

**TERMS AND CONDITIONS**

All shipments and deliveries hereunder are subject solely to the following terms and conditions. All new or different provisions in the Buyer's Purchase Order or other documents are rejected.

1. **DEFINITIONS.** As used herein, the terms set forth shall have the following meaning: 1) "Seller" shall mean Ardagh Glass Inc.; 2) "Buyer" shall mean the party purchasing the glass containers; and 3) "Containers" means the glass container or bottle being purchased.

2. **SHIPMENTS AND PAYMENTS.** All shipments and deliveries hereunder shall be subject to the approval of the Ardagh Glass Inc. ("Seller") Credit Department. Seller's standard payment terms are Net 30 days. In consideration for the extension of credit, the Buyer promises to pay for all purchases within the terms agreed upon. A service fee of 1-1/2% per month (18% annual percentage rate) will apply to all past due balances. If the Buyer fails to make any payment in accordance with the terms and provisions hereof, the Seller may defer future shipments or deliveries until receipt of satisfactory security or cash before shipment. Seller may also employ a third party to assist in the collection process. In the event any third parties are employed to collect any outstanding monies owed by the Buyer, the undersigned agrees to pay reasonable collection costs, including attorney fees, whether or not litigation has commenced, and all costs of litigation incurred.

3. **PRICES.** If Seller shall make an error in computing the prices, the prices shall be subject to correction. The prices specified shall be subject to an additional charge to cover any existing or future sales, use or similar tax which may be applicable. The prices are net of any recycling or similar fees on Containers, and all such fees are the responsibility of Buyer.

4. **DELIVERY.** Seller will make its best efforts to deliver Containers in quantities as close as possible to the ordered quantities consistent with the requested shipping date.

5. **STORAGE.** Seller shall provide storage free of charge for three (3) months following the later of (i) the month of manufacture of the products or (ii) Buyer's requirement date. After such three (3) month period, Seller may invoice Buyer for such products, in which case Buyer shall pay for all such products within thirty (30) days of such invoice or such products may be culleted at Seller's option without releasing Buyer from the obligation to pay for such products. At Buyer's request, Seller may provide an additional three (3) months of storage for any such paid for products; provided, however, Buyer shall be responsible for storage charges calculated and invoiced at the rate of \$10.00 per pallet per month.

6. **FREIGHT, TITLE, RISK OF LOSS AND TAXES.** Prices are ExWorks from Seller's plant of manufacture or origin. Title to Containers shall transfer to the Buyer upon receipt of full payment of the delivered Containers by Seller. When Seller is responsible for delivering Containers, risk of loss shall pass to Buyer upon delivery at Buyer's location. When Buyer is responsible for picking up the Containers, risk of loss shall pass to Buyer upon delivery by Seller to the carrier at Seller's plant of manufacture or origin. Unless otherwise agreed to by Seller on its invoices or order acknowledgements, all Containers sold by Seller to Buyer in Canada, or to Buyer in respect of a "ship to" location in Canada, shall be sold EXW (ex-Works Incoterms 2020) Seller's facility. Buyer shall be the exporter and importer of record in respect to all cross-border transiting of the Containers from Seller's delivery location, and title to Containers shall transfer to Buyer at the same time as Containers are delivered to Buyer. If, as indicated and noted by Seller's invoice to Buyer, Seller agrees to sell Containers to Buyer CPT (Carriage Paid To) "Ship To" location (incoterms 2020) or any other international trade term, Buyer shall be and remain the exporter and importer of record in respect of all cross-border transiting of the Containers, and title to the Containers shall transfer to the Buyer at the same time as the risk of loss. Buyer is responsible for and shall pay directly to the appropriate authority or agency taxes and duties related to the sale and or purchase of those Containers including, but not limited to Canadian Provincial Sales Tax ("PST"), Goods and Services Tax ("GST") and Harmonized Sales Tax ("HST"), or any similar tax.

7. **FORCE MAJEURE.** Neither party shall, under any circumstances, be responsible for failure to comply with this agreement due to: fires; floods; riots; strikes; freight embargoes or transportation delays; shortage of labor; inability to secure fuel, materials supplies or power or significant increase in the costs thereof; acts of God or of the public enemy; epidemics or pandemics; cyber attacks; any existing or future laws or acts of the federal, state or local government with which the appropriate party, in its judgment and discretion, deems advisable to comply as a legal duty; or to any cause beyond such party's reasonable control, whether foreseeable or not.

**8. WARRANTIES AND REMEDIES:**

**A. Seller warrants that at the time of shipment to Buyer of the products specified herein, each product:**

(1) will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended; and

(2) shall be fit to be used as a food or beverage container and shall not be a food additive within the meaning of the Food, Drug and Cosmetic Act, 21

U.S.C. § 301 *et seq.*, and not an article which may not, under the provisions of such Act, be introduced into interstate commerce.

**THESE EXPRESS WARRANTIES SHALL BE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**B. Seller specifically disclaims any warranty or liability for:**

(1) foreign substances of any kind in the product which reasonably could have been introduced by either Seller or Buyer;

(2) any defects or breach of warranty which appear more than one (1) year from the date of delivery of the product; and

(3) breach of the warranty contained in subparagraph A (2) above unless the Container is thoroughly cleaned by Buyer immediately prior to filling, the container is filled under sanitary conditions and in accordance with good manufacturing practices as required or recommended by the Food and Drug Administration, and the container is suitably sealed immediately after filling with an appropriate closure.

(4) Any damage, cost or expense arising from Buyer's handling, packing, transportation or distribution of the Containers.

(5) any use of Containers for purposes for which they are not designed or intended.

**C. In the event of an alleged breach of any of the above warranties, Buyer shall furnish Seller notice of any such breach of warranty within a reasonable time after discovery of the breach. As Buyer's exclusive remedies for an actual breach of warranty, the defective or non-conforming product will be replaced by Seller free of charge or the purchase price thereof refunded, at Seller's option.**

**D. In addition to the above disclaimers, Buyer agrees that the products shall be utilized only under the following conditions and that Seller shall not be responsible for any claims related to any inconsistent use:**

(1) Containers shall not be subjected to vertical forces greater than 1000 psi;

(2) product fill temperature shall not exceed the ambient bottle temperature prior to filling by more than 75° F (42C).

**E. At Buyer's request, Seller may from time to time provide to Buyer closures or other products other than glass containers. Buyer acknowledges that Seller is not the manufacturer of such products and Seller makes no representations or warranties regarding any such products, including any warranty of merchantability or fitness for a particular purpose. Buyer further acknowledges and agrees that it will look solely to the manufacturer of such products in the event of any defect in such product and hereby releases Seller from any liability therefore.**

Seller shall be given an opportunity to conduct an adequate investigation of all claims of breach of this section both by inspection at the Buyer's place of business and having the products returned to Seller.

9. **INDEMNITY.** Buyer shall indemnify and save Seller, its present and future directors, officers, employees, and agents from and against all third-party claims, demands, suits and actions and any fines, penalties, damages and costs, including reasonable legal expenses and attorneys' fees connected therewith, to the extent such is caused by the negligence, willful misconduct, or other act or omission of Buyer.

10. **LIMITATION OF LIABILITIES.** In no event shall Seller be liable to any person or entity for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profit, loss of business, loss of business opportunity, loss of market share, damage to the goodwill or reputation of any party or its products, however caused and under any theory of liability whether based in contract (including indemnity, breach of warranty or representation or other breach of contract), tort (including negligence), or otherwise. The foregoing limitations shall apply regardless of whether such party has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy stated herein.

Buyer hereby agrees that, prior to providing any empty Container to any other commercial entity or party, Buyer shall obtain such party's agreement to the limitations set forth herein and an acknowledgement that Seller is a third-party beneficiary to such agreement for the purposes of such limitation. Buyer further agrees to fully indemnify Seller for any and all claims made by such third-party commercial entity or party made against Seller seeking any of the excluded losses or damages set forth above.

11. **NON-ASSIGNMENT.** Neither the underlying agreement nor any interest therein may be assigned by Buyer, whether by operation of law or otherwise, without the prior written consent of Seller, which consent shall not be unreasonably withheld.

The Seller may assign its rights under this agreement or any of the rights arising out of or in connection with it, in whole or in part, at any time and more than one occasion to one or more members of its group or to a reputable provider of finance. In connection with such assignments, the Seller may disclose to such members of its group or finance provider the terms of the contractual arrangements between the parties.

12. **APPLICABLE LAW.** The laws of the state of Indiana shall apply to the interpretation and enforcement of this agreement, and jurisdiction over any disputes lies solely in the federal and state courts in Indiana.

13. **AMENDMENTS.** No amendment or other modification of this agreement is binding upon the parties unless it is in writing and executed by a duly authorized representative of each party.