



TERMS AND CONDITIONS OF SALE

1. **GENERAL:** These terms and conditions ("**Seller's Terms and Conditions**") shall apply to any contract ("**Contract**") for the sale of goods ("**Goods**") by Acme Bag Company Inc., Baron Bag & Erosion Supply, the Bulk Bag Company, or Sacramento Bag Mfg. Co. (collectively and individually, "**Seller**"). **Seller's Terms and Conditions shall be incorporated in and deemed a material part of the following documents: (a) any bid, quote, response to a request for quote, letter, proposal, or any other form of offer for the sale of Goods ("Proposal") by Seller to a buyer ("Buyer"); (b) any form of order acknowledgment by Seller to Buyer ("Order Acknowledgment"); and (c) any invoice or similar document submitted by Seller for the sale of Goods ("Invoice").** Seller's Terms and Conditions shall supersede and replace any terms and conditions offered by Buyer and shall be the only terms and conditions applicable to Buyer's purchase of Goods pursuant to the terms appearing on the Proposal, Order Acknowledgement or Invoice. **Seller's Terms and Conditions shall not be modified or changed without Seller's written consent. Seller specifically and expressly objects to and rejects any terms and conditions or other provisions in Buyer's purchase orders, printed forms, correspondence or any other writings or oral representations which are different from, inconsistent with or in addition to the Seller's Terms and Conditions.**

2. **PRICE:** The Goods and other items covered by this Contract shall be sold and invoiced at the price or prices on the Proposal, Order Acknowledgement or other sales document. Unless otherwise specified in writing, the prices set forth in Seller's Proposal shall expire 7 days from the date on the Proposal. Freight costs are estimates and are subject to adjustment at time of shipment if third-party logistics providers adjust prices or apply surcharges. Prices are also subject to adjustment for changes in import duties or taxes between the time of quote and import. Unless otherwise specified in writing, prices do not include federal, state or local sales, excise, use or other taxes now in effect or hereafter levied by reason of this Contract. All such taxes shall be paid by Buyer. If Seller pays any such taxes or assessments, Buyer shall, upon demand, reimburse Seller for such amounts.

3. **DELIVERY, TRANSPORTATION AND RISK OF LOSS:** Goods shall either be delivered by Seller, picked-up by Buyer, or at Buyer's request and cost, by common carrier. Seller shall bear the risk of loss, damage or other incidents of ownership until delivery is made to Buyer's destination, unless Buyer is picking up. If Buyer fails or refuses for any reason whatsoever to take delivery of Goods at the designated time of delivery, then Buyer shall be responsible for all reasonable storage fees resulting from such failure or refusal to accept timely delivery.

4. **INSPECTION:** Buyer shall inspect the Goods at the place of destination within 7 days after the Goods' arrival. Buyer must accept any tender of the Goods by Seller that are substantially in conformity with the specifications for the Goods in light of standard industry tolerances and the terms hereof, subject to Buyer's remedies set forth below. Buyer will be deemed to have accepted tender of the Goods if Buyer fails so to inspect, or fails to give Seller written notice of rejection, within 10 days after the Goods' arrival, which notice shall describe the rejected Goods and the non-conformities or defects upon which Buyer's rejection is based.

5. **PAYMENT:** For those customers with established Seller credit, payment terms are net 30 days from the date of invoice. In addition, Acme accepts all major credit cards or check by phone at the time of order or COD for Goods picked up at a Seller warehouse.

6. **WARRANTIES:** Seller warrants that all Goods will, at the time of delivery and for a period of 60 days thereafter, conform to the quoted specifications. SELLER MAKES NO WARRANTY THAT THE GOODS SHALL BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE, NOR DOES SELLER MAKE ANY OTHER WARRANTIES, EXPRESS OF IMPLIED, BY OPERATION OF LAW OR OTHERWISE, EXCEPT SUCH AS ARE EXPRESSLY SET FORTH HEREIN. SELLER MAKES NO WARRANTY WITH RESPECT TO GOODS OR THEIR COMPONENTS WHICH ARE NOT MANUFACTURED BY SELLER. Final determination of the suitability of the Goods for Buyer's use and purposes is the sole responsibility of Buyer, and Seller shall bear no responsibility for such suitability. Notwithstanding the foregoing, the parties further understand and agree that the warranty set forth in this section shall not

apply to the extent that Buyer or its agents (including freight carriers) have: (i) abused or damaged the Goods; (ii) or failed to follow the written care and handling instructions printed on the Goods or supplied to Buyer by Seller.

7. **REMEDIES AND DISCLAIMERS:** In as much as the value of the Goods sold hereunder may be substantially disproportionate to the value of the products to be used in conjunction therewith, and, for the express purpose of limiting the liability of and remedies against Seller to an extent which is reasonably proportionate to the commercial value of this transaction, Buyer and Seller hereby specifically and expressly agree to the terms and provisions set forth in this section with regard to disclaimers and limitations on Seller's liabilities. All claims for shortages or alleged defects in quality shall be deemed waived unless made within 30 days of Buyer's receipt of Goods. BUYER HEREBY AGREES THAT SUCH 30 DAYS IS A REASONABLE PERIOD OF TIME IN WHICH TO INFORM SELLER OF SUCH CLAIMS. In no event shall any such Claim entitle Buyer to relief if made after Goods have been used, processed or transferred by Buyer. Defective or non-conforming Goods shall be held by Buyer for Seller's prompt inspection. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SELLER BE RESPONSIBLE OR LIABLE TO BUYER OR TO ANY THIRD PARTY (EXCEPT AS PROHIBITED BY LAW) FOR ANY LOST PROFITS, LOSS OF USE, OR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR CONTINGENT DAMAGES FOR ANY BREACH OF WARRANTY OR OTHER BREACH OF SELLER'S OBLIGATIONS HEREUNDER OR SELLER'S NEGLIGENT CONDUCT IN PERFORMING ITS OBLIGATIONS HEREUNDER EVEN IF SELLER IS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDIES ARE, UNDER SELLER'S TERMS AND CONDITIONS AND UNDER THE UNIFORM COMMERCIAL CODE, HEREBY LIMITED TO SELLER'S CHOICE OF ONE OF THE FOLLOWING REMEDIES, AS APPLICABLE: (a) THE REPAIR OF ANY DEFECTIVE OR NON-CONFORMING GOODS; OR (b) THE REPLACEMENT THEREOF WITH CONFORMING GOODS AT THE FOB POINT PROVIDED HEREIN. BUYER SHALL BE ENTITLED TO NO OTHER REMEDIES, WHETHER IN CONTRACT, WARRANTY, PRODUCTS LIABILITY, TORT, NEGLIGENCE OR OTHERWISE, EXCEPT AS PROVIDED HEREIN. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THAT PORTION OF THE GOODS WHICH ARE DEEMED TO BE DEFECTIVE OR NOT IN COMPLIANCE WITH SELLER'S WARRANTY OBLIGATIONS HEREUNDER. Replacement of defective or non-conforming Goods or repayment of the purchase price for the Goods will be made only upon return of defective or non-conforming Goods, which Goods shall not be returned until Seller has consented thereto and has delivered to Buyer written shipping instructions. Any claim or cause of action by Buyer for breach of Seller's obligations hereunder must be brought within one year from the date of Seller's tender of the subject Goods to Buyer.

8. **FORCE MAJEURE DELAYS:** Seller's obligations to deliver the Goods shall be excused in the event of circumstances outside of its control, including, without limitation: (a) strikes, work stoppages, or other labor troubles or difficulties of any kind; (b) fires, floods, inclement weather, or other acts of God; (c) riots, war, sabotage or other disturbances of the peace; (d) transportation delays, reductions, shortages, curtailment or cessation of supplies, materials, equipment, facilities, power, labor, transportation or other factors of production; (e) governmental legislation, regulations, rules or orders; (f) pandemics; or (g) delays of other suppliers.

9. **CANCELLATION /TERMINATION:** Buyer may not cancel or terminate a Contract for convenience for the purchase of Goods hereunder. Buyer may request the right to terminate a Contract but, absent a material and uncured breach on the part of Seller, Buyer shall first provide written notice to, and obtain the consent of, Seller. Seller shall have the right to reasonably deny such request. Buyer shall, upon Seller's acceptance of any cancellation, pay Seller for all completed work for Buyer's order, all other costs (including work-in-process and raw materials) incurred up to the date of cancellation, all lost profits due to the cancellation, and all other reasonable cancellation charges.

10. **MISCELLANEOUS:** The relationship between Seller and Buyer is solely that of vendor and vendee and they are independent contracting parties. This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein. No waiver under this Agreement is effective unless it is in writing and signed by the party waiving its right. This Agreement is binding on and inures to the benefit of the parties and their respective permitted successors and permitted assigns. Neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof, shall be discussed by the parties in good faith in order to reach an amicable resolution. If the parties are unable to resolve any dispute within 30 days after delivery of written notice thereof, the dispute shall be submitted to binding arbitration in the state of California, unless otherwise mutually agreed. Each party agrees that a final judgment in any such proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto are governed by, and construed in accordance with, the laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.