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## **TIMBERPAK LLC GENERAL TERMS AND CONDITIONS OF SALE**

### **1. Applicability**

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which shall govern the sale of goods (“**Goods**”) by Timberpak LLC (“**Seller**”) to the buyer listed on the applicable Order Confirmation delivered herewith (“**Buyer**” and, collectively with Seller, the “**Parties**”). Seller hereby expressly rejects any of Buyer’s terms and conditions, including any terms and conditions that may have been included in any submitted purchase order.

(b) The accompanying order confirmation (the “**Order Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the Parties regarding such Order Confirmation, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, except this Agreement shall not replace, supersede, or otherwise alter any Confidentiality Agreement or Non-Disclosure Agreement that may be in place between the Parties. These Terms prevail over any additional or conflicting terms, including Buyer’s general terms and conditions of purchase, regardless of whether, how, or when submitted by Buyer, and any such additional or conflicting terms are hereby expressly rejected by Seller. Fulfillment of Buyer’s purchase order does not constitute acceptance of any of Buyer’s terms or conditions and does not serve to modify or amend these Terms. If both parties have executed an Order Confirmation, that Order Confirmation may not be cancelled by Buyer.

### **2. Delivery**

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage to the Goods in transit.

(b) Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods to the location specified on the applicable Order Confirmation (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods immediately upon their arrival at the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the applicable delivery date, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses, or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### **3. Non-Delivery**

(a) The quantity of Goods recorded by Seller upon shipment from Seller’s facility shall be conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence

proving otherwise.

(b) Seller shall not be liable for any failure to deliver the Goods (even if caused by Seller's negligence) unless Buyer provides Seller with written notice of such failure within three (3) days following the date when the Goods were scheduled to be delivered.

(c) Any liability of Seller for failure to deliver the Goods shall be limited to replacement of the Goods within a reasonable time or adjustment of the applicable price to reflect the actual quantity delivered.

#### 4. Quantity.

If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Order Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Order Confirmation adjusted pro rata.

#### 5. Shipping Terms.

Seller shall make delivery of the Goods in accordance with the terms on the face of the Order Confirmation.

#### 6. Title and Risk of Loss.

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the North Carolina Uniform Commercial Code.

#### 7. Amendment and Modification.

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party.

#### 8. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within three (3) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods**" means only the following: (i) Goods shipped are different from those identified in the applicable Order Confirmation; or (ii) Goods' label or packaging incorrectly identifies the Goods.

(b) If Buyer notifies Seller of any Nonconforming Goods prior to the expiration of the applicable Inspection Period, Seller shall, in its sole and subjective discretion, (i) replace such Nonconforming Goods or components thereof with conforming Goods or components thereof, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its sole cost, expense and risk of loss, the Nonconforming Goods to Seller's designated facility. Buyer shall include with its shipment a receipt indicating the total cost of such shipment. After receiving Buyer's shipment of purportedly Nonconforming Goods, if Seller confirms that the Goods are Nonconforming Goods and exercises its option to replace the Nonconforming Goods, Seller shall ship to Buyer, at Seller's sole cost, expense and risk of loss, the replaced Goods to the Delivery Point, and Seller shall issue to Buyer a credit in the amount of Buyer's actual cost of returning the Nonconforming Goods to Seller.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price.

(a) Buyer shall purchase the Goods from Seller at the prices set forth in the applicable Order Confirmation (the “**Price(s)**”). From time to time, Seller may provide Buyer a representative price list, but such price list is for informational purposes only, and the provision of such a price list shall not constitute an offer by Seller to sell Goods to Buyer at those prices.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel or real or personal property or other assets.

10. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days following the date of Seller’s invoice, unless otherwise stated in the Order Confirmation. Buyer shall make all payments hereunder by wire transfer and in US dollars.

(b) Buyer shall pay interest on all late payments at the lower of (i) the rate of eight percent (8%) per annum, calculated daily and compounded monthly, or (ii) the highest legal rate of interest allowable by law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments or any other monies due and owing to Seller, including, without limitation, court costs and attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, insolvency or otherwise.

11. Limited Warranty.

(a) Seller warrants to Buyer that, for a period of one (1) year from the date of shipment of the Goods (the “**Warranty Period**”), such Goods will materially conform to Seller’s published specifications in effect as of the date of manufacture under the corresponding Order Confirmation and will be free from material defects in materials and workmanship.

(b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; IN EACH CASE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), THE GOODS ARE BEING SOLD “AS-IS”, “WHERE-IS” AND “WITH ALL FAULTS.”**

(c) Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). **FOR THE AVOIDANCE OF DOUBT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; IN EACH CASE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. ALL THIRD PARTY PRODUCTS ARE BEING SOLD “AS-IS”, “WHERE-IS” AND “WITH ALL FAULTS.”**

(d) Seller shall not be liable for a breach of the warranty set forth in Section 11(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within the Warranty Period; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller’s place of business at Seller’s cost for such examination; and (iii) Seller reasonably verifies Buyer’s claim that the Goods are in breach of warranty.

(e) Seller shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Sections 11(d) and 11(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or any defective parts) or (ii) credit or refund the price of such Goods at the pro rata contract rate; provided, that if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

**(g) THE REMEDIES SET FORTH IN SECTION 11(F) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).**

#### 12. Limitation of Liability.

**(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD UNDER THE APPLICABLE ORDER CONFIRMATION.**

(c) The limitation of liability set forth in Section 12(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

#### 13. 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 Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement, with no liability or recourse to Buyer except for the return of the purchase price set forth in the applicable Order Confirmation, if (i) any governmental authority imposes antidumping or countervailing duties, (ii) any other penalties are imposed by any governmental entity on any Goods, or (iii) any new customs regulations, duty impositions, or other similar legislation is imposed which, in Seller's sole discretion, frustrates the intent or impact of this Agreement or the sale of the Goods.

#### 14. Termination.

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment from Seller; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

#### 15. Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. 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.

#### 16. Confidential Information.

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be used, disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure and received from a source other than Seller; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. The terms of this paragraph are intended to be in addition to and cumulative with, and shall not substitute or replace any other Confidentiality Agreement or Non-Disclosure Agreement or other similar agreement entered into between Buyer and Seller prior to or contemporaneously with the issuance of any Order Confirmation.

#### 17. Force Majeure.

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

#### 18. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. 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.

#### 19. 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.

#### 20. Third-Party Beneficiaries.

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 these Terms.

#### 21. Governing Law.

All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of laws provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of North Carolina. The United Nations Convention on the

International Sale of Goods is expressly excluded and will not apply.

22. Submission to Jurisdiction.

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of North Carolina in each case located in the City of Lexington and/or County of Davidson, North Carolina, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Both Parties consent that venue is proper in such jurisdiction.

23. Notices.

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the Parties at the addresses set forth on the face of the Order Confirmation or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Seller may deliver Order Confirmations to Buyer via email. Where Seller seeks Buyer’s signature on an Order Confirmation, such Order Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which constitute one and the same agreement. Electronic delivery of an executed Order Confirmation shall be as effective as delivery of an original, executed counterpart of the Order Confirmation. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

24. Severability.

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.

25. Survival.

Provisions of these Terms which by their nature should apply beyond their respective terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.