



UNIVERSAL
PACKAGING

EST. 1985

TERMS & CONDITIONS

updated: Jan 08, 2015

Parties - In these terms and conditions "seller" means the corporation whose named first appears above on this page and "customer" means the buyer named in above in the above price quote or order confirmation, as the case may be.

Delivery Dates - All dates, timetables and lead times indicated are estimates only. Seller will not be liable for any claim, loss or damage arising out of late delivery including, without limitation, missing mobile bottling dates. If customer is using mobile bottlers customer must sign-off on all order confirmations at least forty (40) business days, and on all artwork at least thirty (30) business days, in advance of customer's mobile bottler date, failing which all additional costs (including, without limitation, freight, production and art costs) incurred by seller in attempting to meet such date shall be payable by customer. In these terms and conditions "business days" means all days other than Saturdays, Sundays and statutory holidays observed in the seller's jurisdiction.

Changing The Decoration Order - No changes are allowed within 72-hours of the production date. Any quantity/volume changes made to the decoration order between 3 and 7 working days before Universal Packaging's production date will result in a \$250 schedule disruption surcharge. Additionally, if the original Sales Order size has been reduced, any materials (eg: glass) that Universal Packaging has brought in to fulfill the original order will get charged to the customer.

Risk of Loss and Inspection of Goods - In these terms and conditions the term "f.o.b." is used only as a price term. Risk for goods sold passes to customer on placement with a carrier, subject only to customer's right to inspect the goods on tender by seller or the carrier and to give notice of any claim for shortfalls, discrepancies or defects ("claim") within thirty (30) days thereafter. No notice of claim shall be valid or effective unless it sets out the specific nature of the shortfalls, discrepancies or defects with reasonable particularity. Customer shall be deemed to irrevocably accept the goods and to acknowledge that the goods fully comply with all aspects of the order save only to the extent set out in any notice of claim delivered within said thirty (30) day period.

Tolerances (Decorated Bottles) - This refers to our production over/under run requirements. For Decoration orders of 12,000 bottles or greater there is a production tolerance of +/-2%. For orders of 6,000-11,999 bottles there is a production tolerance of +/-5%. And for orders less than 6,000 bottles there is a production tolerance of +/-10%.

Tolerances (Online Printed Cartons) - This refers to the carton print quality. The production tolerance is 10% on all orders. This means that the customer accepts that there could be up to 10% of the cartons with a less than perfect print quality.

Returns - No return of goods may be made without seller's prior written permission and seller may refuse the return of any goods for which such permission has not been given. Unless seller otherwise stipulates in writing, all returns shall be delivered f.o.b. seller's original shipping point and no risk shall pass to seller until delivery thereto. The amount of any credit to be given to customer for returned product shall be as determined by seller in its sole discretion.

Rush Screen Printing and Late Art Changes - If seller accepts a request from customer for screen printing to be produced within five (5) days of seller receiving signed off artwork, customer will pay a 25% premium on seller's quoted price or, if no price has been quoted, to seller's usual price at the time. If seller accepts any artwork change requested within seventy-two (72) hours of scheduled production, customer will pay \$250 dollars for each such change. Customer shall not be entitled to make any claim in respect of any screen printing or art changes to which this paragraph applies.

Customer Supplied Glassware - CUSTOMER SHALL INDEMNIFY AND SAVE SELLER AND SELLER'S SUPPLIERS HARMLESS AGAINST ALL ACTIONS, APPEALS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LAWYER FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES) ARISING DIRECTLY OR INDIRECTLY OUT OF GLASSWARE NOT SUPPLIED BY SELLER ("CUSTOMER SUPPLIED WARE"). WITHOUT LIMITING THE FOREGOING, CUSTOMER SHALL INDEMNIFY SELLER FOR ANY DIRECTLY RELATED DOWNTIME COSTS INCURRED BY SELLER OR ITS SUPPLIERS WHICH IS CAUSED DIRECTLY OR INDIRECTLY AS A RESULT OF CUSTOMER SUPPLIED WARE, AS INVOICED BY SELLER. CUSTOMER SHALL NOT BE ENTITLED TO MAKE ANY CLAIM ARISING DIRECTLY OR INDIRECTLY FROM CUSTOMER SUPPLIED WARE.

ACL - Customer accepts full responsibility for the appearance of any screen printed product unless a screen printed sample is requested and approved by customer in writing in advance. Customer accepts full responsibility for any clarity or registration problems arising from requesting the use of fonts under 2 mm in size. Customer acknowledges that some variation between final products and pre-production samples is to be expected due to differences between sample creation and production run processes. Although screen printing & frosting using ceramic paints are extremely durable, seller makes no warranty as to ink or frost adhesion, customer is responsible to perform its own testing and to make its own determination on suitability for its intended purpose. All screen printing and/or glassware sold by seller to customer is good for one trip only. Seller makes no warranty as to multiple trips for either screen printing or plain glassware. Customer accepts the readability of printed QR codes and bar codes to the standard of seller's own code scanner. Customer accepts all risk of readability problems from specifying truncated bar codes or of QR codes or bar codes printed in colors other than white or ivory. Buyer acknowledges that there may be some variation in appearance of sprayed/frosted bottles.

Bottle Closures - CUSTOMER AGREES THAT IT IS SOLELY RESPONSIBLE TO ENSURE THAT IT LEARNS AND SCRUPULOUSLY OBSERVES AND COMPLIES WITH THE CURRENT MANUFACTURER'S SPECIFICATIONS, PROCEDURES AND REQUIREMENTS FOR THE STORAGE, HANDLING AND APPLICATION OF BOTTLE CLOSURES SOLD TO IT BY SELLER. IN THE CASE OF VINO-LOK OR VINO-SEAL™ GLASS CLOSURES, CUSTOMER ACKNOWLEDGES HAVING OBTAINED SUCH APPLICATION SPECIFICATIONS PROCEDURES AND REQUIREMENTS. CUSTOMER SHALL INDEMNIFY AND SAVE SELLER AND SELLER'S SUPPLIERS HARMLESS AGAINST ALL ACTIONS, APPEALS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LAWYER FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES) ARISING DIRECTLY OR INDIRECTLY OUT OF CUSTOMER FAILING TO SCRUPULOUSLY OBSERVE AND COMPLY WITH ALL APPLICABLE MANUFACTURER'S STORAGE, HANDLING AND APPLICATION SPECIFICATIONS, PROCEDURES AND REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, CLAIMS MADE BY THIRD PARTIES AGAINST SELLER.

Payment - Payment terms are as indicated in the order confirmation. All invoices rendered by seller shall be deemed correct and binding unless seller receives written notice of objection from customer within ten (10) days of the invoice being rendered. Late payments shall bear interest at the lesser of 1% per month (12% per annum) compounded annually or the maximum rate permitted by law.

Security - Customer hereby grants seller a security interest in all of customer's present and subsequently acquired personal property as security for the payment by customer of all amounts of every nature and kind now or hereafter due by customer to seller.

Errors and Omissions - All clerical or stenographic errors are subject to correction by seller.

Disclaimer - THERE ARE NO EXPRESS OR IMPLIED WARRANTIES MADE BY SELLER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO MERCHANTABILITY, FITNESS FOR PURPOSE OR CONFORMANCE WITH DESCRIPTION OR SAMPLE, EXCEPT AS IS OTHERWISE SPECIFICALLY SET OUT IN WRITING IN THESE TERMS AND CONDITIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SHALL BEAR NO LIABILITY FOR ANYTHING ARISING FROM FOREIGN MATERIAL OR SUBSTANCES FOUND IN GOODS SUPPLIED BY SELLER AND CUSTOMER SHALL INDEMNIFY AND SAVE SELLER HARMLESS AGAINST ALL ACTIONS, APPEALS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LAWYER FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES) BROUGHT BY ANY THIRD PARTY AGAINST SELLER ARISING DIRECTLY OR INDIRECTLY FROM SAME.

Force Majeure - Despite anything else to the contrary, if seller is, in good faith, delayed or prevented from doing anything required of it because of a strike, labour trouble, inability to obtain materials or services, power failure, restrictive government laws or regulations, riots, insurrection, sabotage, rebellion, war, act of god, terrorism or any other similar reason that is not the fault of seller, the delay or the doing of the thing, as applicable, is excused.

Exclusive Terms - Any acceptance by seller arising from this document is conditional on customer's assent to these terms and conditions. These terms and conditions supersede and replace all prior communications between seller and customer with respect to the subject matter of this order confirmation and represent the entire and exclusive agreement between the parties, notwithstanding any prior course of dealings or trade custom or usage. These terms and conditions may only be varied, amended or added to by further written agreement signed by a senior officer of seller. In the absence of such an agreement, and if customer has not already accepted these terms and conditions in writing, the delivery of the goods shall not constitute an acceptance by seller of any other terms proposed by customer and customer shall be deemed to irrevocably accept these terms and conditions "as is" unless customer, within five (5) days thereafter, delivers written notice to seller specifically referring to and rejecting these terms and conditions, in which case seller, at its option, may reclaim the goods.



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Limits on Liability - SELLER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY ACTIONS, APPEALS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES IN ANY WAY ARISING OUT OF OR RELATING TO THE GOODS SUPPLIED OR SERVICES PERFORMED, EITHER IN CONTRACT OR IN TORT, FOR AN AGGREGATE AMOUNT IN EXCESS OF THE AMOUNT PAID BY CUSTOMER TO SELLER FOR SAME AND IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND OPPORTUNITY COSTS). IN ANY ACTION, CLAIM, LOSS OR DAMAGES ARISING OUT THIS ORDER CUSTOMER AGREES THAT SELLER'S LIABILITY WILL BE SEVERAL AND NOT JOINT AND SEVERAL. CUSTOMER MAY ONLY CLAIM PAYMENT FROM SELLER OF SELLER'S PROPORTIONATE SHARE OF THE TOTAL LIABILITY BASED ON DEGREE OF FAULT. IN THE EVENT OF A CLAIM BY ANY THIRD PARTY AGAINST SELLER THAT ARISES OUT OF OR RELATES TO THE GOODS AND SERVICES PROVIDED OR TO BE PROVIDED PURSUANT TO THIS ORDER, CUSTOMER WILL INDEMNIFY SELLER FROM ALL ACTIONS, APPEALS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LAWYER FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES) EXCEPT TO THE EXTENT FINALLY DETERMINED TO HAVE RESULTED FROM THE DELIBERATE OR FRAUDULENT MISCONDUCT OF SELLER.

Patent Infringement Indemnity – If anything sold by seller to customer is not part of seller's standard line offered in the usual course of its business but is sourced or produced pursuant to customer's specifications or designs then customer shall indemnify and save seller harmless against all actions, appeals, damages, claims, liabilities, costs, expenses, or losses (including, without limitation, lawyer fees and expenses and expert witness fees and expenses) brought by any third party against seller arising out of any claim or demand for or in the nature of infringement of patent, industrial design, trade dress or trademark or in the nature of passing off, unfair competition or the like, regardless of the forum or jurisdiction in which such claim or demand is made.

Warranty of Solvency - Customer represents and warrants to seller that, at the time of accepting this order confirmation, customer is solvent and that the placing of the subject order will not render customer insolvent. For these purposes, "solvent" means that the value of customer's assets is not less than the amount of its total liabilities and that customer is able to pay its liabilities as they become due in the ordinary course of its business.

Litigation Costs - In the event of any litigation arising out of the sale of goods or services by seller to customer, the prevailing party shall be entitled to recover its reasonable lawyer fees and expenses and expert witness fees and expenses from the other, provided that if success is mixed then such party shall be entitled to recover such portion of such fees and expenses as the court in such matter determines to be equitable and commensurate with the degree of success achieved.

Affiliates - For the purposes of the indemnities given by customer pursuant to these terms and conditions and for no other purposes whatsoever, "seller" includes seller, seller's associated and affiliated corporate entities and all of their respective partners, directors, officers and employees. Purchaser acknowledges that the seller acts as agent for such persons solely for the purposes of obtaining such indemnities.

Interpretation – These terms and conditions inure to the benefit of and bind the parties and their respective successors and assigns. The invalidity of unenforceability of any of these terms and conditions shall not affect the validity or enforceability of the other terms and conditions herein. All headings in these terms and conditions are for convenience only and shall not affect the construction of interpretation of the agreement between the parties. Wherever the masculine, feminine or neuter gender is used it shall be deemed to include the others and the use of the singular shall include the plural and vice versa.