

**PACTIV LLC**  
**U.S. TERMS OF SALE**  
**EFFECTIVE SEPTEMBER 1, 2015**

1. **BUYER.** These Terms of Sale will govern the sale of products by Pactiv LLC (**Pactiv**) to a buyer meeting each of the following criteria (a **Buyer**):
  - Buyer submits its order for the products on or after the effective date of these Terms of Sale.
  - Pactiv accepts the order before the effective date of a revocation of amendment of these Terms of Sale.
  - The order requires delivery of the ordered products to Buyer within the United States of America.
  
2. **PLACING ORDERS.** To order products from Pactiv, a Buyer must deliver a written order to Pactiv Customer Service either (a) to the company headquarters at 1900 West Field Court, Lake Forest, Illinois 60045; (b) to a Pactiv facsimile number or email address provided to Buyer by Pactiv Customer Service; or (c) through an electronic ordering system approved by Pactiv. An order must contain the following information:
  - Legal name and address of Buyer.
  - Individual name, title, telephone number and email address of Buyer representative to contact on the order.
  - Customer identification number assigned to Buyer by Pactiv Customer Service.
  - Order identification number assigned by Buyer.
  - Vendor name and identification number assigned to Pactiv by Buyer.
  - Pactiv product number, price and quantity of each product being ordered.
  - Scheduled shipment date and requested delivery date if Pactiv will deliver the ordered products to a Buyer location.
  - Scheduled pick-up date and name of carrier if Buyer will take delivery of the ordered products at a Pactiv location.
  - Address of single Buyer location or Pactiv location within the continental United States of America where delivery will occur.

An order must be submitted by Buyer and accepted by Pactiv at least seven (7) business days in advance of the scheduled shipment date or scheduled pick-up date. The requested delivery date must allow a commercially reasonable period of time to transport the ordered products from the Pactiv manufacturing facility or warehouse to the delivery location of Buyer. An order for a product must also meet all requirements of the then current Pactiv Order Policies for that product published on [www.pactiv.com](http://www.pactiv.com) or otherwise provided by Pactiv to Buyer (e.g., full truck load or other minimum order size; individual items in even layer and pallet quantities; truck trailer cube configuration, permitted delivery or pick-up location; etc.). If Pactiv accepts an order that does not meet all requirements of the then current Pactiv order policies for that product or that requires special handling, packaging or transportation, Pactiv may impose additional charges on Buyer in supplying the non-conforming order (e.g., if Buyer orders less than a full truck load quantity, Buyer will bear the entire cost of delivery; if Buyer requires expedited production or delivery, Buyer will pay all expediting costs; etc.).

3. **PROCESSING ORDERS.** Pactiv will endeavor to review an order and inform Buyer whether the order has been accepted or declined within two (2) business days after receipt. Pactiv may accept or decline an order in its sole and absolute discretion. Pactiv will not be considered to have accepted an order unless and until Pactiv has confirmed its acceptance in a written communication to Buyer or shipped the ordered products. In accepting an order, Pactiv rejects any additional or conflicting terms and conditions in the order and any other communication and document of Buyer (i.e. only the permitted order information described in the prior section and these Terms and Sale will apply to the transaction). After Pactiv has accepted an order, neither Pactiv nor Buyer may cancel or modify the order without the written consent of both parties.

4. **ORDER WITH DELIVERY TO BUYER LOCATION.** Pactiv will charge Buyer the price for the ordered in effect on the scheduled shipment date. Buyer will also be responsible for any sales, use and similar taxes and impositions imposed by governmental authorities on the transaction. The order will be delivered on a Delivery at Place (**DAP**) basis per INCOTERMS 2010. If Pactiv has included the cost of delivery in its price for the ordered products, then Pactiv will bear the delivery cost. If

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Pactiv has not included the cost of delivery in its price for the ordered products, then Buyer will reimburse Pactiv for the delivery cost. In either circumstance, Pactiv will be responsible for loading the ordered products at its expense at the point of shipment, and Buyer will be responsible for unloading the ordered products at its expense at the point of delivery. Pactiv will select the carrier and decide on the method and route of transportation for an order deliveries to a Buyer location. Title to and risk of loss for the ordered products will transfer to Buyer once the ordered products have been tendered by Pactiv's carrier for unloading at the loading dock at the Buyer's location. Pactiv will require its carrier to complete delivery of the ordered products within a 2-hour "delivery window" scheduled with Buyer on the requested delivery date, but Pactiv not be liable under any circumstance for delays caused or occurring after shipment. If Pactiv's carrier arrives at the Buyer's location within the first thirty (30) minutes of the scheduled 2-hour "delivery window" on the requested delivery date and Buyer fails to accept delivery within that scheduled 2-hour "delivery window", then Buyer will pay or reimburse Pactiv for any detention charges imposed by its carrier as a result of the Buyer's delay (not to exceed \$50 per hour).

**5. ORDER WITH PICK-UP AT PACTIV LOCATION.** Pactiv will charge Buyer the price for the ordered products in effect on the scheduled pick-up date. Buyer will also be responsible for any sales, use and similar taxes and impositions imposed by governmental authorities on the transaction. If the cost of delivery is included in the published price, Pactiv will credit Buyer the amount of the pick-up allowance in effect for the ordered products on the scheduled pick-up date. The order will be delivered on an Ex-Works (**EXW**) basis per INCOTERMS 2010. Pactiv will be responsible for loading the ordered products at its expense at the point of shipment, and Buyer will be responsible for unloading the ordered products at its expense at the point of delivery. Title to and risk of loss for the ordered products will transfer to Buyer once the ordered products have been loaded in the truck trailer or other container and placed in the custody of the Buyer's carrier. Buyer will require its carrier to complete delivery of the ordered products within a "pick-up window" scheduled with Pactiv on the requested pick-up date. The "pick-up window" will be two (2) hours if Pactiv has agreed to furnish the Buyer's carrier with a pre-loaded truck trailer or other container on the requested pick-up date. The "pick-up window" will be six (6) hours if Pactiv has agreed to load an empty truck trailer or other container provided by the Buyer's carrier on the requested pick-up date. If the Buyer's carrier arrives at the Pactiv location within the first thirty (30) minutes of the scheduled "pick-up window" on the requested pick-up date and Pactiv fails to complete delivery within that scheduled "pick-up window", then Pactiv will pay or reimburse Buyer for any detention charges imposed by its carrier as a result of Pactiv's delay (not to exceed \$50 per hour).

**6. ACCEPTANCE OR REJECTION OF DELIVERED PRODUCTS.** Buyer will have a period of thirty (30) days after delivery in which to inspect delivered products and either accept or reject them. Buyer will be deemed to have accepted any delivered products which Buyer sells or uses, or which suffer any loss or damage, during the 30-day period. Buyer may only reject a delivered product for the reasons permitted under the then current Product Return Policy published on [www.pactiv.com](http://www.pactiv.com) or otherwise provided to Buyer (i.e., quality defect; damage-in-transit; mis-ship error) and only if Buyer complies with such policy. Any delivered products that Buyer does not reject and return in compliance with such policy will be deemed accepted on the thirtieth (30<sup>th</sup>) day. Once Buyer has accepted a delivered product, Buyer may not revoke its acceptance for any reason other than as provided in Section 9.

**7. PAYMENT.**

- a. Buyer will pay Pactiv the price and any other amounts owed by Buyer under these Terms of Sale for the ordered products by the due date specified in the Pactiv invoice. If a due date is not specified in the Pactiv invoice, the due date will be the thirtieth (30<sup>th</sup>) day after the date of the Pactiv invoice.
- b. Payments will be in U.S. dollars and must be made by ACH or another form of electronic funds transfer approved by Pactiv (i.e., payment by check is unacceptable). A payment will be considered made on the date the Buyer's funds have been deposited in and credited to Pactiv's account.
- c. If Pactiv offers a cash discount to Buyer to encourage the earlier payment of the amount owed, the cash discount will be applied against the "net price" of the ordered products (i.e., price less any freight, taxes, duties, rebates, allowances, returns, credits and other deductions and charges incurred or approved in writing by Pactiv on the transaction). A cash discount will only be earned if the invoiced amount, less the cash discount, is deposited in and credited to Pactiv's account on or before the payment deadline specified for the cash discount.
- d. If the due date of an invoice or payment deadline for a cash discount falls on a Saturday, Sunday or U.S. federal holiday, the due date or payment deadline will be extended to the next business day.
- e. If Buyer fails to pay Pactiv an amount owed by the due date, including, without limitation, if Buyer takes an unearned cash discount or other unauthorized deduction, then the delinquent amount will bear interest from the date of delinquency until the date of payment at an annual interest rate of eighteen percent (18%) or the maximum interest

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permitted under Illinois law, whichever is lower. In addition, Buyer will reimburse Pactiv for any attorney fees, expert fees, court costs and other expenses incurred by Pactiv in collecting a delinquent amount and accrued interest on such delinquent amount.

- f. Buyer may not withhold, offset or otherwise deduct from the invoiced amounts owed under these Terms of Sale without the written consent of Pactiv. If Buyer pays Pactiv less than the invoiced amount owed without Pactiv's written consent for any reason, then Buyer must provide a written notice explaining the basis for the amount withheld, offset or deducts, along with any substantiating documentation and any partial payment, on or before the invoice due date. A failure by Buyer to submit a timely written notice to Pactiv by the invoice due date will be deemed a waiver of any defense to non-payment of the invoice amount owed and any claim against Pactiv on the transaction.

**8. CREDIT.** Pactiv reserves the right in its sole and absolute discretion to determine the credit limit of Buyer and to adjust it any time. If the credit limit of a Buyer has been or will be exceeded or if Pactiv determines that there has been an adverse change in the creditworthiness of Buyer, Pactiv may require payment in advance or other adequate assurance acceptable to Pactiv before Pactiv accepts the order or delivers the ordered products. A failure by Buyer to pay Pactiv an amount owed when due on an order will be immediate grounds to suspend or terminate further performance or require payment in advance of Pactiv accepting an order or delivering ordered products.

**9. WARRANTIES.** Pactiv warrants to Buyer as of the date of delivery of the ordered product that:

- Pactiv has transferred good title to such to Buyer on such date free and clear of all liens and encumbrances arising by, through and under Pactiv (**Title Warranty**).
- The product does not infringe on such date on any U.S. patent of any third-party (**Non-Infringement Warranty**).
- The product complies in all material respects on such date with the written specification for the product published by Pactiv on [www.pactiv.com](http://www.pactiv.com) or otherwise provided by Pactiv to Buyer (**Quality Warranty**).

If there has been a breach of the Quality Warranty, Buyer must notify Pactiv within sixty (60) days of delivery of the defective product. The sole remedy of Buyer for a breach of warranty will be to return the defective product to Pactiv for a refund or a credit in accordance with the then current Product Return Policy published on [www.pactiv.com](http://www.pactiv.com) or otherwise provided by Pactiv to Buyer. Pactiv disclaims all other warranties and representations regarding its products and performance, whether express or implied, including, without limitation, the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. Buyer acknowledges that it has not relied on, and waives any claim based on, any other alleged warranties and representations.

**10. LIMITATION OF LIABILITY.** Pactiv will not have any liability to Buyer or any other person for any delay in supplying an ordered product or other performance arising from events or conditions beyond the reasonable control of Pactiv, including, without limitation, natural disasters; shortages in material; strikes, slowdowns and other labor disputes; governmental actions; a breach, negligence, criminal misconduct or other act or omission of any third-party; fire or other insured or uninsured casualty. Pactiv will not have any liability to Buyer or any other person for any consequential, incidental, indirect, exemplary, punitive or any other types of indirect damages for a breach by Pactiv of these Terms of Sale on a transaction or arising from the resale, transportation, storage, use or disposal of a Pactiv product after Pactiv's delivery to Buyer. Any liability of Pactiv to Buyer will be limited to direct damages and will not exceed, in the aggregate, the amount actually received by Pactiv from Buyer for the product involved in the breach or other claim or occurrence.

**11. CHOICE OF LAW AND FORUM.** These Terms of Sale and any transaction based on them for the sale of products by Pactiv to Buyer will be governed by the laws of the State of Illinois and the United States of America regardless of choice-of-law principles. Pactiv and Buyer submit to the non-exclusive personal jurisdiction and venue of federal and state courts of competent subject matter jurisdiction located in Cook County, Du Page County and Lake County, Illinois. Except as limited in these Terms of Sales, Pactiv or Buyer may exercise all rights and remedies available at law and in equity for a breach.

**12. MISCELLANEOUS.** These Terms of Sale and the information in accepted order specified in Section 2 will represent the full, final and complete agreement between the parties with regards to the purchase and sale of the ordered products and will supersede all prior and contemporaneous oral or written requests, quotations, proposals correspondence and other documents and communications. These Terms of Sale may only be added to or modified for a Buyer in a written agreement signed and exchanged by a Vice-President or higher-level officer of Pactiv and an authorized representative of Buyer.

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**PRODUCT RETURN POLICY**  
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**General Terms**

All claims for Pactiv products sold in the United States of America will be pursuant to this policy. If Pactiv is notified of a product claim within the required notification period and authorizes the return of a product in compliance with this policy, Pactiv will provide a credit or refund for the returned product in full satisfaction of the product claim. If Pactiv is not notified of a product claim within the required notification period or if a product is not returned within the authorized return period, the product claim will be deemed waived. Pactiv will evaluate and only accepted product returns and grant credits or refunds for valid quality, damage-in-transit or mis-ship product claims as outlined in this policy.

- To receive a credit for a returned product, a customer must request a Pactiv Return Authorization Number (**RA**) by email or phone as provided below.
- Return authorizations need to be requested within the appropriate notification period for each return type. Requesting a return authorization does not guarantee that Pactiv will accept the return or issue a credit.
- The RA number must accompany all return shipments; shipments arriving without an RA number will be refused (a RA number may be referenced on a bill of lading).
- For your convenience, below are the methods to request an RA number:
  - Email your designated Returns Coordinator or the Pactiv Return Goods email address at [fsreturns@pactiv.com](mailto:fsreturns@pactiv.com).
  - Call (800) 323-3041 or your designated Returns Coordinator directly.
- A Pactiv Returns Coordinator will provide Buyer with an approved RA number within 2 business days after Pactiv confirms that the product is being returned for a valid quality, damage-in-transit or mis-ship product claim. The Return Coordinator will issue a credit memo within 5 business days of receipt of returned product at the Pactiv warehouse provided that the product is returned in its original delivered condition and matches the RA number. If a customer also desires to receive replacement product, the customer will be directed to provide a new purchase order to Pactiv Customer Service.
- An authorized credit amount will be based on the last invoiced purchase price for each item of the authorized return less the applicable cash discount.
- No credit will be authorized for products damaged in transit in returning to Pactiv; credit will be authorized only for cases returned in original delivered condition.
- All RA numbers will expire 60 days from the date they are issued. No replacement product or credit will be given for any products covered by the RA number that are returned after this period.
- Deductions must not be taken against original invoice and should be taken only after the credit memo has been issued.
- Pactiv reserves the right to offset unauthorized return deductions against any payments due to a customer.
- Buyer will provide Pactiv with all reasonably requested information related to a product claim and afford Pactiv a reasonable opportunity to examine and test the product that is the basis for the claim.

**Quality Returns**

- This category only applies to products with defects in design, material or manufacture caused by Pactiv.
- Quality issues should be addressed to your Sales Representative or Returns Coordinator assigned to quality issues.
- All quality related returns must be reported in writing via a request for return authorization within 60 days of invoice date (notice requirement is 10 days from delivery for Earth Choice products).

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- Picture evidence must be provided for all quality related claims.

**Damage-in-Transit**

- This category only applies to products damaged-in-transit caused during the delivery by a Pactiv carrier.
- Damage-in-transit should be addressed to the Returns Coordinator assigned to the warehouse from which the product shipped or [fsreturns@pactiv.com](mailto:fsreturns@pactiv.com).
- All damage related returns must be reported in writing via a request for return authorization within 30 days of invoice date (notice requirement is 10 days from delivery for Earth Choice products).
- Picture evidence from Buyer of the damaged product, and an appropriate Proof of Delivery document signed by Buyer and the Pactiv carrier, must be provided for all damage related claims.

**Mis-ships**

- This category only applies to products that have not been ordered, that have been delivered in the incorrect quantity (i.e., overage or shortage), that have been delivered late or that have been delivered to the incorrect destination or other errors in delivery.
- Mis-ships should be addressed to the Returns Coordinator assigned to the warehouse from which the product shipped or [fsreturns@pactiv.com](mailto:fsreturns@pactiv.com). For overages or shortages, the subject line should include the customer purchase order number, the Pactiv delivery number and quantity of over or shorted items.
- Mis-ships must be reported in writing via a request for return authorization within 30 days of invoice date (notice requirement is 10 days from delivery for Earth Choice products).
- An appropriate Proof of Delivery document signed by Buyer and the Pactiv carrier clearly indicating the mis-shipped items and quantities must accompany any requests.
- If customer elects to retain and accept products involving an overage, shortage or other mis-ship claim, the Returns Coordinator will process the appropriate debit or credit entry to the invoiced amount.