



## GENERAL CONDITIONS OF SUPPLY AND PURCHASE AGREEMENT

This General Conditions of Supply and Purchase Agreement (the "Agreement") is dated as of \_\_\_\_\_ and is between **360 Containers** a Maryland corporation with principal offices at: 7513 Connelley Drive – Suite M, Hanover, Maryland 21076 and: \_\_\_\_\_, a \_\_\_\_\_ with offices at: \_\_\_\_\_ ("Customer").

**Recitals WHEREAS**, 360 Containers is a supplier of container products (any such container being herein referred to as a "Product" and collectively, as the "Products"); and **WHEREAS**, Customer from time-to-time may desire to purchase certain Products from 360 Containers; and **WHEREAS**, 360 Containers and Customer desire to set forth the terms and conditions that shall govern any such sales of Products from 360 Containers to Customer. **NOW, THEREFORE**, the parties, intending to be legally bound, agree as follows:

### Section 1. Requests for Products

- . 1.1 **Purchase Order or Other Similar Documents.** Customer may from time-to-time submit to 360 Containers requests for Products in the form of a purchase order, electronic request or other similar document (each a "Purchase Order").
- . 1.2 **Acceptance by 360 Containers.** Notwithstanding anything contained in this Agreement, any Purchase Order or otherwise, 360 Containers shall have no obligation to supply any Products to Customer until 360 Containers has provided Customer with confirmation of its election to fulfill any such order.
- . 1.3 **Binding Obligation.** Upon 360 Containers confirmation of its election to fulfill any particular order submitted by Customer, such order shall be deemed a binding obligation on Customer and Customer shall be obligated to purchase the quantities of Products so ordered.

### Section 2. Transaction Terms

- . 2.1 **Terms and Conditions.** 360 Containers standard payment terms are Due on Delivery. Unless Customer and 360 Containers have entered into a definitive agreement for the purchase and supply of Products executed by both parties, any and all transactions between Customer and 360 Containers shall be subject to the terms and conditions of this Agreement and the terms and conditions on Appendix A hereto.
- . 2.2 **Purchase Orders.** The terms of any Purchase Order or similar document issued by Customer shall be invalid except for quantities of Products and delivery schedules, and all orders and deliveries hereunder shall be governed solely pursuant to the terms of this Agreement and Appendix A hereto.

### Section 3. Method of Transmission of Invoices Customer's method of receiving Invoices (check one):

Mail \_\_\_\_\_ Mailing Address: \_\_\_\_\_

Email \_\_\_\_\_ Designated Email: \_\_\_\_\_

- 3.1 **Documents.** 360 Containers may electronically transmit to Customer invoices or summary invoices (collectively "Documents"). Any transmission of data that is not a Document shall have no force or effect between the parties unless justifiably relied upon by the receiving party.
- 3.2 **Cost.** Each party shall be responsible for the costs associated with standard electronic equipment and telephone lines, including, but not limited to, translation or formatting costs.
- 3.3 **Systems Operations.** Each Party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.
- 3.4 **Security Procedures.** Each party shall properly use security procedures which are reasonably sufficient to ensure that all transmissions of Documents are authorized and to protect its business records and data from improper access.
- 3.5 **Proper Receipt.** Documents shall be deemed to have been properly received upon confirmation or by functional acknowledgement indicating transmission was completed.
- 3.6 **Garbled Transmission.** If any properly transmitted Document is received in an unintelligible or garbled form, the receiving party shall promptly notify the originating party (if identifiable from the received document in a reasonable manner). In the absence of such a notice, the originating party's records of the contents of such Document shall control.
- 3.7 **Discounts.** All cash discounts will be calculated from the invoice date and the date payment is received.

**Section 4. Miscellaneous**

- 4.1 **Termination.** This Agreement shall remain in effect until terminated by either party with not less than thirty (30) days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Purchase Order or otherwise under this Agreement prior to the effective date of termination.
- 4.2 **Severability.** Any provision of this Agreement, which is determined to be invalid or unenforceable, will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- 4.3 **Entire Agreement.** This Agreement and Appendix A constitute the complete agreement of the parties relating to the matters specified in this Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement and Appendix A shall be binding on either party. Except as specifically set forth in Section 1 above, no obligation to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of and shall be binding upon the parties and their respective successors and assigns. Each party has caused this Agreement to be properly executed on its behalf as of the date first above written.

**CUSTOMER**

**360 CONTAINERS**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## APPENDIX A TERMS AND CONDITIONS

**All shipments and deliveries hereunder are subject solely to the following terms and conditions. All different or additional provisions in Customer's Purchase Order or other documents are rejected.**

1. **QUANTITY.** Customer commits to purchase and pay for the quantity of containers specified in the Order Acknowledgement issued by 360 Containers ("Seller"). Seller shall use commercially reasonable efforts to produce containers in numbers as close as possible to the ordered quantity, however, a variance of plus or minus ten percent (10%) in volume up to a maximum of one thousand (1,000) gross will be allowed per order.
2. **SHIPMENTS AND PAYMENTS.** All shipments and deliveries hereunder shall be subject to the approval of the Seller's Credit Department. Seller's standard payment terms are Due on Delivery. In consideration for the extension of credit, the Customer promises to pay for all purchases within the terms agreed upon. A service fee of 3% per month (36% annual percentage rate) will apply to all past due balances. If the Customer fails to make any payment in accordance with the terms and provisions hereof, the Seller may defer future shipments or deliveries until receipt of satisfactory security or cash before shipment. Seller may also employ a third party to assist in the collection process. In the event any third parties are employed to collect any outstanding monies owed by the Customer, the undersigned agrees to pay reasonable collection costs, including attorney fees, whether or not litigation has commenced, and all costs of litigation incurred.
3. **PRICES.** The prices to be invoiced shall be the prices in effect as of the date of shipment. If Seller makes an error in computing the prices, the prices shall be subject to correction. The prices specified shall be subject to an additional charge to cover any existing or future sales, use or similar tax which may be applicable. The prices are net of any recycling or similar fees on containers, and all such fees are the responsibility of Customer and may be subject to surcharges or other market price increases on at least thirty (30) days prior notice by Seller.
4. **DELIVERY.** Seller will use commercially reasonable efforts to deliver glass containers in quantities as close as possible to the ordered quantities consistent with the requested shipping date.
5. **FREIGHT, TITLE, RISK OF LOSS, AND TAXES.** Unless otherwise agreed upon by both parties, prices include freight from Seller's facility and are based on full truckload quantities. Title to containers shall transfer to the Customer upon receipt of full payment of the delivered containers by Seller. Risk of loss of the containers shall pass to Customer upon delivery at Customer's facility. For shipments of containers for Customer's facility in Canada and excluding only taxes based upon Seller's income, Customer is responsible for and shall pay directly to the appropriate authority or agency taxes and duties related to the sale and or purchase of those containers including, but not limited to Canadian Provincial Sales Tax ("PST"), Goods and Services Tax ("GST") and Harmonized Sales Tax ("HST"), or any similar tax.
6. **FORCE MAJEURE.** Neither party shall, under any circumstances, be responsible for its failure to comply with this agreement due to: fires; floods; riots; strikes; freight embargoes or transportation delays; shortage of labor; inability to secure fuel, materials, supplies or power or a significant increase in the costs thereof; acts of God or of the public enemy; any existing or future laws or acts of the federal, state or local government with which the appropriate party, in its judgment and discretion, deems advisable to comply as a legal duty; or to any cause beyond such party's reasonable control.

### 7. WARRANTIES AND REMEDIES:

**A. Seller warrants that at the time of shipment to Customer of the products specified herein, the products will:**

- (1) Meet the agreed upon specifications.**
- (2) Be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended.**
- (3) Be fit to be used as a food or beverage container and shall not be a food additive within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq., and not be an article which may not, under the provisions of such Act, be introduced into interstate commerce.**

**THESE EXPRESS WARRANTIES SHALL BE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**B. Seller specifically disclaims any warranty or liability for:**

- (1) the presence of foreign substances of any kind in the contents which could have been introduced by either Customer or Seller where the actual source of the foreign substances cannot be determined.**
- (2) any defects or breach of warranty which appear more than one (1) year from the date of delivery of the product.**

**(3) breach of the warranty contained in subparagraph A (3) above unless the glass container is thoroughly cleaned by Customer immediately prior to filling, the container is filled under sanitary conditions and in accordance with good manufacturing practices as required or recommended by the Food and Drug Administration, and the container is suitably sealed with an appropriate closure immediately after filling.**

**(4) any use of Containers for purposes for which they are not designed or intended.**

**C. In the event of an alleged breach of any of the above warranties, Customer shall furnish Seller notice of any such breach of warranty within a reasonable time after discovery of the breach. As Customer's exclusive remedy for a breach of warranty, the defective warranty, the defective or non-conforming product will be replaced by Seller free of charge or the purchase price thereof refunded, at Seller's option.**

**D. In addition to the above disclaimers, Customer agrees that the products shall be utilized only under the following conditions and that Seller shall not be responsible for any claims related to any inconsistent use:**

**(1) Containers shall not be subjected to vertical forces greater than 1000 psi.**

**(2) Unless otherwise agreed upon by both parties, product fill temperature shall not exceed the ambient bottle temperature prior to filling by more than 75° F (42C).**

Seller shall be given an opportunity to conduct an adequate investigation of all claims of breach of this section both by inspection at the Customer's place of business and having the products returned to Seller.

8. INDEMNITY. Customer shall indemnify and save Seller, its present and future directors, officers, employees, and agents harmless from and against all third party claims, demands, suits and actions and any fines, penalties, damages and costs, including reasonable legal expenses and attorneys' fees connected therewith, to the extent such is caused by the negligence, willful misconduct, or other act or omission of Customer.

9. LIMITATION OF LIABILITIES. In no event shall Seller be liable to Customer or any third party for loss of profit, loss of business, loss of business opportunity, loss of market share, damage to the goodwill or reputation of any party or its products, or for any special, indirect, incidental, punitive, exemplary or consequential damages however caused and under any theory of liability whether based in contract (including indemnity, breach of warranty or representation or other breach of contract), tort (including negligence), or otherwise. The foregoing limitations shall apply regardless of whether such party has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy stated herein.

Customer hereby agrees that, prior to providing any empty container to any other commercial entity or party, Customer shall obtain such party's agreement to the limitations set forth herein and an acknowledgement that Seller is a third-party beneficiary to such agreement for the purposes of such limitation. Customer further agrees to fully indemnify Seller for any and all claims made by such third-party commercial entity or party made against Seller seeking any of the excluded losses or damages set forth above.

10. NON-ASSIGNMENT. Neither this agreement nor any interest herein may be assigned by Customer, whether by operation of law or otherwise, without the prior written consent of Seller.

The Seller may assign its rights under this agreement or any of the rights arising out of or in connection with it, in whole or in part, at any time and more than one occasion to one or more members of its group or to a reputable provider of finance. In connection with such assignments, the Seller may disclose to such members of its group or finance provider the terms of the contractual arrangements between the parties.

11. APPLICABLE LAW. The laws of the state of Maryland shall apply to the interpretation and enforcement of this agreement, and jurisdiction over any disputes lies solely in the federal and state courts in Maryland.

12. AMENDMENTS. No amendment or other modification of this agreement is binding upon the parties unless it is in writing and executed by a duly authorized representative of each party.

**360 CONTAINERS  
7513 CONNELLEY DRIVE – SUITE M  
HANOVER, MD 21076  
(410) 412-7696**