



AUTOMATED PACKAGING SYSTEMS, INC. TERMS AND CONDITIONS

- 1. Entire Contract.** The terms and conditions set forth below and on the face side hereof constitute the complete and exclusive statement of the terms of this transaction. All representations, promises, warranties or statements by any agent or employee of Seller that differ in any way from the terms and conditions hereof are of no force or effect. **Any additional or contradictory terms contained in any initial or subsequent order or communication from Buyer pertaining to the Goods described on the face hereof are hereby objected to.** No course of prior dealings between the parties and no usage of the trade shall be relevant to this transaction. All orders are subject to the approval by Seller at its offices in Streetsboro, Ohio. **No waiver or alteration of terms herein shall be binding unless in writing signed by an executive officer of the Seller.**
- 2. Price.** Unless otherwise specifically set forth on the face side hereof, all prices are F.O.B. Seller's Plant, the price is net and does not include sales, use, excise or similar taxes, whether federal, state or local, which taxes will be paid by Buyer. Only a portion of discounts negotiated with freight carriers will be passed through to Buyer. Insurance for the Goods is Buyer's responsibility. Buyer agrees to pay a delinquency charge of the lesser of 1½% per month, or the maximum rate allowed by applicable law, from the date such balances were due until payment with respect thereof is made in full. Until the purchase price and all other sums due pursuant thereto are paid in full, Seller retains a security interest in the materials described on the face hereof (the "Goods") and Buyer authorizes Seller to file UCC financing statements reflecting this lien. Prices stated are subject to change without notice in the event of: (i) alterations in specifications, quantities, designs or delivery schedules; (ii) increase in the cost of fuel, power, material, supplies or labor; and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increase the cost of producing, warehousing, or selling the Goods purchased hereunder.
- 3. Warranties.** Seller warrants that the Goods will be free from defects in materials and in workmanship for the duration listed in the schedule below, from the date of shipment. This warranty does not apply to normal wear items or component parts made by third parties. Any warranties for third party component parts are, to the extent permitted, passed through to the Buyer. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS. SELLER SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

Machine	Materials	Workmanship
AB Series Bagger	365 Days	90 Days
PI - 412 Series Imprinter	365 Days	90 Days
HS Series Bagger FAS Systems HB-85 Bagger Accu-Count®, Accu-Scale® Maximizer® Kitveyor® Sprint®	180 Days	90 Days
HB 65, 55, 25	90 Days Parts Warranty only	

Buyer must report any warranted defect to Seller in writing within 10 days of discovery, permit the Seller to inspect the defective part, and if requested by Seller ship the defective part, at Buyer's cost, to the Seller. Buyer's sole remedy for any such defect is the repair or replacement of the defective part or the refund of purchase price, at Seller's sole option. This warranty does not include labor or shipping costs and it does not include damage due to abuse, accident, misuse, modification, or improper installation or maintenance.

- 4. Damages; Liability.** **SELLER IS NOT LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES RELATING DIRECTLY OR INDIRECTLY TO THIS TRANSACTION.** Seller's liability for any claim under this transaction (whether based upon a theory of contract or tort) must not exceed the purchase price for the Goods.

- 5. Acceptance.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods to determine damage due to shipping, and if damage exists, make an appropriate claim with the Carrier. Unless Buyer provides Seller with written notice of any claim for shortages of or defects in the goods within forty eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer.
- 6. Title and Risk of Loss.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to carrier, and claims for losses or damage shall be made by Buyer directly with Carrier.
- 7. Credit Terms.** All orders and shipments shall at all times be subject to the approval of the Seller's Credit Department. Standard terms of credit are net 30 days from date of invoice. Any deviation from standard terms of sale must be approved by Seller..
- 8. Packaging.** If other than standard packaging of Seller is required, Buyer will so specify and pay for any special packaging.
- 9. Delays.** All shipping dates are approximate. Seller will not be liable for any damage, loss or expenses arising out of delays in shipment or other nonperformance of the Agreement caused by or imposed by acts of God or any other cause or condition

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beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

10. Termination, Cancellation and Changes. Orders cannot be cancelled or modified or shipment delayed after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to conditions then agreed upon which shall indemnify Seller against liability and expense incurred and commitments made by Seller and which will include profit on work in process and contract value of products or parts completed and ready for shipment.

11. Indemnity. Buyer will defend and indemnify Seller against all liability cost or expense which may be sustained by Seller on account of loss, damage or injury resulting from the use and operation of the equipment.

Buyer will defend and indemnify Seller against any claims or liabilities for or by reason of the infringement of any United States patent arising from the manufacture of any of the Goods in accordance with specifications furnished by Buyer or from the sale thereof. Buyer also agrees to defend and indemnify Seller against claims arising out of the Buyer's choice of artwork or use of caution warnings and all claims involving the size, millage or material of the product.

12. Artwork. Buyer's artwork, drawings and/or blueprints ("Artwork") will be destroyed in the event that no bag orders with that Artwork are placed by Buyer for a period of four years.

13. General Conditions.

- A. Clerical errors are subject to correction.
- B. No delay or omission by Seller in exercising any rights or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be a bar to or a waiver of any subsequent such right or remedy.
- C. This contract shall be binding upon and shall inure to the benefit of the successors, and assigns of Buyer and Seller, provided, however, that Buyer may not assign or transfer this contract in whole or in part, except upon the prior written consent of Seller.
- D. If any provision of these Terms and Conditions is held to be unenforceable, the remaining provisions shall remain in full force and effect.
- E. Over and Under Runs. Seller reserves the right to ship and invoice at the rate for the quantity specified on the order, plus or minus overruns or underruns up to maximum of 5% of such quantity on orders for 1,000,000 units or more; 8% on orders between 999,999 to 300,000; 10% on orders between 299,999 to 125,000; 15% on orders between 124,999 to 75,000; 20% on orders between 74,999 and 25,000; and 25% on orders under 24,999.
- F. Antistatic Film – Disclaimer. Antistatic Film used by Seller is manufactured in batch form and identified by a production code number and the date of production. Electrostatic free quality varies according to conditions including, but not limited to, relative humidity, temperature, storage conditions, washing, solvent rinsing, chemical contact, film millage, and exposure to static charge. ALL SALES BY SELLER OF ANTISTATIC FILM ARE SUBJECT TO ALL DISCLAIMERS SET FORTH IN PARAGRAPHS 3 and 4 ABOVE.
- G. Estimated Cycle Rates. Seller does not warrant that Seller's machines or systems will cycle at any specified rate. Cycle rate performance varies according to product size, weight, density, composition and quantity, bag or sleeve size and millage, atmospheric conditions, fluctuations in power supply and machine adjustment. Estimated rates are offered only for comparing the cycle rate of one product part to the cycle rate of another product part.

14. Ohio Law and Forum. The laws of the State of Ohio, disregarding conflicts of laws, govern the terms and provisions of this Agreement and the relationship between the parties. Any disputes between the parties will be resolved by the courts having jurisdiction in Summit County, Ohio, and Buyer hereby submits to that jurisdiction and venue.

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