

## **CONDITIONS OF SALE**

All orders are accepted and all sales are made subject to the provisions of the written contract signed by each of us including the following provisions, or if no such contract exists, subject only to terms on our invoice and to the following provisions.

**1. EXAMINATION-SUITABILITY-CLAIMS.** You should examine and test each shipment promptly on arrival and before any part of the goods (except for reasonable test quantities) has been changed from its original condition. We will recognize no claims for any cause after the goods have been treated, processed or changed in any manner (except for reasonable test quantities). It is your responsibility to determine whether the goods are suitable for your contemplated use, whether or not such use is known to us. You waive all claims of which we are not notified in writing within ten days after the end of the applicable warranty period except claims for breach of our patent warranty or the Fair Labor Standards Act for sales in the United States.

**2. DELIVERY AND FREIGHT.** Unless otherwise stated on the invoice, delivery of all goods is EXW (Incoterms 2010) our facility with risk of loss and title to pass at shipment. We will pay freight on the order only if so stated on the invoice. If we pay the freight, we have the right to designate routing and means of transportation. You may direct other routing and means; however, you will pay any extra costs involved. We reserve the right to charge you for any detention and/or off-loading charges incurred at the destination. There will be no penalties for late deliveries without our prior written approval.

### **3. WARRANTIES.**

**PATENT:** We warrant that the goods will not in themselves infringe any United States or Canadian patent. We assume no obligation for patent infringement resulting from the use of the goods in combination with other material or in the operation of any process. Liability under this warranty is conditioned upon your giving us prompt written notice of any claim of patent infringement made against you and granting us exclusive control of settlement and/or litigation. We may discontinue delivery of the goods if in our opinion their manufacture, sale or use may constitute patent infringement.

**EQUIPMENT:** We warrant that all new equipment sold by us is free from defects in material and workmanship provided that it is given normal use and proper maintenance. The term of the warranty ("Warranty Period") shall be as stated on our specification or price sheet or warranty document supplied with the equipment or, if not so stated, then the warranty shall expire 90 days after shipment of the equipment. Any warranties on equipment or major components from the original manufacturer will, to the extent permitted, be passed on to the purchaser. All warranties extend only to the purchaser and are not transferable upon resale.

Shipping charges on returned parts will be paid by us only if prior approval is obtained from us. Warranties do not apply if any modifications, alterations or additions are made to equipment without our prior written approval or if repairs are made by persons other than authorized factory representatives. Warranties do not apply to Instapak® equipment for the production of polyurethane foam if chemicals other than Instapak® chemicals are used in the equipment. Warranties do not apply to consumable or expendable items such as cartridges, elements, tapes, fuses, etc.

**OTHER GOODS:** We warrant that goods (except equipment), other than Instapak® products, sold by us will meet our product specifications and will be free from material defects in manufacture for a period of 90 days from shipment. We warrant that for a period of six months from shipment, Instapak® products when used with compatible Instapak® equipment and in accordance with our instructions, will, produce polyurethane foams that meet our foam specifications. We warrant that Instapak® Quick™ bags will be free from material defects in manufacture for a period of six months from shipment. We make no warranty whatsoever as to the performance of Instapak® products with third party equipment.

**FLSA:** We warrant that in the production of the goods there has and will be no violation by us of Section 6.7 or 12 (as amended) of the United States Fair Labor Standards Act of 1938 or of any order of the Administrator issued under Section 14 of the Act. This warranty shall only apply to goods sold and delivered within the United States.

With respect to any claim or damage arising out of or related to any goods (including equipment) or services provided or to be provided and/or related to this agreement (whether such claim or damage is based on contract, tort, statute/law or otherwise) including whether the goods or services are non-conforming or defective or there is breach of this agreement including any delay in performance or non-performance respecting this agreement or any portion thereof, you shall have the following remedy against us in substitution for all other remedies provided by law or otherwise, which remedy you agree shall be exclusive. The right to (a) to repayment, or if not

paid, to credit of the purchase price; (b) to replacement of the goods; or (c) to repair of the goods, as we elect; it being understood that our maximum monetary liability on account of defective or nonconforming goods, delay, failure to ship or from any other cause, like or unlike, shall be to refund if paid, otherwise to credit to you, the purchase price of that part of the goods which is subject to conditions or cause on which claim is based. **We shall in no event be liable for loss of profit, business contracts or revenue, downtime, anticipated savings, special, incidental, indirect, consequential or penal damages whether for conforming, non-conforming goods or services or anything respecting this agreement.** Our liability for failure of equipment to meet our written performance specifications, if any, shall be limited to accepting the return of equipment if made within the Warranty Period and to repay or credit the purchase or lease price. **THERE ARE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, EXCEPT THE FOREGOING EXPRESS WARRANTIES AND NONE SHALL BE IMPLIED BY LAW. ALL WARRANTIES, EXPRESS AND IMPLIED, ARE EXCLUDED WHEN THE GOODS OR EQUIPMENT ARE SOLD "AS IS."**

**4. ADVICE.** Any technical or other advice furnished before or after delivery regarding the use of the goods is furnished on the basis that it represents our best judgment under the circumstances but that it is used at your sole risk. Notwithstanding any technical advice given to you, you should test the application of our products to determine the suitability of the product for your intended use. You represent that any data you supply to us, including inventory or demand levels, are accurate and complete and we can rely on such data.

**5. OVERAGES AND SHORTAGES.** Overages and shortages of goods ordered shall be in accordance with our current practice. Claims for shortages must be noted at the time of delivery on all carrier documents. Failure to notify us of any visible damage or defect in writing within ten (10) days of receipt of goods or services, shall constitute a waiver of all such claims with respect to such goods or services, and the use of such goods or services shall mean that we have satisfactorily performed.

**6. CREDIT AND PAYMENT.** Credit is at all times subject to approval and review of our Credit Department. We shall have a security interest in all goods provided until we receive payment in full. All payments are due net 30 days from date of invoice or as stated on the invoice. To be timely, payment must be actually received by us within terms; for example, mailing or initiating ACH payments on the last day of the payment term is not timely. Payment that is not timely received will accrue late charges at the lower of (i) 1.5% per month (18% per year) or (ii) the maximum rate allowed by law.

**7. RETURNS.** No claims will be recognized for goods disposed of or returned without our consent, and no shipping costs on returns will be paid unless previously authorized in writing.

**8. PRINTING, ETC.** All printing, artwork and compositions shall be subject to the print procedures and requirements of the business unit of Sealed Air Corporation performing the work.

**9. EQUIPMENT.** The purchase of equipment from us confers no license, express or implied, under any patents. Repair and other replacement parts for any equipment are subject to all the foregoing conditions. You will supply, at our request and your cost, adequate personnel or hire riggers to uncrate and move equipment to place of installation. Electrical circuits, steam, water, air supply, floor drains and any other physical plant change necessary for machinery operations shall be supplied by you. Switches and controls are to be supplied by you on equipment (i.e., fabricating conveyors, bone and fat systems, lazy susans, etc.) unless specified on our proposal.

**10. PRICES.** Unless otherwise agreed by us, the goods identified on the invoice will be billed at the price in effect on the date of shipment.

**11. TAXES.** In the absence of proper evidence of exemption supplied to us, you will reimburse us for all taxes, excise or other charges which we may be required to pay to any government (national, provincial, or local), except income taxes, assessed upon the production, storage, sale, transportation and/or use of the goods identified on the invoice.

**12. FORCE MAJEURE.** No liability shall result from any cause (including without limitation Acts of God, force majeure, labor trouble, inclement weather, shortage of or inability to obtain materials, equipment or transportation or significant increase in their price and/or orders of courts) beyond the reasonable control of the party affected. Either of us may eliminate any quantities so affected, but this agreement shall remain otherwise in effect. If our supply of goods to be sold is limited by any such cause, we shall have the right to reduce or cancel in its entirety our commitment under this agreement.

**13. ENTIRE AGREEMENT.** Unless specifically incorporated herein by reference, no written or oral understandings, representations or warranties regarding the subject matter of this agreement and predating the date of this agreement shall be of any effect. No changes or additions are effective unless agreed to by us in a writing signed by us. To the extent that you are a distributor of our products, the terms of the distributor policy statement are incorporated herein by reference. The

terms of any purchase order or similar document shall not apply and are rejected. This agreement is not assignable or transferable without our prior written consent.

**14. GOVERNING LAW.** The rights and obligations under this agreement are governed by the national and local laws applicable in Ontario, Canada, excluding the 1980 United Nations Convention on Contracts for the International Sale of Goods if otherwise applicable. If permitted by law, the English language version of these Conditions of Sale shall be controlling.