



## SAMUEL PACKAGING SYSTEMS GROUP Terms and Conditions of Sale - Canada

1. **GENERAL:** Any written or oral order received from a customer (“**Customer**”) by Samuel, Son & Co., Limited (“**Samuel**”) for the supply by Samuel of products and equipment (the “**Products**”) and/or services (the “**Services**”) is governed by the standard terms and conditions of sale outlined below (the “**Terms**”), as such may be amended by Samuel from time to time. Samuel rejects any terms and conditions inconsistent with these Terms and rejects any other terms proposed by Customer in accepting Samuel’s proposal or quotation. No agreement, oral or written, in any way claiming to modify these Terms will be binding on Samuel unless agreed to in writing by an authorized representative of Samuel.

2. **QUOTATION:** Any quotation given by Samuel to Customer shall not constitute an offer.

3. **ACCEPTANCE OF ORDERS:** Any order from Customer to Samuel for the supply of Products and/or Services shall not be binding on Samuel until either accepted by Samuel in an order confirmation or fulfilled by delivery of the Product(s) and/or Services identified in the order (an “**Accepted Order**”). Any sample provided by Samuel is not part of an Accepted Order.

4. **DELIVERY:** Any quoted delivery dates and/or time of completion are estimates only. Samuel is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever. Samuel shall be under no liability for direct or consequential loss or damage to Customer arising from delay or postponement of delivery.

5. **INCOMPLETE ACCEPTED ORDER.** Any portion of an Accepted Order which is not filled and shipped as a result of a lack of inventory or due to force majeure as described below, will nevertheless be retained as an Accepted Order and delivered as soon as possible; however, if Samuel notifies Customer that such portion cannot be delivered at a later date, the Accepted Order for that portion will be cancelled and Samuel will not incur any liability whatsoever to Customer as a result thereof.

6. **SHIPPING.** Customer’s Accepted Order must contain complete shipping instructions. All fees, costs, duties and other charges connected with shipment, transportation, insurance and importation

of the Products are the responsibility of Customer and if paid by Samuel, shall be reimbursed by Customer to Samuel.

7. **NO CANCELLATION:** Accepted Orders cannot be cancelled or modified, in whole or in part, without Samuel’s prior written consent. If Samuel agrees to alter or cancel an Accepted Order, Customer shall indemnify Samuel against any loss, damage and expense incurred by Samuel in relation to the cancellation or alteration of such order, including the cost of return freight, return shipping, items purchased from third parties for inclusion in the Products and all labor costs incurred by Samuel in the execution or part execution of the Products.

8. **PRICE INCREASES:** All prices are subject to change without prior notice at any time between Samuel’s acceptance of an Accepted Order and the date delivery is completed by Samuel for any Product Samuel allocates to fulfill an Accepted Order.

9. **TAXES:** All prices are subject to all applicable sales and use taxes, excise taxes, customs, duties and tariffs and any other taxes, customs, duties and tariffs now or hereafter imposed by any governmental authority with respect to the Products or the Services (“**Applicable Taxes**”). For avoidance of doubt, Customer is responsible for payment of all such Applicable Taxes.

10. **PAYMENT TERMS & CREDIT POLICY:** Payment terms are set forth in the invoices issued by Samuel to Customer. If payment in full on any invoice is not received when due, or if Customer’s credit worthiness is deemed unsatisfactory by Samuel at any time, Samuel may take, without incurring any liability, one or more of the following actions: (a) impose a service charge at the rate that is the lesser of (i) 1.5% per month (18% on an annual basis) or (ii) the maximum rate allowed by applicable law, on any amount past due commencing from the date of such invoice, (b) modify or accelerate payment terms, and/or (c), withhold delivery of Product(s) or Services under any Accepted Order not yet shipped or performed and/or delay, recall or reclaim shipments of Product(s) on route to Customer or delivered until arrangements satisfactory to Samuel are made to secure payment for any outstanding invoice and for all open Accepted Orders. Samuel will set and review

Customer's credit limit and terms and its discretion from time to time.

11. **TITLE AND RISK.** Unless expressly agreed to in writing by Samuel, all sales are made as follows:
- (a) for steel strapping and seals, all truck load orders will be FOB DELIVERED;
  - (b) for orders that are less than truck load, shipments will be FOB SHIP POINT; and
  - (c) for polyester strapping, all orders of 5 or more skids will be FOB DELIVERED (orders of less than 5 skids will be FOB SHIP POINT.

The risk of loss of, or damage to, the Product is assumed by Customer upon arrival of the Product at the point of delivery or ship point (as set out above). Notwithstanding the foregoing, any Product described in an invoice or in an Accepted Order is and will remain the property of Samuel until they are paid for in full. The reference to F.O.B. shall have the same meaning as that ascribed to it by the International Chamber of Commerce in its current edition of INCOTERMS.

12. **RETURNS:** Product(s) may not be returned for credit without Samuel's prior written approval. Samuel's approval can be withheld in its sole discretion or Samuel can impose terms and conditions for such approval, including but not limited to the imposition of restocking charges.

13. **LIMITED WARRANTY:**

- (a) Samuel warrants that the Product(s) shall be free of defects and conform with the specifications set out in the order confirmation of the Accepted Order for the period of 90 days (except for tools which shall be for a period of 12 months) after the date of delivery and will, at its sole discretion, replace on the same INCO terms such Products as Samuel finds defective.
- (b) Unless expressly set forth otherwise in the order confirmation, on Products furnished by Samuel, but manufactured by others, Samuel will extend the same warranty Samuel received from the manufacturer.
- (c) No liability shall be incurred by Samuel until the Products and Services have been paid for, and then such liability shall be limited to the cost of repairing or replacing such

defective Product.

- (d) Samuel warrants that the Services shall be performed in a good and workmanlike manner consistent with industry standards. Customer's sole and exclusive remedy will be the re-performance of the Services. Any claim for breach of this warranty must be made in writing and provided to Samuel within 90 days of the Services at issue.
- (e) **THIS WARRANTY IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED. SAMUEL MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, OR OF CONFORMANCE OF ANY PRODUCT(S) WITH ANY SAMPLE. THE WARRANTIES CONTAINED HEREIN SET FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A DEFECT IN WORKMANSHIP OR MATERIALS.**
- (f) The obligations under this Section 13 are subject to the following:
  - a. That the Customer shall give written notice to Samuel specifying the nature of defects in the part or parts of the Products alleged to be defective within 10 days of any purported failure.
  - b. That the Customer makes no further use of the Products alleged to be defective after the time at which the Customer discovers that it is defective unless written approval is given by Samuel.
  - c. That the Customer provide Samuel a reasonable opportunity to inspect the Product(s).
  - d. Samuel shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Samuel's instructions, misuse, alteration or repair of the Products without Samuel's approval.

14. **FORCE MAJEURE:** If Samuel's performance of

any obligation is delayed due to unavailability of Product(s) or any other cause beyond Samuel's reasonable control by reason of fire, strike, lock-out, labour trouble, war, epidemic, embargo, flood, delay in transportation, lack or unavailability of trailers and/or railway cars, availability of critical materials, failure of carriers or sub-trades, shortage of manpower, restrictive governmental laws or regulations (including any trade actions, export controls, tariffs, customs or duties) or to any other cause or reason beyond Samuel's commercially reasonable control (a "Force Majeure"), notwithstanding that such Force Majeure may have existed at the time of submission or acceptance of an Accepted Order, Samuel shall not be liable and any portion of an Accepted Order not filled or shipped will be retained as an Accepted Order and delivered as soon as possible. However, Samuel may elect to cancel the Accepted Order, without liability, if we believe that the Product(s) will not become available within a reasonable period of time as Samuel so determines. Samuel also reserves the right to apportion Product(s) among its customers in such manner as Samuel considers equitable, and such determination shall be conclusive and binding on Customer without liability to Samuel.

**15. LIMITATION OF LIABILITY:** Customer acknowledges and agrees that Samuel has no liability in contract, tort (including negligence or breach of statutory duty) by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill or for any liquidated, indirect, special or consequential loss or damage whatsoever. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, SAMUEL'S LIABILITY UNDER ANY CIRCUMSTANCE AND FOR ANY REASON SHALL, AT SAMUEL'S OPTION, BE TO REPLACE NON-CONFORMING PRODUCT(S) AND REPERFORM SERVICES OR REFUND THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH NON-CONFORMING PRODUCTS AND SERVICES AND UNDER NO CIRCUMSTANCE SHALL SAMUEL'S LIABILITY UNDER ANY CONTRACT AND THESE TERMS EXCEED THE TOTAL DOLLAR AMOUNT OF THE PRODUCTS AND SERVICES PURCHASED BY CUSTOMER UNDER THE CONTRACT.**

**16. COLLECTION CHARGES:** Customer shall pay all costs and expenses, including without limitation reasonable attorney's fees and administrative charges, Samuel incurs to protect its rights arising out of Customer's failure to perform its obligations to

Samuel, including without limitation any attempt to collect any amount Customer owes Samuel.

**17. EXPORT COMPLIANCE:** Customer agrees that all US originating products purchased from Samuel are subject to U.S. export-control regulations including the U.S. Export Administration Regulations (EAR). Customer agrees that any products purchased from Samuel that are subject to such regulations will not be exported or re-exported, directly or indirectly, and whether modified or incorporated into other items; (i) to U.S. embargoed countries, or (ii) to parties on the Consolidated Screening List (as set out in the EAR), or (iii) otherwise in contravention of the EAR.

**18. GOVERNING LAW:** The transactions between Customer and Samuel shall be governed by the laws of Province of Ontario, and Customer agrees to submit exclusively to the jurisdiction and venue of the courts of Province of Ontario, with respect to any dispute arising out of any transaction between Customer and Samuel; provided, that Samuel may, at its option, commence proceedings in any jurisdiction where Customer carries on business or owns any assets. **CUSTOMER AND SAMUEL KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF ANY SUCH DISPUTE.**

**19. NO RIGHT OF SET-OFF:** Each Accepted Order constitutes a separate and distinct contract when accepted by Samuel and Customer may not withhold payment of an invoice or offset same, in whole or in part, against sums Customer claims are due it by Samuel with respect to another Accepted Order, invoice or for any other cause or reason whatsoever.

**20. RIGHTS ARE NOT EXCLUSIVE:** Samuel's rights hereunder are in addition to and not in lieu of any other rights and remedies available to Samuel at law or in equity.

**21. NOTICES:** All notices of claims or disputes given by either Customer or Samuel with respect to any communications, Accepted Order or these Terms shall be in writing and sent by (a) email to an authorized representative of Samuel, (b) first class mail with a copy by certified mail, return receipt requested, postage pre-paid, or (c) overnight delivery service, charges prepaid, and addressed as follows: (i) if intended for Samuel, to its address at the location to which an Accepted Order was placed,



and (ii) if to Customer, the address last known to Samuel. Notice will be effective the first business day after notice is sent.

22. **MISCELLANEOUS:** No waiver of any rights or remedies shall be binding on Samuel unless set forth in a written waiver signed by Samuel. Samuel does not give up any of its rights or remedies if it fails or delays in seeking a remedy or if Samuel accepts a payment while there is breach by Customer. Any such waiver, delay or failure by Samuel on one occasion shall not be deemed a waiver by Samuel of

any future default by Customer or of any future right or remedy available to Customer. The Section, Paragraph and other headings in these Terms are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision contained in these Terms. The invalidity or unenforceability of any provision in these Terms shall in no way affect the validity or enforceability of any other provision.