



## STANDARD CONDITIONS OF SALE - PACKAGING MATERIALS

### 1. REPRESENTATIONS, WARRANTY, DISCLAIMER.

(a) Multivac Canada Inc. ("**Multivac**") warrants to the counterparty ("**Customer**") to the agreement or purchase order (in either case, including all attachments, exhibits and schedules and together with these Standard Conditions of Sale, the "**Sales Agreement**") to which these Standard Conditions of Sale relate that the products or materials (hereafter "**products**") delivered hereunder meet the manufacturer's standard specifications for the products or such other specifications as may have been expressly agreed to by Multivac in writing signed by two officers of Multivac. THE WARRANTIES SET FORTH IN SECTIONS 1 and 3 HEREIN ARE COMPLETE AND ARE IN LIEU OF AND CUSTOMER HEREBY WAIVES, ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Customer assumes all risk and liability resulting from use of the products delivered hereunder, whether used singly or in combination with other products.

### 2. LIMITATION OF LIABILITY.

(a) No claim of any kind made by Customer against Multivac, whether as to products delivered or for non-delivery or late delivery of products, and whether or not based on negligence, shall be greater in amount than the purchase price of the products actually received by Multivac in respect of which damages are claimed. Failure to give notice of a claim within ninety (90) days from date of delivery, or the date fixed for delivery (in the case of non-delivery), shall constitute a waiver by Customer of all such claims against Multivac in respect of such products. No charge or expense incident of any claims will be allowed unless approved by an authorized representative of Multivac, which approval shall not be unreasonably withheld or delayed. Products shall not be returned to Multivac without Multivac's prior permission, and then only in the manner prescribed by Multivac. The remedy hereby provided shall be the exclusive and sole remedy of Customer.

(b) For greater certainty, except as provided for above in paragraph 2(a), Multivac shall not be liable to the Customer in contract, tort (including, without limitation, negligence), any other theory of liability and/or under any warranty or otherwise for: (i) the quality, life, handling or other required specifications of the products that are packaged using the products; (ii) damages or accidents resulting from the Customer's, the Customer's employees' and/or any contractors', independent contractors', agents' or other persons on the premises': (A) failure to observe the operating and safety instructions for the products or (B) any act or omission concerning the improper handling, storage, installation, sanitation, operation and/or maintenance of the products; or (iii) for any direct, indirect, incidental, punitive, special, exemplary or consequential damages (including, without limitation, any damages resulting from loss of use, loss of product, cost of capital, loss of goodwill, loss of business opportunity, business interruption, loss of revenue, overhead and/or profits, loss of savings, cost of procurement of substituted goods, loss of any contract that may be suffered by the Customer or for any matter arising out of or in connection with the use or inability to use the products) regardless of whether such damages were foreseeable and whether or not Multivac was advised of the possibility thereof. For greater certainty, the Customer irrevocably and unconditionally waives with respect to the Sales Agreement and the products, to the fullest extent permitted by law, all of the

rights, benefits, conditions, warranties and protections, express, implied or statutory, given by the *Sale of Goods Act* or equivalent legislation, if any.

(c) In the event of any claim or claim over against Multivac in respect of the products, once delivered to the Customer as contemplated herein, the Customer shall indemnify and hold harmless Multivac for all such claims or claims over for any reason whatsoever.

(d) Regarding printing and artwork and other copyrighted works: (i) Any reproduction, including but not limited to, printing, of any material, including copyrighted or otherwise protected works, by or for Multivac is done by or for Multivac as the agent of the Customer and in connection therewith the Customer assumes all liability for such reproductions, including but not limited to, infringements of any patent, trademark, copyright, trade name, trade dress, trade secret and any other intellectual property right (collectively, the "**Intellectual Property Right**") belonging to any third party, if any, and shall indemnify and hold harmless Multivac, its agents, affiliates and their respective directors, officers and employees from and against any and all claims, actions, damages, losses, costs, liabilities and/or expenses (including, without limitation, legal fees and expenses of every kind and nature on a full indemnity basis) that may result from or arising as a result of Multivac directly or indirectly acting as such agent of the Customer; and (ii) Customer shall assume at its sole cost and expense the defense of any suit for such reproduction, including but not limited to, infringement or alleged infringement of any Intellectual Property Right brought against Multivac by reason of the aforementioned reproduction. Multivac shall have the right, but not the obligation, to participate as it deems necessary (at the Customer's sole cost and expense) in and/or take control of any such legal action brought against it. All printing plates shall be and remain Multivac's property even though part of the original cost of a plate may have been borne by Customer.

### 3. NON-INFRINGEMENT.

Multivac warrants that the use or sale of the products delivered hereunder will not infringe the claims of any Canadian patent covering the products themselves, but does not warrant against infringement by reason of the use thereof by Customer (or any other party) if the products are used in combination with other products or in the operation of any process.

### 4. FORCE MAJEURE.

(a) Any failure or delay by Multivac or Customer hereunder, other than failure of or delay in payment for any of the products delivered to Customer, shall be excused from liability for the time and to the extent such failure or delay is caused by force majeure or any other cause not within the reasonable control of the affected party thereto or Multivac's suppliers experiencing such difficulty. The term "force majeure" shall include, without limitation, acts of God and the public enemy, the elements, fire, explosion, accidents, acts of terrorism, breakdowns, labor disputes, embargoes and any other public disturbance, inability to obtain materials, supplies, permits or transportation facilities, damage to equipment or production or storage facilities, or act or omission by a third party not controlled by the party experiencing such difficulty and any laws, orders, rules, regulations, acts, restraints of any governmental authority, civil or military. Upon occurrence of any failure or delay included within the terms of this paragraph 4, the party experiencing such difficulty shall promptly notify the other party, and shall make every reasonable effort to remedy the cause of such failure or delay or find alternative means for performance. Notwithstanding the foregoing,

settlement of strikes, lockouts or other labor disputes shall be exclusively within the discretion of the party hereto experiencing such difficulty.

(b) Quantities so affected may be eliminated from the Sales Agreement without liability, but the Sales Agreement shall remain otherwise unaffected. Nothing in the Sales Agreement or otherwise shall obligate Multivac to purchase supplies of the products specified herein to enable it to perform its obligations under the Sales Agreement.

#### **5. SPECIALLY MADE PRODUCTS.**

If the Sales Agreement covers products that must be manufactured especially for Customer and if such production is suspended or terminated for any reason, Customer will take delivery of and make payment for such products as have been completed and such as are in process on the date notice of suspension or termination is received by Multivac or Customer, as the case may be; provided, that if Customer for any reason cannot accept delivery of such products, it will make payment therefor as though delivery had been made and Multivac will store such products for Customer's account and at Customer's expense.

#### **6. ALLOCATIONS OF SUPPLY.**

If for any reason including, but not limited to, Force Majeure, Multivac is unable to supply the total demand for product specified herein, Multivac may distribute its available supply among any or all purchasers, as well as departments and divisions of Multivac, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.

#### **7. GOVERNMENT ACTION.**

If any government action should place or continue limitations on the price provided for in the Sales Agreement such that it would be illegal or against public or government policy for Multivac to charge, assess or receive the full amount of or to increase such prices as determined by the Sales Agreement, then Multivac shall have the option (1) to continue to perform under the Sales Agreement, subject to such adjustments in prices that Multivac may deem necessary to comply with such government action, (2) to revise the Sales Agreement, subject to Customer's approval, in order to most nearly accomplish the original intent of the Sales Agreement, or (3) to terminate performance of the affected portions of the Sales Agreement without liability for any damages.

#### **8. TECHNICAL ASSISTANCE.**

At Customer's request and in Multivac's sole discretion, Multivac may agree to furnish such technical assistance and information as it has available with respect to the use of the products covered by the Sales Agreement at a price as agreed to by Multivac and the Customer; provided, however, that if agreed to in writing by two officers of Multivac, such technical assistance and information may be provided by Multivac to the Customer gratis. Customer assumes sole responsibility for results obtained in reliance thereon.

#### **9. SAFETY; HANDLING.**

Customer acknowledges that it has received and is familiar with Multivac's labeling and literature concerning the products sold hereunder and Customer will ensure that its employees who handle, process or sell such products and customers of such products are aware of such information and understand and comply with all safety and other special handling and use recommendations and requirements related to such products, if any. Customer agrees that products sold hereunder will not knowingly be resold or given in sample form to persons using or proposing to use the products for purposes contrary to recommendations given by Multivac or prohibited by law, but will be sold or given as samples only to persons who, in the opinion of Customer, can handle, use and dispose of the products safely.

#### **10. TAXES.**

Any sales, use or other taxes assessed on or incurred in the sale of the products are not included in the Sales Agreement, unless specifically indicated therein, and are payable by Customer. Multivac shall be under no obligation to pay any such taxes. In the event Multivac, in its sole discretion, pays any such taxes, Customer shall promptly reimburse Multivac for any of the foregoing charges directly paid by Multivac.

#### **11. INVOICING AND PAYMENT; GRANT OF SECURITY INTEREST.**

(a) The purchase price and terms of payment shall be as set forth in the Sales Agreement. Multivac reserves the right to demand security or full payment of the purchase price from any Customer, including, without limitation, delivery by Customer of an irrevocable letter of credit (in form and substance satisfactory to Multivac) delivered to Multivac at the time of acceptance of the Sales Agreement. At the option of Multivac, for Customers whose credit has been approved in advance by Multivac, terms of payment for certain sales designated by Multivac shall be by wire or electronic transfer of funds to be made to Multivac's bank account upon Customer's receipt of Multivac's invoice.

(b) If payment is not made in accordance with the terms of the Sales Agreement, in addition to all other legal rights available to Multivac at law or in equity, Multivac shall be entitled to (i) charge Customer, effective from the date payment becomes due, interest per annum at the prime rate as published from time to time by The HSBC Bank plus 3 percentage points on the unpaid balance (but not to exceed the highest lawful rate of interest under applicable law), (ii) withhold shipment of any products due to Customer until such payment is made or decline to make further deliveries except upon receipt of cash or satisfactory security and (iii) exercise its rights in connection with any security granted by Customer to Multivac or exercise its rights in connection with any letter of credit delivered by Customer to Multivac. Customer shall pay all costs of Multivac, including, without limitation, reasonable legal fees on a solicitor/client basis and court costs, incurred by it in collection of past due amounts from Customer. All payments by Customer shall be in lawful currency of Canada unless otherwise agreed to by Multivac.

(c) Customer shall not be entitled to set-off any amount owing at any time.

(d) To the extent any portion of the purchase price of the products is not paid in full prior to delivery of such products, Customer hereby grants to Multivac a security interest in the products described in the Sales Agreement and the proceeds thereof to secure payment of any portion of the purchase price remaining unpaid and all other amounts owing by Customer to Multivac. Customer irrevocably authorizes Multivac or its designee to file such financing statements pursuant to applicable personal property security legislation with respect to the products as Multivac may deem appropriate.

#### **12. DELIVERY; SHIPMENT; RISK OF LOSS.**

(a) Unless otherwise agreed in writing by the parties, all products are shipped at Multivac's option via ocean freight, either ex-works, Multivac's facility in Toronto, Ontario, or delivered duty paid (DDP) named place of destination. Upon delivery to the named place of destination, title shall pass to Customer, and Customer shall assume all risk and full responsibility for any loss, damage, deterioration and corrosion of the products. Customer is responsible for all inland freight charges including, without limitation, insurance, handling, shipment and delivery costs, unless prior written agreement with Multivac is otherwise made. Customer shall promptly reimburse Multivac for any such charges directly paid by Multivac.

(b) Unless otherwise agreed to in writing signed by the parties, Multivac is authorized to make partial shipment of the products. Each partial shipment shall be deemed a separate sale, and invoices shall be rendered and payment shall become due



therefore in accordance with the Sales Agreement.

(c) Customer shall give written notice to Multivac of any claim for shortage, error in shipment, or error in charges within thirty (30) days after receipt of the products, or such claim shall be deemed waived.

(d) In the event Customer fails or refuses to accept any delivery of the products, in whole or in part, Multivac shall have the right to dispose of such products in a commercially reasonable manner, at a commercially reasonable price. Customer agrees to pay to Multivac the difference, if any, between the price of the products set forth in the Sales Agreement and the price obtained by Multivac less any and all incidental damages.

(e) For greater certainty, any delivery dates communicated to the Customer, either verbally or in writing, including in the Sales Agreement, are only approximate and Multivac is not responsible for any damages, losses or costs of any kind including, but not limited to, loss of revenues or profits incurred as a result of late delivery of the products.

**13. GOVERNING LAW.**

The Sales Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein without regard to conflict of laws provisions. For purposes of any action brought as a result of, related to or otherwise with respect to the Sales Agreement, the Customer hereby consents to, and waives any objections to the exclusive jurisdiction of the courts of Ontario at Multivac's election. The Customer further consents and waives any objection that venue of any action brought as a result of, related to or otherwise with respect to the Sales Agreement shall be proper in the above-named courts.

**14. SEVERABILITY.**

In the event any one or more of the terms and conditions of the Sales Agreement shall be held invalid, illegal or unenforceable in any respect by a court, such invalidity, illegality or enforceability shall not affect the other terms and conditions of the Sales Agreement; provided, however, that the remaining terms and conditions can be reasonably construed together without the provision declared invalid, illegal, or unenforceable.

**15. EFFECT OF WAIVER.**

Failure of Multivac to enforce any or all of the terms and conditions of the Sales Agreement in a particular instance or instances shall not constitute a waiver or preclude later

enforcement.

**16. CANCELLATION – MODIFICATION.**

Once accepted by Multivac, an order for products cannot be canceled by Customer without written approval from Multivac. Acceptance of cancellation will be predicated upon Customer's payment of a cancellation charge to be determined by Multivac.

**17. ASSIGNMENT.**

The Sales Agreement is not assignable or transferable by either party, in whole or in part, except with the prior written consent of the other party.

**18. ENTIRE AGREEMENT.**

These Standard Conditions of Sale, along with the Sales Agreement to which these Standard Conditions of Sale is an exhibit or attachment and any other exhibits or attachments referred to therein or herein, contains all the terms and conditions with respect to sales and purchases of the products sold hereunder or thereunder. These Standard Conditions of Sale supersede any terms and conditions dated as of an earlier date and any prior quotations, correspondence, conversations, agreements, purchase orders or similar instructions. ANY AND ALL TERMS OR CONDITIONS SET FORTH IN A PURCHASE ORDER OR OTHER COMMUNICATIONS FROM CUSTOMER THAT ARE DIFFERENT FROM, IN ADDITION TO OR IN CONFLICT WITH THESE STANDARD TERMS AND CONDITIONS OF SALE ARE OBJECTED TO BY MULTIVAC AND SHALL NOT BE EFFECTIVE OR BINDING. No modification hereof or of the Sales Agreement shall be binding on either party unless in writing and signed by Customer and [two officers] of Multivac. No modification shall be effected by the acknowledgement or acceptance of purchase order forms stipulating different conditions, which are expressly rejected hereby. Unless Customer shall notify Multivac in writing to the contrary as soon as practicable after receipt of this document by Customer, the Customer's acceptance of the products or payment therefor shall be equivalent to Customer's assent to the terms and conditions hereof. Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party or any default by the other which may thereafter occur.

**19. OTHER.**

Unless otherwise stated, reference in the Sales Agreement to days means a business day in Toronto, Ontario.

