

These Terms and Conditions (this “**Agreement**”) shall apply to all goods of any type (“**Products**”) sold by Engy Southwest Container Products and/or its affiliates (“**Engy**”) pursuant to a purchase order or other order placement document submitted by a customer or its designee (“**Customer**”) to Engy.

Order confirmation or acceptance by Engy as to any Product shall constitute Engy’s offer to supply the same only in accordance with these Terms and Conditions. Customer’s acceptance of Engy’s quotation, offer, OR DELIVERY of any Product or shall be subject to these Terms and Conditions. Any purported acceptance of an Engy offer by Customer under terms that vary from, conflict with, or modify these Terms and Conditions shall not be effective or accepted by Engy. Neither Engy’s commencement of performance nor Engy’s delivery of any Product shall be deemed to constitute acceptance by Engy of any term that varies from, conflicts with, or modifies these Terms and Conditions, regardless of whether such varying terms by Customer are set out in any acknowledgement, order, or other document of Customer. Notice of objection is hereby given to any term, provision, or condition of Customer that modifies or conflicts with these Terms and Conditions. Engy recognizes that Customer may, for operating convenience, desire to utilize its own forms in connection with an order, and, in such case, any term, condition, or provision in such form that modifies, conflicts with, or is added to these Terms and Conditions shall be deemed waived by Customer unless accepted in writing by an officer of Engy.

1. Price. All prices are expressed in EXW, per ICC INCOTERMS 2020, and unless otherwise agreed in writing by Engy, are subject to change without notice, and are at Engy’s prices in effect at the time of Customer’s order placement. Any Engy quotation will remain in effect only for the period specified therein or, if no such period is stated, for thirty days from quotation. All prices are exclusive of costs of transportation and insurance and any applicable federal, state, or local use, sales, property, and other taxes, fees, duties, and the like.

2. Payment. Payment for all Products purchased hereunder shall be cash US funds prior to shipment (with the exception of certain Customers approved by Engy within the last twelve months that currently remain credit worthy with an established credit account, who may pay within thirty days following invoice date or as otherwise stipulated on the quotation). Upon written approval by Engy, Engy may also accept payment by letter of credit on terms acceptable to Engy in its sole discretion. Partial shipments will be invoiced as made. Interest from the invoice due date until payment, at eighteen percent per annum (or such lesser amount as is the maximum legal rate), will be charged by Engy on invoiced amounts remaining unpaid sixty days after the due date. If unpaid amounts are collected through a collection agency, legal proceedings, or an attorney, Customer shall immediately pay or reimburse all reasonable collection fees, attorneys’ fees, and court costs incurred by Engy in connection therewith.

3. Delivery Dates and Excusable Delays. All shipment and/or delivery or completion dates for Products or Services are subject to Engy’s availability schedule, and to receipt of any advance payments required under Section 2. Engy will make commercially reasonable efforts to meet any delivery date(s) quoted; however, Engy will not be liable for its failure to meet any quoted date(s) or for any other delay in performance due to any unforeseen circumstances or any causes beyond Engy’s commercially reasonable control including, without limitation, strike or lockout; civil disturbance; international conflicts; fire; natural disaster; accident; failure or breakdown of parts necessary for completion; delays caused by subcontractor, supplier, or Customer; inability to timely obtain labor or materials or equipment failure; or compliance with any law, regulation, order, or decision of any governmental body or instrumentality thereof. Performance shall be deemed suspended for such time as any such circumstances shall delay its execution. Whenever such circumstances have been remedied, Engy will make and Customer shall accept performance hereunder. No penalty clause of any kind from Customer shall be effective as against Engy.

4. Packing and Shipment. All Products shall be packed, if appropriate, for shipping and storage in accordance with standard commercial practices. Unless otherwise agreed by Engy in writing and stipulated in the quotation, all Products are delivered EXW per ICC INCOTERMS 2020. Notwithstanding transfer of risk and liability, title to the Product shall not pass

to Customer until the Products are paid for in full. When, as an accommodation to Customer, Engy agrees to make shipment to Customer’s nominated delivery point, Engy will ship in accordance with Customer’s shipping instructions and Customer shall bear all charges and all risks arising in connection with such shipment. In the absence of shipping instructions from Customer, or if Engy considers Customer’s shipping instructions unavailable or commercially unsuitable, Engy reserves the right to ship by any commercially reasonable method at Customer’s cost. Engy shall not be liable for any short or incomplete shipments unless Engy receives from Customer written notice of any such shortage or missing Products within ten days of receipt of shipment by Customer.

5. Changes, Cancellation, and Returns. Unless otherwise agreed in writing, Engy reserves the right to change designs, materials, and specifications of its Products, and to discontinue any such Products, without any notice or liability to Customer. If Customer issues a change order or cancels an order, Customer shall be liable to pay to Engy the whole cost and loss incurred by Engy resulting from such change or cancellation, as such is reasonably determined by Engy, which shall include all costs, direct and indirect, plus a *pro rata* proportion of normal profit. No credit shall be given for any Product returned by Customer unless returned with the prior written approval of an authorized representative of Engy issuing to the Customer a discretionary Return Goods Number. Only sales managers, major department managers, or officers of Engy are authorized to approve return of Products. Risk of loss or damage in respect of any Product returned with Engy’s authorization will remain with Customer until the Product is received by Engy. Except for Products validly returned under warranty as set out in Section 7, a charge of not less than twenty percent (20%) of the purchase price or such larger amount as Engy may consider reasonable in the circumstances, will be charged by Engy on all Products returned, in order to pay for costs of inspection, repacking, handling, and accounting for the Product. Engy shall not be responsible for holding or accounting for any Products returned without the required Return Goods Number. If freight and other transportation costs are not prepaid by Customer on any returned Product, the cost thereof will be deducted from any credit issued by Engy. No credit will be given on any non-standard Product manufactured at the request of, or to the individual specifications of, Customer.

6. Use and Acceptance of Product; Product Resales.

(a) Customer represents and warrants, by acceptance or use of a Product, that Customer is familiar with the Product and its proper use and all safety, environmental and regulatory issues attendant thereto. Before using any Product, Customer shall give the Product reasonable and prudent examination and/or tests to determine the suitability of the Product for Customer’s intended use. Customer shall be deemed to have accepted any Product upon Customer’s use of the Product, or in any event, no later than ten days after Customer’s receipt of the Product unless, before that time, Engy has received from Customer written notice of any defect or nonconformity from Customer. **Customer acknowledges that certain Engy Products can, if misused or mishandled, cause significant damage to persons, property, or the environment. Customer shall use the Products in strict accordance with all applicable regulations, with prudent industry practices, and with all specifications, instructions, and appropriate safety procedures. Any harm or loss caused by Customer’s failure to use the Products properly and safely shall be the sole responsibility of Customer, and shall fall within the scope of Customer’s indemnity of Engy as set out in Section 8 below.**

(b) In the event that Customer resells any Engy Product, the Customer/reseller shall ensure that the Customer/reseller’s purchaser meets the requirements of this Section 6. Specifically, no Product resale can be made in violation of any law (including U.S. export and sanctions regulations) or any license restriction applicable to any Product, and the Customer reseller shall ensure that its purchaser shall be familiar with accurate representations of Engy specifications, and with all safety, environmental, and regulatory issues relevant to the ownership and/or use of the Product. Any Loss arising in connection with any such resale by Customer shall be a Customer-indemnified Loss pursuant to Section 7 hereof.

7. Limited Warranty and Remedy.

(a) **Term of Cover.** For sold Products, subject to the conditions set forth herewith, Limited Warranty and Remedy shall remain in effect until six months from first use, or nine months after date of shipment to Customer,

whichever occurs first; or as otherwise agreed in writing by Engy of any Product delivery; or as otherwise agreed in writing by Engy in advance of any Product delivery.

(b) Remedies are Limited to Repair or Replacement. Customer's remedies for any and all breaches of any nature, including without limitation breaches of contract and warranty, are limited to the remedies of repair or replacement as specifically stated in these Terms and Conditions. The remedies provided herein are the exclusive remedies of Customer for failure of Engy to meet its obligations, whether claims of Customer are based on contract, in tort, or otherwise, and upon expiration of the applicable warranty or lease period all obligations of Engy with respect to the Products will terminate.

(c) Disclaimer of Warranties Not Expressly Stated. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED. ENGY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

(d) Limited Warranty Exceptions. Engy warrants each Product supplied by it to Customer to be free from material defects in materials and workmanship if, and only if, all of the following conditions are met:

(1) The Product claimed to be defective has been exposed only to normal storage, use, and service, has been used in conditions and temperatures within Engy's Product specifications, has been reasonably maintained, has not been subjected to any misuse, negligent use, or accident that caused the Product to suffer a defect, and has not been repaired or altered except by Engy or an authorized representative of Engy; and

(2) The Product claimed to be defective has been dispatched at Customer's expense, or as otherwise agreed to in writing by Engy, to Engy's plant in Houston, Texas or to such other location as Engy may designate, within thirty days after Customer first discovered the alleged defect; and

(3) The alleged defect in the Product was caused by Engy through a defect in materials or workmanship, and

(4) Neither the Product nor any relevant component thereof is one that is expendable in normal use and that has been expended in normal use.

(e) Specialty Products. In the event that Engy supplies to Customer any Product based upon Customer's request that Engy develop, produce, test, or put to use any non-standard Engy Product (a "**Specialty Product**") so as to satisfy a unique need of Customer, Customer acknowledges and agrees that any such Specialty Products may not have or contain the same or similar characteristics as Engy's standard Products and may not have a historical performance against which such Specialty Product can be measured. In developing, producing, testing, and/or supplying any such Specialty Product, Engy shall be relying upon information and specifications provided by Customer, and as such Engy shall bear no responsibility for any failure of such Product to meet the specific needs or intended uses of the Customer. Rather, Engy's sole warranty with respect to any such Specialty Product shall be limited to warranting that the Product meets the specifications agreed in advance by Engy.

(f) Except as expressly agreed otherwise in a writing signed by an officer of Engy, all Products furnished hereunder shall be supplied in accordance with Engy's standard practices, and all Products (including all specialty orders) shall be subject to Engy's customary tolerances consistent with generally accepted standards and practices.

(g) Limited Remedies Available Under Warranty. Except as otherwise provided above or agreed in a writing signed by an officer of Engy, Engy's liability under the above-described limited warranty shall be limited to the repair or replacement of the Products. Engy will repair or replace the Product at no cost to Customer, but the decision as to whether to repair or replace will be solely that of Engy. Repairs or replacement Products are only warranted for the remaining unexpired portion of the applicable lease or warranty period. **The Customer acknowledges and agrees that the remedies set forth in this Section 7 shall be the Customer's sole and exclusive remedy against Engy, and that Engy shall have no liability or responsibility whatsoever to Customer for any claim or losses of any nature, except as set forth in this Section. The Customer shall not be able to avoid the waivers and limitations expressly set forth in this**

Agreement by electing to pursue some other remedy, whether in tort or otherwise.

(h) Notice of Claims Required. All claims under the warranty set out herein must be made promptly after the alleged defect occurs or comes to light and must be received by Engy within the warranty period. No Product return shall be accepted by Engy unless such return is first approved by an officer of Engy. Engy disclaims all responsibility for accepting, holding, storing, returning or otherwise handling any Products returned without an appropriate return authorization from Engy. Any Product returned under claim of defect shall be sent prepaid by appropriate transportation. Customer is responsible for all damage or loss resulting from improper packing or handling, and for any loss or damage occurring during the transmission of the Product to Engy; provided, however, that if the Product is verified to be defective or non-conforming, Engy shall reimburse the Customer's reasonable cost of return shipping. If any Product is returned and is found not to be defective, Engy will notify Customer and, at Customer's option, will return the Product to Customer at Customer's expense, and Customer shall reimburse Engy for all costs incurred in testing and examining the Product.

8. Indemnity. EXCEPT TO THE EXTENT CAUSED SOLELY BY ENGY'S OWN NEGLIGENCE OR MALFEASANCE, CUSTOMER HEREBY AGREES TO AND DOES RELEASE, UNCONDITIONALLY INDEMNIFY, DEFEND, AND HOLD HARMLESS ENGY, ITS EMPLOYEES, OFFICERS, DIRECTORS, OWNERS, AGENTS, CONTRACTORS, INVITEES, AFFILIATES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "**ENGY INDEMNIFIED PARTIES**"), AGAINST ALL LIABILITY, EXPENSES, CLAIMS (INCLUDING INJUNCTIONS, SUBPOENAS, AND OTHER COURT ORDERS, AND ALL LEGAL INQUIRIES OF ANY SORT), DAMAGES, LOSSES (**INCLUDING LIABILITY TO ANY THIRD PARTY IN RESPECT OF PROPERTY LOSS OR DAMAGE OR INJURY OR DEATH OF PERSONNEL**), JUDGMENTS, AND AWARDS (COLLECTIVELY, "**LOSS**") THAT ANY ENGY INDEMNIFIED PARTY MAY AT ANY TIME SUFFER OR SUSTAIN AS A DIRECT OR INDIRECT RESULT OF THE CUSTOMER'S PURCHASE, USE, OR RESALE OF ANY PRODUCT OR SERVICES SUPPLIED BY ENGY HEREUNDER, **EVEN IF SUCH LOSS IS CAUSED IN PART BY ENGY'S STRICT LIABILITY OR THE JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OF ANY ENGY INDEMNIFIED PARTY.**

(a) Pollution. Customer indemnifies the Engy Indemnified Parties against all Loss involving environmental degradation arising in connection with use of any Engy Product by Customer (or anyone obtaining an Engy Product from Customer), except to the extent that such Loss is manifestly the result of an Engy Product having been defective upon delivery to Customer.

(b) Consequential Damages. IN NO EVENT SHALL ANY ENGY INDEMNIFIED PARTY BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY PUNITIVE DAMAGES OR FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF GOODWILL, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF PRODUCTION. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE LIABILITY OF ANY ENGY INDEMNIFIED PARTY TO CUSTOMER FOR ANY LOSS WHATSOEVER IN CONNECTION WITH ANY PRODUCT OR SERVICE, HOWEVER CAUSED, SHALL IN NO EVENT EXCEED THE PAYMENT, IF ANY, RECEIVED BY ENGY FOR THE RELEVANT PRODUCT PROVIDED BY ENGY TO THE CUSTOMER HEREUNDER. MOREOVER, CUSTOMER AGREES TO AND DOES HEREBY WAIVE, RELEASE, INDEMNIFY, AND HOLD ENGY OR ANY ENGY INDEMNIFIED PARTY HARMLESS FROM AND AGAINST ANY LOSS IN EXCESS OF SUCH PAYMENT RECEIVED BY ENGY. CUSTOMER FURTHER AGREES TO PROVIDE SUFFICIENT INSURANCE (OR SHALL SELF-INSURE) FOR THE BENEFIT OF EACH OF THE PARTIES HERETO AS SHALL BE NECESSARY TO PROTECT CUSTOMER, ENGY, ANY ENGY INDEMNIFIED PARTY, AND ANY THIRD PARTY FROM ANY SUCH LOSS AS ALLOCATED PURSUANT TO THE PROVISIONS HEREOF.

Upon written request, each party shall furnish to the other party certificates of insurance evidencing the fact that adequate insurance to support each party's obligations hereunder has been secured, which request may be issued by Engy prior to shipment of any Products.

9. Intellectual Property Rights of Engy; Software. Under no circumstances shall the sale of any Product hereunder transfer ownership of any intellectual property rights from Engy to Customer, regardless of whether Engy has designed, configured, engineered, or manufactured any Product

specifically to Customer's specifications. Customer expressly acknowledges that any design, engineering, technical work, or other intellectual property of any kind developed by Engy in connection with meeting any order from Customer or supplying any Product to Customer shall constitute Engy's proprietary data and shall be solely Engy's intellectual property.

10. Confidentiality. All specifications, pricing and other information disclosed in any form or manner to Customer by Engy in connection with the provision of Products to Customer hereunder (collectively defined as "Information") will be held in strict confidence by Customer; provided, however, that this confidentiality obligation shall not apply to any Information given freely by Engy to prospective customers (for example, in product brochures or on Engy's website). All such non-public Information will be treated and protected by Customer as strictly confidential and will not be disclosed to any third party without the prior written consent of Engy and may be disclosed within Customer's organization only on a need-to-know basis. Customer acknowledges that Engy's confidential Information has proprietary value to Engy that derives, in part, from the fact that such confidential Information is confidential and therefore not available to Engy's competitors. The foregoing obligations shall not apply to any Information that (i) is publicly known or becomes publicly known through no fault of or disclosure by Customer; (ii) is given to Customer by someone other than Engy as a matter of right and without restriction; (iii) was known to the Customer prior to the acceptance of these Terms and Conditions; or, (iv) is legally compelled to be disclosed. If Customer receives a subpoena, governmental order, or other legal process seeking disclosure of Engy's Information, Customer shall immediately notify Engy in order to allow Engy the opportunity to oppose the order, notice, or process, or seek a protective order. If requested by Engy, Customer shall cooperate fully with Engy in contesting such disclosure. Except as such demand shall have been timely limited, quashed or extended, Customer may thereafter comply with such demand, but only to the extent required by law.

11. General. Except to the extent amended by an instrument in writing signed by Engy and Customer, (i) these Terms and Conditions constitute the entire agreement of Engy and Customer with respect to the Product, and contain all of the covenants and agreements of Engy and Customer with respect thereto; (ii) Customer acknowledges and represents that no representations or agreements, oral or written, have been made by Engy or anyone acting on behalf of Engy, that are not contained herein; and (iii) any prior agreements, promises, negotiations, or representations not expressly set forth in these Terms and Conditions are of no effect. These Terms and Conditions may not be altered or amended except by an instrument in writing signed by Engy and Customer. Failure by Engy to enforce any of these Terms and Conditions in any case shall not constitute a waiver of or preclude subsequent enforcement.

12. Limited Statute of Limitations. TO THE EXTENT PERMITTED BY LAW, THE STATUTE OF LIMITATIONS FOR ANY BREACH OF CONTRACT RELATIVE TO THE SALE OF ANY PRODUCT HEREUNDER SHALL BE ONE YEAR FROM THE DATE THE CAUSE OF ACTION ACCRUES.

13. No Authority of Seller's Agents. No agent or representative of Engy has any authority to bind Engy to any representation, warranty, or term except as may be stated herein, nor shall any agent or representative have any authority to alter any term hereof, except as may be approved in writing by an officer of Engy.

14. Applicable Law and Dispute Resolution. Any dispute between the parties relating in any way to this Agreement (whether such dispute involves claims raised in tort or contract or otherwise) shall be subject to the exclusive jurisdiction of the state and federal courts in Harris County, Texas, the location of the corporate headquarters for the Engy companies, and Customer hereby represents, acknowledges, and stipulates that Harris County is a fair and reasonable location for the bringing of any court action regarding this Agreement; provided, however, that Engy shall also remain free to seek any appropriate preliminary injunctive relief that may be appropriate to preserve its rights under this Agreement in any court with jurisdiction over the Customer or the matter threatening Engy's rights. This Agreement and the relationship of the parties shall be governed by the law of the State of Texas.