

TERMS AND CONDITIONS OF SALE

1. Formation of Contract. Unless the context clearly requires otherwise, as used in these Terms and Conditions, the terms “our,” “we,” “us” and the like mean and refer to Apex Filling Systems, LLC and our affiliates if applicable, and the terms “your,” “you” and the like mean and refer to the purchaser of Products. “**Equipment**” means filling equipment, cappers, conveyors, turntables and labeling equipment manufactured by us and specified in this Proposal. “**Products**” means the Equipment, goods and services provided to you and specified in this Proposal (the “**Proposal**”). “**Order**” means your written, electronic or verbal communication to purchase Products. “**Specifications**” means the written performance levels indicated on the Order Specification Confirmation Form accompanying this Proposal. “**Agreement**” means these Terms and Conditions of Sale and the Proposal. Our offer to sell Products is conditioned upon your agreement to the Agreement. Only the Agreement shall apply and we expressly reject any other terms proffered by you at any time whether as part of an Order or otherwise. Our delay or failure to object to any terms or conditions received from you, including your original Order, will not be a waiver of any Agreement term. Under no circumstances shall your Order or our acceptance of your Order be construed or implied to create an obligation (a) on your part to make, subsequent to the Order, any additional purchase orders for any of our products, or (b) on our part to accept any such additional purchase orders for any of our products.

2. Prices. The prices of Products are as stated in this Proposal and, unless we state otherwise, are based on shipment FOB our shipping point. The prices of Products excludes all taxes (imposed by any state, country or other governmental entity), duties, special packing and freight costs (including, without limitation, the cost of loading Products on board a carrier) and related costs and expenses, all of which shall be added to such prices and paid by you.

3. Payment Terms. Sixty percent (60%) of the price for Products is payable upon acceptance of the Proposal with the balance payable prior to shipment, unless other terms specified in the Proposal. Time is of the essence regarding your payment obligations

4. Title, Risks and Delivery. Title to such Products shall pass to you at the earlier of (i) the date when you obtain physical possession of such Products or part thereof or (ii) the date such Products are loaded on a carrier for delivery to you. If no carrier is specified by you sufficiently in advance of the required date(s) of shipment, we may select any mode(s) of transportation and any common carrier satisfactory to us and such selection shall conclusively be deemed satisfactory to you. Unless we specify otherwise, delivery is FOB our shipping point. You alone bear the risk of loss or damage to the Products once we provide them to the carrier. You acknowledge and agree that all delivery times or shipment dates are approximate, and may be changed. We will give you as much notice as is reasonably possible of such change. Time for delivery of the Products is not of the essence and we shall not be liable for any loss or damage you may suffer due to any changed or missed delivery times or shipment dates. In the event you fail to take delivery of the Products tendered by us, you shall, notwithstanding anything to the contrary herein, (i) thereafter bear all risk of loss with respect to such Products, (ii) promptly reimburse us for any packing, un-packing, loading, un-loading, storage, protection, freight and other costs thereafter incurred by us in connection with such Products, and (iii) pay us, at our then current commercial billing rates, for any storage of such Products by us.

5. Security Interest. We shall retain, and you hereby grant to us, a security interest in the Products, now owned or hereafter acquired, wherever located, including all returns, reposessions and parts, and all chattel paper, instruments, documents, accounts, general intangibles, contract rights and security agreements (resulting from the sale or other disposition of such Products) and all cash and non-cash proceeds of any of the foregoing, which shall secure the payment of all amounts due from you to us for such Products. You shall, at our request, execute, and you hereby grant us the right to execute in your name, any documents necessary to grant to us a security interest in such Products and any filings necessary to perfect such security interest in all jurisdictions where we deem such filings to be necessary to protect our interest.

6. Export Control. You will not export or re-export any Products, technical data, direct products thereof or any other items which would violate any applicable export control laws and regulations, including but not limited to those of the United States. You agree it is your responsibility to obtain copies of and to familiarize yourself fully with these laws and regulations to avoid violation.

7. Inspection and Acceptance. Products are accepted by you unless we receive written notice to the contrary specifying the nonconformance within 30 days of your receipt of Products. We reserve the right to examine on your premises any Products you claim are nonconforming. We may impose charges to reimburse us for our costs if we find your claim is unsupported, or for rescreening conforming Products. No Products will be returnable to us unless you have received our written consent and complied with our return material authorization (RMA).

8. Testing of Equipment; Samples. We test all Equipment for compliance with Specifications. Notwithstanding Section 13A, we will not warrant Equipment that has not been tested by our application engineers. You must provide Material Safety Data Sheets for any material subject to HSC standards and submitted for testing. We are not responsible for failure to test any potentially hazardous material with no accompanying Material Safety Data Sheet. You must provide samples product, containers, caps, and/or labels for evaluation and use in testing by us. Your failure to provide adequate test samples prior to shipment will void the Equipment warranties in Section 13A. Quantities required vary with each application, and the Equipment purchased. You should consult with our agent for the quantities required. We are not responsible for design misapplication of Equipment due to your failure to provide adequate samples for testing. In the case of filling Equipment purchased for the purpose of filling to a specific level in the container, you must define the cosmetic fill height of the liquid in each container in terms of distance from the top of the container. Any modifications to Equipment that is required in the field due to the failure to provide correct samples and the information above shall be at your expense. We are not responsible for performance failures due to manufacturing variances of your caps and containers. You are responsible for using caps and containers that are substantially the same as the samples tested by us. The Products, including Equipment, and Specifications expressly set forth in this Proposal comprise the entirety of what is offered for sale. Any subsequent additions or modifications to this Proposal by you must be in writing.

9. Bulk Product Supply. Unless specifically supplied by us in this Proposal, you are responsible for product feed and supply system(s) to work in conjunction with all Equipment. You are responsible for supplying any filler reservoir with product at a rate greater than or equal to 125% of the filler Equipment's output. Unless specifically supplied in this Proposal, you are responsible for level control of the product reservoir in order to guarantee filling accuracy.

10. Your Responsibilities. You are responsible for all permanent electrical hardwiring, including any hardwiring between the Equipment and/or control boxes, and supplying air pumping, and all incoming product supply to the Equipment. We may provide temporary connections for testing purposes only. You are responsible for ensuring final compliance with all local codes, including but not limited to safety standards, OSHA compliance, and electrical code compliance, required certifications, and any associated costs. Due to the wide variety of products that may be run on the Equipment, you must be responsible for final confirmation of the material compatibility of all contact components.

11. Safety Requirements. Purchase of additional machine guarding and interlocked enclosures is strongly recommended. If you fail to purchase additional guarding, you agree to indemnify us from all liabilities and suits that may arise from your use of the Equipment.

12. Changes; Cancellation. In the event of any change in construction or design of Equipment resulting from you supplying incorrect tolerances, prints or samples, or by changes in, the specifications, then you shall pay any resulting increase in costs for Products. If you cancel any portion of an Order, then we reserve the right to charge you a cancellation and/or restocking fee, not to exceed 30% of the purchase price for the cancelled Products. Customized parts will not be refunded.

13. Limited Product Warranty.

A. Products. We warrant that Products of our own manufacture are free from defects in material and workmanship and conform to Specifications in all material respects for a period of two (2) years from date of delivery. This warranty will not apply (i) in cases where Products have suffered misuse, abuse, neglect, alteration, accident, mishandling, repair, operation outside the associated environmental specifications, improper installation, improper testing or the like after shipment; (ii) where Products are designated as experimental or to be used for development purposes; (iii) to Products not manufactured by us or a related company; or (iv) to Products for which claims are being made by anyone other than you (collectively a "**Disqualifying Event**"). Our giving you technical assistance will not expand this limited warranty. This limited warranty does not apply to any equipment within which Products are contained or integrated.

To obtain a remedy for Products failing to meet the foregoing warranty, the following conditions must be met: (i) you must notify us in writing promptly on discovery of the deficiency in reasonable detail within the warranty period; (ii) you must return Products to our plant promptly on receipt of our RMA number, at your risk and expense, or pay for our expenses to travel to your plant; and (iii) we confirm the claimed deficiency is present and find it is not attributable to a Disqualifying Event. If all of these conditions are met, we will, at our option, (a) refund of the price paid by you for the Products in question and return of such Products to us, or (b) repair and/or replacement of nonconforming Products, or parts thereof. The repair and/or replacement of nonconforming Products does not include reimbursement for any labor costs incurred to remove defective units or install replacement units. **SECTION 13A CONSTITUTES YOUR SOLE AND EXCLUSIVE REMEDY FOR BREACH OF OUR PRODUCTS WARRANTY, AND WE WILL HAVE A REASONABLE TIME TO PROVIDE THE REMEDY.**

B. EXCLUSIVE WARRANTIES. YOU AGREE THAT THE FOREGOING WARRANTIES FOR PRODUCTS ARE IN LIEU OF AND EXCLUDE (TO THE FULLEST EXTENT PERMITTED BY LAW) ANY OTHER WARRANTY, CONDITION, STIPULATION, STATEMENT, TERM OR UNDERTAKING OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, STATUTORY OR OTHERWISE, RELATING TO THE PRODUCTS INCLUDING, BUT NOT LIMITED TO, THEIR CONDITION, QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR PURPOSE. UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, ALL WARRANTY LIABILITY SHALL TERMINATE. YOU ACKNOWLEDGE AND AGREE THAT YOU RELIED ON YOUR OWN SKILL AND JUDGMENT TO SELECT PRODUCTS.

C. THIRD PARTY PRODUCTS. If you license, purchase or lease any software and/or equipment from us, you must refer to the separate limited warranty documentation, if any, provided with the software and/or equipment by the manufacturer or licensor for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation. If the software and/or equipment did not include a limited warranty from the manufacturer or licensor, you agree that you accept the software and/or equipment "AS IS". **OTHER THAN WARRANTIES, IF ANY, AS TO THE SOFTWARE AND/OR EQUIPMENT EXPRESSLY SET FORTH IN DOCUMENTATION PROVIDED WITH THE SOFTWARE AND/OR EQUIPMENT BY THE MANUFACTURER OR LICENSOR, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE SOFTWARE AND/OR EQUIPMENT BY THE MANUFACTURER OR LICENSOR.**

14. Intellectual Property Rights; Infringement.

A. Ownership. Unless otherwise specified herein, you shall not obtain any rights or interests in any patent, copyright, proprietary right or confidential know-how, trademark or process owned by us or any other party. Any and all intellectual property rights, including rights of patent, copyright and trademark, in any reports, drawings, documents, specifications, calculations, confidential know-how, materials, or processes (the "**Intellectual Property Rights**") owned or created by us and used or embodied in Products shall remain our sole property. Any and all Intellectual Property Rights developed by us, whether in the provision of Products or independently thereof, shall belong to us. Any and all right, title or interest that you or any other party may have or obtain in or to our Intellectual Property Rights is hereby assigned to us and you shall take, or cause to be taken, all necessary or appropriate

actions to vest such Intellectual Property Rights in us.

B. Infringement. We agree to indemnify and hold you harmless against claims brought against you to the extent such claim is based on a claim that the Products manufactured by us to you constitute direct infringement of any United States patent issued to us prior to the date hereof, if such claims are based exclusively upon infringement by Products designed and manufactured by us, except where the alleged infringement is based on (a) our compliance with your designs or specifications, (b) your use of Products in combination with any other product or process, including but not limited to integrating Products into a system, whether direct or contributory infringement, (c) modification of Products after we deliver them, or (d) your use of Products in a manner for which they were not designed. Such indemnity shall include all costs of defense against such claims, including reasonable legal fees. In order to be entitled to such indemnity, you must notify us in writing of any such claim and tender to us the right to defend, settle, or make changes for the purpose of avoiding infringement. The foregoing indemnity states our sole and exclusive remedy and liability for intellectual property infringement.

15. Force Majeure. We shall be excused from performance hereunder for any period, and to the extent, that we are hindered or prevented from performing pursuant hereto, in whole or in part, as a result of delays caused by you or third parties, floods or other acts of God, war, revolution, terrorism or civil disturbance, governmental action, statute, ordinance or regulation, court order, strike or other labor dispute, fire, damage to or destruction in whole or in part of Products or place of fabrication, lack or inability to obtain raw materials, labor, fuel or supplies or any other circumstances or conditions beyond our reasonable control. In the event of nonperformance occasioned by any of the foregoing circumstances or conditions, the time for performance shall be extended to the extent of such delay. Such nonperformance shall not be a default hereunder or a ground for termination hereof and shall not excuse you from your payment obligations hereunder or extend the time for such payment.

16. Limitation of Liability.

A. In General. To the fullest extent permitted by law, in no event will we be liable, whether in contract, warranty, representation, tort (including negligence or breach of statutory duty), strict liability, indemnity, contribution or otherwise, for any indirect, special, punitive, exemplary, incidental or consequential loss, damage, cost or expense of any kind whatsoever, howsoever caused, or any loss of production, cost of procurement of substitute Products, loss of capital, loss of software, loss of data, loss of profit, loss of revenues, contracts, business, cost of rework, loss of goodwill or anticipated savings, wasted expenses, or wasted management time, even if we have been advised of their possibility or they are foreseeable.

B. Aggregate Limit Of Liability. Except for our indemnification obligations set forth in Sections 14B, and 16C, our total aggregate liability on all claims, whether in contract, warranty, representation, tort (including negligence or breach of statutory duty), strict liability, indemnity, contribution, or otherwise, shall not exceed the purchase price of the Products.

C. Death And Personal Injury. Nothing in this Proposal shall exclude or limit the liability of either party for death or personal injury arising from negligence or any other liability not excludable by law.

D. Your Responsibility For Products And Processes. Without affecting our responsibilities to you hereunder, and to the fullest extent permitted by law, you agree that you are solely responsible for (i) any product or process using or incorporating the Products; (ii) testing the Products and determining their suitability for your application, product or process; and (iii) determining whether your products or systems using the Products infringe third-party patents, copyrights, or other proprietary rights.

E. Allocation Of Risk. You acknowledge and agree that the allocation of risk contained in these terms and conditions is reflected in the price of the Products and is reasonable in all the circumstances having regard to all relevant factors, including the parties' bargaining position, and your ability to rely on your own insurance arrangements and resources to bear or recover any costs or damages incurred for which we are not liable.

17. General Terms.

A. Nondisclosure of Trade Secrets and Confidential Information; No License. You agree to maintain the secrecy of and not to disclose, without our express written consent, any trade secrets or confidential information which you received from us. All intellectual property rights in the Products remain vested in us or our licensors and the sale of Products to you shall not change this position. The Products are offered for sale and are sold subject to the following conditions: (i) you shall not (nor permit others to) manufacture, reverse engineer, create derivative works based on the whole or any part of the Products, disassemble, adapt, modify, duplicate or otherwise copy or reproduce any of the Products without obtaining our prior express written permission.

B. Government Contracts. If the Products are furnished or to be used in the performance of a U.S. Government contract or subcontract for which mandatory pass down clause/s are applicable to us, our performance or the Products, you will inform us and let us review the clause/s before we begin performance, so that we may decide whether to perform. If after we start performance we are notified of the clause/s and rescind our willingness to proceed, we will have no liability for such rescission.

C. Assignment. We may assign, transfer or subcontract our rights and/or obligations under the Agreement. You may not assign, transfer or subcontract your rights or obligations, without our prior written consent, except to a successor in interest to all or substantially all of the assets of your business; provided, however, that any such assignment will not relieve you from your obligation to perform. Except as indicated in this Section 17C, the Agreement will inure to the benefit of the respective parties, their successors and assigns

D. Notices. Notices required or permitted by the Agreement must be in writing and signed on behalf of the noticing party, addressed to the receiving party as specified in the Proposal, and sent by courier, certified mail, facsimile, personal delivery or other recognized manner of delivery. Notices will be effective on receipt by the party to whom the notice is given except where the notice is sent by

facsimile, in which case it shall be deemed to have been received immediately upon transmission provided the sender receives electronic confirmation of an error-free transmission.

E. Business Relationship. In providing the Products to you, we have acted only as an independent contractor and under no circumstances shall we be deemed to be in any relationship with you carrying with it fiduciary or trust responsibilities, whether through partnership or otherwise. Unless otherwise specified herein, we have the sole right and obligation to supervise, manage and direct the provision of all Products. We do not undertake to perform any of your obligations, whether regulatory or contractual, or to assume any responsibility for your business or operations. You shall (i) accurately represent the Products, including, without limitation, as to quality, function, purpose and compatibility, (ii) not attempt or purport to create any obligation of ours with respect to Products or otherwise, (iii) not add, remove, obstruct, conceal, change or deface any notice, legend, logo, designation or other mark on, or affixed to, any Products or any packing or other materials provided with Products, and (iv) permit operation, maintenance and use of Products only in accordance with, and in a manner anticipated by, applicable design conditions, specifications and operating instructions. You shall indemnify, defend and hold us harmless from any and all damages, liabilities, costs, and expenses, including without limitation, reasonable legal fees and expenses, arising out of, under or in connection with any claim, demand, charge, action, cause of action or other proceeding relating to the conduct of your business, including without limitation, the acquisition, transfer, operation and/or use of Products covered hereby. No rights or benefits are hereby conferred upon any third party, including, without limitation, any of your employees, customers, business associates, creditors or affiliates.

F. Entire Agreement; Modifications and Waiver. This Agreement constitutes the entire agreement and understanding of us and you with respect to the subject matter of the Products, and supersedes all prior communications, representations, agreements, understandings, proposals, negotiations and promises relating to that subject matter, whether written or oral. Except as expressly set forth in these Terms and Conditions, no modification or waiver of either the Order or this Agreement will be effective unless made in a writing signed by the party charged with having given the modification or waiver. No failure or delay by us to assert any rights or remedies arising from a breach shall be construed as a waiver or a continuing waiver of such rights and remedies, nor shall a failure or delay to assert a breach be deemed to waive that or any other breach. If any part of the Agreement is found by a court of competent jurisdiction to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of the Agreement which will continue to be valid and enforceable to the fullest extent permitted by law. Sections 7, 8, 9, 10, 11, 13, 14, 16 and 17 shall survive any cancellation or termination of the Agreement or Order.

G. Governing Law; Venue; Waiver of Jury Trial; Dispute Resolution. The Agreement will be governed, construed and enforced according to the laws of the State of Indiana, excluding its conflicts of law principles. Except when in conflict with this Agreement, the parties agree that the Uniform Commercial Code as adopted in the State of Indiana shall apply to the sale of the Products under the Order, and the parties exclude all international conventions relating to the international sale of Products. The federal and state courts of the State of Indiana shall have exclusive jurisdiction to adjudicate any dispute arising out of the Order or the Agreement. You hereby expressly consent to (i) the personal jurisdiction of the courts of Indiana and (ii) service of process being effected upon you by registered mail sent to your address specified in the Proposal. WE AND YOU, EACH IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING TO WHICH WE ARE PARTIES INVOLVING ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THE ORDER OR THE AGREEMENT. The prevailing party in any litigation proceedings arising out of or related to the Agreement or the Order shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses incurred in such action, including court costs and reasonable attorneys' fees.

Signature _____ Date _____