



Terms and Conditions

1. General Terms

These Standard Terms and Conditions of Sale ("Terms and Conditions") constitute an offer by Caps & Tabs, Inc., a Delaware corporation, or its subsidiary identified in the Packing Slip or Invoice provided by Caps & Tabs, Inc. ("Seller") to provide the products described in such Packing Slip or Invoice (the "Products") to the buyer identified in such Packing Slip or Invoice (the "Buyer"), subject to the terms, covenants and conditions contained herein. This document, together with any additional writings signed by an authorized representative of Seller, represents a final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence, Buyer's purchase order, a course of dealing, usage of trade, Seller's performance or delivery, or in any other way except in writing signed by an authorized representative of Seller. SELLER EXPRESSLY REJECTS ANY PROVISIONS ADDITIONAL TO OR DIFFERENT THAN THE TERMS HEREOF THAT MAY APPEAR IN BUYER'S PURCHASE ORDER OR IN ANY OTHER PRIOR OR LATER COMMUNICATION FROM BUYER TO SELLER UNLESS SUCH PROVISION IS EXPRESSLY AGREED TO BY SELLER IN A WRITING SIGNED BY SELLER. SELLER'S AGREEMENT TO PROVIDE THE PRODUCTS IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN. Catalogs, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof.

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 Buyer's acknowledgment of Seller's Packing Slip, 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. All Products shall be finally inspected and accepted within ten (10) days after receipt of the Products by Buyer. Any and all claims of Buyer (including claims for shortages), excepting only those provided for under the LIMITED WARRANTY; LIMITED LIABILITY; DISCLAIMER OF WARRANTIES clause hereof, must be asserted in writing by Buyer within said ten (10) day period or they are irrevocably waived. Failure to give such notice shall constitute unqualified acceptance by Buyer. If this contract involves partial performances, all such claims must be asserted within said ten (10) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products or works and Buyer's remedy for lesser defects shall be those provided for under the LIMITED WARRANTY; LIMITED LIABILITY; DISCLAIMER OF WARRANTIES clause. If Buyer wrongfully rejects or revokes acceptance of items tendered under this agreement, or fails to make a payment due, or repudiates this agreement, Seller shall have a right to recover as damages, together with any other damages and remedies outlined herein and under applicable law, the price as stated herein. Under recovery of the price, the items involved shall become the property of the Buyer. No Products may be returned to Seller for any reason without Seller's prior written authorization. Products delivered without labels may neither be rejected by Buyer, nor may the acceptance of such Products be revoked by Buyer. Partial shipments shall be permitted. Shipments may contain underruns or overruns not exceeding 20%.

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 for artwork, printing plates, dies and tooling. All such charges shall be invoiced with the first shipment unless otherwise agreed. Artwork, printing plates, dies, tooling and related items shall be and remain Seller's property.

6. Delivery.

All delivery costs shall be borne by Buyer. 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, routing and carrier for delivered orders. Buyer shall provide Seller with a minimum lead time of 10 days to make shipping arrangements. Seller will use its reasonable commercial 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 shall not constitute a cause for rejection, cancellation or 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 30 days. After 30 days, storage fees will be assessed to Buyer each month in an amount equal to 2% of the total purchase price of the stored Products. Releases of Products to Buyer valued at less than \$1,000 will be assessed a handling fee equal to \$20 per release. In no event will Products be warehoused more than 6 months. Upon expiration of 6 months, Seller shall invoice Buyer the outstanding balance for stored Products and any attendant fees. Upon full payment of such balance and fees, 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.

Seller shall deliver the Products to the Delivery Point. Unless otherwise stated in Seller's Packing Slip 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, delay 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. As detailed in Section 12 below, Seller retains title, for security purposes only, to all Products until paid for in full (unless such title is retained by Seller following payment pursuant to applicable security agreements between Buyer and Seller) and Seller may, at Seller's option, repossess the Products, upon Buyer's default in payment hereunder, and charge Buyer with any deficiency (whether or not Seller sells the Products to another purchaser).

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 Packing Slip 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. Unless otherwise provided for herein, 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 Packing Slip or Invoice, payment terms are 100% of the order amount due net 45 days from Seller's delivery of the Products to the Delivery Point. 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 and/or any Packing Slip or Invoice issued from Seller to Buyer, or Buyer defaults on or breaches the terms, conditions or covenants of any other agreement between Buyer and Seller beyond any applicable grace or cure period, 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, any other agreements between Buyer and Seller, and/or any Packing Slip 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. Any charges not paid within forty-five (45) days from Seller's delivery of the Products to the Delivery Point may, at Seller's sole discretion, bear interest at the rate of two percent (2%) per month or, if lower, the highest interest rate allowable under applicable law, on any overdue balance until paid. Seller reserves the right to require payment in advance or other secured form of payment from time to time. If any payment obligation of Buyer to Seller is due on a day that is not a Business Day, such obligation shall be due on the Business Day immediately preceding such day. "Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in San Diego, California.

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 and/or any Packing Slip 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 and/or any Packing Slip 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; Limited Liability; Disclaimer of Warranties

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"). This warranty does not apply to instances of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, altered Products, failure to follow Seller's instructions or improper storage. All claims under this warranty must be made in writing immediately upon discovery and, in any event, within thirty (30) days following the expiration of the Warranty Period. Defective items must be held for Seller's inspection and returned to the original f.o.b. point upon request and at Buyer's expense. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER EXPRESS, IMPLIED AND STATUTORY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS. Upon Buyer's submission of a claim as provided above and the provision of substantiation satisfactory to the Seller, Seller shall at its option either (i) repair or replace its product, F.O.B. Seller's manufacturing facility, if Seller finds, in its sole discretion, the Product to be defective and covered by this warranty or (ii) refund an equitable portion of the purchase price for such Product. THE FOREGOING IS SELLER'S ONLY OBLIGATION AND BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY AND, EXCEPT FOR GROSS NEGLIGENCE AND WILLFUL MISCONDUCT, THE FOREGOING IS BUYER'S EXCLUSIVE REMEDY AGAINST SELLER FOR ALL CLAIMS ARISING HEREUNDER OR RELATING HERETO WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE, AND STRICT LIABILITY) OR OTHER THEORIES. BUYER'S FAILURE TO SUBMIT A CLAIM AS PROVIDED ABOVE SHALL SPECIFICALLY WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON LATENT DEFECTS. IN NO EVENT SHALL BUYER BE ENTITLED TO INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF THIS AGREEMENT. ANY ACTION BY BUYER ARISING HEREUNDER OR RELATING HERETO, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES, MUST BE COMMENCED WITHIN SIX (6) MONTHS AFTER THE EXPIRATION OF THE WARRANTY PERIOD OR IT SHALL BE BARRED. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THESE TERMS AND CONDITIONS AND/OR ANY PACKING SLIP OR INVOICE ISSUED FROM SELLER TO BUYER SHALL BE LIMITED TO THE MONIES PAID BY BUYER TO SELLER FOR THE DEFECTIVE PRODUCT.

14. 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, know-how, processes and other intellectual property are and shall remain Seller's property (the "Proprietary Information"). Buyer shall not use, reverse engineer, copy, reproduce, distribute, publish or communicate to any third party such Proprietary Information without Seller's prior written permission. Buyer shall disclose promptly to Seller all inventions which its employees, directors, officers, consultants and/or agents may make as a result of the Seller providing the Products which are wholly or in part based on or derived from Proprietary Information. All rights, title and interest in and to such inventions shall belong to Seller.

15. 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.

16. 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 and/or any Packing Slip 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.

17. Force Majeure.

Seller shall not be responsible for nonperformance or delay in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to, an act of God, war, major disaster, terrorism, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delays by carriers or vendors, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, any other governmental actions, demand for goods exceeding Seller's available supply, or any other cause beyond Seller's control affecting production or delivery. Any delays so occasioned shall effect a corresponding extension of Seller's performance dates which are, in any event, understood to be approximate. In no event shall Buyer be entitled to incidental or consequential damages for late performance or a failure to perform. 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.

18. Governing Law; Compliance with Laws

These Terms and Conditions and/or any Packing Slip or Invoice issued by Seller to Buyer shall be governed and construed according to the internal laws of the State of California, including, without limitation, the Uniform Commercial Code as in effect in California from time to time, without regard to conflict of laws principles. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of these Terms and Conditions and/or any Packing Slip 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 California. Both parties hereby irrevocably admit themselves to and consent to the exclusive jurisdiction of said court. Any proposed terms or conditions contrary to U.S. laws, rules and regulations are expressly rejected and will not apply to this transaction. Buyer shall not do anything that would cause Seller to be in breach of applicable laws, rules and regulations. Buyer acknowledges that the Products are subject to U.S. export control laws, rules and regulations. Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations, including but not limited to the U.S. Export Administration Regulations, and shall not resell, export, re-export, distribute, transfer or dispose of the Products, directly or indirectly, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations. Failure by Buyer to comply with such laws, rules and regulations shall constitute a material breach of these Terms and Conditions. Seller assumes no responsibility or liability for Buyer's failure to obtain required authorizations. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Products.

19. Miscellaneous.

The invalidity or unenforceability of any provision or clause of these Terms and Conditions and/or any Packing Slip or Invoice issued by Seller to Buyer 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 and/or any Packing Slip 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 and/or any Packing Slip 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. The provisions of sections 9, 11, 12, 13, 14, 15, 16, 18 and 19 shall survive termination of these Terms and Conditions and/or any Packing Slip or Invoice issued from Seller to Buyer. Should Seller have concerns about Buyer's financial condition and/or ability to comply with its obligations hereunder, Buyer shall supply information requested by Seller which Seller feels is necessary to address said concerns. In the event of a conflict among the provisions of these Terms and Conditions and/or any Packing Slip or Invoice issued from Seller to Buyer, the order of priority shall be: (i) these Terms and Conditions; (ii) the Packing Slip; and (iii) the Invoice.

20. Benefit; No Assignment by Buyer.

These Terms and Conditions and/or any Packing Slip 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 and/or any Packing Slip or Invoice issued from Seller to Buyer, or any part thereof, without Seller's prior written consent.