

GENPAK LLC
TERMS AND CONDITIONS OF SALE

1. **CONTRACT TERMS.** These terms and conditions of sale (as amended from time to time in accordance with Section 15 below, these “**Terms**”) govern the sale of products (“**Goods**”) by Genpak LLC, a New York limited liability company (“**Seller**”), to any buyer of Goods (each, a “**Buyer**”). Upon receipt of a purchase order from Buyer, Seller may, in Seller’s sole discretion, accept such purchase order, at which time Seller will provide confirmation to Buyer of such acceptance, which sets forth the pricing terms, by electronic data interchange or e-mail (the “**Sales Confirmation**”). Such Sales Confirmation and these Terms (collectively, the “**Agreement**”) comprise the entire agreement between the parties with respect to such purchase of Goods, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to such purchase of Goods. Any samples, drawings, descriptive matter or advertising issued by Seller or contained on Seller’s websites or in Seller’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Agreement or have any contractual force. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Seller which is not set out in the Agreement. All terms to the contrary, or additional terms and conditions stated in any purchase order or other document prepared by Buyer, have been and hereby are rejected and shall not be binding in any way on Seller or be made part of the Agreement. Fulfillment of Buyer’s purchase order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend the Agreement.
2. **PRICES.** The price for Goods shall be the price set out in the Sales Confirmation or, if no price is quoted, the price set out in Seller’s published price list (subject to any applicable discounts or rebates) as of the date of order. For the avoidance of doubt, any prices quoted in a purchase order provided by Buyer shall not apply unless such prices are confirmed in the applicable Sales Confirmation. Prices and discounts may be modified by Seller without notice; provided, that any pricing set forth in a Sales Confirmation may not be changed by Seller for 30 days thereafter. Respecting any order accepted for shipment, Seller’s prices set forth in the Sales Confirmation shall apply. Seller reserves the right to select the carrier. Any excess transportation charges arising through Buyer’s selection of the carrier shall be borne by Buyer.
3. **PAYMENT.** For Buyer’s with approved credit, payment terms shall be net 30 from invoice date or as otherwise set forth in the Sales Confirmation. Buyer shall make all payments hereunder by check, wire transfer or automated clearinghouse and in U.S. dollars. Buyer shall not withhold payments of any amounts due and payable by reason of any set-off of any claim or dispute with Seller. Seller may, without limiting its other rights or remedies, set off any amount owing to it by Buyer against any amount payable by Seller to Buyer. If Buyer becomes delinquent in payment obligations, or fails to meet other credit or financial requirements established by Seller, or, if in Seller’s sole judgment, Buyer’s credit becomes impaired, Seller may exercise any or all of the following rights and remedies in addition to any other rights or remedies provided in the Agreement or by applicable law: (i) all late payments shall accrue interest, calculated daily and compounded monthly, at the lesser of (A) the rate of 1.5% per month or (B) the highest rate permissible under applicable law; (ii) Seller may, in its sole discretion, defer or suspend shipping Goods to Buyer; (iii) Seller may refuse to extend further credit to Buyer and may require advance payment for new orders; and (iv) Seller may declare all outstanding amounts due and payable. Buyer agrees to pay all costs and expenses, including, but not limited to, attorney and court fees, and collection agency fees, if the Buyer is delinquent and the account is placed in collections.
4. **DELIVERY.** Unless otherwise specified within the Sales Confirmation, delivery terms are FOB Seller’s warehouse. Seller may set an estimated shipment date of ten days after receipt of Buyer’s purchase order, which shall be an estimate and not a guaranty. Seller shall not be liable for any delays, loss or damage relating to the Goods in transit. 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 number of units shipped whether such shipment is in whole or partial fulfillment of the Sales Confirmation. Additional or unexpected delivery, detention and unloading costs per Seller’s then current policies (including, for example, missed appointment fees) may be incorporated into the price of the Goods.
5. **TITLE, RISK OF LOSS.** Upon delivery of the Goods to a carrier by Seller, risk of loss with respect to the Goods shall transfer to Buyer. Any loss or damage thereto (including, without limitation, any loss or damage that occurs following delivery of the Goods to a carrier), shall be borne by Buyer. Buyer shall obtain appropriate insurance (including fire, theft, damage and extended coverage), with Seller named as an additional insured or its interests otherwise recognized and insured. Title to the Goods shall not pass to Buyer until the earlier of: (i) Seller’s receipt of payment in full (in cleared funds) for the Goods; and (ii) as applicable, Buyer’s resale of the Goods, in which case title to the Goods shall pass to Buyer immediately before such resale.
6. **LIMITED WARRANTY.** SELLER EXPRESSLY WARRANTS THAT ALL UNUSED GOODS FURNISHED BY SELLER ARE FREE FROM MATERIAL DEFECTS IN WORKMANSHIP AND MATERIALS AS OF THE TIME OF SHIPMENT BY SELLER. EXCEPT FOR THE FOREGOING WARRANTY, SELLER MAKES NO WARRANTIES

WHATSOEVER WITH RESPECT TO THE GOODS AND DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES AS TO THE QUALITY THEREOF, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES. ALL SELLER WARRANTIES AND OTHER DUTIES WITH RESPECT TO THE GOODS ARE CONCLUSIVELY PRESUMED TO HAVE BEEN SATISFIED AS OF 30 DAYS FOLLOWING THE DATE OF SHIPMENT BY SELLER, SUBJECT TO SECTION 7 HEREOF.

7. **REMEDIES FOR BREACH OF WARRANTY.** Seller shall not be liable for a breach of the warranty hereunder unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 30 days following the date of shipment of the applicable Goods; (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 the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective. Seller shall not be liable for a breach of the warranty hereunder if: (a) Buyer makes any further use of such Goods after giving such notice; (b) 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 (c) Buyer alters or repairs such Goods without the prior written consent of Seller. Subject to the foregoing, upon the determination of a breach of the limited warranty set forth herein, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) 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. THE REMEDIES SET FORTH IN THIS SECTION 7 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.
8. **INSPECTION AND CLAIMS.** Upon delivery, Buyer shall make prompt inspection, and all claims relating to nonconforming Goods must be made in writing to Seller within five business days after delivery (the "**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 reasonably required by Seller. Buyer will afford Seller reasonable opportunity to examine and test the Goods being the basis for any claim. As a condition for refund or credit, Seller may request Buyer to return to Seller the Goods upon which the claim is made in as good condition as when received by Buyer. No claim against Seller shall be made or allowed or credit given for Goods returned without prior authority of Seller in writing. In the event the Goods are received in damaged condition not acceptable for use, or an order is received short, Buyer shall notify Seller. A copy of the delivery carrier's receipt, indicating the damage or shortage and the disposition of the damaged goods must accompany such notification. Deduction must not be taken against the original invoice. Except as provided under Sections 7 and 8, Buyer has no right to return Goods shipped to Buyer pursuant to this Agreement.
9. **LIMITATION OF LIABILITY.** 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. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID OR PAYABLE TO SELLER FOR THE GOODS SOLD UNDER THE APPLICABLE SALES CONFIRMATION.
10. **TERMINATION.** In addition to any remedies that may be provided under these Terms, Seller may terminate the Agreement, and suspend any further performance by Seller hereunder, with immediate effect upon written notice to Buyer, if: (i) Buyer fails to pay any amount when due under the applicable Sales Confirmation; (ii) any proceeding in bankruptcy, insolvency, receivership or liquidation is taken against Buyer; (iii) Buyer makes an assignment for the benefit of creditors or is the subject of an act of bankruptcy or insolvency; (iv) Buyer materially breaches any term of the Agreement; or (v) Seller, in good faith, believes that the ability of Buyer to pay or perform any provision of the Agreement is impaired.
11. **INTELLECTUAL PROPERTY AND INFRINGEMENT.** Seller reserves the right to discontinue deliveries of any Goods, the manufacture, sale or use of which, in its opinion, would involve intellectual property infringement. All intellectual property rights in or arising out of or in connection with the Goods shall be owned by Seller. Nothing in the Agreement shall be deemed to grant Buyer a license to use, offer to sell, or sell any of Seller's intellectual property.
12. **TAXES.** 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.

13. **FORCE MAJEURE.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the 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, earthquake, explosion, pandemics, strikes or other labor disputes (whether or not relating to either party's workforce), riots, other civil unrest, fires, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, national emergency, revolution, insurrection, epidemic, restraints or delays affecting carriers or inability or delay in obtaining suppliers of adequate or suitable materials, late or non-delivery by, or other breaches of, Seller's suppliers, assertion by third parties of infringement claims, compliance with any order, recommendation or request of any government authority or agency. Seller reserves the right to equitably allocate its available Goods among its customers, including its own affiliates, as it determines in its sole discretion.
14. **GOVERNING LAW.** All matters arising out of or relating to the 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 law provision or rule.
15. **MISCELLANEOUS.** The relationship between the parties is that of independent contractors. Nothing contained in the 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. Buyer shall not assign any of Buyer's rights or delegate any of Buyer's obligations under the Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 15 is null and void. No assignment or delegation relieves Buyer of any of Buyer's obligations under the Agreement. Except as set out in these Terms, any amendment to the Agreement shall only be binding when agreed in writing by Seller. A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein is intended to or shall confer upon any other person or entity any right, benefit or remedy of any nature under or by reason of these Terms. 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 Sales 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 or other electronic transmission (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). 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 15. All non-public, confidential or proprietary information of Seller, including, without limitation, 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 the Agreement is confidential, solely for the use of performing the Agreement and may not be 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 15. This Section 15 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure and not otherwise subject to any confidentiality obligations; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.