

Terms & Conditions of Sale

THIS TRANSACTION IS GOVERNED BY EVERGREEN PACKAGING'S (SELLER'S) TERMS AND CONDITIONS OF SALE, NOTWITHSTANDING ANY PROVISIONS SUBMITTED BY BUYER. ACCEPTANCE OF THE ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO SELLER'S TERMS AND CONDITIONS. SELLER SPECIFICALLY REJECTS ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS AND NEITHER SELLER'S PERFORMANCE NOR RECEIPT OF PAYMENT SHALL CONSTITUTE ANY ACCEPTANCE OF THEM. IN THE EVENT THERE IS A WRITTEN AGREEMENT SIGNED BY BUYER AND SELLER THAT CONFLICTS WITH THE TERMS SET FORTH BELOW, THE TERMS OF THE WRITTEN AGREEMENT CONTROL FOR SUCH SPECIFIC PROVISIONS IN CONFLICT.

1. TERMS OF PAYMENT. Seller shall render an invoice upon shipment of each order. Unless otherwise specifically set forth, a one and one-half percent per month (18 percent per annum) charge or the highest permissible rate under applicable law, whichever is less, shall be assessed on late payments. Payments shall be made at the direction of and to the location specified by Seller. Terms of payment shall be in accordance with Seller's invoice and shall be subject to change by Seller, up to and including the requirement of cash with order. Unless otherwise agreed in writing between Seller and Buyer, payment is due in United States Dollars.

2. SHIPPING; TITLE; RISK OF LOSS.

FOR PACKAGING AND PAPERBOARD ONLY:

For domestic sales, standard shipping terms of F.O.B. Seller's plant apply. For export sales, shipping terms (INCOTERMS® 2000) as agreed to between Buyer and Seller shall apply, if terms are not specifically agreed, standard international shipping terms are FCA Seller's plant (INCOTERMS® 2000) with title transferring at origin.

FOR PAPER ONLY:

For domestic sales, goods shall be delivered to Buyer F.O.B. loading dock at Seller's mill (as defined in the Tennessee Uniform Commercial Code). Although title and risk of loss shall transfer at F.O.B. loading dock at Seller's mill, Seller will ship the goods Freight Pre-Paid and Add to the specified Buyer plant. "Freight Pre-Paid and Add" means that Seller will arrange and pay for the freight and then will add such freight costs to the invoice, and Buyer shall reimburse Seller for any and all freight costs and expenses paid by Seller to transport the goods from Seller's mill to the specified destination. For ultimate destinations outside of the U.S., although title and risk of loss shall transfer EXW loading dock at Seller's mill (*Incoterms 2020*), Products shall be delivered to Buyer "Freight Pre-Paid and Add" to the destination specified by Buyer, unless Buyer and Seller agree in writing to other *Incoterms 2020* shipping terms. Goods ordered in less than full vehicle quantities will be subject to additional freight charges (actual freight

cost). Delivery dates are approximate. Claims for damages to goods will be handled under Seller's "EZ Claim" transport claims process.

3. **ADDITIONAL CHARGES.** In addition to the invoice amount, Buyer shall be responsible for any duties, charges and/or taxes (including, but not limited to, value added, use, excise, environmental impact, sales or other, similar taxes) imposed by any governmental authority with respect to the manufacture, sale, transportation, delivery, and/or use of the goods and/or otherwise imposed on this transaction (which includes, but is not limited to, the purchase of raw materials associated with this transaction).

4. **EXCUSE OF PERFORMANCE.** No liability shall result from delay in performance caused by circumstances beyond the control of the party affected, including but not limited to, act of God, fire, flood, war, act of terror, government action, accident, labor trouble or shortage, and inability to obtain material, equipment, or transportation. Quantities so affected may be eliminated from the amount ordered at the discretion of the party affected without liability and Seller may allocate its available supply among its purchasers, including its own internal customers, but the order shall remain otherwise unaffected.

5. **FINANCIAL RESPONSIBILITY.** If at any time and for any reason the financial responsibility of Buyer shall become unsatisfactory to Seller, or Buyer does not comply with Seller's credit policies, Seller may require cash or satisfactory security on subsequent shipments or deliveries without impairing the obligation of Buyer to take and pay for the quantity of goods ordered.

6. **DEFAULT.** In the event Buyer fails to pay any invoice when due, Buyer shall be in default with respect to all unpaid invoices, whether due or not, which unpaid invoices shall be immediately due and payable. Upon Buyer's failure to pay any invoice when due, Buyer agrees to also pay Seller for any undelivered inventory produced by Seller for sale to Buyer, whether invoiced or not, at customary prices between Seller and Buyer. In the event of default, Seller shall be entitled to collect payment for all unpaid invoices and any undelivered inventory. In the event Seller engages attorneys to enforce these Terms and Conditions or to collect on any amounts owed to Seller, Buyer agrees to pay Seller's reasonable attorneys' fees. The remedies under this Section 6 are in addition to any other remedies available to Seller at law or in equity.

7. **LIABILITY.** Buyer shall examine the goods for nonconformity promptly upon receipt. All claims of whatever nature shall be deemed waived unless all defects ascertainable at the time of giving notice are stated with particularity in writing and received by Seller, promptly upon discovery, and in any event within 90 days of Buyer's receipt of shipment. Any action for breach of this transaction based in whole or in part on nonconformity of the goods must be commenced within one year after the cause of action has accrued.

Seller shall in no event be liable for any incidental, consequential, punitive, or special damages. Seller's liability and Buyer's exclusive remedy for any cause of action arising out of this transaction and its performance, including negligence, is expressly limited to replacement of nonconforming goods or payment in an amount not to exceed the purchase price paid for the specific goods for which damages are claimed, at Seller's option.

Buyer shall not be entitled to deduct from the price invoiced to it the amount of any claim asserted against Seller without Seller's written consent. Buyer's failure to accept delivery of any

installment of shipment of goods in the quantities and on the terms specified by any invoice or to fulfill any other provision of any invoice shall constitute a material breach of the entire transaction, in response to which, in addition to any other remedies here under or at law, Seller may in its discretion by written notice to Buyer at least five days prior to the start of the succeeding month (i) declare the entire transaction terminated as of the date of the breach, or (ii) reduce the installments during the remainder of the term of the transaction to that quantity last ordered by Buyer.

7. WARRANTIES. SELLER MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, BY FACT OR BY LAW, OTHER THAN ITS DELIVERY OF GOODS OF SELLER'S STANDARD QUALITY. SELLER MAKES NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY. THIS WARRANTY EXTENDS ONLY TO BUYER, AND IN NO EVENT SHALL SELLER BE LIABLE FOR ANY PERSON DESIGNATED AS A THIRD PARTY BENEFICIARY OF THIS WARRANTY OR ANY OTHER WARRANTY HELD TO SURVIVE SELLER'S DISCLAIMER. BUYER'S EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY IS EXPRESSLY LIMITED TO SELLER REPLACING NONCONFORMING GOODS OR PAYING AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE PAID FOR THE SPECIFIC GOODS FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION.

8. WAIVER. The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of any invoice or of these terms and conditions shall not operate as a continuing waiver of such rights.

9. ASSIGNMENT. Any order and its rights and obligations are not assignable or transferable by Buyer, in whole or in part, except with the written consent of Seller.

10. NOTICES; GOVERNING LAW. This transaction shall be governed by the laws of the State of Tennessee, without reference to choice of law rules or to Convention on Contracts for the International Sale of Goods, which is hereby expressly excluded. All notices required by any invoice shall be sufficiently given if sent by U.S. mail (return receipt requested) or by recognized international courier (e.g., FedEx, UPS, and DHL) addressed to the party at the place of business referred to on the front of the invoice.

11. MODIFICATION; MERGER. These terms and conditions may be modified or revised only by a writing signed by authorized agents of the parties. Unless goods covered by any invoice are the subject of a written contract between the parties, the invoice and these terms shall constitute the entire agreement between the parties and there are no understandings, agreements, or representations, express or implied, not specified herein.

12. CONFIDENTIALITY. Any agreement between Buyer and Seller is confidential and may only be disclosed as required by law, unless agreed to in writing by Buyer and Seller.