releases and agrees to indemnify, defend and hold harmless Kitpackers, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers ("Kitpackers' Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, loss, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs of proceedings ("Damages") incurred by or against Kitpackers or any of Kitpackers' Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (i) misrepresentations, breach of the warranties, representations, covenants or agreement contained in this Agreement or any law by Buyer or any of Buyer's shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Buyer's Parties"), or (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties, or (iii) losses, damages or injuries caused by Buyer's products, Buyer's specifications, designs, approvals or instructions provided to Kitpackers, or due to improper application or use of the Products or otherwise. Prior to settling any claim, Buyer will give Kitpackers an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Kitpackers' written consent. In the event of any form of recall affecting or relating to the Products, Kitpackers shall have the right to control the recall process and Buyer shall fully cooperate with Kitpackers in connection with the recall.

## **12. ADDITIONAL PROVISIONS.**

**(a) General Provisions.** Kitpackers reserves the right to correct clerical or similar errors relating to price or any other term shown in this Agreement. The failure of Kitpackers to insist, in any one or more instances, upon performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition. The invalidity of any provision or clause of this Agreement shall not affect the validity of any other provision or clause hereof. Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of Kitpackers. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on Kitpackers' behalf. The provisions found in sections 3(c), 4(d), 6, 7, 8(e), 8(f), 10, 11 and 12 and the warranty and damage limitations in sections 8 and 9, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of Kitpackers' remedies herein are cumulative and not exclusive of any other remedies available to Kitpackers at law, by contract or in equity.

**(b) Entire Agreement. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY NEGOTIATIONS OR UNDERSTANDINGS BETWEEN KITPACKERS AND BUYER WHICH ARE NOT CONTAINED IN THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, PURCHASE ORDERS, CORRESPONDENCE OR STATEMENTS THAT CONFLICT WITH, DIFFER FROM OR MODIFY THIS AGREEMENT) SHALL HAVE NO FORCE OF EFFECT, UNLESS IN WRITING AND SIGNED BY AUTHORIZED OFFICERS OF KITPACKERS AND BUYER.** Kitpackers' sales representatives are without authority to change the terms of this Agreement.

**(c) Assignment.** Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party; provided, however, Kitpackers may assign, without Buyer's consent, this Agreement or its interest herein to any affiliate or to any assignee or successor of Kitpackers' business. Kitpackers reserves the right to use subcontractors. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Kitpackers and Buyer and their successors and assigns.

**(d) Governing Law; Dispute Resolution.** The internal laws of the State of Wisconsin, without regard to conflict of law provisions, shall govern the rights and obligations of Kitpackers and Buyer under this Agreement and any disputes hereunder. Neither this Agreement nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Agreement or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court. Upon expiration or termination of this Agreement for any reason, Kitpackers shall have all of the rights and remedies provided by law, including, without limitation, the rights of a secured party under Chapter 409, Wisconsin Statutes or any successor statute or similar statute in the jurisdiction where Buyer is located or stores the Products. Kitpackers shall be entitled to temporary and/or permanent injunctive relief and/or other equitable remedies to protect its (or its affiliates' or suppliers') Confidential Information or intellectual property.

**(e) Force Majeure.** Kitpackers shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Kitpackers' available supply or any other cause beyond Kitpackers' control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Kitpackers may, at its option and without incurring liability, prorate its deliveries, cancel all or any portion of the Agreement and/or extend any date upon which performance is due hereunder.

**(f) Termination.** In addition to any remedies that may be provided herein, Kitpackers may terminate this Agreement with immediate effect upon written notice to Buyer if Buyer (i) fails to pay any amount when due hereunder, (ii) has not otherwise performed or complied with this Agreement 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.

**(g) 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 this Agreement, except as may be set forth in section 11 with respect to Kitpackers' Indemnified Parties.