

TARAL PLASTIC CONTAINER COMPANY
TERMS AND CONDITIONS
REVISED JUNE 2009

- 1. GENERAL.** These Terms and Conditions shall govern the sale of Taral's products to Buyer. Buyer shall be bound by these Terms and conditions upon the earliest to occur of: (i) Buyer's written agreement to be bound hereby; (ii) Buyer's payment of any portion of Taral's invoiced amount; or (iii) Buyer's acceptance of delivery of any product from Taral. These Terms and Conditions take precedence over any additional or different terms or conditions of Buyer, to which notice of objection is hereby given. In no event shall Taral's delivery of any product hereunder be deemed or construed as an acceptance of any additional or different terms or conditions of Buyer.
- 2. PRICE AND PAYMENT TERMS.** Unless otherwise agreed to in writing by Taral, (i) all prices quoted are F.O.B. Taral's designated departure shipping or delivery location, (ii) all payments shall be in U.S. Dollars, and (iii) Buyer agrees to pay all invoices no later than thirty (30) days after the invoice date. **All overdue accounts shall accrue a service charge of 1.5% of the unpaid balance per month (or such lesser rate as may be permitted by law) until the account is paid in full.** Taral shall also charge Buyer a fee equal to the lesser of \$50 or 5% of the invoice amount for each time any Buyer check does not clear Buyer's bank due to insufficient funds. Regardless of any prior approval of credit for an order, Taral may at any time require full or partial payment in advance. Taral may without liability suspend performance until receipt of any requested advance payment. Until payment in full of all amounts owed to Taral by Buyer with respect to product, Taral shall have a purchase money security interest in all product, including all additions and replacements and proceeds thereof.
- 3. DELIVERY.** Taral shall use its best efforts to deliver product in accordance with any reasonably requested delivery schedule. Where strict compliance with such requested delivery schedule is not possible, Taral will make delivery as soon as reasonably possible. Taral shall not be liable for delay in delivery or for failure to give notice of any delay. Buyer acknowledges that Taral may ship up to plus or minus 10% of the quantity of product ordered without obtaining any approval from Buyer, and Buyer agrees to pay Taral in full for all product delivered, including all product delivered in excess of the ordered amount.
- 4. TAXES AND OTHER CHARGES.** Taral's prices are exclusive of any federal, state, local or foreign sales, use, withholding excise or similar taxes or any United States or foreign customs duties or other charges that may be assessed, charged, imposed or levied by any public authority. Any such taxes or charges shall be paid by Buyer.
- 5. TITLE; RISK OF LOSS; SHIPMENT.** Title and risk of loss and damage shall pass to Buyer upon delivery of the product to the common carrier or to Buyer's representative at the F.O.B. point. Buyer shall (i) reimburse Taral for all shipping charges paid by Taral plus an administration surcharge of 20% of such charges or (ii) directly pay its own shipping charges by providing Taral with Buyer's shipping account information prior to shipping. All product shall be packed for shipment and storage in accordance with standard commercial practices. In no event shall Taral assume any liability in connection with shipment, nor shall the common carrier be deemed an agent of Taral.
- 6. INSPECTION / ACCEPTANCE OF GOODS / RETURNS / CREDITS.** Buyer shall inspect all goods within fifteen (15) days after receipt by Buyer. **All claims for shortages, defects, or other non-conformities shall be made in writing by Buyer within fifteen (15) days after receipt by Buyer.** Failure to notify Taral in writing of any claim within such fifteen (15) day period shall constitute an irrevocable acceptance of the goods and an admission by Buyer that the goods comply fully with all terms, conditions and specifications of the corresponding order. Credit will not be allowed on any parts which have been altered or defaced in any manner. **Taral's sole liability is the repair or replacement at Taral's option, of any product which is defective or differs substantially from sample or description.** Taral is not liable for consequential or incidental damages. Buyer shall have no right to return conforming goods without Taral's consent. In the event Taral consents to Buyer's return of conforming goods, Buyer shall pay Taral restocking fee equal to 20% of the total costs of such goods.
- 7. LIMITED WARRANTY / DISCLAIMER OF WARRANTIES.** TARAL WILL REPLACE ANY PRODUCT WHICH DOES NOT MEET MINIMUM INDUSTRY QUALITY STANDARDS. NO FURTHER WARRANTY OF ANY KIND IS EXPRESS OR IMPLIED. TARAL HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ALL PRODUCT DELIVERED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, AND (III) ARISING OUT OF COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. BUYER'S REMEDIES WITH RESPECT TO THE SALE, DELIVERY OR RESALE OF ANY PRODUCT DELIVERED BY TARAL HEREUNDER, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE, PRODUCTS LIABILITY AND STRICT LIABILITY), UNDER ANY WARRANTY OR OTHERWISE, SHALL BE EXCLUSIVELY AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL TARAL HAVE LIABILITY HEREUNDER FOR ANY DAMAGES EXCEEDING THE AMOUNT ACTUALLY PAID BY BUYER HEREUNDER, OR FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO FOR LOSS OF PROFITS OR REVENUE, LOSS OF USE, OR CLAIMS OF BUYER'S CUSTOMERS, NOTWITHSTANDING (A) THAT TARAL MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR CLAIMS OR (B) THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL ANY FAILURE OF TARAL TO REPLACE ANY DEFECTIVE PRODUCT AFFECT THE FOREGOING DISCLAIMER OF CONSEQUENTIAL DAMAGES. TARAL IN NO WAY WARRANTS THAT THE PRODUCT SOLD HEREUNDER WILL BE COMPATIBLE FOR USE WITH ANY OTHER PRODUCT OR COMPONENT, OR THAT THE PRODUCT SOLD HEREUNDER WILL BE SUITABLE FOR BUYER'S OR ANY THIRD PARTY'S INTENDED USE, AND ASSUMES NO RESPONSIBILITY THEREFOR.
- 8. FORCE MAJEURE.** Taral shall not be liable for failure to perform its obligations hereunder due to events beyond its reasonable control, including, but not limited to, strikes, parts or materials shortages, manufacturing difficulties, riots, wars, actual or threatened acts of terrorism, fires, acts of God, delays of carriers or suppliers, and acts in compliance with any applicable law, regulation or order (whether valid or invalid) of any governmental body.
- 9. ASSIGNMENT; AMENDMENT.** Buyer may not assign its rights or obligations hereunder without Taral's prior written consent. No change or modification of any of these Terms and Conditions shall be valid or binding on Taral or Buyer unless such change or modification is in writing and signed by an authorized representative of both parties.
- 10. INDEMNITY.** Buyer acknowledges that it is Buyer's responsibility to ensure that any final product incorporating Taral's goods is manufactured, packaged and sold in a safe and careful manner. Buyer shall indemnify, hold harmless and defend Taral and its directors, officers and employees from and against any claim, action, loss, or judgment (including attorneys' fees) which arise as a result of the use, manufacture, sale or other distribution of products incorporating Taral's product.
- 11. PERIOD FOR COMMENCEMENT OF CLAIM.** In no event shall Buyer be entitled to commence any action for breach of any warranty, express or implied, or for any loss or damage related to the goods sold by Taral more than one year after the date of Buyer's receipt of such goods.
- 12. GOVERNING LAW; JURISDICTION AND VENUE.** These terms and conditions shall be governed by and construed in accordance with California law. In the event of any litigation hereunder, the parties submit to the exclusive jurisdiction and venue of the Superior Court of California for the County of San Francisco or the United States District Court for the Northern District of California.
- 13. ATTORNEYS' FEES.** In the event Taral initiates a collection action hereunder, Buyer shall reimburse Taral for all of its costs (including, without limitation, all of its attorneys' fees and/or collection agency fees) incurred in connection therewith. In the event any party initiates any legal action regarding these Terms and Conditions, the prevailing party in any such action (including, without limitation, any mediation or alternative dispute resolution the parties may agree upon) shall be entitled to recover its reasonable attorneys' fees and costs.
- 14. SEVERABILITY.** If any provision of these Terms and Conditions is held to be unenforceable or invalid, the remaining provisions shall remain in full force and effect.