



Terms and Conditions

These Terms and Conditions ("Terms") govern the sale and purchase of goods and/or services ("Products") between Blank Industries LLC, ("Seller"), and the purchasing party ("Buyer"). By purchasing Products from Seller, Buyer agrees to be bound by these Terms. Seller and Buyer may collectively be referred to as "Party" or "Parties".

1. Payment Terms

Net 30, subject to credit approval, unless special terms are otherwise agreed upon in writing, or unless Buyer has qualified for the benefits under a sales program confirmed by Seller in writing. The current sales programs offered by Seller and the special terms applicable to each are described in Exhibit A hereto attached. Seller's credit terms are determined at the sole discretion of Seller and may be modified based on Buyer's credit status with Seller at the time Buyer places an order. Upon Seller's reasonable request, Buyer will furnish Seller with financial or other information sufficient to enable Seller to determine Buyer's current creditworthiness and willingness to pay.

If an unpaid amount of any invoice is not paid when due, as specified by the payment terms, a finance charge of 1.5% per month payable from the date of the invoice to the date of payment is received, shall be due and payable to Seller. Buyer shall indemnify Seller for its costs, including reasonable attorneys' fees and disbursements, incurred to collect any unpaid amount. In addition to other remedies available, Seller may suspend delivery of any Product if Buyer fails to pay any amount when due and such failure continues for five (5) days following written notice. Buyer will not withhold payment of any amounts due by reason of any set-off of any claim or dispute with Seller.

2. Freight Terms

All shipments shall be F.O.B. Seller's shipping point (Seller's shipping dock), freight collect unless otherwise agreed to in writing by both Seller and Buyer. Transfer of Product to a carrier at Seller's F.O.B. shipping point shall constitute delivery of Product to Buyer and all risk of loss or damage in transit shall pass to Buyer at that time. Buyer shall be responsible for insuring the Product while it is in transit to Buyer's destination. Buyer shall not file any claims against Seller for loss or damage to Product in transit.

3. Returned Goods

No Product may be returned to Seller without the express written consent of Seller. Buyer may request such consent only by written notice given to Seller within ten (10) days after delivery of the applicable Product, which notice shall state the reason or reasons for Buyer wishing to return Product and, if due to Product delivered being different than identified in Buyer's Purchase Order, which notice shall include supporting documentation reasonably required by Seller. If Seller grants such consent, then in the case of nonconforming Product, Seller, at its discretion, will either replace the nonconforming Product or credit or refund the price paid by Buyer for such Product within a reasonable period of time after its receipt of the nonconforming Product. Buyer will ship, at its expense and risk of loss, to Seller's facility designated by Seller in such consent all Product that Seller has consented to be returned. Buyer will bear the shipping expense for any replacement Product.

4. Delivery

Delivery times on Purchase Orders, quotations, or acknowledgments are estimates. Buyer shall not hold Seller responsible for any delay or damage suffered by Buyer by reason of any delay in delivery. Seller may deliver Product in installments. In the event Product is not delivered within 30 days after a delivery time in an accepted Purchase Order, Buyer's exclusive remedy shall be to cancel the Purchase Order to the extent of such undelivered Product by providing written notice of cancellation to Seller that is received by Seller prior to shipment, except if the delay in delivery is on account of circumstances beyond Seller's control, in which event a period equal to the time lost by reason of such delay shall be added to the estimated delivery date. If Buyer has qualified for the benefits under a sales program confirmed by Seller in writing, Seller will use commercially reasonable efforts to meet each delivery date associated with the priority shipping level of such sales program, provided that Buyer furnishes all necessary order and delivery information sufficiently prior to each such delivery date, and gives as much notice as reasonably possible of any change.

If, for any reason, Seller is unable to supply the total demand of Product ordered, Seller may allocate its available supply of Product among any or all purchasers or users or make partial shipments on such basis as it may deem fair and practical without liability for any failure of performance which may result therefrom, it being understood and agreed, however, that if Buyer has qualified for the benefits under a sales program confirmed by Seller in writing, Seller will recognize the priority shipping level of such sales program in making such allocation.

5. Cancellation by Buyer

Seller will consider written requests for cancellation of a Purchase Order by Buyer if Seller receives such a request before shipment of Product to Buyer. In the event that Seller accepts cancellation of a Purchase Order, Buyer will promptly pay Seller all of Seller's costs associated with the Purchase Order up to the time of cancellation. Seller shall not be required to accept any request to cancel a Purchase Order. Restocking fee of 25% may be added based on Seller's discretion.

6. Cancellation by Seller

Seller reserves the right to cancel any Purchase Order at any time. Such cancellation shall be effective upon Seller sending written notice of cancellation to Buyer. If Seller cancels any pre-paid Purchase Order, Seller shall refund the amount of the applicable prepayment, and this shall be the sole and exclusive remedy of Buyer for Seller's failure to supply such Purchase Order. Provided that if Buyer has qualified for the benefits under a sales program confirmed by Seller in writing, Seller will not cancel any Purchase Order submitted by Buyer in accordance with the terms of such sales program unless (i) on account of circumstances beyond Seller's control, Seller has determined, in good faith, that it will be unable to perform, or (ii) Seller has the right to terminate the Contract with Buyer under Paragraph 12 of these Terms and Conditions.

7. Taxes and other charges

Buyer will be solely responsible for, and will pay, any and all sales, use, and excise taxes, and any other taxes, duties, fees, charges, or extractions imposed on or measured by a Purchase Order and will hold Seller harmless from the same. All prices set forth in Seller's price list, from time to time, are exclusive of all such taxes and other charges.

8. Compliance with laws; governing law and jurisdiction

Buyer has and will maintain in effect all licenses, permissions, authorizations, consents, and permits needed to carry out its obligations under the Contract with Seller or as otherwise may be required with respect to the operation of its business. Buyer agrees to comply with all applicable laws and regulations now or hereafter in effect with respect to the Product, including export and import laws of all countries involved in the sale of Product and laws and regulations regarding any resale of Product by Buyer. Buyer assumes all responsibility for shipments of Product requiring any government import clearance. The validity, construction, and interpretation of these Terms and Conditions, and the validity, construction, interpretation, and performance of each Purchase Order and the Contract between Buyer and Seller, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding conflict of law principles that would cause the laws of any jurisdiction other than the Commonwealth of Massachusetts to apply. All international conventions relating to the international sale of goods, including the United Nations Convention on Contracts for the International Sale of Goods, are excluded. Any legal suit, action, or proceeding arising out of or relating to Product or the Contract between Buyer and Seller, or both, will be instituted in the federal courts of the U.S. or courts of the Commonwealth of Massachusetts located in Suffolk County or Middlesex County, and each party irrevocably submits to the exclusive jurisdiction of such courts. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO TRIAL BY JURY.

9. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SELLER, NOR ANY OF SELLER'S SUPPLIERS, NOR ANY OFFICER, DIRECTOR, EMPLOYEE, OWNER, OR AFFILIATE OF ANY OF THE FOREGOING SHALL BE LIABLE FOR ANY LOSS OR DAMAGE ON ACCOUNT OF ANY PRODUCT ORDERED OR USED BY BUYER OR ANY THIRD PARTY, INCLUDING FOR ANY LOST REVENUE OR PROFIT, OR DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY. BUYER'S EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY OR BREACH OF PURCHASE ORDER SHALL BE LIMITED TO RECOVERY OR REFUND OF THE COST PAID BY BUYER FOR ANY NONCONFORMING OR NONDELIVERED PRODUCT. BUYER SHALL INDEMNIFY AND HOLD HARMLESS SELLER AND ALL OF SELLER'S SUPPLIERS, AND ANY OFFICER, DIRECTOR, EMPLOYEE, OWNER, OR AFFILIATE OF ANY OF THE FOREGOING FOR ANY LOSSES, DAMAGES, COSTS, OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED ON ACCOUNT OF ANY CLAIM AGAINST THEM ARISING FROM THE USE OF ANY PRODUCT BY BUYER.

10. DISCLAIMER OF WARRANTIES

SELLER, FOR ITSELF AND ITS SUPPLIERS, AND FOR EACH OFFICER, DIRECTOR, EMPLOYEE, OWNER, OR AFFILIATE OF ANY OF THE FOREGOING, DISCLAIMS ANY AND ALL EXPRESS WARRANTIES (OTHER THAN EXPRESS WARRANTIES MADE BY SELLER IN WRITING, WHICH SHALL BE BINDING SOLELY UPON SELLER TO THE EXTENT OF, AND SUBJECT TO, THE EXPRESS TERMS THEREOF), AND DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT AUTHORIZED BY LAW. CLAIMS WITH RESPECT TO ANY EXPRESS WARRANTY MADE BY SELLER IN WRITING MAY ONLY BE MADE BY BUYER AND ARE NOT ASSIGNABLE TO THIRD PARTIES.

11. Minimum Order

Minimum order of one full truckload (18 full pallets) for any Purchase Order, whether submitted under any particular sales program or otherwise.

12. Termination

In addition to any remedies provided under these Terms and Conditions, Seller may terminate the Contract between Buyer and Seller with immediate effect upon written notice to Buyer if Buyer: (a) fails to pay amounts due for ten (10) days after Buyer's receipt of Seller's written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. If Seller terminates the Contract, Seller may suspend further deliveries, and will be entitled to cancellation charges for finished Product and work in progress, which Seller reasonably started to meet the delivery schedule, as well as to any quantity price adjustments reflecting volume pricing quoted for quantities ordered but cancelled due to Buyer's default, and all costs, direct and indirect, incurred or committed, plus prorated anticipated profits. Continued shipment after Buyer's default will not constitute a waiver of any of Seller's rights or remedies.

13. Confidential Information

All Seller non-public, confidential, or proprietary information, including specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with the Contract between Buyer and Seller is confidential, solely for the use of performing the Contract, and may not be disclosed or copied without Seller's prior written consent. Upon Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Paragraph 13. This Paragraph 13 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

14. Assignment

Buyer will not assign any of its rights or delegate any of its obligations under the Contract between Buyer and Seller without Seller's prior written consent. Any purported assignment or delegation in violation of this Paragraph 14 is null and void. No assignment or delegation relieves Buyer of any of its obligations to Seller.

15. Relationship of the parties

The relationship between the parties is that of independent contractors. Nothing in the Contract between Buyer and Seller will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party is authorized to contract for or bind the other party in any manner whatsoever.

16. Notices

All notices will be in writing and addressed to the parties at the addresses set forth on the face of Seller's Order Confirmation or to such other address that may be designated by the receiving party in writing. All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Contract between Buyer and Seller, a Notice is effective only upon receipt of the receiving party and if the party giving the Notice has complied with the requirements of this Paragraph 16.

17. Severability

If any term or provision of the Contract between Buyer and Seller is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Contract.

18. Survival

Provisions of these Terms and Conditions which by their nature should apply beyond the term of the Contract between Buyer and Seller will remain in force after any termination or expiration of the Contract including Paragraphs 8 (Compliance with laws; governing law and jurisdiction), 9 (Limitation of Liability), 10 (Disclaimer of Warranties), 12 (Termination), 13 (Confidential Information), 14 (Assignment), 16 (Notices), 17 (Severability), and 18 (Survival) of these Terms and Conditions.

19. Conflicting Terms

If these Terms and Conditions conflict or are inconsistent with any terms and conditions contained, incorporated, or referred to, in any Purchase Order or other document or agreement between the parties, these Terms and Conditions shall prevail unless otherwise specifically agreed to in writing by the parties. The terms and conditions of Seller's order acknowledgment shall prevail over any conflicting or inconsistent terms in any Purchase Order. No failure or delay by Seller to exercise any rights or remedy arising under its Contract with Buyer will constitute a waiver of Seller's respective rights. No modification or waiver of any provision of the Contract between Buyer and Seller is effective unless explicitly set forth in writing signed by an authorized representative of Seller.

In addition to the foregoing Terms and Conditions, Buyer agrees to abide by all of the terms and conditions as stated in the Sales Order and Sales Conditions agreement, which also constitute a part of the Contract between Buyer and Seller, subject to Paragraph 19 of these Terms and Conditions.

Exhibit A
(Sales Programs)

1. Platinum Level

The following special terms shall apply at this Level:

Payment Terms

100% prepay due within 7 days of Purchase Order and prior to shipment.

Buyer's Commitment for Product

To the extent of Purchase Order(s) submitted by Buyer prior to the expiration date of this sales program for the current sales season running from April – March (heretofore known as “the current season”).

Delivery

Product is available the earlier of September 15th of the current season, or such earlier date as Buyer shall specify for initial shipment upon qualifying for this Level. First priority shipping.

2. Gold Level

The following special terms shall apply at this Level:

Payment Terms

Three-month payment plan for each Purchase Order submitted under this sales program consisting of three (3) equal installments with the first installment due seven (7) days after Seller's acceptance of the Purchase Order and each subsequent installment due on the like (or, if none, than on the last) day of each calendar month thereafter. If Buyer fails to pay any installment when due, Seller may suspend delivery of any Product, including Product that may be covered by previously paid installment or installments, without any liability for withholding delivery, and Buyer shall not be entitled to any refund of any previously paid installment or installments, and the same shall become Seller's property, unless prior to December 31, of the current season, Buyer shall order and pay for at least one (1) full truckload (18 full pallets) of Product at Seller's then regular price, in which case the amount of the previously paid installment or installments shall be a credit on such order.

Buyer's Commitment for Product

To the extent of Purchase Order(s) submitted by Buyer prior to the expiration date of this sales program for the current season.

Delivery

Product available the earlier of September 15th of the current season, or such earlier date as Buyer shall specify for initial shipment upon qualifying for this Level. Second level priority shipping (subject only to prior shipping of available supply to Platinum Level customers).

3. Silver Level

The following special terms shall apply at this Level:

Payment Terms

Net 30 from product pickup, subject to credit approval. Remaining unpurchased inventory from the specific purchase order commitment as of February 28 of the current season shall be invoiced in March of the current season with Net 30 terms.

Buyer's Commitment for Product

Buyer agrees to a specific purchase order commitment at the time of qualifying for this Level.

Delivery

Product available September 15th of the current season. Third priority shipping (subject only to prior shipping of available supply to Platinum Level and Gold Level customers).

4. Bronze Level

The following special terms shall apply at this Level:

Payment Terms

Net 30, subject to credit approval.

Buyer's Commitment for Product

Buyer agrees to provide an estimate of its purchase requirements for the season with initial Purchase Order.

Delivery

Product available October 1st of the current season. Fourth priority shipping (subject only to prior shipping of available supply to Platinum Level, Gold Level, and Sliver Level customers).

Exhibit B
(Private Label Manufacturing and Supply)

In addition to the foregoing Terms and Conditions, Buyer for Private Label agrees to abide by the following Terms and Conditions in connection with Buyer's purchase order submitted to Blank Industries, LLC ("Seller").

1. Private Label Design and Delivery

Buyer acknowledges and agrees that it has selected, in its sole discretion, the packaging to be delivered by Seller and that Buyer has provided an "art plate" to the manufacturer/supplier of the packaging for the purpose of the manufacturer/supplier printing a private label on each bag (the "Private Label"). Ownership of said "art plate" remains with Buyer. Buyer further acknowledges that Seller has not played any role in selecting the type of packaging or in designing or selecting the Private Label to be printed on the packaging. Buyer further acknowledges and agrees that Buyer is solely responsible for the selection of the packaging and the design and/or selection of the Private Label, and that it verified the art design before the "art plate" was created so that Seller bears no responsibility for the design. Further, art design must be compatible with Seller specifications regarding size, weight, shape, film roll size, number of colors, and/or licensed materials. Buyer also retains ownership of all film which is to be used in the manufacture of Private Label packaging. Seller is not responsible for the printing process of all Private Label products, does not guarantee any timeline for performance, and expressly disclaims any responsibility for the design, production, and delivery of all Private Label products.

2. Promotional Claims Disclaimer

Promotional Claims

Buyer acknowledges and agrees that any promotional claims, advertising statements, representations, warranties, or other communications made by the Buyer in connection with the Private Label product manufactured by the Seller are the sole responsibility of the Buyer. Seller disclaims any and all liability for such claims, including but not limited to any misrepresentations, inaccuracies, or legal non-compliance arising from the Buyer's promotional activities.

Indemnification

Buyer agrees to indemnify, defend, and hold harmless the Seller, its affiliates, officers, directors, employees, and agents from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to the Buyer's promotional claims, advertising statements, representations, warranties, or other communications concerning the Private Label.

No Warranty on Claims

Seller does not warrant or guarantee the accuracy, legality, or effectiveness of any promotional claims made by the Buyer. Seller provides no warranty, express or implied, that the Buyer's promotional claims will be legally compliant or free from third-party claims, and the Buyer assumes all risks associated therewith.

Compliance with Laws

Buyer shall ensure that all promotional claims, advertising statements, representations, warranties, or other communications regarding the Private Label comply with all applicable federal, state, and local laws, regulations, and industry standards. Seller shall not be responsible for any fines, penalties, or legal actions resulting from the Buyer's non-compliance.

3. Payment Terms for Private Label and Packaging

Buyer agrees to pay Seller for the private label manufacturing and packaging as follows:

- Cost of "art plate" – payment due not less than ninety (90) days before design can be started by Seller and is non-refundable
- Cost of "film production" – payment due thirty (30) days before ordering film through Buyer
- Buyer is responsible to deliver to Seller all packaging

4. Price and Payment Terms for Material

- The Purchase Price for Material shall be determined at the time of acceptance of Buyer's purchase order and shall be fixed for a period of twelve (12) months. After the first contract year, Seller may modify the process for products upon notice to the Buyer up to 5% in any one contract year unless justified by cost increases

incurred from third-party suppliers. Seller shall provide thirty (30) days written notice to Buyer of any such change in price.

- Payment for Material received by Buyer is due on the agreed upon terms. Buyer shall pay all invoices in full without offset or deduction for any reason except as provided in this agreement. In the event that Buyer fails to pay Seller in accordance with these Terms and Conditions, Seller shall be entitled to collect interest on all outstanding balances at a rate of 1.5% per month, plus any additional costs of collection, including reasonable attorney's fees and expenses.
- Payment on the remaining inventory produced but not received by Buyer is due at the end of season date of 3/31. Any remaining inventory produced must be moved from Seller's facility by 3/31 unless otherwise agreed upon by Seller and Buyer or as provided in Paragraph 10 of this Exhibit B.

5. Freight

All sales are FOB Hudson, MA Seller facilities. Buyer shall separately pay all expenses in shipment and delivery of ordered product including (but not limited to):

- Freight charges
- Import duties
- Insurance premiums

Destination of shipment will be based on Buyer's purchase order. Any changes to the destination requested by Buyer shall be paid for by the Buyer.

6. Fulfillment of Purchase Order

Seller will schedule production of Material based on the content of each purchase order subject to the availability of the requested inventory. In the event that orders request quantities that exceed availability inventory or production schedule, Seller will allocate available inventory and make deliveries on what Seller deems is an equitable schedule, subject to agreement by Buyer. Seller is authorized to make installment deliveries of Material. Materials shall be packaged for shipment and storage in accordance with the purchase order and these Terms and Conditions. Any special packaging requirements shall be requested in writing by Buyer not less than thirty (30) days in advance of requested delivery and, if agreed upon by Seller, any increased cost shall be paid for by Buyer. Seller shall not be responsible for waste during production of purchased film, raw materials, inventory, and shall not be responsible for shortage of any raw materials, equipment, power failure, mechanical difficulties, line down, or other delays in fulfilling any purchase order.

7. Fulfillment Claims

Buyer shall make any claims for shortage of or damage to products shipped with the common carrier upon receipt of the order and provide Seller with written notice of the claim. Seller shall not be responsible for such claims except in the case of gross negligence on the part of Seller to package products as stated in this agreement. Acceptance of delivery by Buyer shall be deemed acceptance of Material unless within three (3) days of delivery of the products, Buyer affirmatively rejects the products, by written notice to Seller detailing the reasons for rejection. Such reasons for rejection may be:

- Non-conformance of the products to the technical specifications
- Damage in connection with bodily injury and property damage arising out of any defect in the product under this agreement
- Breach of any material provision of this agreement by Seller

If Buyer shall reject a delivery, Buyer shall promptly return, at Buyer's expense, a sample of the allegedly defective product to Seller in accordance with Seller's return instructions in order for Seller to inspect the product. Said inspection to be completed by Seller within thirty (30) days of receipt of the returned product. Buyer shall retain and store remaining product pending the Seller's determination. If rejection was timely effected and Seller determines the product to be defective, Seller agrees to repair or replace the product or cancel an unpaid invoice or refund the amounts paid with respect to such defective product once product is returned, at Seller's option.

8. Product Trademarks and Copyrights

Trademark Usage

Buyer agrees that the Products purchased and/or licensed hereunder shall be sold or leased by Buyer only under the trademarks, trade names or logos (collectively the "Buyer Marks") of Buyer.

Notices

Buyer shall not alter or remove any copyright, trademark, trade secret, proprietary and/or other legal notices of Seller or third parties contained on or in the Products. The existence of any such copyright notice shall not be construed as an admission, or be deemed to create a presumption, that any publication of such Products has occurred.

Logos

Seller shall label all Products with Product Labels, as may be specified by Buyer. Buyer shall provide Seller with camera-ready artwork necessary for the labeling of the Products, which shall include, without limitation: Buyer Marks, Product serial numbers, UPC codes, and such additional information as may be specified by Buyer. Buyer shall be responsible for the costs of such labeling. Buyer shall be responsible for the costs of registration.

Trademark License

Buyer hereby grants to Seller a non-exclusive, non-transferable right to use the Buyer Marks solely on the Products ordered by Buyer hereunder and associated packaging. Seller agrees to the following:

- to comply with Buyer's guidelines and instructions regarding use of the Buyer Marks as communicated to Seller from time to time;
- in the event Buyer notifies Seller that such use is not in conformance with Buyer's guidelines and instructions, to promptly bring such use into conformance at the expense of the Buyer;
- to ensure that all use of the Buyer Marks will not reflect adversely upon the good name or good will of Buyer and that all Products in connection with which the Buyer Marks are used are of high standard and workmanship and of such nature, style, appearance and quality as shall be adequate and suited to the protection of the Buyer Marks and the goodwill associated therewith;
- not to use the Buyer Marks (or any part thereof) as part of, or in combination with, any other names or trademarks without Buyer's prior written approval;
- not to register (or aid any third party in registering) the Buyer Marks (or confusingly similar mark) or take any action inconsistent with Buyer's ownership of the Buyer Marks in any jurisdiction; and
- that all usage of the Buyer Marks will be on behalf of, and inure to the benefit of, Buyer.

Indemnification

Buyer shall defend, indemnify and hold Seller harmless against losses, damages, costs, or expenses, including reasonable attorney's fees, incurred by Seller on account of claims arising from the alleged misuse, misappropriation or infringement of a trademark, trade name, logo, Buyer Marks or patent by Buyer.

9. Support obligations

Marketing and promotional materials

Seller shall provide technical consultation to Buyer for development of its own internal promotional and educational materials. Buyer is solely responsible for the costs of developing its own promotional and marketing materials. Any use of Seller Marks, such as trademark, logo, copyright, etc. must be approved before distribution.

Product recalls

Seller shall be responsible for all Product recalls. Seller agrees to take any and all actions, at its sole cost and expense, which are reasonably necessary and appropriate to effectuate a Product corrective action, including, without limitation, a Product recall, provided, however that Buyer agrees to cooperate with Seller in such action, including, without limitation contacting customers and assisting in the transfer of Products, as directed by Seller, if necessary. Seller agrees to respond within a reasonable period to any question or request for information received by Buyer from its customers pertaining to the production of Product. Each party agrees to provide to the other party all necessary information in its possession arising out of a recall or corrective action program. Upon thirty (30) business days written notice, each party shall, at a time and place mutually agreeable to the parties, have the right to audit and inspect the other's facilities and/or records relating to such party's obligations under this Agreement and with respect to the Products. All information that the inspecting party obtains in the course of such inspection or audit shall be treated as "Confidential Information," in accordance with Section "Confidentiality" of this Agreement.

10. Product and storage

- Storage Limitations
 - Products may be stored at the discretion of Seller for a period of one week after production of products unless otherwise agreed to in writing

- Film for packaging may be stored at Seller facilities for up to nine months after the date of the last order received by Buyer from Seller
- Storage fees
 - Seller reserves the right to charge a fee for storage of any products not covered above

11. Events of Default By Buyer

The following events shall be deemed "Events of Default" by the Buyer:

- Failure to pay any amounts due under the agreement between the parties hereto;
- Failure to comply with any provision of these Terms and Conditions;
- The dissolution, termination of existence, liquidation, insolvency or business failure of Buyer, or the appointment of a custodian or receiver for Buyer; and
- The institution by Buyer of any proceeding under the United States Bankruptcy Code or any other federal, national, or state bankruptcy, reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally or the making by either party of a composition or any assignment or trust mortgage for the benefit of creditors.

12. Remedies

In the event of default by Buyer, Seller shall have the right to terminate the Agreement and demand payment of all monies due under the Agreement plus any other losses or actual damages caused by the Buyer's default, including reasonable attorney's fees and expenses. In addition, upon default by Buyer, Buyer releases all rights it may have in and to the products which are the subject of this Agreement and further releases and expressly authorizes Seller to attempt to mitigate Seller's damages by selling said products in a commercially reasonable manner.

13. Force Majeure

Seller shall not be liable in any respect for failure to product or ship or for delay in production or shipment of Products pursuant to accepted orders or packaging where such failure or delay shall have been due wholly or in part to the elements, acts of God, acts of Buyer, acts or civil or military authority, fires, floods, epidemics, quarantine restrictions, war, armed hostilities, riots, strikes, lockouts, breakdown, differences with workers, accidents to machinery, delays in transportation, delays in pickup from Buyer or any other cause beyond the reasonable control of Seller. Upon such occurrence, Seller shall immediately notify Buyer as soon as practicable of such inability and of the period for which such inability is expected to continue, and any time for performance hereunder shall be extended by the actual time of delay caused by the occurrence; provided, that Seller uses commercially reasonable efforts to mitigate any damages incurred by the Buyer. Products on which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller for Buyer's account and at Buyer's risk.

14. Applicable Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to the conflict of laws provisions thereof.