

GRAHAM PACKAGING
TERMS AND CONDITIONS
OF SALE

1. **Title.** Title and risk of loss shall pass upon delivery to a common carrier at the plant of manufacture F.O.B plant of manufacture. "Products" include the items described on the attached quote sheet and any replacements or substitutes for such items.

2. **Acceptance of Delivery.** Purchaser shall accept delivery of the Products hereunder if the delivery complies in all material respects with the Specifications. Purchaser shall inspect all the Products delivered hereunder within ten (10) days of their delivery. Purchaser shall provide Graham with written notice of its rejection of a delivery, in whole or in part, within fifteen (15) days of such delivery. Any notice of rejection shall specify in detail the reason(s) therefore. Should Purchaser fail to provide Graham with written notice of its rejection of the delivery within fifteen (15) days of delivery, then the delivery shall be deemed to have been accepted by Purchaser on the fifteenth (15th) day after delivery.

3. **Warranties.** Seller warrants that the Products shall be manufactured to meet the specifications agreed upon by both parties ("Specifications"). GRAHAM MAKES NO OTHER WARRANTIES, INDEMNIFICATIONS, GUARANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The burden of establishing that Products (i) are fit for Purchaser's purpose; or (ii) fail to conform to the Specifications shall be upon Purchaser. In order to be entitled to recovery hereunder, Purchaser must (i) timely inspect the Products before filling; (ii) give Graham immediate oral notification (to be followed by written notice within two (2) business days) of allegedly non-conforming Products; (iii) set aside the allegedly non-conforming Products for inspection by and return to Graham; (iv) mitigate its damages incurred as a result of any and all breaches of the foregoing warranty; and (v) provide Graham with an itemized accounting of the extent of the Product losses incurred as a result of a breach by Graham of the foregoing warranties. In keeping with Purchaser's obligation to mitigate its damages incurred as a result of a breach by Graham of the warranties set forth in above, Purchaser shall maintain and perform quality control procedures for the purpose of monitoring Purchaser's Product filling and packaging process which are designed to identify defects and deficiencies in finished products (i.e. Products that are filled and sealed) prior to leaving the filling line. Every claim shall be deemed

waived by Purchaser unless made within thirty (30) days from the date of filling the Products to which the claim relates.

4. **Limitation of Damages.** Purchaser's exclusive remedy for Product(s) proven to be other than as warranted shall be at Graham's option: (a) refund of the purchase price; or (b) the repair or replacement of the Product(s) without charge, F.O.B. point of destination, but only within the Continental United States. Graham's liability for any and all loss or damage to Purchaser resulting from any cause whatsoever including but not limited to Graham's negligence, damaged or defective Product(s), irrespective of whether such defects are discoverable or latent or irrespective of whether the claim arises out of tort, contract or any other legal theory, shall in no event exceed the purchase price of the particular Product(s) with respect to which losses or damages are claimed.

INDEPENDENT OF ANY OTHER PROVISION OF THE AGREEMENT, PURCHASER ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL GRAHAM BE LIABLE TO PURCHASER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE, LOST PROFITS, LOSS OF BUSINESS OR GOODWILL, OR INJURY TO PROPERTY. GRAHAM SHALL NOT BE LIABLE FOR LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY ARISING FROM THE USE OF THE BOTTLES BY ANY PARTY, INCLUDING WITHOUT LIMITATION CLAIMS FOR DAMAGE ARISING FROM PURCHASER'S OR PURCHASER'S CO-PACKER'S HANDLING, STORAGE, FILLING OR PACKING OF BOTTLES.

5. **Force Majeure.** Each party shall be relieved of its obligation to perform any part of the Agreement to the extent its performance is prevented or rendered impracticable by events beyond its reasonable control, which events may include, without limitation, fire, storm, flood, earthquake, and other Acts of God, and explosion, accident, acts of the public enemy, riots and other civil disturbances, sabotage, strikes, labor disputes, work stoppages, court injunctions, transportation embargo's, shortages or unreasonable increases in the cost labor or energy, shortages or unavailability of raw materials or equipment, failure of raw materials, acts, regulations or other requirements of federal, state, county, municipal, or local governments or branches, subdivisions or agencies thereof ("Force Majeure"). Each party will promptly notify the other party of the occurrence of any Force Majeure that may affect its performance of the Agreement. If as a consequence of any such Force Majeure event the total demand for Graham's goods cannot be supplied by Graham from its plants normally producing such goods, Graham may allocate its supply of goods among its present and future customers and itself on such basis as Graham deems fair and reasonable without liability for failure to deliver any goods to Purchaser hereunder.

6. **Equipment/Mold Ownership.** The parties agree that Purchaser's purchase of Bottles or Equipment/Molds does not confer any right or license to Purchaser under patents Graham may have now or in the future, or any of Graham's other intellectual property rights, including trade secrets and know-how.

7. **Confidentiality.**

"Confidential Information" hereunder is defined as products, formulae, formulations, ingredients, research, designs, samples, equipment, manufacturing methods and processes, computer programs, techniques, strategies, methods of distribution, capabilities, systems, technology, specifications, customers, marketing and sales information, business plans, financial data, consumer data, employees, or any other private matters, whether or not related to the Products, of a party and its subsidiaries and affiliates, regardless of whether such information is disclosed directly or indirectly in written, oral, or visual form.

Purchaser agrees to treat in strictest confidence, in a manner adequate to protect Graham's rights therein, any Confidential Information received by Purchaser from Graham. Purchaser shall not disclose any Confidential Information to any other party nor will Purchaser use Confidential Information for any purpose other than performing under this Agreement.

Information which is not to be regarded as Confidential Information under this Agreement shall be any information which:

- a. was publicly available to the receiving party prior to disclosure by the disclosing party; or
- b. became publicly available after disclosure to the receiving party through no fault of the receiving party; or
- c. was known to the receiving party prior to disclosure by the disclosing party; or
- d. was rightfully acquired by the receiving party after disclosure by the disclosing party from a third party who was lawfully in possession of the information and was under no legal duty to the disclosing party to maintain the confidentiality of the information; or
- e. the receiving party can demonstrate to have been independently developed by it for a party other than the disclosing party and without use of any Confidential Information.

Purchaser and Graham will each endeavor to provide to the other only such Confidential Information as is required for its performance under this Agreement.

Confidential Information shall be disclosed only to employees or agents of the receiving party who have a need to know such information in order to carry out its responsibilities hereunder, and only then to employees who have been advised that such information is confidential and proprietary and who have agreed in writing to accept the obligations of confidentiality and non-use as set forth herein.

All documents and other materials transferred by the disclosing party in confidence hereunder shall remain the property of the disclosing party. At the termination of this Agreement or at any time requested by the disclosing party, the receiving party shall return or destroy, at the disclosing party's direction, all such documents and materials, and any notes or other records, written or electronic, which contain such Confidential Information, shall retain no copy thereof, and shall provide the disclosing party with written confirmation of the return or destruction, as applicable, of all Confidential Information in its possession.

The Agreement and the terms and conditions of the Agreement shall remain confidential, unless the confidentiality is waived by mutual agreement of the parties.

8. **Intellectual Property.** All inventions, discoveries, and improvements including trade secrets, patents, copyrights, trademarks and other proprietary rights in whatever form, arising from or related to Graham's work hereunder (collectively, herein, "Intellectual Property") are the sole and exclusive property of Graham and shall not be deemed "work for hire". Purchaser waives all right, title and interest in such Intellectual Property and hereby assigns, transfers, grants and conveys all such right, title and interest to Graham. Purchaser agrees to execute all applications, assignments and other papers relating to the Intellectual Property which Graham believes are necessary to apply for and to obtain patent rights in any country or to otherwise protect Graham's interest in the Intellectual Property. Purchaser also agrees to assist Graham in enforcing all rights and protections relating to the Intellectual Property in any and all countries. All costs incurred in connection with the preparation and execution of the papers and the enforcement of any rights will be borne by Graham.

9. **Administration.** The parties recognize that, during the term of the Agreement, purchase orders, letters, e-mail, invoices, releases and other routine documents (collectively "Forms") may be used to implement or administer provisions of the Agreement. Therefore, the parties agree that the terms of the Agreement shall prevail in the event of any conflict between the Agreement and the printed provisions of such Forms, or typed provisions of Forms that add to, vary, modify or are at conflict in any way with the provisions of the Agreement. In the event Graham and Purchaser do not both sign a formal "Supply Agreement" or similarly styled document that incorporates or supercedes this quote then this quote shall be the "Agreement" and shall not be varied by Forms and shall be the entire agreement of the parties.

10. **Governing Law.** The laws of the Commonwealth of Pennsylvania shall apply to the Agreement. The United Nations Convention of Contracts for the International Sale of Goods (Vienna Convention) shall not apply.

11. **Assignment.** The Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. Except as otherwise specifically provided below, neither party may assign its rights and obligations under the Agreement without the prior written consent of the other; provided, however, that either party shall have the right, without such consent of the other, to assign its rights and obligations as a whole hereunder to any successor to all or substantially all of the business or assets of such party (whether by merger, transfer of assets or equity interests).