



EVERGREEN PLASTIC CONTAINER, INC.  
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## Standard Terms and Conditions

*By entering into a business relationship with Evergreen Plastic Container, Inc. (further known as "EPC") both parties agree to be bound by these standard terms and conditions.*

- 1. Prices and Taxes.** Buyer shall pay all taxes, duties or other governmental charges (other than income taxes) that now or in the future may be imposed, increased, or levied on EPC in connection with the manufacture, sale, transportation, storage, handling, delivery, use, possession or disposal of the Products or the raw materials used in them. Buyer shall provide EPC with properly completed exemption certificates for any tax from which Buyer claims exemption.
- 2. Confidentiality.** The parties shall keep confidential and not disclose to third parties, including Buyer's customers and EPC's competitors: (a) the specific terms and conditions of the business relationship or written agreements; (b) any information exchanged by the parties to implement this working agreement, especially but not limited to pricing; and (c) any information concerning EPC's products, technology, know-how, techniques, product development, and business plans, disclosed or learned during any negotiations or term of a written agreement. The parties shall not use such information for any purpose other than in conjunction with this Agreement (the "Permitted Use"). Each party agrees to transmit such information only to its agents, employees, advisors, and representatives who have a legitimate need to know such information related to the Permitted Use and who shall be advised by the recipient of this agreement. Each party hereto shall be responsible for any breach of this agreement by its employees, agents, advisors, or representatives. Nothing in this agreement shall obligate either party to refrain from disclosure of any such information to the extent such disclosure is required by law or stock exchange regulation or in connection with a dispute between the Parties. In the event of any disclosure mandated by law or stock exchange regulation, including without limitation, pursuant to the terms of a subpoena or in connection with any proceedings, the discloser shall give prior, prompt notice of such disclosure to the other party.
- 3. Inspection.** Buyer shall inspect and test Products for any damage or shortage immediately upon delivery.
- 4. Warranties, Disclaimer of Warranties and Limitations of Liability.** EPC warrants that the Products shall be free from defects in workmanship and materials. However, in no event shall EPC incur any liability under this warranty, or otherwise, where the Products are not packed, stored and distributed (by a party other than EPC) in accordance with good business practice; or where the alleged damage results from improper capping, closing, and filling operations; or where the Products are exported, in an empty or filled state, outside the United States (unless a special warranty has been specifically approved in writing by EPC to cover such exported Products). EPC's liability for any damages or other remedies, whether sought in tort or contract or equity or for breach of the warranty contained herein, is limited exclusively to the repayment of the purchase price of the defective Products, the direct cost of the contents of those Products, and actual recall costs where such recall is ordered by a court of competent jurisdiction or government agency. In view of the above express warranty, EPC makes no other warranty, whether of merchantability, fitness or otherwise, expressed or implied in fact or by law, and EPC shall have no further obligation or liability with respect to the Products. EPC shall in no event be liable for any punitive, general or incidental damages or for lost profits or other consequential damages, regardless of whether EPC has reason to know of the possibility thereof.
- 5. Intellectual Property and Property Rights.** Unless otherwise specifically set forth in a written agreement between the parties, all Container and packaging inventions, developments, improvements, ideas, trade secrets, designs, or the like shall be the sole and exclusive property of EPC. If the designs and/or specifications are provided or owned by Buyer, then Buyer shall indemnify EPC against all losses, liabilities and expenses, including but not limited to attorneys' fees, arising from claims or violation of a third party's rights to such designs and/or specifications. Unless otherwise specifically set forth in a written supply agreement, all molds are the property of EPC, irrespective of any amortization that may be agreed upon.
- 6. Force Majeure.** Fires, strikes, labor unrest, accidents, failure of usual sources of supply of materials, utilities, transportation or equipment, governmental regulations, or any contingencies beyond the control of EPC, whether related or unrelated to any of the foregoing, shall excuse any failure of performance on the part of the EPC, and similar causes unavoidable by Buyer shall be sufficient excuse for failure to take goods ordered, other than those in transit or manufactured or in process of manufacture, until such contingencies are removed.
- 7. Payment Terms; Credit and Interest.** All invoices are due and payable via ACH or wire transfer within fifteen (15) days from invoice date with no cash discounts applicable. No deductions or setoffs may be made against invoices in respect of any amounts claimed to be due from EPC. The payment due date is the date on which EPC expects to receive payment into the bank account specified on the invoice. EPC shall be entitled to refuse to honor any order or to ship any part of the Products sold if any indebtedness or liability of Buyer to EPC under this or any other agreement shall at that time be overdue. EPC may fix or change from time to time the terms of credit under which the Products ordered shall be shipped and may decline to ship all or any part thereof until such credit terms are met. Interest may be charged on past due accounts at 2% per month from the due date.
- 8. Entire Agreement.** The terms and conditions set forth in this Agreement, including any subsequent Schedules, represent the entire agreement between Buyer and EPC with respect to the Products and supersede all prior agreements, oral or written. No amendment or modification of this Agreement shall be effective unless it is in writing signed by the parties.

**9. Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and any of their successors and/or assigns. No such successor or assign of Buyer's business shall move requirements away from the current operating locations. If Buyer sells or otherwise cedes control of the business that gives rise to the Product requirements that are the subject of this Agreement in any way that assignment is not effected thereby, and that might cause this Agreement not to be applicable, Buyer shall use its best efforts to cause EPC to continue as supplier of Products under the new structure, and EPC shall be entitled to recovery of any lost profits that EPC would have otherwise earned under this Supply Agreement owing to Buyer's failure to secure such supply position for EPC.

**10. Waivers.** The failure of either party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or any part thereof, nor the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

**11. Severability.** Any provision of this Agreement which is determined to be invalid, illegal or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of any provision in any other jurisdiction.

**12. Headings.** The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

**13. Notices.** Any notice, demand, election or communication required, permitted or desired to be given between the parties hereunder shall be in writing and shall be personally delivered or shall be sent by prepaid registered or certified mail, return receipt requested, or by commercial courier service, or electronic facsimile or e-mail. Notices, demands, elections or communications shall be deemed received on the first to occur of the following: (i) when personally delivered; (ii) when actually received; or (iii) when sent by commercial courier service, two (2) days following the deposit thereof with such service. Notices, demands, elections or communications shall be addressed as follows (or to any other address which the relevant party may designate to the others by written notice): if to EPC, Evergreen Plastic Container, Inc., 7820 N. Leadbetter Rd, Portland, OR 97203 Attn: Sr. VP Sales and Marketing, Fax 503-286-6419, or by email: [info@evergreenplastic.com](mailto:info@evergreenplastic.com)

**14. Governing Law and Dispute Resolution.** This agreement shall be governed by the internal law of the state of Oregon without giving effect to the conflict of laws rules thereof. If this Agreement involves sales outside the United States of America, the United Nations Convention on International Sale of Goods will have no force or effect on transactions relating to this Agreement. Any dispute between the parties concerning the interpretation, enforceability, termination or breach of this Agreement shall be decided by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") by a single arbitrator. The parties agree to expedite procedures, if permitted by the rules of the AAA. The arbitration will be held as promptly as possible in the county of Multnomah, Oregon, USA. The language of the arbitration shall be English. The fees and expenses of the AAA and the arbitrator will be shared equally by the parties. In addition to monetary awards, the arbitrator shall have the power to grant other appropriate relief, including injunctive relief. The decision of the arbitrator will be final and binding upon the parties hereto. Judgment upon the award may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. Without limiting the foregoing, each party consents to the exclusive jurisdiction of the courts sitting in the state of Oregon for the resolution of all disputes hereunder. For the avoidance of doubt, the parties acknowledge that the initiation of arbitration shall not modify the principle that the party who alleges a breach of this Agreement shall be under no obligation to accept any tender of performance by the other party which occurs after the expiration of the grace period for curing a breach specified in this Agreement.

**15. Limit on Actions.** Buyer shall not bring any claim arising under this Agreement unless such claim or action is brought within one (1) year after such claim or cause of action has accrued. Buyer waives all claims for shortages in the Containers ordered and received hereunder unless they are submitted, in writing, within thirty (30) days after delivery. Buyer shall not have the right to claim a shortage if such shortage is 0.5% or less of the gross quantity of the relevant shipment.