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Dear Vendor:

## **PERFORMANCE REQUIREMENTS**

Graham Packaging Company, L.P., including its subsidiaries and affiliates ("Graham"), is committed to providing our customers with the highest quality of products and services. To ensure that our suppliers and vendors share and uphold the same standards of doing business, Graham demands that our suppliers and vendors agree to the following terms and conditions when selling or conveying equipment to Graham.

## **DELIVERY**

In doing business with Graham, Vendor agrees to deliver any equipment sold or conveyed to Graham ("Equipment") within the time specified in the Purchase Order ("Time Schedule"). Vendor agrees that TIME IS OF THE ESSENCE. Unless Vendor objects to the Time Schedule within five (5) days of the Purchase Order, Vendor will be bound by its terms. In the event Vendor makes a timely objection to the Time Schedule, Graham may cancel the Purchase Order without penalty, and any amounts previously paid to Vendor shall be refunded in full. In the event the Time Schedule is delayed for reasons other than those attributable to Graham, Vendor agrees to pay liquidated damages equal to one percent (1%) of the Contract Price for each one (1) day of delay ("Liquidated Damages for Delay"). In the event the Time Schedule is delayed for more than thirty (30) days, Graham may at any time terminate the Purchase Order without further liability and any amounts previously paid to Vendor shall be refunded in full.

## **WARRANTY & PERFORMANCE**

Vendor warrants: (1) that the Equipment will meet or exceed the specifications set forth in the Purchase Order or as otherwise agreed to in writing by the parties, including those generally applicable to such goods ("Specifications"); (2) the Equipment will meet or exceed the performance criteria set forth in the Purchase Order or as otherwise agreed to in writing by the parties ("Performance Criteria"); (3) the Equipment will be of good quality and free from defects in material and workmanship under normal use and service for which it was intended, so long as it has been properly operated by Graham, and as more fully described below; (4) that the Equipment is manufactured, packaged, stored and transported in compliance with all applicable laws, rules, regulations and orders of any court or arbitral tribunal; and (5) that no goods, nor any of its elements, nor the use or sale thereof, violates or infringes upon any patent, trademark, copyright, trade secret or other 2401 Pleasant Valley Road York, Pennsylvania 17402 (717) 849-8500 intellectual property right of any other person. Notwithstanding anything to the contrary, the warranties provided in Clause (5) above shall survive the Warranty Period as defined below. Exclusions: The above warranties shall not apply to defects, slowdown, diminished efficiency, malfunction, or damages (collectively "Nonconformities") arising from any of the following, except to the extent such Nonconformities are attributable to Vendor: improper use, bad maintenance, repairs incorrectly carried out, non-compliance with operating manual and the directions for use, unqualified or not properly trained personnel, faulty replacement materials installed, normal wear and tear, or exposure to conditions outside the range of any environmental specifications provided by Vendor. Common wear parts and consumables are excluded from the warranty. Vendor's liability is limited to defects, including without limitation, failure to meet the Specifications or Performance Criteria, which appear within a period of one (1) year after the delivery of the Equipment ("Warranty Period"). During the Warranty Period, Vendor will remedy at its own costs any defect of the Equipment imputable to defective material, workmanship or design (with the exception of those designs delivered or any way requested by Graham and for which Vendor has explicitly disclaimed its responsibility in writing). Graham shall notify Vendor of any warranty claim ("Warranty Defect") in writing

promptly upon its discovery by Graham. Promptly upon receipt of notice of a Warranty Defect, but in no event more than five (5) business days, Vendor shall repair or replace the affected pieces of Equipment in order to meet or exceed the Specifications and Performance Criteria. Any repaired or replaced Equipment shall itself be deemed to be covered by the warranty hereunder for the balance of the Warranty Period. In no event shall the repair or replacement of the Equipment to meet or exceed the Specifications and Performance Criteria exceed ten (10) days from receipt of notice of Warranty Defect. Vendor agrees that TIME IS OF THE ESSENCE. In the event a Warranty Defect occurs more than two (2) times during the Warranty Period, or Vendor fails to timely repair or replace the Equipment, Graham shall be entitled to claim liquidated damages equal to one percent (1%) of the Contract Price for each one percent (1%) of efficiency lower than the warranted Performance Criteria, or one (1) day of delay, as applicable. In this case, the above liquidated damages for underperformance or delay shall be cancelled and Graham shall be entitled to claim refund of all money paid Vendor against return of the deliveries supplied and all reasonable freight, disassembly and/or transportation charges related to the return of the Equipment. The liquidated damages set forth in this document have been reduced to a sum certain and agreed in advance as a formula, percentage or otherwise, it is agreed that Vendor and Graham have made a good faith effort to estimate future damages and have freely elected to liquidate such damages, as future damages are difficult to determine, and that such liquidated damages are not a penalty.

### **INSURANCE**

Vendor shall carry and maintain, at its expense, the following insurance with duly licensed and financially sound insurance companies: (a) Workers' Compensation Insurance or qualification as a self-insurer to satisfy the laws of the states which have jurisdiction over Vendor's employees; (b) Employers' Liability Insurance for Bodily Injury per accident with limits of not less than \$2,000,000 and Bodily Injury by Disease with limits of not less than \$2,000,000 per policy; (c) Commercial General Liability Insurance for bodily injury, personal injury and property damage, including coverage for products/completed operations and contractual liability, with combined limits of not less than \$2,000,000 per occurrence; (d) Automobile Liability Insurance (with non-owned and hired vehicle coverage) in an amount not less than \$1,000,000 per accident; and (e) if applicable, Product Recall Insurance, including Expense and Liability Damages coverage, with combined limits of not less than \$2,000,000 per occurrence. To the fullest extent permitted by law, all policies shall include a waiver of subrogation and name Graham as an additional insured. Upon Graham's request, Vendor will provide Graham with written certification, reasonably acceptable to Graham, of Vendor's compliance with the requirements listed in this paragraph. Vendor may satisfy the limits of insurance required herein with any combination of primary and umbrella/excess insurance policies. The insurance requirements of this paragraph are separate and distinct from any other obligations of Vendor contained herein, and neither the issuance of any insurance policy nor the minimum limits specified herein will be deemed to limit or restrict in any way Vendor's liability arising from its activities with Graham.

In the event of any conflict between these Performance Requirements and the Purchase Order, the terms and conditions of these Performance Requirements shall prevail unless specifically excluded in a writing signed by both parties. All other terms and conditions of the Purchase Order shall remain unchanged.

Thank you,