



TERMS AND CONDITIONS OF SALE

PENNY PLATE, INC. ("SELLER")

Seller agrees to provide to you (the "Buyer") its products and/or services (collectively, the "Products") only on the terms and conditions set out below. Any additional terms or conditions proposed by Buyer that are inconsistent with or in addition to the terms and conditions set out below are expressly rejected and shall be void and of no effect, unless agreed to in writing by Seller, notwithstanding Seller's commencement of performance and/or delivery.

PRODUCTS

Unless otherwise agreed to in writing by Seller, the finish on any Product will be that which Seller selects. Seller's aluminum foil container Products are standardized on gauges in 1/2 mil increments (such as .0035, .004, .0045, etc.), and they are manufactured within commercial gauge tolerances of plus or minus 10%.

QUOTATIONS AND PRICES

Seller's quotations and prices are subject to the following: (1) all published prices are subject to change with thirty (30) days notice; (2) all prices quoted are exclusive of transportation, insurance, taxes, license fees, customs fees, duties and other charges, and Buyer shall hold Seller harmless therefrom; and (3) all prices quoted are for Products only and do not include technical data or proprietary rights of any kind.

EQUIPMENT

All equipment (including tools, dies, jigs, and fixtures) which Seller expressly agrees to construct or acquire for use in the production of Products for Buyer shall be and remain Seller's property and in Seller's possession and control. Any charges to Buyer therefor shall not give Buyer any ownership and/or licensing rights thereto and shall relate solely to the cost to Buyer for Seller's use of the equipment to manufacture Buyer's Products. While in Seller's possession, any materials or equipment owned or furnished by Buyer will be carefully handled and stored by Seller, but Seller shall have no responsibility or liability for loss or damage thereto.

TERMS OF PAYMENT

Unless credit is granted, payment is due upon delivery. All payments for Products released and shipped on approved credit accounts shall be due in full thirty (30) days from date of invoice. Title for financial security purposes shall remain with Seller until Buyer has made payment in full in accordance with the terms hereof.

TRANSPORTATION AND RISK OF LOSS

Packaging machinery and equipment are sold FOB shipping point, transportation charges collect, without allowance therefor. Products are sold FOB destination on shipments within the continental United States, and FAS vessel at port of embarkation on shipments outside the continental United States, except that transportation charges on all shipments weighing less than 1500 lbs. shall be at Buyer's expense. Transportation charges on all shipments shall be prepaid on the basis of the most economical means as determined by Seller, and shall be added to invoice when and to the extent that they are at Buyer's expense. In determining the most economical means, consideration will be given to packing and shipping costs, as well as transportation charges; any transportation method or routing instruction or method of packing specified by Buyer will be followed to the extent that it is practicable to do so, but any resulting increased cost will be for Buyer's account and will be added to the invoice.

PERFORMANCE

Seller will make all reasonable effort to observe its dates indicated for delivery or other performance. However, Seller shall not be liable in any way because of any delay in performance hereunder due to unforeseen circumstances or to causes beyond its control, including, without limitation, strike, lockout, riot, war, fire, act of God, acts of terrorism, accident, failure or breakdown of components necessary to order completion, subcontractor, supplier of Buyer caused delays, inability to obtain labor, materials or manufacturing facilities, or compliance with any law, regulation

or order, whether valid or invalid, of any cognizant governmental body or any instrumentality thereof whether now existing or hereafter created.

ACCEPTANCE

Each Product furnished by Seller shall be deemed accepted by Buyer unless notice of defect or nonconformity is received within ten (10) days of delivery thereof. Notwithstanding the foregoing, use of any such Product by Buyer, its agents, employees or customers, for any purpose after delivery thereof, shall constitute acceptance of the product by Buyer.

CANCELLATION OR DEFERRMENT OF ORDERS

Orders may not be cancelled by Buyer and deliveries may not be deferred by Buyer except with the written consent of Seller and upon terms which will indemnify Seller for all costs incurred, plus a reasonable allowance of profits.

SPECIAL ORDER ITEMS AND RELEASES

Special Order Items (defined as Products that are non-standard and/or that have been specially manufactured for Buyer) are produced against Buyer's Order with specific release dates not more than 90 days after date of first shipment. If any remaining quantity is held by Seller at Buyer's request beyond the final delivery date specified in the Order, Seller will invoice Buyer for such quantity as of that date. Seller reserves the right to supply ten percent (10%) more or less than the quantity of Special Order Items specified in Seller's order acknowledgement.

INTELLECTUAL PROPERTY

Buyer shall indemnify, defend, and hold Seller harmless against any expense, loss, costs or damages resulting from claimed infringement of patents, trademarks or other industrial property rights arising out of compliance by Seller with Buyer's designs, specifications, or instructions.

WARRANTY

Seller warrants to the original Buyer that each Product will be free from defects in material or workmanship at time of shipment, and that each Product delivered will meet the published specifications for that Product or any contractually agreed upon specifications. Seller's obligation under the foregoing warranty is limited to the repairing or replacing of any Product that does not meet this warranty, provided that the Product is returned to Seller, transportation charges pre-paid, and provided that upon Seller's examination, the Product, when tested within the specified ratings and in accordance with good engineering practice, does not meet the warranty contained herein. This warranty does not extend to any Products that have been subject to misuse, neglect, or accident, nor shall it extend to material that has been altered or repaired outside of Seller's factory. Claims by Buyer for defects in quality or quantity are waived by Buyer if Seller does not receive written notice thereof within 30 days after delivery. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Because of handling costs, Seller reserves the right to assess a restocking charge equal to thirty-five percent (35%) of the purchase price and other reinspection and packaging charges.

DAMAGES AND LIABILITY

SELLER'S LIABILITY FOR DAMAGES SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY SELLER FOR THE UNIT OF PRODUCT FURNISHED WHICH IS THE SUBJECT OF CLAIM OR DISPUTE. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES. LIABILITY TO THIRD PARTIES FOR BODILY INJURY INCLUDING DEATH RESULTING FROM SELLER'S PERFORMANCE SHALL BE DETERMINED IN ACCORDANCE WITH APPLICABLE LAW AND THE TOTAL LIABILITY LIMITATION STATED ABOVE SHALL NOT BE CONSTRUED AS A LIMITATION ON SELLER FOR DAMAGES FOR ANY SUCH BODILY INJURY, INCLUDING DEATH.