



## Terms and Conditions of Sales

### 1. Governing Provisions

These Terms and Conditions of Sale ("Terms and Conditions") constitute an offer by Accord Carton Co, or its subsidiary or division identified on the Quotation, Acknowledgment or Invoice provided by Accord Carton Co., ("Seller") to provide the products and/or services described in such Quotation, Acknowledgment or Invoice (the "Products") to the buyer identified in such Quotation, Acknowledgment or Invoice ("Buyer"), subject to the terms, covenants and conditions contained herein. Buyer may not modify, change, alter, renounce or waive any term, covenant or condition hereof or any of Seller's rights or remedies hereunder unless an authorized representative of Seller consents thereto in writing. Seller agrees to provide the Products to Buyer only on these Terms and Conditions, notwithstanding any language in Buyer's purchase order, if one exists, or other writing or oral representation previously, simultaneously or hereafter received by Seller purporting to amend, modify or replace these terms, covenants and conditions with any different or additional terms, covenants or conditions or reciting that any action or inaction by Seller constitutes agreement or consent by Seller to such amendment, modification or replacement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any terms used in these Terms and Conditions, the Quotation, Acknowledgment or Invoice. SELLER'S AGREEMENT TO PROVIDE THE PRODUCTS IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

### 2. Buyer's Acceptance

Buyer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become the agreement between the parties on the earliest of the following to occur: (i) Seller's receipt of Buyer's purchase order number or a signed copy of the Buyer's acknowledgment of Seller's Quotation, Acknowledgment, Invoice or these Terms and Conditions; (ii) Buyer's payment of any amounts due to Seller; (iii) Buyer's delivery to Seller of any material to be furnished by Buyer; (iv) Buyer's receipt of the Products; or (v) any other event constituting acceptance under applicable law.

### 3. Cancellation or Modification

Buyer may not cancel or modify its order except upon terms accepted in writing by Seller. In the event of such cancellation or modification, Buyer shall compensate Seller for all resultant costs and damages. All undelivered Products may be cancelled by Seller, without incurring any liability to Buyer, if production becomes impracticable.

### 4. Quotations and Orders

Written quotations are void unless accepted within 30 days from date of issue. Seller reserves the right to accept or reject Buyer's purchase orders in its sole discretion. Any accepted purchase orders shall be governed by these Terms and Conditions and no additional or different terms in any such purchase order shall be part of the parties' agreement.

## 5. Artwork and Tooling

Buyer shall be charged Engineering Costs for artwork, printing plates, dies and tooling. All such charges shall be invoiced with the first shipment unless otherwise agreed. Artwork, printing plates, dies and tooling shall remain Seller's property. If Buyer, or a third party on behalf of Buyer, provides Seller with incorrect or defective artwork, printing plates, dies and/or tooling and Seller incurs at least 2 hours of downtime as a result thereof, then Seller may charge Buyer \$500/hour for each hour of downtime incurred by Seller up to a maximum of 6 hours. Buyer's order will be pulled from production if such downtime reaches the 6 hour maximum limit.

## 6. Delivery

Buyer may select the mode of transportation, routing and carrier for delivered orders. If Buyer does not provide Seller with shipping instructions, then Seller shall select the mode of transportation for delivered orders. Buyer shall provide Seller with a minimum lead time of 5 days to make shipping arrangements. Seller will use its reasonable business efforts to meet the scheduled dates, but does not guarantee to meet such dates. Time for delivery shall not be of the essence. Failure by Seller to make any shipments by scheduled dates does not constitute a cause for cancellation and/or for damages of any character. In the event of delay in delivery requested by Buyer or caused by Buyer, Seller will store all Products at Buyer's risk and expense.

## 7. Storage

Unless agreed otherwise in writing, Seller will store Products at no additional charge to Buyer for a maximum of 90 days. Upon expiration of 90 days, Seller shall invoice Buyer the outstanding balance for stored Products. After 90 days, storage fees will be assessed to Buyer each month in an amount equal to \$25 per pallet/per month for the stored Products. In no event will Products be warehoused more than 6 months from the date of production. Presuming Buyer has paid for such, the Products shall be released to Buyer. Should Buyer decline release of the Products, or in the event that Buyer is in arrears on amounts owed to Seller, Seller may elect to dispose of the Products and assess the additional cost to Buyer.

## 8. Risk of Loss; Title; Inspection

Seller shall deliver the Products to the Delivery Point. Unless otherwise stated in Seller's Quotation, Acknowledgment or Invoice, for sales to Buyers in the United States, the "Delivery Point" shall be F.O.B. Seller's manufacturing facility, and for sales to Buyers outside the United States, the "Delivery Point" shall be EX WORKS Seller's manufacturing facility pursuant to INCOTERMS 2000, as may be amended from time to time. Regardless of any freight payment by Seller on Buyer's behalf (for which Buyer agrees to reimburse Seller), all risk of loss or damage in transit shall pass to Buyer upon delivery to the Delivery Point. Seller is not responsible for any loss, damage, or delay which may occur after Seller delivers the Products to the Delivery Point. Any claims for damage in transit shall be filed by Buyer directly with the carrier. Buyer shall inspect the Products upon receipt and any claims for shortages or other errors must be noted at the time of delivery on all carrier documents and supported by signed documentation. Claims for shortages or other errors must be made in writing to Seller within 10 days after Seller's delivery of the Products to the Delivery Point. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. No Products may be returned to Seller for any reason without Seller's prior written authorization. Partial shipments shall be permitted. Shipments may contain underruns or overruns not exceeding 10%.

## 9. Insurance

Upon Seller's request, Buyer shall provide and maintain adequate insurance for Products, covering them from the Delivery Point until Seller has received payment in full for all Products naming Seller as an additional insured, and shall annually provide to Seller a certificate of insurance evidencing compliance with this requirement. Such insurance shall be reasonably satisfactory to Seller and shall provide that it may not be cancelled or modified without prior written notice to Seller.

## 10. Prices

All prices, discounts and transportation charges are in U.S. Dollars and are subject to change without notice. If no price is stated on Seller's Quotation, Acknowledgment or Invoice, prices shall be Seller's current prices in effect on the date of acceptance of orders by Seller (or, in Seller's sole discretion, on the date of shipment) as set forth on price lists issued or modified by Seller from time to time. All general or special taxes, duties, fees, freight and insurance costs and any other charges of any nature whatsoever, imposed on, in connection with or measured by any transaction between Seller and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced.

## 11. Payment

Unless otherwise stated in the Quotation, Acknowledgment or Invoice, payment terms are 100% of the order amount due net 30 days from shipment from Seller's Facility. Terms of payment on all orders are subject to the approval of Seller's credit department. If Buyer does not pay Seller any amount when such amount is due, or if Buyer defaults in the performance of these Terms and Conditions or any Quotation, Acknowledgment or Invoice issued from Seller to Buyer, Seller may, without incurring liability and without prejudice to Seller's other lawful remedies and at Seller's sole option: (i) terminate Seller's obligations under these Terms and Conditions, and/or any Quotation, Acknowledgment or Invoice issued from Seller to Buyer; (ii) declare immediately due and payable all of Buyer's obligations to Seller; (iii) change credit terms with respect to any further work; (iv) suspend or discontinue any further work until Buyer pays all overdue amounts; and/or (v) repossess the Products. Buyer agrees to reimburse Seller for all costs incurred by Seller in collecting any sums owed by Buyer to Seller, including without limitation, attorneys' fees and costs of proceedings. Buyer agrees to pay, at Seller's discretion, a late payment fee of up to 1.5% per month on all amounts not paid in full when due. Seller reserves the right to require payment in advance or other secured form of payment from time to time.

## 12. Security Interest

As partial consideration for Seller's sale of the Products to Buyer, Buyer hereby grants to Seller and Seller hereby retains a security interest in all Products sold to Buyer now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all Products and materials thereof or any other products bearing any trademark of Seller, returns or repossessions and the proceeds of all of the foregoing, to secure all of Buyer's obligations to Seller under these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer and all other obligations of Buyer to Seller. Buyer agrees to execute such financing statements, continuation statements and other documents and to take such actions as may be required by Seller to evidence or perfect the security interest granted herein and the interest of Seller as the owner of the Products. If Buyer fails to perform any of its duties set forth in these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer, Seller is authorized in Buyer's name or otherwise to take such actions including, without limitation, signing Buyer's name, and Buyer hereby appoints Seller as its attorney-in-fact for such purpose.

## 13. Limited Warranty

Seller warrants to Buyer that its Products will be free from material defects in workmanship and materials under normal use and service, for a period for 6 months from the date of Seller's delivery of the Products to the Delivery Point (the "Warranty Period"). There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, altered Products, failure to follow Seller's instructions or improper storage. **SELLER'S SOLE AND EXCLUSIVE OBLIGATION (AND BUYER'S SOLE AND EXCLUSIVE REMEDY) UNDER THIS WARRANTY SHALL BE, UPON PROMPT WRITTEN NOTICE RECEIVED BY SELLER DURING THE WARRANTY PERIOD OF ANY BREACH, TO EITHER, AT SELLER'S OPTION, REPAIR, CORRECT OR REPLACE WITHOUT CHARGE, F.O.B. SELLER'S FACILITY, ANY DEFECTIVE PRODUCT EXPRESSLY WARRANTED HEREIN BY SELLER AGAINST DEFECTS AND FOUND BY SELLER IN ITS SOLE DISCRETION TO BE DEFECTIVE AND COVERED BY THIS WARRANTY, OR CREDIT BUYER FOR THE PURCHASE PRICE PAID FOR SUCH PRODUCT. SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER'S ACTS OR OMISSIONS OR OTHERWISE. This warranty covers only replacement, correction or repair of defective Products at Seller's main facility and does not include the cost of inspection, removal, delivery or field service travel and living.**

## 14. Limited Liability

Prior to using Products, Buyer or user shall determine the suitability of the Product for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith. **IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, INDIRECT, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THESE TERMS AND CONDITIONS, THE QUOTATION, ACKNOWLEDGMENT OR INVOICE ISSUED FROM SELLER TO BUYER SHALL BE LIMITED TO THE MONIES PAID BY BUYER TO SELLER FOR THE DEFECTIVE PRODUCT. The remedy described in this section 14 is Buyer's exclusive remedy and is in lieu of any other remedy otherwise available at law or by contract.**

## 15. Disclaimer of Warranties

**SELLER AND BUYER AGREE THAT THE WARRANTY IN SECTION 13 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS FURNISHED BY SELLER HEREUNDER (INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRINTING OR REPRODUCTION OF UNIVERSAL PRODUCT CODE INFORMATION). SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES.** Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as a warranty.

## 16. Other Manufacturers' Warranties

On Products furnished by Seller, but produced or manufactured by others, the written warranty of the manufacturer, if any, will be assigned to Buyer if assignment is reasonably practicable. However, Seller does not adopt or guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer.

## **17. Engineering Data and Design Information**

Except for data, information and drawings provided by Buyer, all engineering data, design information, composition plates, sketches and drawings used in the completion of Buyer's order and all of Seller's copyrights, trademarks, patents and other intellectual property are and shall remain Seller's property. Buyer shall not use, copy, reproduce, distribute, publish or communicate to any third party such data, information, intellectual property or drawings without Seller's prior written permission.

## **18. Buyer's Drawings, Designs or Descriptions**

Orders manufactured to drawings, designs or specifications provided by or on behalf of Buyer are executed only with the understanding that Buyer releases and agrees to indemnify, defend and hold harmless Seller and each of Seller's Indemnified Parties (as defined below) from and against any and all Damages (as defined below) sustained by or against any of them, resulting from, in connection with or relating to any action or threatened action concerning: (i) infringement of the patents, trademarks, copyrights or other intellectual property or proprietary rights of any other person or entity; or (ii) injury to person or property, including death, relating to the drawings, designs or specifications provided by or on behalf of Buyer.

## **19. Indemnification**

Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, directors, officers, employees, affiliates, agents, successors and assigns (collectively, "Seller's Indemnified Parties") from and against any and all direct and indirect claims, demands, actions, liabilities, judgments, damages, losses, fines, penalties, forfeitures, costs and expenses, including, without limitation, reasonable attorneys' fees and costs of proceedings (collectively, "Damages"), arising out of, in connection with, resulting from or relating to: (i) breach of these Terms and Conditions with Seller and/or any Quotation, Acknowledgment or Invoice provided by Seller or any law by Buyer or any of Buyer's shareholders, directors, officers, employees, representatives, agents, successors or assigns ("Buyer's Parties"); (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties; (iii) losses, damages or injuries caused by, arising out of or relating to the Products or the handling or use of the Products; and/or (iv) any infringements of any patent, trademark, copyright or other intellectual property rights of any other party by the Products either alone or in combination with other products.

## **20. Special Indemnity Regarding Game Pieces and Similar Products**

Buyer releases, and agrees to indemnify and hold Seller and each of Seller's Indemnified Parties harmless from and against any and all Damages due to or arising out of or resulting, directly or indirectly, from the design of the game, participation in the game or any game related activities, any receipt, use or misuse of any prize from any game, the illegality of the game (whether resulting from design, implementation or other factors), and any other aspect of the game that is not expressly covered by Seller's limited warranty. Further, Seller shall not be responsible in the event any of Buyer's games are terminated due to the fact that such game is technically impaired or corrupted or that fraud or technical problems, failures or malfunctions have destroyed or severely undermined the integrity and/or feasibility of such game, unless such termination is the result of Seller's failure to produce the game in accordance with Buyer's written specifications.

## 21. Force Majeure

Seller will endeavor to fill all accepted orders as soon as it is practical and consistent with production schedules. Seller shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, insurrection, riot, flood, earthquake, fire, strike, pandemic, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Seller's available supply, or any other cause beyond Seller's control affecting production or delivery. In the event of any delay in shipment or nonperformance caused by any of the foregoing, Seller may, at its option and without liability, cancel all or any portion of its obligations to Buyer and/or extend any date upon which performance is due.

## 22. Final Written Expression

These Terms and Conditions, the Quotation, Acknowledgment and/or Invoice issued from Seller to Buyer (if any), constitute the final written expression of the terms between Seller and Buyer regarding the Products and, together, are a complete and exclusive statement of those terms. Any negotiations or understandings between Seller and Buyer which are not contained in these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer shall have no force or effect. In the event of a conflict among the provisions of these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer, the order of priority shall be: (i) these Terms and Conditions of Sale; (ii) the Quotation; (iii) the Acknowledgment; (iv) the Invoice.

## 23. Governing Law

These Terms and Conditions, Quotation, Acknowledgment and/or Invoice between Seller and Buyer shall be governed and construed according to the internal laws of the State of Illinois, including, without limitation, the Uniform Commercial Code as adopted in Illinois, without regard to conflict of laws principles. Subject to section 27 below, any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of these Terms and Conditions, Quotation, Acknowledgment or Invoice issued from Seller to Buyer or the relationship of the parties shall be brought exclusively in a court situated in the State of Illinois. Both parties hereby irrevocably admit themselves to and consent to the exclusive jurisdiction of said court. **ANY ACTION BROUGHT BY BUYER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE DELIVERY OF THE PRODUCTS OR THE COMPLETION OF SERVICES NOTWITHSTANDING ANY STATUTORY PERIOD OF LIMITATION TO THE CONTRARY.**

## 24. Miscellaneous

The invalidity or unenforceability of any provision or clause of these Terms and Conditions, the Quotation, Acknowledgment or Invoice shall not affect the validity or enforceability of any other provision or clause. Seller reserves the right to correct clerical or similar errors relating to price or any other term shown in these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer. Failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of such term, covenant or condition. Seller reserves the right to amend these Terms and Conditions from time to time. Seller's sales representatives are without authority to change, modify, or alter these Terms and Conditions. The provisions of sections 9, 11, 12, 14, 17, 18, 19, 20, 22, 23, 24 and 27 shall survive termination of these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer.

**25. Export Laws**

To the extent applicable, the Products and all shipments are subject to compliance with the U.S. Export Administration Act, as amended, the regulations thereunder and all other U.S. laws and regulations concerning exports and reexports. Buyer agrees to comply with all such laws and regulations.

**26. Benefit; No Assignment by Buyer**

These Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer is binding upon and inures to the benefit of Buyer and Seller and their respective successors and assigns. Buyer may not assign these Terms and Conditions, the Quotation, Acknowledgment or Invoice issued from Seller to Buyer, or any part thereof, without Seller's prior written consent.

**27. Alternative Dispute Resolution**

It is the policy of Seller to attempt to settle all disputes through alternative dispute resolution techniques and to use litigation only as a last resort to settle any dispute, except in the case of collection of past-due accounts or when other circumstances dictate that litigation is advisable. Buyer agrees to make a good faith attempt to settle any disputes arising out of the purchase of the Products by Buyer through the use of alternative dispute resolution before instituting any litigation against Seller.

Accepted For:  
Accord Carton Co.

Accepted For:  
\_\_\_\_\_

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_