

Performance Packaging of Nevada, LLC Terms & Conditions

GENERAL TERMS OF SALE

Performance Packaging of Nevada, LLC ("Seller") acceptance of, and performance under, Buyer's Purchase Order(s) will be governed by these Terms of Sale notwithstanding any inconsistent terms in Buyer's Purchase Order(s) or other subsequent writings.

1. Invoices are due and payable Net 30 days unless otherwise noted under Terms on the invoice. All initial orders from new customers require a 50% deposit before commencement of any work. A late payment charge of the lower of: one and one-half percent (1.5%) or the highest amount permissible by law, per month, will be assessed on all past due invoices. If Buyer fails to make any payment due hereunder, Buyer will be responsible for all expenses (including reasonable attorneys' fees) incurred by Seller in collecting such amounts. All payments due hereunder are in U.S. dollars and are exclusive of any applicable taxes, for which Buyer shall be solely responsible.
2. All materials will be billed as of the date of **shipment**, and all such billings will cover the full quantity of materials being shipped.
3. All cylinder, art, and plate charges are due immediately upon final art approval.
4. The Seller will have the right to dispose of cylinders of the items that have not had any orders placed for a continuous 12 months.
5. All materials are sold F.O.B. origin. Freight costs on individual shipments of 2,000 lbs. or more will be prepaid for the first destination point only. Freight on additional shipments will be at Buyer's expense. Freight costs on individual shipments of fewer than 2,000 lbs. will be paid by Buyer and are due immediately upon receipt. Beyond the continental United States, freight allowance will be only to the point of export. Air shipments will be at Buyer's expense. All fuel surcharges will be at buyer's expense.
6. The price of each order shall be determined by the quantity of identical materials to be printed and shipped at one time, in accordance with Seller's then current price lists. In addition to any material costs, Buyer shall pay the amount of any present or future manufacturer's tax, use tax, sales tax, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer (other than any federal or state taxes on the net income of Seller).
7. Seller reserves the right to ship and invoice PER ITEM Overruns at the price rate of the quantity specified in the quotation, and any Underruns within the same range shall likewise be deemed as constituting the complete fulfillment of such items. Such Overruns or Underruns shall not exceed the following:
Less than 5MM sq in PER ITEM 40%, 5MM TO 10MM sq in PER ITEM 30%, 10MM TO 25MM sq in PER ITEM 20%, 25MM sq in and above PER ITEM 10%
8. In addition to the Over/ Under run tolerances outlined in Section 7, Seller reserves the right to ship and invoice PER ITEM an unequal number of pouches and caps not to exceed a +/- 5% difference between the two on custom spout pouch orders. This +/- 5% difference applies to EACH individual cap color on any order where there might be different colored caps required.
9. All art or other materials provided to Seller shall not (i) infringe any intellectual property, confidentiality, publicity or privacy rights of any third party; (ii) be defamatory; or (iii) violate any laws regarding unfair competition, anti-discrimination or false advertising. All original files and/or art provided by Buyer can be returned to Buyer if their account is in good standing and all invoices have been paid relating to the artwork item. All working files altered by Seller shall remain the property of Seller. All plates, artwork, cylinders, etc. are the property of the Seller and are to be released only to the Seller.
10. A signed Purchase Order for merchandise is required before Seller shall proceed with any work.
11. Title to materials shall pass to the Buyer at the F.O.B. point, and the Buyer assumes all risk of loss and responsibility for obtaining and paying for insurance and negotiating with the carrier and/or insurer in the event of mis-delivery, loss or damage.
12. Seller expressly warrants that for the period of 90 days after the shipment, the materials to be supplied hereunder will be free from defects in workmanship. THE FORGOING EXPRESS WARRANTY IS EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTIES EXPRESS, OR IMPLIED, WITH RESPECT TO SUCH MATERIALS. Particularly, since these materials are processed or used under conditions beyond Seller's control, SELLER MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO THE MERCHANTABILITY OF SUCH MATERIALS, OR WITH RESPECT TO THEIR FITNESS FOR ANY PARTICULAR PURPOSE. IT IS THE BUYER'S RESPONSIBILITY TO SPECIFY THE EXACT MATERIAL CONSTRUCTION THAT WORKS FOR THEIR PRODUCT AND THEIR PACKAGING MACHINERY.
If, prior to the expiration of the foregoing warranty period, any materials are defective, Buyer's exclusive remedy and Seller's sole obligation will be that Seller will repair or replace such defective materials. At Seller's sole option, UPON RECEIPT OF THE DEFECTIVE PRODUCT, F.O.B. Seller location or other location designated by Seller, Seller will (i) replace the defect quantity of the material order, or (ii) refund costs of the defective material, or (iii) provide Buyer with a credit in the amount of the purchase price paid by Buyer. Such exclusive remedy and sole obligation is expressly conditioned upon Seller receiving written notice of any defect within a reasonable period of time after it was discovered, or by reasonable care should have been discovered, but in no event more than sixty (60) days after delivery to the F.O.B. point. Seller shall be given reasonable opportunity to investigate all claims, and no materials may be returned by Buyer to Seller until after receipt by Buyer of definite shipping instructions from Seller.
In no event will Seller's liability for such defective or nonconforming materials exceed the purchase price paid by Buyer. Seller shall in no event be liable to anyone for any contingent, incidental or consequential damages resulting from any breach of warranty on its part or for failure to deliver or otherwise, hereunder. In no event will Seller be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence) or other theories of law, with respect to goods sold or services rendered by Seller, or any undertakings, acts or omissions relating thereto. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of materials, cost of capital, cost of substitute materials, facilities or services, downtime, shutdown or slowdown costs, or for any other types of economic loss, and for all claims of Buyer's customers for any such damages.
13. Seller will not be liable for any ordinary, incidental or consequential loss or damage as a result of Seller delay in or failure of delivery due to: (i) any cause beyond Seller's reasonable control; (ii) an act of God, act of Buyer, embargo or other governmental act, authority, regulation or request, fire, flood, earthquake, theft, accident, strike (whether legal or illegal), slowdown or other labor disturbance, act of war, hostility, terrorism or belligerency by any person, group or nation, riot, power failure, delay in transportation; or (iii) inability to obtain necessary labor, materials, components or facilities.
Should any of the foregoing events occur, Seller, at its option, may cancel Buyer's order with respect to any undelivered materials or extend the delivery date for a period equal to the time lost because of delay. Notice of such election will be given promptly to Buyer. In the event Seller elects to so cancel the order, Seller will be released of and from all liability for failure to deliver the materials, including, but not limited to, any and all claims on behalf of Buyer for lost profits, or any other claim of any nature which Buyer might have.
If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer will pay Seller for all additional charges resulting therefrom.
14. Seller shall have the right to require full cash payment in advance before making shipping regardless of the terms shown. If Buyer defaults in any of the terms of any order or payment, or if the financial responsibility of Buyer shall at any time become impaired or unsatisfactory to Seller, the terms of payment provided herein may be altered or terminated by Seller, and delivery of materials may be suspended pending receipt of cash or satisfactory security.
15. Seller accepts all major credit cards, including Visa, MasterCard, Discover, and American Express with the understanding that a 4% processing fee will be applied.
16. To secure payment of the purchase price and of all monies which may be due hereunder, and performance of all of Buyer's obligations hereunder, Buyer hereby: (i) grants Seller a first priority security interest in all materials sold by Seller and any products or proceeds therefrom; (ii) agrees to execute such other security agreements and financing statements as Seller may reasonably request; and (iii) authorizes the filing by Seller of a UCC Financing Statement on Form UCC1 (or other similar form). In addition, without presentment, demand, notice, protest or advertisement of any kind and without limiting any other remedy available to Seller at law or equity, Seller shall have the right to enter and take possession of all materials sold by Seller from the premises on which they are located.
17. No course of dealing, usage of trade or course of performance will be relevant to explain or supplement any of these Terms of Sale.
18. These Terms of Sale, and the contract of sale between Seller and Buyer, will be governed by and construed in accordance with the laws of the State of Nevada. Seller and Buyer hereby agree that any legal action will be brought in the State and Federal courts located in Clark County, Nevada and hereby consent to personal jurisdiction of such court in any such action over the parties hereto.
19. The invalidity, in whole or part, of any of the provisions of these Terms of Sale will not affect the enforceability of any of the other provisions herein.
20. Buyer shall indemnify and hold harmless Seller and its managers, officers, directors, employees, agents and representatives from and against any and all loss, damage, liability, or expense, including costs and reasonable attorneys' fees, that the foregoing, or any of them, may incur by reason of, or in connection with, any misrepresentation, inaccurate statement or material omission made by Buyer herein, any breach of any of Buyer's representations and warranties, or any failure on Buyer's part to fulfill any of the Buyer's covenants, agreements or obligations set forth herein.
21. Seller and Buyer are independent contractors. Neither party is an agent, representative or partner of the other party. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between Seller and Buyer or to impose any partnership obligation or liability upon either party.