



## STANDARD CONDITIONS OF SALE - PACKAGING MATERIALS

### 1. REPRESENTATIONS, WARRANTY, DISCLAIMER.

Multivac, Inc. ("Multivac") warrants to the counter-party ("Customer") to the agreement or purchase order (in either case, including all attachments, exhibits and schedules and 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. MULTIVAC MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY, EXCEPT AS PROVIDED IN SECTIONS 1, 3 AND 4 HEREIN. 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.

No claim of any kind made by Customer against Multivac, whether as to products delivered or for nondelivery 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 nondelivery), 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. In no event shall either party be liable for special, indirect or consequential damages, whether or not caused by or resulting from the negligence of such party.

### 3. NON-INFRINGEMENT.

Multivac warrants that the use or sale of the products delivered hereunder will not infringe the claims of any United States 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. FAIR LABOR.

Multivac warrants that all products delivered hereunder were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

### 5. FORCE MAJEURE.

No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the party affected, including, but not limited to, Acts of God, fire, explosion, flood, war, act of or authorized by any government, accident, labor trouble or shortage, inability to obtain material, equipment or transportation ("Force Majeure"). Quantities so affected may be eliminated from the agreement without liability, but the agreement shall remain otherwise unaffected. Nothing in the agreement or otherwise shall obligate Multivac to purchase supplies of the products specified herein to enable it to perform this agreement.

### 6. SPECIALLY MADE PRODUCTS.

If this 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.

### 7. 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.

### 8. GOVERNMENT ACTION.

If any government action should place or continue limitations on the price provided for in this 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 this agreement, then Multivac shall have the option (1) to continue to perform under this agreement subject to such adjustments in prices that Multivac may deem necessary to comply with such government action, (2) to revise this agreement, subject to Customer's approval, in order to most nearly accomplish the original intent of this agreement, or (3) to terminate performance of the affected portions of the agreement without liability for any damages.

### 9. 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 this agreement. Unless otherwise agreed in writing signed by Customer and two officers of Multivac, all such technical assistance and information will be provided gratis. Customer assumes sole responsibility for results obtained in reliance thereon.

### 10. 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.

### 11. TAXES.

Customer shall reimburse Multivac for taxes (excluding income taxes), excises or other charges that Multivac may be required to pay to any government (national, state or local) as a direct consequence of the sale of the products sold hereunder.

### 12. INVOICING AND PAYMENT; GRANT OF SECURITY INTEREST.

(a) The purchase price and terms of payment shall be as set



forth in the Sales Agreement. The Company 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 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 at the prime rate as published from time to time by The Wall Street Journal 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 reasonable attorney's fees and court costs, incurred by it in collection of past due amounts from Customer. All payments by Customer shall be in lawful currency of the U.S.A. unless otherwise agreed to by Multivac in writing signed by two officers of 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 with respect to the products as Multivac may deem appropriate.

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

(a) Unless otherwise agreed in writing signed by Customer and two officers of Multivac, all products shall be shipped, at Multivac's option, either ex-works Multivac's plant in Kansas City, Missouri or ex-works the manufacturer's production facility. Upon delivery, title shall pass to Customer, and Customer shall assume all risk and full responsibility for any loss, damage or deterioration of the products. Customer is responsible for all freight charges including insurance, handling, shipment and delivery costs, unless prior written agreement with Multivac is otherwise made. Customer shall promptly reimburse Company for any such charges directly paid by Company.

(b) Unless otherwise agreed to in writing signed by Customer and two officers of Multivac, 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 on the face hereof and the price obtained by Multivac less any and all incidental damages.

#### **14. GOVERNING LAW.**

The Sales Agreement shall be governed by the laws of the State of Missouri, USA without regard to conflict of laws provisions. For purposes of any action brought as a result of or related to this Agreement, the Customer hereby consents to, and waives any objections to the exclusive jurisdiction of state court in Kansas City, Platte County, Missouri, USA and the United States District Court for the Western District, Western Division of Missouri at Multivac's election. The Customer further consents and waives any objection that venue of any action brought as a result of or related to the Sales Agreement shall be proper in the above-named courts.

#### **15. SEVERABILITY.**

In the event any one or more of the Standard Conditions of Sale contained herein shall be held invalid, illegal or unenforceable in any respect by a court, such invalidity, illegality or enforceability shall not affect the other Standard Conditions of Sale stated herein; provided, however, that the remaining Standard Conditions of Sale can be reasonably construed together without the provision declared invalid, illegal, or unenforceable.

#### **16. EFFECT OF WAIVER.**

Failure of Multivac to enforce any or all of the Standard Conditions of Sale herein in a particular instance or instances shall not constitute a waiver or preclude later enforcement.

#### **17. 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.

#### **18. ASSIGNMENT.**

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

#### **19. ENTIRE AGREEMENT.**

This agreement, 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 terms and conditions 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.



**CUSTOMER**

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Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**MULTIVAC, INC.**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
  
Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_