

Pearson Packaging Systems

Standard Purchasing Terms and Conditions

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Definitions:

Agreement: shall mean these Terms and Conditions together with the Order pursuant to which goods or services are being provided and all documents specifically referenced herein or in such Order.

Buyer: shall mean the Pearson affiliated company issuing the Order.

Deliverables: shall mean Goods and/or Services depending on the context.

Goods: shall mean materials or products described in Orders, the purchase of which is governed by the terms of this Agreement.

Order: shall mean a document, electronic or hard copy, issued by Buyer to Seller, in the form of a purchase order or release or similar document, referring to these Terms and Conditions and ordering Deliverables.

Intellectual Property: shall mean all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

Seller: shall mean the individual, partnership, corporation or other entity contracting to furnish the Deliverables described in the Order, to whom the Order is issued by Buyer.

Services: shall mean services (whether or not ancillary to a sale of Goods) described in Orders, the purchase of which is governed by the terms of this Agreement.

Terms and Conditions: shall mean these Standard Terms and Conditions of Purchase.

1. Scope of the Agreement

- 1.1. This Agreement must be accepted as indicated in Orders or, if Orders do not provide, in writing by Seller within the time specified on the face of the Order or, if not so specified, within a reasonable time of Seller's receipt hereof.
- 1.2. If for any reason Seller fails to accept this Agreement in writing or as specified in the Order, the furnishing or commencement of any Services called for hereunder, (including preparation for manufacture), the shipment by Seller of any Goods (or lots thereof) ordered hereby, the acceptance of any payment by Seller hereunder, or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof, may, at Buyer's election, be treated as an unqualified acceptance by Seller of this Agreement and all the terms and conditions hereof.
- 1.3. Any terms or conditions proposed in Seller's acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Agreement shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and shall apply to each Deliverable received by Buyer from Seller hereunder, and such terms and conditions may hereafter be modified only by written instrument executed by an authorized representative of Buyer's Purchasing Department and an authorized representative of Seller.
- 1.4. If the Order is issued by Buyer in response to an offer by Seller and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assents to all such additional and different terms herein and acknowledge that this Agreement constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within ten (10) days of receipt of the relevant Order.

2. Price and Payment

- 2.1. Payment terms: Payment terms will be net Sixty (60) days following (i) receipt of conforming Deliverables delivered pursuant to Buyer's delivery requirements, and (ii) satisfaction of the invoicing requirements (electronic or otherwise) set forth in this Agreement.
- 2.2. Seller warrants that the agreed price for the Deliverables is not less favorable than that currently extended to any other buyer for the same or like Deliverables in similar quantities.
- 2.3. Cash Discount: The cash discount period, if any, shall be computed as commencing with receipt by Buyer of invoice or of Deliverables, whichever is later.
- 2.4. Invoices: All invoices must contain the following information: Purchase order number, item number, description of items, quantities, unit prices, and taxes. Payments of invoices shall not constitute acceptance of Deliverables and shall be subject to adjustment for shortages, defects and other failure of Seller to meet the requirements of this Agreement. Buyer or any of its affiliated companies may set off

any amount owed by Seller or any of its affiliated companies to Buyer or any of its affiliated companies against any amount owed by Buyer hereunder.

- 2.5. Buyer shall not be obligated to pay for any Deliverable if the invoice for such Deliverable is received more than six (6) months after the receipt of the Deliverable.

3. Delivery

- 3.1. In case of late delivery except for Force Majeure cases, the Seller shall pay to the Buyer 1.5% of the total value of the late equipment per day. Any fractional part of a day is to be considered a full day. The total amount of penalty shall not, however, exceed 15% of the total value of the equipment involved in late delivery. If the delay is more than 2 weeks, the Buyer is entitled to terminate this Contract. The definition of late delivery in this context is any delivery that exceeds the "wanted date" listed on the PO. The delivery is not considered late if a revised date is included in the PO confirmation and the delivery does not exceed the revised date. This confirmation must be completed within 24 hours of PO receipt.
- 3.2. Seller shall furnish the items called for by this Agreement in accordance with the delivery dates stated on the Order and if delivery dates are not stated, Seller shall offer Buyer its best delivery dates, subject to written acceptance by Buyer ("Delivery Dates"). Time is of the essence in Seller's performance of the Order, and Seller shall deliver Goods and perform Services by the Delivery Dates. Buyer may from time-to-time adjust its delivery schedules, and unless otherwise agreed in writing, such changes in schedule shall not affect the prices of the Deliverables ordered. Buyer may defer payment or return at Seller's expense, any Deliverables delivered in advance of the scheduled Delivery Date or in excess of the quantity specified for such items.
- 3.3. Notice of Delay: Whenever an actual or potential reason for delay (including but not limited to labor disputes), delays or threatens to delay the timely performance of the Order, Seller agrees to immediately notify Buyer in writing of all relevant information and, subject to the force majeure provision set forth herein, to make and pay for all necessary changes to fulfill its obligations under the Order and mitigate the potential impact of any such delay. Buyer has the right without incurring any liability to cancel any Deliverables affected by the delay in performance.
- 3.4. Bills of Lading: Bills of Lading shall reference the Order and Buyer's receiving address and purchase point of contact. When Buyer will be the importer of record, Seller will follow the instructions of Buyer's designated representative regarding completion of documentation used in the importation process and proper declaration of value. The original copy of the bill of lading with Seller's invoice shall be mailed to the location specified by Buyer's procurement contact, or if no location is specified by Buyer, to Buyer's applicable Accounts Payable Department or Accounts Payable service provider.
- 3.5. Packing Slip: Seller shall include an itemized packing slip with all shipments that will adequately identify the Goods shipped, including Buyer part number.
- 3.6. Shipping and Approved Carriers: On Orders where Buyer either pays for or reimburses Seller directly for shipping costs, Goods shall be shipped in accordance with routing instructions furnished by Buyer. If such instructions are not received, Goods shall be shipped via least expensive method sufficient to meet delivery requirements, but always through Buyer approved carriers.

4. Change Orders

- 4.1. Buyer shall have the right at any time prior to the Delivery Date of Deliverables to make changes in drawings, designs, specifications, packaging, place of delivery, nature and duration of Services, and method of transportation, or require additional or diminished work. If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of the Order, Seller will communicate the adjustment in writing. Buyer must accept the adjustment in writing or the Buyer will not pay for the adjustment and the original delivery time will apply. Seller's claims for adjustment under this section shall be deemed waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from the date Seller receives the change order.

5. Warranties

- 5.1. Seller expressly covenants and warrants that all Deliverables shall conform to the specifications, drawings, samples or other description upon which the Order is based, shall be suitable for the purpose intended, merchantable, free from defects in material and workmanship, and free from liens, or encumbrances of title, and that Deliverables of Seller's design will be free from defect in design. All products will be covered under seller warrantee for at least 1 year from buyer's physical receipt.
- 5.2. Non-conforming equipment or parts. Buyer reserves the right to (i) cancel or terminate for cause any Order, in whole or in part, which contains Non-Conforming Good, and return the Non-Conforming Goods for a full refund or (ii) require Seller to replace or promptly repair defects of any Non-Conforming Goods without expense to Buyer. Seller shall be liable for all expenses incurred in the return shipping of the Non-Conforming Goods.

6. Publicity

- 6.1. Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Agreement or which shall make use of Buyer's name or logo without the prior written consent of Buyer, except as may be reasonably required to perform this Agreement.

7. Insurance

- 7.1. Without limiting Seller's duty to defend, hold harmless and indemnify hereunder, Seller agrees to secure and carry as a minimum during the entire term of this Agreement and any Order, the following insurance:
- 7.1.1. Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the amount of \$1,000,000 for any one occurrence;
- 7.1.2. General Liability Insurance including Premises and Contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum,

a combined single limit of \$1,000,000 for any one occurrence, unless some other amount is agreed to in writing;

- 7.1.3. If Seller vehicles are used on Buyer's premises and/or used to accomplish work under this Agreement or an Order or otherwise on behalf of Buyer, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of \$1,000,000 for any one occurrence;
- 7.1.4. If Seller or its subcontractors have Buyer's materials or equipment in its care, custody or control, Seller shall maintain All Risk Property Insurance in an amount sufficient to meet or exceed the replacement value of such material; and
- 7.1.5. If Seller is performing professional services on behalf of Buyer, Seller shall maintain Professional Liability Insurance with a limit of not less than \$5,000,000, unless some other amount is agreed to in writing.

7.2. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Seller, its employees, invitees or agents under the Agreement and that such insurance shall not be invalidated by any act or neglect of Seller whether or not such act or neglect is a breach or violation of any warranty, declarations or conditions of the policies.

8. Force Majeure / Disaster Recovery

- 8.1. Neither Seller nor any Buyer shall be liable for damages for any failure or delay in the performance of this Agreement or any Order resulting from causes beyond its reasonable control including, but not limited to, unforeseeable events such as acts of God, acts of Government, war, court order, riots, natural disasters, and labor strikes. Buyer may cancel without liability to Seller its purchase of any Deliverables affected by Seller's failure or delay in performance. The party incurring the delay shall give timely notice to the others of any such event and shall use all reasonable efforts to avoid or remove the cause and resume performance with minimum delay. If requested by Buyer, the parties shall jointly prepare a contingency plan to address the potential impact of any such event.
- 8.2. Seller that is: (i) a sole source of supply; or (ii) providing Deliverables whose lead-time exceeds one hundred twenty (120) days, shall develop and maintain a Disaster Recovery Plan. The said plan must include strategy and actions for recovery and continuation of business, related to production of Seller's Deliverables furnished under this Agreement, in the event of a disaster or emergency in order to prevent or limit interruption of supply of Deliverables. Seller shall furnish a copy of Disaster Recovery Plan to Buyer upon request.

9. Dispute Resolution / Governing Law

- 9.1. Both parties agree that they will endeavor to resolve any disputes arising from or related to this Agreement amicably through discussions with each other; and that prior to either party filing legal action against the other (except for equitable actions that may be necessary to protect a party's rights), they will enter into informal settlement discussions between management personnel of each party. The settlement discussions will commence following receipt of written notice by one party to the other and will conclude within a 60-day period, unless the parties agree to a different time period. Such settlement

discussions will include attempts that are at least two tiered; meaning that if one level of management from each side cannot resolve the dispute, then each party will appoint a higher level of management to review the dispute and endeavor to reach resolution. The purpose of this section is to prevent costly litigation where early frank and pragmatic discussions between the parties could avert such litigation.

- 9.2. Any action or claim by Seller with respect hereto shall also be brought in the appropriate court in the jurisdiction described above, if Buyer so elects. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid. If Buyer and Seller mutually agree to participate in alternative dispute resolution, Seller agrees that all alternative dispute resolution proceedings shall take place in Washington State.

10. Miscellaneous

- 10.1. **Duty to Proceed:** Seller shall proceed diligently with the performance of this Agreement. Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement regarding a dispute related to this Agreement shall excuse Seller from proceeding. During the pendency of any dispute, Buyer shall continue to pay in accordance with this Agreement for Seller's performance related to matters not in dispute. Notwithstanding the generality of the foregoing, Buyer shall retain its rights with respect to setoff and withholding.
- 10.2. **Independent Contractor:** Seller shall perform the services required under this Agreement as an independent contractor and shall have exclusive control and direction of the persons engaged by Seller to perform such services, including, but not limited to, employees of Seller working at Buyer facilities. Seller assumes full responsibility for the acts and omissions of such persons. Seller shall have exclusive liability for the payment of and compliance with regulations pertaining to local, state, and federal or other governmental entity payroll taxes or contributions, and taxes for unemployment insurance, workers' compensation, social security and/or similar or related protection for such persons, as required by applicable law. Seller shall have no power to legally bind, or act on behalf of, Buyer and shall not hold itself out as an agent of Buyer.
- 10.3. **Waiver:** Buyer's failure to seek a remedy for any breach by Seller or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, rights or privileges or any other terms, conditions, or privileges whether of the same or similar type. Acceptance of any Deliverables or payment therefore shall not waive any breach.
- 10.4. **Remedies:** Seller shall be liable for any damages incurred by Buyer as a result of Seller's acts or omissions under this Agreement. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.
- 10.5. **Interpretation:** This Agreement shall be construed as if drafted jointly by the parties and no provision in this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.