

TERMS AND CONDITIONS
Applicable to Sales by API Foils Inc. ("API")

- 1. AGREEMENT:** These terms and conditions ("Agreement") apply to all orders of products ("Goods") on the face of this Agreement ("Order") sold by API to the customer identified on the face of this Order ("Customer") to the exclusion of all other terms and conditions, including any terms or conditions which Customer purports to apply under any purchase order, confirmation of order or similar document, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, this Agreement, in its applicable version at the relevant time, shall apply to each future order without API having to issue a copy for each order. API will notify Customer about any changes to this Agreement. API shall have no obligation to Customer to provide any Goods under the Order unless API shall have provided notice to Customer of its acceptance of this Order. API's shipment and delivery of the Goods identified in this Order without delivery of its acceptance notice shall nonetheless constitute a contract binding Customer to this Agreement if Customer does not reject such Goods upon their delivery. API is providing the Goods identified on this Order to Customer pursuant to the provisions of this Agreement and no other terms. API cannot change any provision of this Agreement without the written agreement of an authorized representative of API.
- 2. ORDER FULFILLMENT; CANCELLATION:** API and Customer agree the quantity of Goods delivered hereunder may vary by plus or minus 10% the quantity of Goods ordered. After API has accepted the order, Customer shall not alter or cancel any Orders without (a) API's written approval and (b) Customer's payment of "Cancellation Charges" applicable to the cancellation or alteration of this Order. API will assess and Customer will pay cancellation charges for any order cancelled in whole or in part after API's acceptance of the order. Customer's cancellation of any specially manufactured goods will require payment in full for such Goods.
- 3. PRICES:** Prices quoted for Goods are subject to change without prior notice to Customer. Prices for Goods shall be the prices in effect at the date of delivery to Customer. Goods will be delivered when available. Price does not include shipping, insurance or applicable sales or use tax.
- 4. BLANKET ORDERS:** API may accept "Blanket orders" when they are accompanied with purchase orders and specific release dates.
- 5. DELIVERY; RISK OF LOSS:** Delivery of the Goods shall be EXW (Incoterms 2010 as amended from time to time) as specified by API. Risk of loss for all Goods delivered to the EXW point shall pass to Customer upon delivery to the EXW point.
- 6. ACCEPTANCE BY CUSTOMER:** Customer shall inspect or cause the Goods to be inspected immediately upon delivery to the EXW point. Customer's use, sale or other disposition of the Goods or Customer's failure to notify API of any material deviation from API's published or agreed specifications for such Goods within 30 days after the date of delivery where the defect should be apparent on reasonable inspection or within 30 days of the same coming to the knowledge of Customer where the defect is not one which should be apparent on reasonable inspection and in any event no later than 3 months from the date of delivery, constitutes Customer's unconditional acceptance of the Goods.
- 7. RETURN OF GOODS:** (a) Customer may not return any Goods (or any portion of the Goods) which do not materially deviate from their published or agreed specifications; and (b) In the event that any Goods (or any portion of the Goods) materially deviate from their published or agreed specifications, the Customer will be entitled to return such Goods (or any such portion of the Goods) provided that (i) Customer has notified API within the timescale stipulated in **Condition 6** and (ii) API has verified that the Goods (or any portion of the Goods) materially deviate from their published specifications and has subsequently authorized their return in writing. For the avoidance of doubt, until such Goods are received by API, Customer shall continue to have all risk of loss and other liabilities in respect to such Goods (or any portion of such Goods). On receipt of the returned Goods API will, free of charge, replace, or at its option, refund the price of such Goods.
- 8. LIABILITY; NO CONSEQUENTIAL DAMAGES:** API's maximum liability to Customer for any material deviation from the published specifications for the delivered Goods shall be, at API's option, the replacement of the Goods following their authorized return or a refund or credit to Customer of the purchase price of that portion of the Goods which is the basis of any claim. Unless Customer fully complies with the provisions of **Conditions 6 and 7** above, Customer shall have waived any right to assert any claim under any theory or law or equity against API. Regardless of API's knowledge or lack thereof of any special damages that Customer could suffer, **API shall not be liable or responsible under any circumstance or theory of law or equity to Customer or any person whose rights arise from Customer for any indirect, special, consequential or similar damages or penalties or for direct loss of profits.**
- 9. LIMITED WARRANTY:** API warrants to Customer only that the Goods shall materially conform to the specifications applicable to them described on API's website or other current sales literature for 3 months from delivery. **API EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR USE AND WARRANTIES OF MERCHANTABILITY.** API does not warrant that the Goods or Customer's use of the Goods will achieve a particular result.
- 10. CUSTOMER'S ASSUMPTION OF RISKS:** Customer acknowledges that API's warranty with respect to the Goods is limited and API does not guarantee or promise that the Goods will be fit for the purpose intended by Customer or as used or applied by Customer. Customer knowingly assumes all risks and liability arising from the use of the Goods whether singly or in combination with other products, including without limitation, all risks and liability for the application of the Goods and the end result of use of the Goods.
- 11. PAYMENT; LATE PAYMENT, ENFORCEMENT:** Unless otherwise stated on the face of this Order, Customer shall pay for the Goods ordered under this Agreement within 30 days of the invoice date. If Customer fails to pay the entire amount when due under this Order, Customer shall pay, in addition to such overdue amount and API shall be entitled to: (a) collect a service charge as permitted by law that reflects API's additional administrative and interest expenses in managing an overdue account; (b) collect interest on the overdue amount at a rate of the lesser of 1.5% per month or the maximum amount permitted by applicable law; and (c) exercise such other rights and remedies available at law or equity, including without limitation, accelerate and declare due and owing all amounts owed under any other agreement or order between Customer and API and repossess the Goods. If Customer does not pay all amounts required by this **Condition 11**, API shall be entitled to bring a collection action against Customer and collect the amounts owed under this Order and any other order, the fees of attorneys, accountants, experts and other costs incurred by API in the collection of amounts owed by Customer. API's remedies under this Agreement are cumulative.
- 12. TITLE, SECURITY INTEREST:** Title shall pass on payment. To secure its payment for the Goods provided under this Order and any other amounts due to API under this Agreement, Customer hereby grants to API a purchase money security interest and lien in and to such Goods and all proceeds arising from the sale, loss or other disposition of the Goods (including without limitation, insurance proceeds) until such time as Customer has paid in full for such Goods and all other amounts due under this Agreement. Customer authorizes API to file a financing statement to reflect Customer's grant of a security interest to API.
- 13. INTELLECTUAL PROPERTY:** No right or licence is granted to Customer in respect of any Intellectual Property Rights (IPR) of API, except the right to use, or re-sell the Goods in the Customers' ordinary course of business. Where any IPR arise from or are generated through the provision of Goods by API, such IPR will vest in API absolutely.
- 14. CONFIDENTIALITY:** Each Party will keep confidential any and all Confidential Information that it may acquire from the other Party. Each Party will not use the Confidential Information of the other Party for any purpose other than (in the case of the API) to perform its obligations under the Contract or (in the case of the Customer) to receive and use the Goods. Each Party will ensure that its officers and employees comply with the provisions of this **Condition 14**. The obligations on each Party set out in **Condition 14** will not apply to any information which is publicly available or if that Party is required to disclose by order of a court of competent jurisdiction or due to any law or regulation (to the extent of such required disclosure).
- 15. OBLIGATIONS OF CUSTOMER:** Among Customer's other obligations, API notes that Customer may have the additional responsibilities as listed below. This is not intended to be an exhaustive list and does not constitute API's provision of legal advice. Customer should obtain its own legal advice for information about Customer's compliance obligations
- A.TPRA:** Pursuant to the Toxic Packaging Reduction Act ("TPRA") effective in the United States, a seller of certain packaging products provides a certification that those of its Goods intended for use in a "Package" or as a "Packaging Component" (as defined in ASTM D 99-95) do not contain certain

prohibited substances. API believes that Customer has the sole responsibility and liability under applicable law to inform API of the intended use of API's Goods. To assist Customer in complying with TPRA and obtain the required certifications, API must receive from Customer at the time of this Order a written notice from an authorized representative of Customer (i) stating that Customer intends to use the Goods in a Package or Packaging Component and (ii) requesting a certification from API. After such written request, API will provide to Customer a TPRA certification with the delivered Goods. Customer's failure to so specify that the Goods are to be used in a Package or a Packaging Component may violate federal, state or international statutes, rules and regulations and may subject Customer to penalties. Customer may also have obligations with respect to disposal of Goods. API shall have no responsibility or liability for Customer's failure to comply with its legal and regulatory obligations under any circumstances and Customer shall defend in the first instance, indemnify and keep indemnified and hold API harmless from any and all liabilities, damages, claims, losses, fees (including the fees of attorneys and other professionals) and expenses. API can make available Material Safety Data Sheets for its Goods.

B. EU Obligations. Customers who intend to utilize Goods in the European Community have the responsibility to inform API of the intended use of the Goods and to ensure that the Goods will not be in violation of the European Parliament and Council Directive 94/62/EC of December 20, 1994 and any update thereto on packaging and packaging waste in the European Community. API shall have no responsibility or liability for Customer's failure to comply with its legal and regulatory obligations under any circumstances and Customer shall defend in the first instance, indemnify and keep indemnified and hold API harmless from any and all liabilities, damages, claims, losses, fees (including the fees of attorneys) and expenses.

16. CHOICE OF LAW; CONSENT TO VENUE; WAIVER OF JURY TRIAL: This Agreement and its performance shall be governed by and construed according to the internal laws of the State of Kansas. Customer and API agree that any dispute between them shall be brought in any federal or state court sitting in Kansas City, Kansas and each consents to the personal jurisdiction of such court and waives any right to claim forum *non conveniens*. **Each of Customer and API knowingly and voluntarily waive, to the extent legally permissible, the right to a trial by jury in any dispute between them.**

17. FINAL AGREEMENT; ASSIGNMENT: This Agreement, including the Order is the final and entire agreement of the parties and merges and supersedes all prior and contemporaneous oral or written agreements and understandings. API does not accept any terms or conditions contained in Customer's form of order, acknowledgment or acceptance that are contrary to this Agreement. This Agreement can be modified only in writing signed by API (pursuant to paragraph 1) and Customer. Customer shall not assign this Agreement without the prior written consent of API, which consent shall not be unreasonably withheld. API may assign this Agreement to any of its affiliates.

18. INVALIDITY: If any provision contained in this Agreement is found to be invalid or otherwise prohibited by any law, regulation or ordinance, the remaining provisions of this Agreement shall nonetheless remain in full force and effect.

19. NOTICES: Each Party shall give any notices or other communications required or permitted under this Agreement in writing, to be delivered to the addresses identified in the Order by first class U.S. mail or recognized overnight carrier. Each party shall be entitled to specify a different address by giving prior written notice to the other.