

1. **NOTICE.** The terms and conditions contained herein apply to all purchases of goods ("Goods") from PackGen and/or its affiliates ("PackGen") by any purchaser and/or its affiliates (the "Buyer"). ALL SALES OF PACKGEN GOODS ARE MADE EXPRESSLY CONDITIONAL UPON THE BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. No additional or different terms or attempted additions, exclusions or modifications of such terms (by way of Purchase Order, confirmation, acknowledgment, course of performance, or any other action or communication (jointly and severally, a "Reply")) shall be effective against PackGen without the express written consent of PackGen. To the extent that the Buyer has previously submitted a Reply, this document shall serve as a rejection of such Reply (and any terms submitted therewith). This document shall serve as a counteroffer with respect to any purchase of Goods by the Buyer. To the extent that the Buyer subsequently submits any Reply to PackGen, any attempt to add, exclude or modify the terms and conditions contained herein is deemed material and PackGen hereby objects to any terms that are proposed additions to, or different from these terms and conditions.
2. **PAYMENT TERMS.** All payments shall be made to PackGen at its office as noted on the face of this Sales Order, or such other office as may be from time to time designated by PackGen. Interest accrues on overdue invoices at the rate of one and one-half percent (1 1/2%) per month, but not more than the amount allowed under Maine law. If Buyer fails to make advance payment when requested by PackGen, or if Buyer is or becomes delinquent in the payment of any sum due PackGen or refuses to accept C.O.D. shipment, then PackGen shall have the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel the sales order, refuse to make further deliveries, and declare immediately due and payable all unpaid amounts due from Buyer. Partial shipments made under any order shall be treated as a separate transaction and payment thereof shall be made accordingly. However, in the event of any default by Buyer, PackGen may decline to make further shipments without in any way affecting its rights. All prepaid and add freight charges will be assessed a handling and processing fee.
3. **RISK OF LOSS AND TITLE.** Full risk of loss (including transportation delays and losses) shall pass to Buyer upon delivery of the products to the F.O.B. shipping point. PackGen, however, retains title, for security purposes only, to all products until it has received payment in full in cash. PackGen may, at its option, repossess its products upon Buyer's default in payment or other obligations hereunder, and may charge Buyer with any deficiency.
4. **TAXES.** All federal, state, and local taxes imposed on the sale or use of any products, or the furnishing of any service, and all other similar taxes, shall be charged to and paid by Buyer. PackGen may accept a valid exemption certificate from Buyer, if applicable, but if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved, and PackGen is required to pay the tax covered by such exemption certificate, Buyer agrees to reimburse PackGen for the taxes paid.
5. **PERFORMANCE, INSPECTION, AND ACCEPTANCE.** All Goods are sold on the condition that Buyer agrees to examine all Goods upon receipt at the point of delivery and in any event no later than ten (10) days thereafter to determine whether the Goods meet Buyer's requirements. Buyer shall promptly provide to PackGen written notice of all objections (including claims for shortages or non-conformity) that a reasonable inspection would reveal and, in any event, no later than twenty (20) days after the date of arrival of Goods at the point of delivery. Buyer shall provide PackGen with a reasonable opportunity to examine and/or test any Goods that are alleged to be non-conforming. To the extent that any Goods may be deemed non-conforming by PackGen following its opportunity to examine and/or test the Goods, the Buyer agrees that PackGen may cure any such non-conformity within a reasonable time. Failure of Buyer to give such timely notice of any defect, non-conformity, or other claim or objection shall result in waiver and release of such claim and constitute final, irrevocable acceptance of the products.
6. **CANCELLATION.** Buyer's Orders placed with PackGen in relation to this counteroffer or otherwise may not be canceled except upon PackGen's express written consent prior to shipment and Buyer's acceptance of PackGen's cancellation charges, which shall protect PackGen against all costs, expenses and losses. Orders requiring special packaging, as well as custom-built or "Made to Order" products, may not be canceled and shipment of such products may not be postponed except upon PackGen's express written consent. Unless PackGen and Buyer agree otherwise in writing, Buyer shall be responsible to pay the full amount owed to PackGen for Goods. [[If PackGen, in its judgment, has reasonable concerns regarding Buyer's ability to perform its obligations under this agreement, PackGen may (a) by notice in writing to Buyer, cancel this agreement, without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to PackGen, (b) require full or partial payment in advance and suspend further deliveries and performance until such payment has been received or (c) make shipments C.O.D.]]
7. **EVENTS BEYOND PACKGEN'S CONTROL.** PackGen shall not be liable for failure to perform or delay in performance due to any cause beyond its reasonable control, or due to fire, flood, strike, or other labor difficulty, act of God, any governmental authority, or transportation difficulties, delays in usual sources of supply. In the event of delay in performance due to any such cause, the date of delivery or shipment will be extended by a period of time reasonably necessary to overcome the effect of such delay.
8. **LIMITED WARRANTIES.** Subject to Buyer's obligation to: i) examine the Goods upon arrival at point of destination and ii) promptly provide written objection to any alleged non-conformity (as set forth in paragraph 5 above), PackGen warrants that any Goods purchased by Buyer shall be free from defects in material and workmanship for a period of **[30 or] 120** days from arrival at point of delivery. To the extent that any Goods are deemed non-conforming by PackGen, PackGen, in its sole discretion, may elect to refund, repair or replace any non-conforming portion of the Goods. This warranty is the only warranty made by PackGen with respect to the Goods and no representative or person is authorized to bind PackGen for any obligations or liabilities beyond this warranty in connection with the sale of PackGen's Goods. This warranty is made to the original purchaser only at the original location and is nontransferable and may only be modified or amended by a written instrument signed by a duly authorized officer of PackGen. Goods that are replaced or repaired under this warranty are warranted only for the remaining unexpired portion of the original warranty period applicable to the specific product. All Goods that Buyer considers non-conforming shall be returned to PackGen. The risk of loss of the Goods shipped or delivered to or from PackGen for repair or replacement will be borne by Buyer. If it is found that any Goods have been returned without cause, Buyer will be notified, and the Goods shall be returned at Buyer's expense.
9. **EXCLUSION OF ALL OTHER IMPLIED AND EXPRESS WARRANTIES.** EXCEPT AS PROVIDED ABOVE, PACKGEN DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT OR TITLE FOR ANY GOODS PURCHASED BY BUYER. BUYER'S RIGHT TO SEEK (AT PACKGEN'S ELECTION) A REFUND, REPAIR OR REPLACEMENT OF ANY NON-CONFORMING PORTION OF THE GOODS CONSTITUTES BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM ARISING HEREUNDER OR RELATING HERETO WHETHER ASSERTEDLY BASED IN CONTRACT, WARRANTY, TORT OR OTHERWISE. PACKGEN MAKES THIS LIMITED WARRANTY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, WHICH ARE HEREBY DISCLAIMED. PACKGEN SHALL NOT BE RESPONSIBLE TO BUYER OR ANY OTHER PARTY UNDER THIS LIMITED WARRANTY FOR FIT OR COMPATIBILITY WHEN THE GOODS ARE USED WITH PRODUCTS OF ANOTHER MANUFACTURER. ALL ORAL AND WRITTEN COMMUNICATIONS PROVIDED BY PACKGEN IN RELATION TO THE GOODS ARE SUBJECT TO THE FOREGOING DISCLAIMER OF WARRANTIES AND LIMITATION ON DAMAGES CONTAINED HEREIN, WHICH REPRESENT A REASONABLE ALLOCATION OF RISKS BETWEEN PACKGEN AND THE BUYER, WHICH ALLOCATION IS REFLECTED IN THE PURCHASE PRICE FOR THE GOODS.
10. **CONFIDENTIAL INFORMATION.** All information that appears on the Website and all information however gained and in any medium, regarding PackGen's prices, costs, discounts, inventions, planned and existing products (including the Goods some of which may also be subject to PackGen's copyright or patent rights), packaging, customers and distributors as well as information regarding PackGen's business or finances and production methods, know-how and concepts used by PackGen is proprietary and confidential ("Confidential Information"). Purchaser agrees that all such Confidential Information constitutes trade secrets and that it will not disclose any such Confidential Information to others and will advise its employees and agents of the secrecy of such Confidential Information and take all other steps necessary to protect PackGen's Confidential Information. Purchaser shall not copy, reverse engineer or otherwise duplicate PackGen's Goods or any part of those Goods or copy, misuse or misappropriate any Confidential Information belonging to PackGen or any other person. PackGen shall be entitled to all legal and equitable rights and remedies available under state and federal law and otherwise to protect its Confidential Information, trade secrets and intellectual property of all kinds ("IP"). Confidential Information shall not include information that: (i) was known to Purchaser before receipt from Bery; (ii) is or becomes publicly available through no fault of Purchaser; (iii) is rightfully received by Purchaser from a third person not bound by a duty of confidentiality; or (iv) is disclosed by Purchaser with PackGen's prior written approval.
11. **LIMITED REMEDIES.** In no event will PackGen be responsible for damages, if any, caused by improper handling, storage, application, or use of the Goods after PackGen ceases to have custody, possession, or control thereof. All warranty claims must be made in writing immediately after discovery any breach thereof and, in any event within twelve (12) months from the date of delivery to the point of destination. Goods that are the subject of warranty claims must be held for PackGen's inspection. Upon Buyer's objection or submission of a claim, as provided above, and upon reasonable investigation of the claim by PackGen, including opportunity to examine and/or test the Goods (at PackGen's election), PackGen shall at its option either (i) repair or replace any non-conforming portion of the Goods or (ii) refund the purchase price for any portion of the non-conforming Goods. In no event shall PackGen be liable for more than the total purchase price for any non-conforming portion of the Goods.
12. **EXCLUSION OF CONSEQUENTIAL, INCIDENTAL AND OTHER DAMAGES.** BUYER AGREES THAT UNDER NO CIRCUMSTANCES WILL PACKGEN BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, DIRECT OR INDIRECT OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL REMEDIATION, CLEANUP OR CONTAINMENT COSTS, LABOR COSTS, REWORK CHARGES, LOST PROFITS, LOST BUSINESS OR LOST GOODWILL, EVEN IF PACKGEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER FURTHER AGREES THAT THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER.
13. **MODIFICATIONS.** Buyer agrees that PackGen shall have the right to make reasonable substitutions and modifications in the Goods, provided that such substitutions or modifications will not materially affect overall performance of the Goods or cause the Goods to become non-compliant with applicable regulations.
14. **INDEMNIFICATION.** Buyer shall defend, indemnify and hold PackGen, its subsidiaries and affiliates, their officers, directors, employees, and agents harmless from and against any loss, damage, expense, claims, causes of action, demands or liabilities (including, without limitation, PackGen's reasonable attorney fees, expenses and arbitration fees), arising out of the use, misuse, marketing, sale, distribution of the Goods, including, but not limited to, third party claims.
15. **GOVERNING LAW.** Any dispute regarding this agreement or transaction, or any matters related thereto, shall be governed by the law of the State of Maine, without regard to conflict of law principles. This agreement shall not be governed in whole or in part by the United Nations Convention on Contracts for the International Sale of Goods; As allowed by that convention, the parties specifically disclaim its application.
16. **ARBITRATION.** Buyer consents to and agrees that any and all disputes arising out of this agreement or transaction, or any matter related thereto, shall be heard by an arbitration panel of the American Arbitration Association and that judgment shall be entered on such award. The arbitration shall take place in Portland, Maine.
17. **ATTORNEY'S FEES, EXPENSES AND ARBITRATION COSTS.** To the extent that Buyer has breached its obligations hereunder or under applicable law, or because Buyer has brought invalid claims against PackGen, or it is otherwise necessary for PackGen to enforce its rights against Buyer in relation to its purchase of the Goods, PackGen shall be entitled to an award of reasonable attorney's fees, expenses, and arbitration fees. This right shall be in addition to, and not in limitation of, any right PackGen may have under applicable law.