

TERMS & CONDITIONS OF SALE

1. **APPLICABILITY.** POINT FIVE PACKAGING, LLC ("POINT FIVE") EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITIONS (THIS "AGREEMENT") CONTAINED HEREIN, AND THIS AGREEMENT CONTAINS THE ONLY TERMS AND CONDITIONS UNDER WHICH POINT FIVE AGREES TO BE BOUND. UNLESS POINT FIVE OTHERWISE AGREES IN WRITING, THIS AGREEMENT SHALL BE APPLICABLE TO ALL AGREEMENTS, PURCHASE ORDERS, ACKNOWLEDGEMENT FORMS, INVOICES, REFERENCES TO POINT FIVE'S WEBSITE, AND SALES OF ALL POINT FIVE'S PRODUCTS, GOODS AND/OR SERVICES (INDIVIDUALLY AND COLLECTIVELY, "PRODUCTS") TO YOU ("BUYER").
2. **AGREEMENT.** This Agreement is the final, complete and exclusive expression of the parties' agreement, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement prevails over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend this Agreement.
3. **CANCELLATION.** After acceptance by POINT FIVE, Purchase Orders shall not be subject to cancellation by Buyer except with POINT FIVE's express written consent and upon terms that will indemnify POINT FIVE against all direct, incidental and consequential losses or damage. POINT FIVE may withhold its consent to a termination or cancellation for any reason.
4. **TERMS OF PAYMENT.** Unless otherwise agreed in writing by POINT FIVE, the total sales price is due net 30 days after shipment. Unless otherwise specified by POINT FIVE, all prices are F.O.B. POINT FIVE's factory or warehouse from which shipment is made.
5. **LATE CHARGES; PURCHASE MONEY SECURITY INTEREST.** Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum allowable interest rate under applicable law, and Buyer shall be responsible and liable for all expenses incurred by POINT FIVE in collection, including reasonable attorney's fees. Until Buyer has paid to POINT FIVE all amounts due POINT FIVE in connection with all products purchased hereunder ("Products"), POINT FIVE shall retain, and Buyer hereby grants to POINT FIVE, a purchase money security interest (a) in all such Products now existing or hereafter acquired, (b) in all proceeds thereof as defined by the Uniform Commercial Code ("UCC") as adopted in the state in which Buyer is incorporated, organized or otherwise resides, (c) in all accounts receivable arising from the resale of any of POINT FIVE's Products by Buyer, and (d) in all materials supplied by Buyer to POINT FIVE for use in connection with the production of POINT FIVE's Products for Buyer. POINT FIVE shall retain all rights and remedies of a secured party under the UCC as in effect at the time of delivery of such Products. This grant of purchase money security interest is made to secure payment of all debts or liabilities and performance of all obligations of Buyer to POINT FIVE, whether such debts, liabilities or obligations are now existing or hereafter arise and whether direct or contingent. Buyer hereby authorizes POINT FIVE to file with the appropriate authorities at any time any such financing statement or other document or instrument required in order to perfect POINT FIVE's purchase money security interest. Buyer agrees to execute all instruments and perform all acts that may be deemed necessary by POINT FIVE for the creation, perfection and protection of such lien and purchase money security interest. In addition to any other right or remedy of POINT FIVE at law or in equity, POINT FIVE shall be entitled to set off and retain all monies paid (including but not limited to, credits, monies, or balances owed to Buyer or any affiliate of Buyer with respect to any transaction between Buyer and POINT FIVE) and to apply the same to any amounts owed to POINT FIVE, as POINT FIVE in its sole discretion shall deem appropriate. In addition to all other remedies available under this Agreement (which POINT FIVE does not waive by the exercise of any rights hereunder), POINT FIVE shall be entitled to suspend the delivery of any Products or (if applicable) performance of any services if Buyer fails to pay any amounts when due hereunder and such failure continues for ten days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with POINT FIVE, whether relating to POINT FIVE'S breach, bankruptcy or otherwise.
6. **TAXES.** Any tax imposed on the sale of Products shall be added to the amount to be paid by Buyer; provided, however, if POINT FIVE does not collect any such taxes and is later asked by or required to pay such to any taxing authority, Buyer will make such payment to POINT FIVE on demand or, if requested by POINT FIVE, directly to such taxing authority. At POINT FIVE's option, prices may be adjusted to reflect any increase in the costs to POINT FIVE resulting from state, federal or local legislation, or any change in the rate, charge or classification of any carrier. A properly executed tax exemption certificate is required if purchases are to be used in an exempt manner or bought for resale. If no certificate is received with your order POINT FIVE is obligated to charge tax at the applicable rate. Please fax a copy of the certificate to POINT FIVE at (877) 292-5813 or mail it to POINT FIVE, attn: Accounting Dept.
7. **DELIVERY DATES; CONTINGENCIES.** All delivery dates are approximate and POINT FIVE shall not be responsible for any damage of any kind resulting from any delay. POINT FIVE shall not be liable for any default or delay in performance if caused directly or indirectly, by acts of God; war; force of arms; fire; flood; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay in transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material or equipment used in the manufacture of the Products; failure of any party to perform any contract with POINT FIVE relative to the production of the Products; or from any cause whatsoever beyond POINT FIVE's control, whether or not such cause is similar or dissimilar to those enumerated.
8. **CLAIMS; INSPECTION.** Claims for loss or damage to any Products must be submitted with a copy of the inspection report of the delivering carrier. Buyer shall promptly inspect all Products upon delivery. No claims against POINT FIVE (including claims for shortages) will be allowed unless asserted in writing within 10 days after delivery or, in the case of an alleged breach of warranty, within the warranty period described in Section 9 hereof.
9. **WARRANTY.** Buyer acknowledges that no guarantees or assurances have been made as to the results that may be obtained from the use of the Products sold hereunder whether used singly or in combination with other items.
Products are not manufactured by POINT FIVE and therefore are subject only to the warranties, if any, of the manufacturers of such Products ("Third Party Manufacturers"). To the extent it is able, POINT FIVE will assign to Buyer all rights in such Third Party Manufacturers' warranties to Buyer.
POINT FIVE MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR USE OR OTHERWISE, ON THE PRODUCTS, OR ANY PARTS OR LABOR FURNISHED DURING THE SALE, DELIVERY OR SERVICING OF THE PRODUCTS. POINT FIVE HEREBY DISCLAIMS ANY LIABILITY WHATSOEVER IN CONNECTION PRODUCTS.
10. **RISK OF LOSS.** Regardless of the manner of shipment and regardless of when title to the Products passes, risk of loss or damage to the Products shall pass to Buyer upon tender to the carrier at the factory or warehouse of POINT FIVE, except in those instances in which delivery is made by POINT FIVE's vehicles, in which case risk of loss shall pass upon tender to Buyer at its place of business. No deferment of shipment at Buyer's request beyond the dates agreed by POINT FIVE will be made except on terms that will indemnify POINT FIVE against all loss and additional expense, including, but not limited to, demurrage, handling, storage and insurance charges.
11. **PROPRIETARY RIGHTS.** Any and all right, title and interest and intellectual property rights of any type or nature whatsoever relating to the Products, including, without limitation, patent rights, copyrights, trademarks, proprietary information, technology rights and licenses, documents, data, test results, evaluations, plans, studies, instructions, manuals, marketing materials and copies, derivative works and translations of the same, at any stage of their development, whether or not patentable, copyrightable, trademarkable or protectable as trade secrets, are and shall be the sole and exclusive property of POINT FIVE. Buyer agrees it will not copy, nor permit anyone else to copy, decompile, modify or disassemble any Products or parts thereof, or any pattern, plan, drawing, specification, instruction or depiction thereof, without written approval of POINT FIVE, and that it will not knowingly, directly or indirectly, violate or infringe upon or contest the validity of any patent, trademark, license or other right of POINT FIVE pertaining to any Product. Buyer agrees it will not make any changes and/or alterations to any Products or remove any identification, copyright or other notices from any Products.

- Where any Product is manufactured from patterns, plans, drawings or specifications furnished by Buyer, Buyer shall indemnify POINT FIVE against and save POINT FIVE harmless from all loss, damage and expense arising out of any suit or claim against POINT FIVE for infringement of any patent, trademark, copyright or other right because of POINT FIVE's manufacture of such Product or because of the use or sale of such Product by any person. The terms of any POINT FIVE Software License Agreement submitted to Buyer with the Products and are incorporated herein by reference.
12. LIMITATION OF LIABILITY. IN NO EVENT SHALL POINT FIVE, OR ITS AFFILIATES, AGENTS, MANUFACTURERS, DISTRIBUTORS OR SUPPLIERS (COLLECTIVELY, THE "POINT FIVE GROUP") BE LIABLE TO BUYER FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, LOST REVENUES, DIMINUTION IN VALUE AND LOSS OF GOODWILL) ARISING OUT OF, OR AS A RESULT OF, ANY BREACH OF THIS AGREEMENT, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT POINT FIVE'S WRITTEN CONSENT, EVEN THOUGH A MEMBER OF THE POINT FIVE GROUP HAS BEEN NEGLIGENT, AND BUYER INDEMNIFIES AND HOLDS EACH MEMBER OF THE POINT FIVE GROUP HARMLESS FROM ANY AND ALL SUCH CLAIMS OF DAMAGE BY BUYER OR OTHERS. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE POINT FIVE GROUP UNDER ANY CLAIM MADE BY BUYER UNDER THIS AGREEMENT OR OTHERWISE EXCEED THE PURCHASE PRICE OF THE PRODUCT ACTUALLY PAID BY THE BUYER IN RESPECT TO WHICH DAMAGES ARE CLAIMED.
 13. LIMITATIONS. Any suit or other action based upon breach of this Agreement or upon any other claim arising out of the sale of Products under this Agreement (other than an action by POINT FIVE for any amount due to POINT FIVE by Buyer) must be commenced within one year from the date of tender of delivery by POINT FIVE, or in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the warranty period in which the defect is or should have been discovered by Buyer.
 14. GOVERNING LAW. This Agreement and the sale of all Products shall be governed by and construed in accordance with the laws of the State of Illinois. Whenever there is a conflict of laws, the laws of the State of Illinois shall prevail. Any claim arising out of or in any way related to this Agreement shall be instituted and adjudicated in either the Federal District Court for the Northern District of Illinois or in the Circuit Court of Cook County, Illinois. The parties consent to and agree not to contest the personal jurisdiction of and venue in such courts, acknowledge that these forums are convenient and waive their rights to demand a jury trial.
 15. COMPLIANCE WITH LAW. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance.
 16. WAIVER; SEVERABILITY. No waiver by POINT FIVE of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by POINT FIVE. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
 17. ASSIGNMENT. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of POINT FIVE. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
 18. RELATIONSHIP OF THE PARTIES. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
 19. NO THIRD-PARTY BENEFICIARIES. Except as otherwise set forth herein in respect of the POINT FIVE GROUP, 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.
 20. SURVIVAL. Survival. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.