



TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (“Terms”) apply to and govern all sales by Kelly Spicers Inc. or any of its divisions or subsidiaries (each and collectively, “Seller”) to its Customers (each, a “Customer”). There are separate sections that include additional provisions relating to specific items sold by Seller. If there is a conflict between the general provisions and those separate sections, the provisions of those separate sections will take precedence.

GENERAL

All Customer orders are expressly subject to these Terms. By placing an order with Seller, whether telephonically, over the internet (whether on Seller’s ecommerce site, by Customers purchasing systems or through a third party system), by phone, by submission of a paper purchase order or otherwise, Customer consents to the applicability of these Terms. Seller objects to any terms proposed in Customer’s proposal, purchase order, acknowledgment or other document which add to, vary from, or conflict with the Terms, and acceptance of customer’s order is expressly made conditional on its assent to the terms and conditions stated herein. Any such proposed terms shall be void and these Terms constitute the complete and exclusive agreement and statement of the terms and conditions between Customer and Seller. There are no understandings, agreements or representations, express or implied, not specified herein. Subject to the express provisions of these terms, the customs of the American paper trade relating to merchandise of the type and quality provided for herein shall apply.

Price: Payments shall be in United States currency. In the case of sales arranged through cooperatives, purchasing group, print management company, or affiliated entities Seller may pay a rebate to the cooperative, purchasing group, print management company or affiliated entity in connection with such sale. The Seller may impose a small order charge set by Seller from time to time for any order that does not meet the minimum order value. Such value is determined by the Seller from time to time and can vary from region to region. The price for the sale of any merchandise shall be Seller’s price prevailing at time of shipment unless otherwise agreed. Any such agreement as to pricing or price protection is based on manufacturer’s then current price and price protection guidelines, which are subject to change. Notwithstanding any such agreement any increase in the cost to Seller of the purchase and delivery of the merchandise, whether by way of a change in manufacturer’s price, imposition of surcharge, change in freight policies or costs, tariffs, duties or otherwise, including with respect to orders previously placed and accepted, will result in a correlative increase in the price payable by Customer.

Taxes and Additional Charges: All federal, state, local and other governmental taxes or other charges imposed upon the manufacture, sale, transportation, delivery and/or use of any merchandise sold to Customer by Seller in the present or future, and any increase in any such items, or in freight or insurance, whether or not included in the price under the Acknowledgement relating thereto, and shall be paid by, Customer or reimbursed to Seller by Customer. Customers are responsible for providing and updating Seller with any sales tax certificate of exemption. If Customer fails to provide a valid certificate of exemption Seller will charge Customer sales taxes, which are non-refundable. Any taxes and additional charges not included on the original invoice will be invoiced separately.

Terms of Payment: Terms of payment are as specified in the invoice and run from date of invoice, not date of shipment or delivery. A Return Check fee of \$50.00 will be applied to the Customer's account if a check is returned as Non-sufficient Funds (NSF).

A one and one half percent per month service charge (18 percent per annum) or the highest permissible rate under applicable law, whichever is less, shall be assessed on late payments. Payments are to be made at the direction and to the location specified by Seller. If at any time and for any reason, including but not limited to refusal or failure to adequately respond to requests for financial information, the financial condition of Customer shall become unsatisfactory to Seller, Seller may require cash or satisfactory security on shipments or deliveries or prior to placing any mill order or prior to the last date to change any mill order or otherwise change any previous payment terms, without impairing the obligation of Customer to take and pay for the quantity of goods ordered. Seller may accept credit or debit cards in its discretion, but no prompt payment or other discounts or rebates shall apply to any payments made using any credit or debit card. To secure payment for all sums due hereunder or otherwise, Seller shall retain a security interest in all goods and equipment delivered hereunder and these terms and conditions shall be deemed a security agreement under the Uniform Commercial Code. Customer authorizes Seller to execute and file on Customer's behalf all documents Seller deems necessary to perfect such security interest. Buyer's failure to accept delivery of any installment of shipment of merchandise in the qualities and on the terms specified or to fulfill any other agreement shall constitute a material breach of the entire transaction, in response to which, in addition to any other remedies hereunder or at law, Seller may in its discretion by written notice to Buyer declare the entire transaction terminated as of the date of the breach, or reduce the installments during the remainder of the term hereof to that quantity last ordered by Buyer.

Delivery, Title and Contingencies:

Mill Direct Orders: Except as otherwise agreed shipments of merchandise from mill of manufacturer shall be delivered to Customer f.o.b. mill, less prevailing freight allowance, if any, accorded to Seller by manufacturer, and title to merchandise from any such mill and all risk of loss or damage shall thereupon pass to Customer. Any date for shipment or delivery specified is only an estimated date, and delivery by Seller shall be timely if made within ten (10) days thereof, or, if Seller orally or in writing notifies Customer prior to the end of said ten day period of a delay in shipment from the mill, delivery shall then be deemed timely if made within ten (10) days after the date of shipment from the mill.

Warehouse orders: Shipments of merchandise from Seller's warehouses shall be subject to imposition by Seller of delivery and related charges (including fuel surcharges), and title to merchandise from any such warehouse and all risk of loss or damage shall pass to Customer upon delivery to it at such location as Seller and Customer may agree.

General: Customer agrees to accept partial or pro rata deliveries as full performance in the event Seller cannot fulfill an entire order. Seller shall not be liable to Customer or to any other person for loss or damage of any kind if it fails to make or arrange timely delivery of merchandise, or if performance by Seller is rendered impracticable or commercially unreasonable (including as a result of increased expense), as a result of failure of Seller's suppliers to make adequate or timely delivery of the merchandise; strikes, lockouts or other labor disputes; war (whether declared or not), hostilities, military mobilization, riot, armed conflict, insurrection, embargo or blockade; imposition of duties, tariffs, quotas, sanctions or other import, export or other restrictions (including restrictions on payment channels); plague, epidemic, pandemic, widespread infectious disease or public health or other

emergency, statute, regulation, order or any other action of any governmental authority; transportation breakdown, unavailability or delay, rejected mill runs; acts of God or natural disaster such as but not limited to storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought, explosion, fire; destruction of machines, equipment factories and any kind of installation; prolonged breakdown of telecommunication or electric current; accidents; shortage or inability to obtain material or supplies or any other circumstance beyond Seller's control whether or not foreseeable or abatable or subject to mitigation by Seller. 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, but the order shall remain otherwise unaffected.

Tolerances: Over-runs and under-runs shall be accepted by Customer in accordance with the specific policies of the manufacturer of the merchandise, and in the absence of any specific policy, usage of trade shall control.

SELLER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, EXCEPT THAT ANY MERCHANDISE DELIVERED SHALL BE OF THE MANUFACTURER'S STANDARD QUALITY FOR MERCHANDISE OF SUCH KIND.

THE FOREGOING WARRANTY IS EXCLUSIVE OF AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SUPERSEDES AND EXCLUDES ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS, MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FOREGOING AND SELLER'S SOLE RESPONSIBILITY HEREUNDER IS AS STATED. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF VALUE OR LOSS OF USE), EVEN THOUGH SELLER MAY HAVE BEEN NEGLIGENT OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY AMOUNT IN EXCESS OF THE PRICE FOR THE SHIPMENT INVOLVED, UNDER THE FOREGOING OR ANY OTHER PART OF THESE TERMS, OR ANY OTHER AGREEMENT BETWEEN SELLER AND CUSTOMER. ANY LEGAL ACTION AGAINST SELLER FOR BREACH OF THESE TERMS, OR SUCH ANY OTHER AGREEMENT INCLUDING ANY WARRANTIES HEREUNDER, MUST BE INSTITUTED WITHIN ONE YEAR AFTER DELIVERY.

Claims and Returns: All returns are at the sole discretion of Seller. No merchandise shall be accepted for return prior to inspection by Seller's authorized representative or otherwise with the written consent of the Seller, and in no event will a return of allegedly defective merchandise be acceptable for credit if the containers, wrappers, or labels are defaced, damaged, removed or covered, or if the merchandise is not in its original container. Credit will only be allowed on defective merchandise returned within 30 days of the date of delivery, and all returned merchandise is subject to inspection by Seller. No claim will be allowed by Seller after the merchandise either has been cut, printed or written upon, or otherwise altered from its original form. 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. If the merchandise was obtained for Buyer on special order, no returns will be accepted unless the conditions in this paragraph have been satisfied and in addition unless Seller's supplier has consented to accept return of goods.

Indemnification. To the maximum extent allowed by law, Customer must defend and indemnify Seller, its employees, officers, directors and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Seller, its agents, officers, directors or employees may incur or be obligated to pay as a result of (i) Customer's negligence or willful misconduct; (ii) use, ownership, modification, maintenance, transfer, transportation or disposal of the goods; (iii) any infringement or alleged infringement of the intellectual property rights of others arising from Customer's plans, specifications (including Customer's trademarks and brand names) or production of the goods ordered by Customer; and (iv) Customer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices. Customer hereby waives and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled.

Miscellaneous: No provision hereof or any other agreement may be modified, amended or rescinded unless by a written instrument executed by Seller and Customer. The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of these Terms or any other agreement, or to take advantage of any of its rights, shall not operate as a continuing waiver of such rights. If Customer breaches any of the terms herein, including failure to timely pay for any goods ordered, necessitating any collection efforts or legal action by Seller, the Buyer agrees that Seller shall be entitled to recover its reasonable costs incurred including, but not limited to, reasonable attorneys' fees and costs. Seller shall have the right to assign any and all accounts receivable from, and any rights against, Customer to any person. Customer shall not have the right to offset any amounts owed to it by Seller or any of its affiliates against amounts owed by Customer to Seller. This transaction shall be governed by the laws of the State of California, without reference to choice of law rules, and the Convention on Contracts for the International Sale of Goods shall not be applicable. Any legal action or proceeding concerning the validity, interpretation and enforcement of these terms or any sale of goods by Seller, matters arising out of or related to these terms or any sale of goods by Seller or its making, performance or breach, or related matters shall be brought exclusively in the courts of the State of California in the County of Los Angeles or of the United States of America for the Central District of California, and all parties consent to the exclusive jurisdiction of those courts, waiving any objection to the propriety or convenience of such venues and THE PARTIES WAIVE TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING. Process in any such action may be served by registered or certified mail addressed to a party at its last known address.

EQUIPMENT SALES, SERVICE AND INSTALLATION

General: These additional Terms, together with any sales, lease or evaluation agreement or invoice, shall be applicable to the sale, lease or evaluation of packaging, wide format and other equipment by Seller.

OSHA Regulations: Employees of operators of equipment are required to follow applicable OSHA regulations. Customer further understands that OSHA requires that operators of equipment must be trained and authorized. Customer will only permit properly trained operators to use any equipment delivered to Customer.

Price: For sales, prices are F.O.B. carrier's equipment at Manufacturer's dock. All prices and charges are exclusive of all taxes--federal, state or local which shall be the responsibility of the Customer. If there is a delay in completion or shipment of order, due to any change requested by Customer, or as a result of any delay on Customer's part in furnishing information necessary for completion of the order, the price or charge initially agreed upon at time of acceptance is subject to change. Any change order requested

by Customer will not be considered effective until mutual agreement has been reached between Customer and Seller as to the effect of any changes in prices, delivery, and other conditions of the order.

Delivery/Installation Dates: The projected delivery and installation dates are an estimate based upon information available when the estimate was made and Seller shall not be responsible for any damages of any kind resulting from any delay. Customer agrees to accept partial or pro rata deliveries as full performance in the event Seller cannot fulfill an entire order.

Title/Risk of Loss: Title to all equipment shall remain in Seller until the complete purchase price and all additional costs and charges, as adjusted, are paid by Customer. Customer hereby grants Seller a security interest in such equipment and authorizes Seller to file all documents (including a UCC-1) necessary to perfect such security interest. Seller retains a security interest in, and the right to repossess, any such equipment until it is paid in full. Risk of loss shall pass to Customer upon delivery of the equipment to carrier.

Inspection and Notice of Defect: Unless otherwise specified, the equipment to be furnished hereunder shall be subject to manufacturer's standard inspection at the place of manufacture. If inspection by the Customer at the place of manufacture is provided for, Customer's inspectors shall be deemed agents of Customer to accept the equipment on Customer's behalf regardless of deviation from formal specifications. Customer shall be responsible for supplying all consumables used in connection with the installation and testing of the equipment. Notice of any defects or claims of any nature (except written warranty) must be made within 10 days of delivery. Returns will not be accepted for any reason without Seller prior written authorization.

New Equipment Warranty: The manufacturer's standard published warranty in effect at the time of shipment for the particular new equipment shall apply. The manufacturer's warranty covers the cost of defective components only. The Customer is responsible for proper routine maintenance during the warranty period including, but not limited to, replacement of consumable items, lubrication, equipment changeovers, adjustments, etc. (NOTE: If, during a warranty service call, the technician discovers evidence of abuse, misuse, neglect or maladjustment, all warranties will be voided and Customer will be charged normal hourly service rates for the services rendered.)

Customer's sole recourse shall be against the manufacturer of the equipment, and it shall have no recourse against Seller. THE MANUFACTURER'S WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

Used Equipment Warranty: All used equipment is sold on an "as is, where is" basis without any warranties. ALL WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY WITH RESPECT TO SUCH USED EQUIPMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

Limitation of Liability: Customer acknowledges that the sales, lease or evaluation use price or charge quoted for the equipment is in consideration of limiting Seller's warranties and liability. If Seller breaches any of its obligations under this agreement, whether in warranty or otherwise, Seller shall absolutely have no obligation to Customer, except to refund the purchase price upon Seller's receipt of the returned equipment as specified by Seller.

THE FOREGOING WARRANTY IS EXCLUSIVE OF AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SUPERSEDES AND EXCLUDES ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS, MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FOREGOING AND SELLER'S SOLE RESPONSIBILITY HEREUNDER IS AS STATED. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF VALUE OR LOSS OF USE), EVEN THOUGH SELLER MAY HAVE BEEN NEGLIGENT OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY AMOUNT IN EXCESS OF THE PRICE FOR THE SHIPMENT INVOLVED, UNDER THE FOREGOING OR ANY OTHER PART OF THESE TERMS, OR ANY OTHER AGREEMENT BETWEEN SELLER AND CUSTOMER. ANY LEGAL ACTION AGAINST SELLER FOR BREACH OF THESE TERMS, OR SUCH ANY OTHER AGREEMENT INCLUDING ANY WARRANTIES HEREUNDER, MUST BE INSTITUTED WITHIN ONE YEAR AFTER DELIVERY.

Patent, Trademark or Copyright Infringement: If any equipment, parts or tooling is manufactured from patterns, plans, drawings, or specifications furnished by Customer, Customer shall indemnify Seller against and save harmless Seller from all loss, damage and expense arising out of any suit or claim against Seller for infringement of any rights of any person, including under patent, trademark, or copyright, because of the manufacture of such equipment or because of the use, sale or lease of such equipment by any person. At Seller's option, upon receipt from Seller of written notice of any such suit or claim, Customer shall appear in and assume the defense of the litigation.

Software: The equipment may include software owned or licensed. When Customer pays for the equipment (whether purchase or lease), it will have a single, perpetual, royalty-free, nonexclusive license to use the software in connection with the operation of the equipment. Customer will not modify, adapt, translate, reverse engineer, decompile or otherwise attempt to discover the source code of the software.

Proprietary Information – Confidentiality: Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of Seller or the manufacturer furnished to Customer shall be deemed to be incorporated herein by reference the same as if fully set forth. Seller or the manufacturer shall at all times retain title to all such documents, and Customer shall not disclose such to any third party without Seller's and the manufacturer's prior written consent. Upon Seller's request, Customer shall promptly return to Seller all such documents and copies thereof.

Tooling: Unless otherwise agreed to in writing, all tooling shall remain the property of Seller or the manufacturer of the equipment.

Government Contract or Conditions: If Customer's purchase order contains a U.S. government contract number and orders products to be used in the performance of the contract, those clauses of applicable U.S. government procurement regulations mandatory required by federal statute to be included in U.S. subcontracts shall be incorporated herein by reference.

Modifications: Customer (or its employee or agent) will not modify the equipment delivered hereunder without the express written consent of Seller, including, without limitation, the modification or removal of any safety devices from the equipment. Customer will implement any changes in the equipment

directed by Seller or the manufacturer of such equipment. Customer agrees to indemnify, defend and hold Seller harmless from any and all claims, demands, suits, costs (including reasonable attorney's fees and costs of suit), and expenses incurred, whether in contract, tort, or otherwise relating to, resulting from or arising from failing to comply with this paragraph or otherwise from the use of the equipment by or on behalf of Customer.

Evaluation Equipment: If Customer receives equipment for the purpose of on site evaluation, Customer shall be solely responsible, at Customer's sole expense, for maintaining such evaluation equipment in good condition and shall insure such equipment against casualty or loss. Customer shall maintain such equipment with manufacturer authorized replacement parts which are installed by manufacturer-trained repair personnel.

Trade-in: In the event Customer is delivering a trade-in to Seller in connection with the sale or lease of the equipment, on or prior to the time of delivery of equipment to Customer, Customer agrees to deliver to Seller at Seller's place of business the equipment agreed in writing by Seller as being traded-in, and thereupon to transfer to Seller the title to said equipment free and clear of all liens and encumbrances. Customer assumes risk of loss until such equipment is delivered FOB Seller warehouse. Seller's obligation to accept the equipment being traded in is subject to Customer maintaining such equipment in good condition.

PACKAGING EQUIPMENT POLICIES START-UP/TRAINING/WARRANTY SERVICE

- ▶ **START UP OF EQUIPMENT:** Customer will, at its expense, ensure that the site is prepared in accordance with site planning instructions prior to the scheduled shipping date. Customer's site must be ready for the equipment. If Seller pays transportation and transportation insurance charges, Customer will reimburse it. Upon receipt of the equipment, it is Customer's responsibility to inspect, uncrate, assemble, place in position, and connect all necessary power. Then a qualified Seller Service Technician will visit the location and inspect the equipment and voltage to ensure proper installation. (NOTE: Customer will void warranty if machine is powered up before proper start-up by a Seller Technician). Start-up will be performed between normal working hours (8-5) Monday through Friday, and service will be at no charge. For start-up after normal working hours and weekends, a per hour service charge will apply.
- ▶ **OPERATOR TRAINING:** Complete training of the operating and maintenance personnel is to be accomplished at start-up in one (1) visit. It is necessary that the proper personnel be available at that time so training can be accomplished. If not available at that time, a per hour charge, plus travel time, will be required for additional visits to train personnel.
- ▶ **CONTINUING SERVICE:** Seller has trained personnel available to service the equipment we sell. Hourly charges, including during normal working hours, an overtime rate, and portal to portal travel time, will apply.

BEVERAGE CANS

These provisions relate to sales by Seller of aluminum and other beverage cans and can ends to Customers for Customer to use to package one or more beverages, drinks or other fluids ("Fluid").

Customer has Seller to provide cans and ends which Customer will fill with Fluid. Customer acknowledges that Seller has not tested the Fluid with the cans and ends and that Seller has not performed any testing on the suitability of the cans and ends for packaging any Fluid. Customer has evaluated any perceived risk and expressly assumes all risk and liability for any non performance of the cans and ends, such as resulting in leakages or recalls, and for any resulting damages or bodily injury to Customer, its employees, purchasers from Customer or any third parties arising from the handling, filling and/or use of the cans ("Filled Cans") filled with Fluid or from ingestion of the contents of the Filled Cans, and agrees that Seller will have no responsibility and no liability for any such damage or bodily injury to Customer, its employees, purchasers from Customer or any third parties.

SELLER MAKES NO WARRANTY WITH RESPECT TO CANS DISTRIBUTED BY SELLER. AND THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CUSTOMER AGREES TO PROTECT, DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS SELLER, ITS EMPLOYEES, AFFILIATES, AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, EXPENSE, AND LIABILITY ARISING OUT OF INJURY OR DEATH TO ANY PERSON OR THE DAMAGE, LOSS OR DESTRUCTION OF ANY PROPERTY WHICH MAY OCCUR OR IN ANY WAY GROW OUT OF SELLER'S SALE OF THE CANS AND ENDS OR ANY AND ALL COSTS, EXPENSES AND/OR ATTORNEY FEES INCURRED BY SELLER AS A RESULT OF ANY CLAIMS, DEMANDS, AND/ OR CAUSES OF ACTION. CUSTOMER AGREES TO INVESTIGATE, HANDLE, RESPOND TO, PROVIDE DEFENSE FOR AND DEFEND ANY SUCH CLAIMS, DEMANDS, RECALLS OR SUITS (collectively, the "CLAIMS") AT ITS SOLE EXPENSE AND AGREES TO BEAR ALL OTHER COSTS AND EXPENSES RELATED THERETO, EVEN IF THE CLAIMS ARE GROUNDLESS, FALSE OR FRAUDULENT. Customer agrees to obtain insurance sufficient to cover its obligations under these Terms.