

## HEAT SEAL, LLC TERMS AND CONDITIONS OF SALE

**Agreement.** Any order placed by a Buyer, shall be deemed to constitute an offer to enter into a contract to purchase Seller's Goods on these Terms and Conditions of Sale ("T&C") which are hereby incorporated into any such order (the "Agreement"). Buyer's order shall be accepted by Heat Seal and a contract entered into on these T&C, upon the transmittal of Heat Seal Order Acknowledgment or upon the shipment of the Goods, whichever occurs first. Heat Seal OBJECTS TO, AND IS NOT BOUND BY, TERMS OR CONDITIONS ON BUYER'S PURCHASE ORDER, CONFIRMATION FORMS, OR OTHER DOCUMENTS, WHICH ATTEMPT TO IMPOSE UPON HEAT SEAL ANY TERMS OR CONDITIONS AT VARIANCE WITH OR IN ADDITION TO THESE T&C. SHIPMENT OR OTHER PERFORMANCE BY HEAT SEAL SHALL NOT CONSTITUTE ASSENT TO ANY SUCH INCONSISTENT OR ADDITIONAL TERMS OR CONDITIONS.

**Orders.** All orders placed, changed, cancelled, by a Buyer, must be submitted in 'written' form via email, facsimile, or through web form/e-commerce. All customer orders are subject to acceptance by Heat Seal, in its sole discretion, at its general offices, even if such orders are taken elsewhere by an authorized sales representative of Heat Seal. All orders received are subject to credit approval. All quoted lead times and production are subject to order completion, submitted with correct pricing, discounts, required deposits and any other requests from Seller to Buyer.

**Changes in Specifications or Design.** If Buyer requests any change in quantity, specification or design relating to any goods, or changes of delivery date and/or schedules, such proposed change(s) shall be subject to the terms and conditions of this Agreement and must be approved in writing to be binding upon Seller. Seller reserves the right to change such specifications, designs and standard equipment without notice and without incurring any obligation to Buyer.

**Price.** Prices shown in Heat Seal sales literature are subject to change without notice and should not be construed as a definite quotation or offer to sell. A signed and dated quote by an authorized representative of Heat Seal is an offer to sell that shall expire not more than thirty (30) calendar days from the date it is transmitted to Buyer. Heat Seal's quote is expressly conditioned on Buyer's assent to these T&C. Heat Seal reserves the right, upon notice to Buyer, to correct miscalculations, omissions, and typographical errors on any quote or offer.

**Taxes.** Prices quoted or accepted by Heat Seal are exclusive of all federal, state, municipal or other government excise, sales, use, occupational, or like taxes, tariffs, fees, export duties, and other export costs. All of the foregoing shall be for the account of Buyer. Consequently prices are subject to increase by the amount of any such tax, tariff, duty, or fee that Heat Seal pays or is required to pay or collect upon sale or delivery of the Goods. Any such taxes, tariffs, duties, fees, and costs, when applicable to sales or to the Goods, shall appear as separate items on Buyer's invoice.

**Payment Terms.** All payments shall be made in U.S. dollars. If Buyer fails to fulfill the terms of payment or if Heat Seal shall have any doubt as to Buyer's financial condition Heat Seal may, in addition to any other of Heat Seal rights on Buyer's default, decline to make further deliveries until receipt of cash or satisfactory security. Minimum payment terms are described below depending on items purchased; any variation in payment terms must be agreed upon by both parties and set forth in writing.

**Industrial Equipment Orders.** Dependent on credit and/or limit; 50% due upon order to complete acknowledgement, 40% prior to shipment, 10% net 30 days final invoice from shipment.

**Food Service Equipment & Parts Orders.** Payment terms for domestic sales are 1% 10 days, net thirty (30) days after the date of Heat Seal's final invoice.

**Export Sales.** Payment terms for export sales are 50% due upon order to complete acknowledgement, 50% prior to shipment; excluding equipment deemed 'custom' by Heat Seal where one hundred percent (100%) net cash in U.S. currency upon presentation of invoices, bills of lading, or other appropriate shipping documents.

**Credit.** All orders received are subject to credit approval. Buyer agrees to submit from time to time to Seller those items reasonably requested in order to establish or update Buyer's credit. Whenever Seller in good faith deems itself insecure, it may, without prejudice or waiving any other rights or remedies it may have at law or equity, cancel any outstanding orders with Buyer and/or hold production and/or shipment of any unfilled orders; modify or revoke its extension of credit to Buyer; reduce any unpaid debt by enforcing its security interest (described below) (and applying the proceeds therefrom); and take any other steps permitted by law and necessary or desirable, in Heat Seal's sole discretion, to secure Seller with respect to Buyer's payment for goods furnished or to be furnished. Buyer will pay Seller's actual costs of collection, including but not limited to court costs, additional litigation expenses, and reasonable attorneys' fees and costs, incurred for collection of any amount owed to Seller hereunder. Buyer shall permit Seller at any reasonable time to make audits of its collateral, including records of shipments, sales and payment. Buyer shall have no right of offset against amounts owed to Seller. However, Seller shall have the right to credit toward the payment of any monies that may become due Buyer hereunder any amounts which may now or hereafter be owed to Seller or any of its subsidiaries or affiliates by Buyer.

**Warranty & Returns.** Heat Seal's exclusive warranty is set forth separately at [www.HeatSealCo.com/Warranty](http://www.HeatSealCo.com/Warranty) and it is hereby incorporated by reference into this Agreement as if fully set out within. Returns are not guaranteed. Parts are not returnable. All returns must be approved by Heat Seal with a Return Authorization Number. Returns must be received within 30 days of granted Return Authorization number. For special considerations, please contact customer service. Restocking fees may apply.

**Security Interest.** Seller reserves and, by its order, Buyer grants, Seller a security interest in all goods furnished by Seller to Buyer wherever located until payment has been received, and Buyer will promptly execute and deliver documents to perfect such security interest. Heat Seal hereby reserves and Buyer grants a purchase money security interest in the Goods sold and the proceeds thereof, in the amount of the purchase price. If Buyer defaults on any of its obligations to Heat Seal, Heat Seal shall have the right, in addition to any other rights and remedies available, to repossess the Goods sold hereunder. In such event, Buyer agrees to make the Goods available for repossession. These security interests shall be terminated upon payment in full.

**Cancellation for Payment Suspension/Insolvency/Institution of Proceedings.** In the event of any suspension of payment or the institution of any proceedings by Buyer against Seller, or the initiation of voluntary or involuntary proceedings in bankruptcy or insolvency proceedings naming Buyer as debtor, or proceedings under any provisions of the United States Bankruptcy Code in which Buyer is a debtor, or for the appointment of a receiver or a trustee or an assignee for the benefit of creditors, or Buyer's admission in writing of its inability to pay its debts as they become due, Seller shall be entitled to cancel any agreement entered into hereafter, forthwith, without liability of any nature.

**Shipping.** Buyer must inspect for damage IMMEDIATELY after receipt of shipment. Buyer must file claims with shipping company if in receipt of damaged goods. Unless otherwise agreed in writing all deliveries are shipped F.O.B. Heat Seal factory and Buyer assumes the risk of loss, delay, and damage immediately upon delivery of the Goods to a suitable common carrier. All delivery expenses including transportation, freight, insurance, and any other shipping cost shall be for the account of Buyer. Notwithstanding, the Parties agree to cooperate to recover from the common carrier for any loss or damage resulting from the transportation of the Goods by the carrier. Unless otherwise indicated in writing selection of a carrier shall be at Heat Seal's discretion. Charges for special packaging shall apply on Buyer's request, or otherwise required by trade regulations.

**Export Regulations.** Buyer shall adhere to all provisions of the U.S. Government Export Administration Regulations, related documentation requirements, and internal control procedures. Buyer shall be responsible for obtaining any and all necessary export or import licenses and permits. If applicable, performance by Seller is

subject to U.S. export laws and regulations. Seller's failure to perform due to such laws and regulations shall not constitute a breach of this agreement.

**Acceptance.** Goods furnished by Seller in all events will be deemed to have been accepted within ten (10) days after receipt by Buyer, unless rightfully rejected within such period by written notice to Seller, setting forth all of the defects upon which the rejection is claimed. Claims for damage or shortages shall not be considered unless also made in writing within ten (10) days after receipt of the goods and accompanied by reference to Seller's bill of lading and invoice numbers. Defective goods shall be held for Seller's inspection or disposition. Acceptance of goods upon delivery shall constitute a waiver by Buyer of any claim for damages on account of non-shipment or delays in delivery or performance.

**Installation and Repair Assistance.** Unless otherwise agreed to under the warranty provisions of this Agreement, all Goods shall be installed and repaired by and at the expense of Buyer. If Buyer so desires, Heat Seal shall furnish an experienced person to supervise and assist in the installation or repair of the Goods, as available. Service personnel will be billed on an hourly basis according to Heat Seal then current rates. Heat Seal shall not be liable for the negligent, reckless, or intentional acts of anyone not employed by Heat Seal who installs, repairs, operates, or handles the Goods under this Agreement. The Buyer agrees that it is its responsibility to install the Goods in a safe manner and to operate the Goods in accordance with Heat Seal's instructions.

**Delays in Delivery and Force Majeure.** Heat Seal shall use commercially reasonable efforts to meet any delivery date(s) quoted. However, under no circumstance shall Heat Seal be liable for any delay in shipment, failure to meet any quoted delivery date(s), or for any delay in performance hereunder. In addition, Heat Seal shall have the right to postpone the time for delivery due to unforeseen circumstances or cause(s) beyond its control. Examples of such causes are acts of God, wars, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, strikes, transportation delays or shortages, inability to obtain material or supplies, excessive demand over available supply, interruption in the manufacture of products needed to produce Heat Seal's Goods, or other causes not within Heat Seal's control.

**No License.** Goods offered for sale by Heat Seal are subject to the condition that such sale shall not convey any right to reproduce, copy, or duplicate the Goods in whole or in part either, expressly or by implication, under any intellectual property rights, with respect to any inventions of Heat Seal or others, patented or not patented, embodied in Heat Seal Goods, processes, sales literature, or manufacturing operations. Unless expressly stated otherwise in a signed writing, Heat Seal reserves all its rights in such intellectual property and no manufacture to Buyer's specifications entails ownership by or conveyance to Buyer of any property right.

**Intellectual Property Rights Infringement.** Heat Seal agrees to indemnify and defend Buyer against any claim that the Goods purchased hereunder, as manufactured by Heat Seal, infringe on a United States Patent, United States Copyright, United States Trademark, or other United States intellectual property right, provided Heat Seal is promptly advised of any such claim or action and has sole control of the defense of any such action and all negotiations for its settlement or compromise. However, Heat Seal will not indemnify or defend Buyer from claims that Goods designed specifically to Buyer's specifications infringe on any intellectual property right.

**Confidential Information.** Buyer shall not, without Heat Seal's express written consent, disclose drawings, data, designs, plans, and specifications, knowhow, production methods, or other confidential information belonging to Heat Seal to any person not directly involved with the completion of this Agreement or operation of the Goods. Confidential information does not include information that is public, the receiving party lawfully knew prior to this Agreement, or that the receiving party could otherwise independently discover without the aid of the disclosing party.

**Limitation on Actions.** Buyer may not commence litigation or any other legal action against Heat Seal for breach of warranty or breach of this Agreement unless the suit or action is brought within one (1) year of the date of Heat Seal's invoice. Seller shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys' fees and other litigation expenses, from the Buyer relating to any lawsuit or other proceeding arising from, or relating to, this agreement, or any agreement entered into hereafter, in which Seller predominantly prevails.

**Indemnification.** Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, liabilities, loss, costs, damage, expense (including reasonable attorneys' fees and costs) or injury of any kind or nature whatsoever (including, but without limitation, property damage, personal injury or death, as well as economic loss or damage) caused by, resulting from, arising out of, relating to, or occurring in connection with, the goods purchased by Buyer and/or the performance by Seller hereunder, whether such claims are premised on contract, tort (including, without limitation, strict liability or negligence), or otherwise, and shall include, but not be limited to, those arising from Buyer's dismantling or overriding of safety devices attached to the goods, failure to follow instruction manuals and product warnings, as well as other improper use of the goods. This indemnity provision shall not apply where such damage or injury is attributable solely to the gross negligence of Seller.

**Software License.** If computer software is in or among the Goods to be transferred hereunder, Heat Seal hereby grants to Buyer, effective upon sale of the items covered by this order, a perpetual non-exclusive non-transferable license to use such software, provided that such use shall be only for Buyer's business and shall be limited to use on the Goods transferred hereunder.

**Notice.** Any notice, demand, or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and shall be delivered by reputable overnight courier service or pre-paid first class mail to the other party's address.

**Waiver.** No failure or delay by Heat Seal in exercising any right, power, or privilege hereunder shall operate as a waiver thereof.

**Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, and assigns.

**Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement is held to be invalid, illegal, or unenforceable under any applicable law or rule, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

**No Assignment.** This Agreement all rights, duties, and obligations thereto shall not be assigned, delegated, or transferred by Buyer without prior written consent of Heat Seal, which it may withhold or grant in its sole discretion. Any attempted assignment or transfer in violation of this section is void and unenforceable.

**Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to the conflicts of law principles of such State, except that the United Nations Convention on Contracts for the International Sale of Goods, if otherwise applicable pursuant to such laws, shall be excluded in favor of the Uniform Commercial Code as in effect at the time in the State of Ohio.

**Entire Agreement.** These terms and conditions are not intended to be all-inclusive. In order of precedence (1) special terms and conditions agreed to in a writing signed by both Parties (2) Heat Seal's Order Acknowledgement (3) these T&C (4) specifications and (5) all other exhibits or warranties incorporated by reference constitute the complete Agreement between the Parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. No other act, document, usage, or custom shall be deemed to amend or modify this Agreement.