

STANDARD TERMS AND CONDITIONS

- BASIS OF SALE.** All orders placed by buyer, all products and services furnished by InterFlex Group, herein referred to as IFG, and the performance by IFG under any proposal or contracts is expressly conditioned by and subject to IFG's standard terms and conditions as listed herein. By submitting a purchase order to IFG, buyer agrees to be subject to these terms and conditions in their entirety. All purchase orders must be bona fide commitments showing definite prices and quantities. No purchase order, whether or not submitted in response to a quotation by IFG, shall be binding upon IFG until IFG has accepted such purchase order by issuing an order acknowledgement. Buyer may not cancel or modify any purchase order accepted by IFG without the express written consent of IFG. Buyer shall remain responsible for the payment of all amounts invoiced for raw materials and finished goods that are procured and manufactured by IFG in connection with any such purchase orders in accordance with the terms set forth herein.
- PRECEDENCE.** No terms or conditions stated by buyer in a purchase order or otherwise shall be binding on IFG, whether in conflict with or in addition to any of the provisions of this agreement, including those pertaining to delivery, price, quantity, payment, specifications, warranties and all other terms and conditions, unless expressly agreed in writing by IFG. For the avoidance of doubt, any documents incorporated by reference in another agreement expressly agreed in writing by IFG shall not themselves constitute documents that IFG has expressly agreed in writing. Without limiting the generality of the foregoing, IFG's acknowledgement of any purchase order shall not constitute its express written agreement with the terms contained in such purchase order. In the event of any conflict between these terms and conditions and any other written agreement expressly agreed in writing by IFG, the terms and conditions of such other written agreement shall govern but only as it pertains to those specific terms and conditions that are in conflict.
- PRICES.** Prices are based upon continuous production in uninterrupted runs of the quantity or quantities specified by IFG which, unless expressly authorized by IFG in writing, shall not be less than 8 million square inches, herein referred to as MSI, per individual item. In the event production runs are less than the quantity or quantities specified by IFG, then unless such lesser production runs are in no way due to any actions or failures on the part of buyer, such prices shall be subject to a reasonable increase to reflect the cost of additional set up times. In the event buyer requests or causes any deviation from the specifications that were agreed to by buyer at the time any prices were established, buyer shall be responsible for any increase in such prices as is necessary to recover any increase in cost to IFG resulting from such deviation.
- TAXES.** Prices, unless expressly indicated, do not include federal, state or local sales, use or other taxes, now or hereafter enacted, applicable to the goods sold. Any such taxes will be added by IFG to the sales price where IFG has legal obligation to collect same, and will be paid by the buyer unless buyer provides IFG with the proper tax exemption certificates. Buyer agrees to indemnify IFG against all claims and liabilities in connection with the taxes set forth in this section.
- TERMS AND METHOD OF PAYMENT.** All invoices are due and payable on a net basis within thirty (30) days from the date of invoice unless otherwise set forth in such invoice. No deductions shall be allowed from invoices unless authorized by IFG in writing. The amount of credit may be modified or revoked by IFG at any time. If shipment is delayed by buyer, payment is due from date when IFG is prepared to make such shipment. IFG reserves the right to charge interest, or a fee in lieu of interest, at the highest rate allowed by the law on all overdue accounts, plus all costs associated with the collection of such overdue accounts (including, without limitation, attorneys' fees), with each fraction of a month counted as a full month. Whenever IFG in good faith deems itself insecure, IFG may cancel any outstanding purchase order with buyer; decline to make delivery of products to buyer; reduce any unpaid debt by enforcing its security interest, created hereby, in all products (and proceeds therefrom) furnished by IFG to buyer; and take any other steps necessary or desirable to secure IFG fully with respect to buyer's payment for products and services furnished or to be furnished by IFG. Notwithstanding the other provisions herein, noting that risk of loss shall pass to buyer at such time as IFG delivers the goods to a common carrier for shipment to buyer, it is the intention of IFG and buyer that title to possession only of such products shall remain with IFG until, and buyer shall have the right to title when, the entire purchase price therefore, is paid in full in cash to IFG. If, contrary to such intention, such title to the products at any time prior to payment in full in cash of the purchase price is construed to have passed to buyer, it is the intention of IFG and buyer that IFG shall have, and buyer hereby grants to IFG in such event, a security interest in said products and all proceeds therefrom. Buyer shall cooperate with IFG in complying with all applicable laws and regulations and perform all acts deemed necessary or advisable by IFG to perfect and ensure IFG's security interest in said products. If requested by IFG, either prior to shipment or at any time when any part of the purchase price remains unpaid, buyer shall give to IFG in IFG's usual form, a financing statement or such other document as may be required to perfect such security interest.
- LEAD TIMES.** Any quoted lead times for products are approximate only and shall, in no case, be less than the following standard lead times: (i) 6 weeks for roll items and (ii) 8 weeks for Inno-lok items, bags and pouches, in each case from the date that final approved artwork and all requested technical specifications have been provided to IFG. In the event any lead times are quoted by IFG prior to IFG's receipt in full of the aforementioned artwork and technical specifications, such quoted lead times shall be deemed to be revised in accordance with this section without any further action on the part of IFG. In any case, IFG shall not be liable for any delivery of products in advance of or subsequent to the date quoted for delivery, however caused, and time for delivery is not of the essence.
- DELIVERY.** Prices are F.O.B. IFG's plant. Buyer is responsible for all freight costs except on shipments that meet the following requirements: (i) shipments in excess of 3,500 lbs. for mixed load or roll stock items, (ii) shipments in excess of 2,000 lbs. for Inno-lok items only and (iii) shipments in excess of 1,500 lbs. for bags or pouches only. Title thereto and liability for loss and damage in transit or thereafter shall pass to buyer upon IFG's delivery of goods to a common carrier for shipment to buyer. Claims for damages in transit must be asserted against the carrier. IFG may, at its option, make partial shipment and invoice buyer therefore.
- INSPECTION, ACCEPTANCE AND RETURN.** Within ten (10) days after receipt of shipment, buyer must report any shortage, damage or quality deficiency. After such period, all such claims will be deemed waived and buyer shall be conclusively deemed to have inspected and accepted such products except to the extent such claims are valid under IFG's warranty but only as expressly set forth herein without regard to any other warranty terms that may otherwise be applicable. Buyer may not return any products, under warranty claim or otherwise, without first reporting to IFG the reasons for such return and obtaining IFG's prior approval therefore, and then observing such reasonable instructions as IFG may give in authorizing any return.
- OVER / UNDER RUNS.** IFG reserves the right to ship and invoice over and under run amounts up to the following percentages (based on individual item order quantity expressed in MSI of roll stock) which shall constitute proper and complete fulfillment of any order and shall be paid for at the unit price specified in the order: (i) under 8 MSI, 35%, (ii) 8 to under 10 MSI, 30%, (iii) 10 to under 20 MSI, 20%, (iv) 20 to under 50 MSI, 15% and (v) 50 or more MSI, 10%.
- INVENTORY PROTECTION.** Finished goods may be held by IFG for up to 90 days from the manufacture date at no cost to buyer, following which such finished goods may be shipped and invoiced to buyer at any time at IFG's sole discretion. If at IFG's sole discretion such finished goods are not shipped after 90 days, buyer may be charged a warehousing fee equal to one and one-half percent (1.5%) of the invoiced price of the stored finished goods per month with each partial month counting as a full month to be billed at the time of shipment. IFG is under no obligation to continue any storage after 90 days from the manufacture date and may invoice and ship such finished goods to buyer at any time thereafter. IFG may ship and invoice buyer for all raw materials remaining in inventory that were ordered in response to purchase orders from buyer and that are not committed to firm production orders by buyer within thirty (30) days after such raw materials are delivered to IFG.
- TOOLING.** All preparatory work, plates or cylinders, referred to herein as tooling, shall remain IFG's property unless the cost of such tooling was invoiced to and paid for in full by buyer when such tooling was procured or, if the cost such tooling was to be amortized into the price of future orders, until such time as the cost of such tooling has been fully recovered thru such amortization. IFG may invoice buyer for the remaining unamortized cost of any tooling if the items produced with such tooling are discontinued or the anticipated future orders into which such tooling was to be amortized are delayed or otherwise not fulfilled. IFG shall store all tooling without charge; provided, however, that IFG shall have the right, without liability, to destroy such tooling if not used for two years. In the case of any tooling that is the property of buyer, prior to such destruction, IFG shall provide buyer with at least 10 day notice that it intends to destroy such tooling so that buyer may, during such 10 period, complete the purchase of such tooling at its original cost from IFG. Failure of buyer to respond and complete such purchase prior to the end of such 10 day notice period shall constitute buyer's agreement to such destruction.
- LIMITATION OF WARRANTY AND CLAIMS.** Buyer assumes all risk and liability for the use of IFG's products, whether used singly or in combination with other products. IFG warrants that all new and unused products furnished by IFG shall be free from defects in material and workmanship under normal use for a period of twelve (12) months from the date of manufacture. IFG makes no warranty that any product sold by buyer conforms to any state or federal regulating label. THE FOREGOING WARRANTY EXTENDS ONLY TO BUYER, AS THE ORIGINAL PURCHASER, AND, TO THE EXTENT APPLICABLE, IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, TERMS AND CONDITIONS, REPRESENTATIONS, INDEMNITIES, AND GUARANTEES WITH RESPECT TO ANY PRODUCTS SOLD BY IFG TO BUYER, AND IN LIEU OF ANY OTHER OBLIGATION ON THE PART OF IFG, EXPRESS OR IMPLIED, OR ARISING BY LAW OR CUSTOM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In the case of IFG's breach of warranty or any other breach of the transactions contemplated by these terms and conditions (including, without limitation, any repair made or undertaken to be made under warranty), the exclusive remedies therefore shall be: (i) repair; (ii) replacement; or (iii) repayment of, or credit against future purchases for, the purchase price of the defective products upon return of the defective products. Selection among the exclusive remedies described above shall in each case be at IFG's sole discretion and subject to buyer's compliance with IFG's return procedures.
- LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL IFG BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING, WITHOUT LIMITATION, DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, LOST GOODWILL, COST OF PURCHASED OR REPLACEMENT GOODS THAT ARE DAMAGED OR DESTROYED AS A RESULT OF IFG PRODUCTS, CLAIMS FOR SERVICE INTERRUPTIONS OR INCREASED MANUFACTURING COSTS, IMPAIRMENT OF OTHER ASSETS, OR OTHERWISE, AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, OR OTHERWISE. IN NO EVENT SHALL IFG'S LIABILITY EXCEED THE COST OF THE PRODUCTS IT HAS SOLD TO BUYER.**
- FORCE MAJEURE.** IFG shall be excused from performing in the event of acts of God, strikes, sabotage, riots, fires, storm, earthquake, explosion, accident, epidemic, quarantine restrictions, war, revolution, civil commotion, acts of a public enemy, acts of terror, assertions by third parties of infringement claims, late or non-delivery by suppliers to IFG, lack of adequate production capacity, failure or delay in plant start-up, breakdown of machinery or shortages of raw materials, power, equipment, field, transportation, containers, local, state, federal, or foreign governmental prohibitions or limitations on performance, any act, law or regulation of any government or agency with jurisdiction over IFG, and all other contingencies beyond the reasonable control of the party claiming excuse which render performance by such party impractical. In the event of shortage of production or supply of products for any reason, IFG reserves the right to allocate its supplies of products to itself as well as to unaffiliated customers, as it deems equitable.
- INDEMNIFICATION.** Buyer agrees to defend, indemnify and hold harmless IFG, its successors and assigns against and shall pay the monetary value of any losses related to any liability, injury or death to persons, or damages to property resulting, directly or indirectly, from or in connection with (i) buyer's use of the products and (ii) any negligence or willful misconduct of buyer.
- TRADEMARKS, COPYRIGHTS AND PATENTS.** When IFG has manufactured any products in accordance with specifications or drawings furnished by buyer or when a product is made to buyer's design, buyer at its own expense will defend any suit against IFG for infringement of trademarks, copyrights or patents and will satisfy any final award of damages for such infringement, provided IFG gives buyer notice in writing of any such suit for infringement, opportunity to conduct the defense thereof and assistance and cooperation in said defense. When buyer orders products to which buyer is licensee, buyer authorizes IFG to manufacture said products under buyer's license and buyer will be responsible for such royalties as may be due and for such notifications to its licensor as buyer is obligated to make.
- INTELLECTUAL PROPERTY.** IFG shall retain sole ownership of all right, title, and interest in and to all of its intellectual property, including, without limitation, content and materials on its website, ideas, methods, trademarks, service marks, trade names, symbols, logos, copyrights, patents, trade secrets, product formulations and structures and know-how, referred to herein as Intellectual Property, and no licenses to any Intellectual Property are created hereunder. Notwithstanding anything to the contrary herein, buyer understands that IFG is in the business of supplying flexible packaging products and buyer acknowledges and agrees that nothing shall restrict IFG from supplying such products to other customers and prospective customers of IFG including such products which utilize similar or identical structures or technologies.
- CONFIDENTIALITY.** All Intellectual Property, specifications, drawings, documents, designs, data, information, computer software, technical matter, samples, and/or inventions acquired, made, conceived, or developed by IFG (including, without limitation, if acquired, made, conceived, or developed in cooperation with buyer), incident to procuring or carrying out the transactions contemplated by these terms and conditions, referred to herein as Confidential Information, is and shall be the property of IFG and shall be disclosed to buyer only to assist buyer, and such disclosure shall be made only on a confidential basis and in no way shall impair the confidential nature thereof. Without the express prior written consent of IFG, buyer shall not at any time disclose, or cause or permit any employee, agent or affiliated, controlled, or controlling entity of buyer to disclose to any person, firm, corporation, or other entity, or use for its own or their benefit, or reproduce, the Confidential Information, or any information concerning the business affairs of IFG. Confidential information shall not include any information which is: (i) otherwise in the public domain or (ii) disclosed without violation of these terms and conditions or any other agreement between buyer and IFG relating to the transactions contemplated by these terms and conditions. The Confidential Information is provided by IFG with the express understanding that such Confidential Information is owned exclusively by IFG, and buyer shall acquire no right, title or interest in or to the Confidential Information.
- NON-WAIVER OR DEFAULT.** Any claim or right of IFG arising out of a breach of these terms and conditions or the transactions contemplated hereunder can be discharged in whole or in part by a waiver or renunciation of the claim or right only if such waiver or renunciation is supported by consideration and is in writing signed by a duly authorized representative of IFG. The waiver by IFG of a breach of any provision of these terms and conditions or any of the transactions contemplated hereunder shall not constitute a waiver of any other breach, or a subsequent breach of such provision for the same or any other cause. The failure or delay by IFG at any time to exercise any right, power or privilege hereunder, whether by course of dealing or otherwise including without limitation the decision to make or refrain from making any shipments, shall in no way affect the right of IFG to subsequently exercise the same or any other right, power or privilege hereunder.
- GOVERNING LAW AND LIMITATIONS.** The valid construction and performance of these terms and conditions shall be governed by laws of the state of North Carolina without reference to any choice of law provision that would cause the application of the laws of any jurisdiction other than the laws of North Carolina. Any legal action with respect to the matters covered herein must be commenced within two years after the cause of action has occurred. All limitations herein on IFG's liability and remedies for breach of any duty of IFG to buyer or any other user of IFG's products are extended to IFG's affiliates, suppliers, distributors, and service providers, insofar as they may have any duties to buyer or any other user of IFG's products.
- GENERAL PROVISIONS.** Buyer shall not assign its rights under any transactions contemplated by these terms and conditions without the express prior written consent of IFG. These terms and conditions may be amended or supplemented only by a separate, signed agreement expressly amending or supplementing one or more of these terms and conditions and signed by a duly authorized representative of IFG and buyer. In the event any of the terms and conditions contained herein is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other term or condition.