

## O-I PACKAGING SOLUTIONS, LLC TERMS AND CONDITIONS

**GOODS AND SERVICES COVERED BY SELLER'S INVOICE ARE BEING SOLD ONLY IN ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN, AND IN SELLER'S QUOTATION OR ACKNOWLEDGMENT IF ANY, INCLUDING THE TERMS AND CONDITIONS PRINTED ON THE INVOICE. BY ACCEPTING DELIVERY OF THE GOODS OR SERVICES COVERED HEREBY, BUYER WAIVES ALL TERMS AND CONDITIONS CONTAINED IN ITS PURCHASE ORDER OR OTHER DOCUMENTS WHICH ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED HEREIN AND ALL SUCH DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS SHALL BE NULL AND VOID AND OF NO EFFECT.**

**1. PRICE.** Shipping allowances and prices are subject to change by Seller without notice. Increases in labor, freight and material costs before completion of contract plus applicable overhead may be invoiced to Buyer. Premium time as required by Buyer will be invoiced as an extra item.

**2. DELIVERY OR PERFORMANCE.** Unless otherwise specified on the invoice, all deliveries are F.O.B. point of shipment. Shipment will be made in accordance with instructions issued by Seller. Upon delivery of goods to carrier, Buyer assumes risk of all loss and damage resulting from any cause whatsoever. Shipping, delivery or performance dates are approximate and are not guaranteed. Seller reserves the right to ship and invoice for a quantity of goods which may vary up to ten percent over or under the quantity specified and Buyer agrees to accept delivery and pay for such revised quantity and consider the shipment to be complete. Partial deliveries shall be accepted by the Buyer and paid for at contract prices and terms.

**3. FORCE MAJEURE.** Seller shall not be liable for any delay or other failure of performance due to causes beyond its reasonable control including without limitation acts of God, acts of Buyer, acts of military or civil authorities, fire or other casualty, strikes, lockouts, weather, epidemic, war, riots, delays in transportation or car shortages, or inability to obtain necessary labor, materials, components, equipment, services, energy or utilities through Seller's usual and regular sources at usual and regular prices. In any such event Seller may, with notice to Buyer, at any time and from time to time without further liability to Buyer, (a) postpone its performance under this contract, (b) make partial performance or cancel all or any portion of this contract, or (c) allocate available quantities among its customers in any manner which Seller deems reasonable. Cancellation or any part of this contract shall not affect Seller's right to payment for performance or any other part hereof.

**4. WARRANTY AND REMEDY.** Unless otherwise expressly stated on the invoice, Seller warrants to Buyer, for a period of 30 days from the date of shipment and/or performance of services, that its services hereunder are performed in a good and workmanlike manner and that goods delivered hereunder are free from defects in materials and workmanship, except that those materials furnished by Seller's suppliers or subcontractors are warranted by Seller only to the extent of the supplier's or subcontractor's express warranty to Seller. If during such period Buyer promptly notifies Seller in writing of any breach of such warranty and complies with any applicable warranty procedures of Seller, Seller shall thereupon, at Seller's option, re-perform services, repair or replace any defective goods at Seller's plant (Buyer to pay all transportation charges) or refund the price of the goods or services or part thereof which gives rise to the claim. Seller shall make no allowance for repairs or alterations made by Buyer unless made with Seller's prior written consent. The foregoing shall constitute the sole and exclusive remedy of Buyer and the full liability of Seller, for any breach or warranty. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE (AND SUPERSEDES AND EXCLUDES ANY ORAL WARRANTIES OR REPRESENTATIONS OR WRITTEN WARRANTIES OR REPRESENTATIONS, NOT EXPRESSLY DESIGNATED IN WRITING AS A "WARRANTY" OR "GUARANTEE" OF SEELER, MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS).

**5. LIMITATION OF SELLER'S LIABILITY.** Seller's liability on any claim of any kind, including negligence with respect to the goods or services which are the subject of this contract, shall in no case exceed the price of the goods or services or part thereof which gives rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR DAMAGES IN THE NATURE OF PENALTIES.

**6. LIMITATION OF ACTIONS.** Any action for any loss or damage with respect to the goods or services which are the subject of this contract must be commenced by Buyer within one year after Buyer's cause of action has occurred.

**7. INDEMNIFICATION AND WAIVER.** Buyer shall defend, indemnify and hold harmless Seller from any loss or damage sustained directly by Seller and from and against all claims asserted against Seller, with respect to the goods or services which are the subject of this contract arising in whole or in part out of (a) failure of Buyer, its agents, employees or customers to follow specifications, instructions, warnings or recommendations furnished by Seller, (b) failure of Buyer, its agents, employees or customers to comply with all applicable laws and regulations, including the Occupational Safety and Health Act of 1970, (c) misuse of the goods by Buyer, its agents, employees or customers, (d) misrepresentation by Buyer, its agents, employees or customers, (e) the sole or contributing negligence of Buyer, its agents, employees or customers, or (f) alleged infringement of any patent, trademark or copyright as a result of Seller's performance in accordance with Buyer's designs, plans or specifications. Buyer hereby waives and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled. As used in paragraph 7 hereof, the term "Seller" shall mean the Seller, its officers, directors, agents, employees, subcontractors, parent, subsidiaries, divisions and affiliates.

**8. CANCELLATION BY BUYER.** Buyer may cancel this contract only upon written notice to Seller and payment of reasonable cancellation charges including (1) the price for goods and services completed prior to Seller's receipt of such notice, (2) all costs previously incurred in connection with uncompleted goods or services together with reasonable profit thereon, and (3) the expenses incurred by Seller by reason of such cancellation.

**9. TAXES.** All taxes and other charges imposed by federal, state, local or foreign governments on the manufacture, sale, shipment, import, export or use of the goods (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify and hold harmless Seller from and against all liabilities for such taxes or charges and attorney's fees or costs incurred by Seller in connection therewith.

**10. BUYER'S MATERIALS.** All of Buyer's tooling, goods and other property in Seller's possession shall be fully insured by Buyer and Buyer releases Seller from all liability for loss or damage to such materials caused by Seller's negligence or otherwise. Whenever one year has elapsed since the completion of any order from Buyer requesting the use of such materials, Seller may make any use or disposition of such materials without any liability to Buyer.

**12. SELLER'S PROPRIETARY RIGHTS.** Seller shall be the sole owner of all drawings, molds, designs, inventions or improvements made by or for Seller in connection with the performance of this contract. Buyer shall not reproduce any drawing furnished by Seller. Buyer shall not use or disclose any of Seller's trade secrets or confidential information, whether or not designated as such, except as required in connection with the use or resale of the goods or services covered by this contract.

**13. SECURITY AGREEMENT; CREDIT AND COLLECTION.** To secure payment of all sums due hereunder or otherwise, Seller shall retain a security interest in the goods delivered hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest. Seller is relying upon Buyer's representation of solvency and if Seller at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, Buyer shall be in material breach hereof and Seller may without liability to Buyer, withhold performance hereunder, change the payment terms and/or repossess goods theretofore delivered. Title to the goods covered by this contract shall remain with Seller until payment in full is received. In extending any credit hereunder, Seller may charge Buyer finance, service or late charges in an amount not greater than allowed by law, and if Buyer fails to pay according to the terms of this contract, Seller may make such charges and may also collect the amount unpaid with Buyer being liable to Seller for all costs of collection including attorney's fees.

**14. MISCELLANEOUS.** This contract constitutes the entire agreement between Buyer and Seller relating to the goods or services which are the subject hereof. No modifications shall be binding upon the Seller unless in writing signed by Seller's duly authorized representative. No waiver by either party or default shall be deemed a waiver of any subsequent default. The captions used herein shall have no substantive significance.