

**General Terms and Conditions of Sale and Delivery for DaklaPack US, Inc.**

**Article 1      Applicability**

- 1.1 These General Terms and Conditions of Sale and Delivery (the “Terms and Conditions”) apply to all purchases from DaklaPack US, Inc. (“DaklaPack”) by customer (“Customer”) and exclusively govern the relationship between Daklapack and Customer. These Terms and Conditions shall be applicable even if DaklaPack uses third parties to deliver products.
- 1.2 DaklaPack expressly rejects any general terms and conditions used by Customer. No other terms and conditions shall be binding upon DaklaPack unless accepted by DaklaPack in writing. Additional or different terms and conditions contained in any Purchase Order will be null and void and do not bind DaklaPack.
- 1.3 DaklaPack reserves the right to amend these Terms and Conditions at any time. New or amended terms and conditions shall be applicable upon thirty (30) days’ notice to Customer.

**Article 2      Purchase Orders and Ordering**

- 2.1 Any quotations or offers made by DaklaPack are non-binding and may be revoked at any time prior to execution of a written Purchase Order made by Customer (a “Purchase Order”) and written order acceptance (“Order Acceptance”) issued by DaklaPack accepting such Purchase Order, unless stated otherwise in writing by DaklaPack.
- 2.2 Customer shall issue a written Purchase Order to cover each shipment of products (“Products) or orders for services (“Services”). Customer is responsible for ensuring that a Purchase Order is complete and accurate. Any Purchase Order from Customer constitutes an offer by Customer to purchase goods in accordance with these Terms and Conditions. After DaklaPack issues an Order Acceptance, such order will become binding upon both parties. The parties agree that upon acceptance of a Purchase Order, neither party shall revoke, cancel or reschedule any Purchase Order without the other party’s written consent, which consent shall not be unreasonably withheld, conditioned or delayed.
- 2.3 Customer hereby understands and accepts that all samples, drawings, models, figures, dimensions, weights or any other specifications for Products and Services are estimates only, however DaklaPack shall use best efforts to ensure their accuracy.

**Article 3      Prices and Taxes**

- 3.1 Prices of products are subject to change at any time, and DaklaPack shall at all times be entitled to modify price lists, brochures, printed matter, quotations and other documents. Price increases may result from factors such as, but not limited to:
  - a) increases in excise duties, factory prices, raw materials, freight costs, foreign exchange rate fluctuations;
  - b) requests by Customer to make changes to the Purchase Order; or
  - c) delay caused by any special instructions of the Customer or failure of the Customer to give DaklaPack adequate or accurate information or instructions.In the event of a price increase due to the factors listed in Section 3.1(a) above, DaklaPack will provide notice to Customer up to three (3) days prior to delivery.
- 3.2 The prices listed do not include federal, provincial, or local sales, PST, GST, HST, VAT, foreign withholding, use, property, excise, service, or similar transaction taxes (“Taxes”) now or hereafter levied, all of which shall be for Customer’s account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to DaklaPack with the Purchase Order. If DaklaPack is required to pay Taxes on Customer’s behalf, DaklaPack shall invoice Customer for such Taxes, and Customer shall reimburse DaklaPack for such amounts in accordance with this Article 3.2. Customer hereby agrees to defend, indemnify, and hold harmless DaklaPack and its officers, directors, managers, employees, and agents from any and all liabilities, costs, and expenses (including reasonable attorneys’ fees) in connection with any Taxes and related costs, interest, and penalties paid or payable by DaklaPack on Customer’s behalf. For the avoidance of doubt,

DaklaPack shall be responsible for any taxes related to its income, property, franchise, or employees.

- 3.3 The prices or fees quoted are in U.S. dollars, or in another currency if stated by DaklaPack in writing. Customer shall bear any exchange rate risk, unless otherwise agreed in writing.

#### **Article 4 Delivery/Risk of Loss**

- 4.1 All deliveries are made from the DaklaPack warehouse and all goods are transported at the expense and risk of the Customer, unless otherwise agreed in writing. The goods will only be covered by goods in transit insurance by DaklaPack upon written request of the Customer and subject to the written acceptance of DaklaPack and at the expense of the Customer.
- 4.2 Dates quoted for delivery are approximate, and the time of delivery is not of the essence. If delivery is not made on the estimated delivery date:
- a) Customer is not entitled to reject the goods and/or terminate a Purchase Order, except in the event delivery is not made within three (3) days of such estimated date. If delivery is not made within such time period, Customer may terminate the Purchase Order.
  - b) DaklaPack is entitled to make partial deliveries. In the event part of a delivery is delayed beyond three (3) days, DaklaPack and Customer each have the right to terminate the Purchase Order in respect of the outstanding portion of such Purchase Order.
  - c) In no event shall DaklaPack be liable for any delay in delivery that is caused by a Force Majeure Event (as defined in Article 8) or Customer's failure to provide DaklaPack with accurate and adequate shipping information and/or instructions.
- 4.3 Customer must accept delivery of Products during normal business hours, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with DaklaPack's rates or local charges. Customer shall bear the risk of loss during the storage of the Products, including the risk of loss of quality.
- 4.4 Customer may submit a request for a modification to a Purchase Order to DaklaPack in writing up to ten (10) business days before the scheduled delivery date. Whether such request is accommodated shall be at the sole discretion of DaklaPack. If accepted, the change will be confirmed in writing by DaklaPack. If a Customer's request for a change in the quantity/dimensions of an order is accepted, DaklaPack may adjust the price in accordance with these Terms and Conditions.

#### **Article 5 Returns**

- 5.1 Immediately upon Customer's receipt of Products, Customer shall inspect the Products for defects and non-conformance with the Purchase Order and must notify DaklaPack in writing within seven (7) days of receipt of the shipment of any defects or non-conformance. After such seven (7) day period, Customer shall be deemed to have irrevocably accepted the products, if not already previously accepted. After acceptance, Customer shall have no right to reject the Products for any reason or to revoke acceptance. Customer hereby agrees that a seven (7) day period is a reasonable amount of time for inspection and revocation. If Customer fails to report a defect or non-conformance with the Purchase Order within such seven (7) day period, DaklaPack will have no obligation to correct such error, and Customer shall bear the expenses thereof.
- 5.2 Notwithstanding Section 5.1, in the event of a hidden defect, Customer shall have a maximum of two (2) months to report such defect to DaklaPack. Claims will not be recognized if the Products have in any way been used or processed. Claims do not entitle Customer to postponement of payment.
- 5.3 Defects in part of a delivery do not entitle the Customer to reject the complete delivery.
- 5.4 In the case of any alleged shortage, errors, defect or non-conformance with the Purchase Order, Customer shall allow DaklaPack to inspect the Products subject to the alleged defect. Notwithstanding the above, DaklaPack will have no obligation to replace or repair any Products if (i) the Products have been handled, processed or stored improperly by the Customer, (ii) the Products have already been processed, or (iii) if Customer has not fully met its obligations under these Terms and Conditions. Returns will not be accepted unless DaklaPack has given prior authorization. The costs of any returns approved by DaklaPack in accordance with these Terms

and Conditions will be borne by the Customer, unless otherwise agreed between DaklaPack and Customer in writing.

- 5.5 THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGEDLY DEFECTIVE PRODUCTS IS THE REPLACEMENT OR REPAIR OF SUCH PRODUCTS OR PARTS OF SUCH PRODUCTS, AT NO COST TO CUSTOMER.

**Article 6 Proofs**

- 6.1 In the event Customer is provided with proofs for a Product prior to production and shipment of the order, Customer must assess the proofs for compliance with the agreed upon specifications, including printing and typographical errors, and return the proofs to DaklaPack. In case the proofs are in compliance with the agreed upon specifications and do not contain any errors, Customer must return the proofs without further comments, or with an indication that the proofs are approved. In case of non-compliance or any errors, Customers must return the proofs to DaklaPack and specify the required corrections in writing. If agreed by DaklaPack, DaklaPack will provide Customer with new proofs as soon as reasonably is possible. Customer understands and accepts that DaklaPack will not be required to start production of Products and/or ship any Products, unless DaklaPack has received proofs that are fully approved by Customer as indicated above.
- 6.2 Unless agreed upon in writing otherwise, each party will pay its own expenses in connection to the shipment of proofs to the other party.

**Article 7 Permitted Quantities and Deviations**

- 7.1 DaklaPack may require that a minimum number of units of a Product or Service or a minimum weight of a Product be ordered by Customer. In the event Customer submits a Purchase Order that does not meet such required minimum, the Purchase Order shall be adjusted and returned to Customer for its acceptance.
- 7.2 If Customer wishes to modify the quantity or dimensions of any Products ordered under a previously submitted Purchase Order, all such modifications must be communicated to and accepted by DaklaPack in writing and any related costs shall be borne by Customer.
- 7.3 The dimensions of the Products provided by DaklaPack shall be in substantial conformance with the dimensions quoted by DaklaPack and Products may not be rejected as a result of a deviation in the size of the Products if such Products fall within the allowable deviation limits as set forth below:
- 7.3.1. The average length and/or width of a Product in one delivery, including printed bags with side joints, cannot exceed five percent (5%) of the quoted length and/or width of such Product, provided that in these cases the permitted deviation cannot be greater than 1 cm;
- 7.3.2 The average thickness or quoted height of a Product in one delivery cannot exceed ten percent (10%).
- 7.4 Customer acknowledges that certain deviations in the number of units or weight of Products ordered may occur during the production and printing process. Customer may not reject Products as a result of such deviations if the Products fall within the permitted deviation limits, as set forth below:
- 7.4.1. For Purchase Orders placed by unit:

Number of units ordered	Permitted Deviation
Fewer than 500	25% of total order
500-1000	20% of total order
1000-2500	15% of total order
2500 and greater	10% of total order

- 7.4.2. For Purchase Orders placed by weight:

Weight of Products ordered	Permitted Deviation
Less than 500 kg	25% of total weight ordered

500-1000 kg	20% of total weight ordered
1000-2500 kg	15% of total weight ordered
2500 kg and greater	10% of total weight ordered

- 7.5 In the event of a permitted deviation as set forth in Section 7.4 above, Customer will be invoiced, and Customer agrees to pay, the agreed upon price per unit or weight in the quantities actually delivered to Customer.
- 7.6 DaklaPack does not guaranty the exact color of any Product. Deviations in color from any sample provided by DaklaPack resulting from the standard printing process and/or materials used are not cause for rejection of the Products.

**Article 8 Force majeure**

DaklaPack will not be liable for any delay in performing or failure to perform any of its obligations under these Terms and Conditions caused by events beyond its reasonable control, which include, but are not limited to, war, riots, strikes, prohibitions on import or trade, and extreme weather (each, a “Force Majeure Event”). DaklaPack will notify Customer promptly in writing of such Force Majeure Event (and the likely duration thereof) and will take all reasonable steps to overcome the Force Majeure Event.

**Article 9 Warranty**

- 9.1 DaklaPack warrants its Products and Services against errors and defects in materials and workmanship for two (2) months from the date of delivery to Customer. During the aforementioned warranty period DaklaPack will use its best efforts to repair any defects as may be found during such period or replace the Products at DaklaPack’s sole discretion. Such warranty only applies if Customer is in compliance with these Terms and Conditions.
- 9.1.1 The warranties hereunder do not cover faults or damages arising from improper storage, unauthorized use or misuse of Products, or a failure caused by a Product for which DaklaPack is not responsible, such as a manufacturing defect. The warranty does not apply if Customer makes use of the Product after a defect becomes apparent.
- 9.1.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND UNLESS OTHERWISE STATED IN WRITING, DAKLAPACK, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE DAKLAPACK PRODUCTS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM DAKLAPACK OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS.

**Article 10 Liability and Limitation of Damages**

- 10.1 NEITHER DAKLAPACK NOR ITS OFFICERS, EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL ACTS AND/OR OMISSIONS RELATING TO PRODUCTS USED, DISTRIBUTED, OR SOLD TO CUSTOMER.
- 10.2 IN NO EVENT SHALL DAKLAPACK, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS.

- 10.3 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, DAKLAPACK'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE FEES PAID BY CUSTOMER FOR SUCH PURCHASE ORDER.
- 10.4 THE LIMITATIONS ON DAKLAPACK'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT DAKLAPACK, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

**Article 11 Indemnification**

CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD DAKLAPACK, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, IN CONNECTION WITH, OR ARISING OUT OF CUSTOMER'S BREACH OF ANY AGREEMENT OR THESE TERMS AND CONDITIONS, OR ARISING OUT OF ANY USE, DISTRIBUTION, OR SALE OF THE DAKLAPACK PRODUCTS OR SERVICES BY CUSTOMER, UNLESS SUCH WAS THE RESULT OF DAKLAPACK'S WILFUL MISCONDUCT, GROSS NEGLIGENCE OR FRAUD.

**Article 12 Intellectual Property**

- 12.1 All intellectual property rights, including, but not limited to, patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentation, in relation to the Products or Services, including modifications thereto, delivered and/or used by DaklaPack, are owned by DaklaPack or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if products have been specifically designed, developed or compiled for Customer.
- 12.2 Unless otherwise agreed in writing, Customer may not make repairs or modifications to the Products nor allow or enable any third parties to do so.
- 12.3 Customer shall not be permitted to affix any other trademark to the Products, or to remove any copyright, trademark or other proprietary rights notices on same, or to use the relevant mark in any other way, or to register it in Customer's own name, and specifically Customer shall not be permitted to register any patent involving, based upon, or for any of the Products or Services.
- 12.4 If a third party threatens to infringe any of the intellectual property rights of DaklaPack and Customer has knowledge of it, Customer is obliged to alert DaklaPack immediately and to take all commercially reasonable measures necessary to prevent the infringement, and Customer shall lend its full cooperation to any investigation to be conducted by or on behalf of DaklaPack in relation to the Customer's compliance with the agreed restrictions of use.

**Article 13 Confidential Information**

- 13.1 Confidential Information means (i) the existence and terms of any agreement between DaklaPack and Customer and (ii) any non-public, confidential or proprietary information relating to a disclosing party, whether or not technical in nature, including any information that is designated by the disclosing party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving party; (ii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving party at the time of disclosure by the disclosing party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing party; or (v) is developed independently and separately by either party without use of the disclosing party's Confidential Information.
- 13.2 Each party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other party and that it will observe the same due care with respect to such information as it

would observe with respect to its own Confidential Information. The other party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing party's prior written consent, which consent may be granted or withheld in such party's sole and absolute discretion.

- 13.3 Each party agrees that it will restrict the employees or third parties it retains who have access to the other party's Confidential Information and provide such access only on a need to know basis and after binding such employees and third parties to the same level of confidentiality as set forth in these Terms and Conditions.
- 13.4 Immediately following the receipt of a written request by the disclosing party the receiving party will return any and all Confidential Information received from the disclosing party or destroy such Confidential Information, if the disclosing party so requests.

#### **Article 14 Payment**

- 14.1 Customer agrees to pay the full amount set forth on Customer's invoice within the payment period stated on the invoice, and in the absence thereof, within 14 days of the invoice date, without the right to set-off any amount. All amounts will be due immediately in the event Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- 14.2 Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.5% a month, or the highest rate allowed by law, if lower, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month. Payments made by Customer shall always be used first to meet all the interest and costs owed.
- 14.3 If DaklaPack believes that Customer's financial position and/or payment performance justifies such action, DaklaPack has the right to demand that Customer immediately furnish security in a form to be determined by DaklaPack and/or make an advance payment. If Customer fails to furnish the desired security, DaklaPack has the right without prejudice to its other rights, to immediately suspend the further execution of the Agreement, and that which Customer owes to DaklaPack for whatever reason will become immediately due and payable.
- 14.4 Customer shall be liable for amounts which DaklaPack incurs to collect payment, including without limitation, collection agency fees, reasonable attorneys' fees and arbitration or court costs.

#### **Article 15 Customer Materials**

- 15.1 The manuscripts, originals, plates, lithos, image carriers, printwork ("Customer Materials") made available by Customer to DaklaPack will become property of DaklaPack and will be retained, at the risk of the Customer, for a maximum of two (2) years from the termination of the Order. Such Customer Materials shall be destroyed or disposed of following such two year following if Customer does not request the return of the Customer Materials.
- 15.2 All Customer Materials remain the property of DaklaPack and a transfer to the Customer or third parties cannot be demanded.

#### **Article 16 Severability**

If any provision of these Terms and Conditions, or any other agreement between the Parties, is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

#### **Article 17 Governing Law**

All orders and any other dealings between DaklaPack and the Customer shall be governed by and construed in accordance with the laws of the State of New Jersey, notwithstanding conflict of law principles, and without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. DaklaPack and Customer hereby consent to and waive any objection to the exclusive jurisdiction and venue of the federal courts located in Bergen County, New Jersey, with respect to any claims, suits or proceeding arising out of or in connection with these Terms and Conditions or any transactions contemplated hereby.