

## OLIVER HEALTHCARE PACKAGING TERMS AND CONDITIONS OF SALE

**1. Agreement.** These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of any products or services (collectively “**Products**”) by Supplier to the customer identified in the relevant agreement, quotation, work order, purchase order, order acknowledgment or invoice (“**Customer**”). These Terms apply to and are incorporated into any agreement to which they are attached and any quotation, work order, purchase order, or invoice accompanying these Terms (collectively, the “**Agreement**”). These Terms shall become effective upon the earliest of: (i) Supplier issuing a quotation, order acknowledgement or invoice to Customer; (ii) Customer’s receipt of the Products; (iii) Supplier’s receipt of payment in full or in part for the Products; or (iv) Customer’s and Supplier’s execution of a written agreement regarding the sale of Products into which these Terms are incorporated. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence relating to the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

**2. Acceptance.** These Terms prevail over any of Customer’s general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms. Any terms and conditions proposed by Customer in any product inquiry, purchase order or other document that are different from, conflict with, or add to these Terms shall be deemed to materially alter the offer and are hereby objected to and rejected by Supplier.

**3. Purchase Price.** Customer shall pay Supplier the purchase price for the Products as listed in Supplier’s quotation, order acknowledgement or as otherwise set forth in Supplier’s invoice. All prices are in US dollars. Supplier may change its prices at any time without notification; provided, however, that unless revoked prior to acceptance, prices set forth in Supplier’s quotation shall be valid only for the period set forth in such quotation. Supplier’s prices are exclusive of insurance, shipping, handling, and sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall have the sole responsibility for payment of all such insurance, shipping, handling, taxes, duties and charges with respect to the purchase of any Products. If Customer is a tax-exempt entity, Customer shall present all appropriate documentation for any tax exemption to Supplier prior to placing its order. Tool fees payable by Customer are for the right to have the tools used by Supplier for performance of an order; they do not convey title or right of possession of any such tools.

**4. Payment Terms.** Customer shall pay all invoices within thirty (30) days from the date of the invoice (unless specified otherwise on the invoice). If Customer fails to make any payments when due, Customer will be charged interest of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) or the maximum rate permitted by applicable law, whichever is less, on any overdue balance. Supplier is not obligated to extend credit or financing terms to Customer. Supplier may in its sole discretion revoke any credit extended to Customer and require payment in full prior to Supplier’s delivery of Products. If Supplier retains a collection agency or legal counsel or incurs any out-of-pocket expenses to collect payments from Customer, all such costs will be added to the sums due, will bear interest at the rate set forth above, and will be the responsibility of Customer. In addition to all other remedies available under these Terms or at law (which Supplier does not waive by the exercise of any rights hereunder), Supplier shall be entitled to suspend the delivery of any Products if Customer fails to pay any amounts when due hereunder. Customer agrees that, other than Supplier’s delivery of the Products, payment to Supplier is not contingent on any other occurrence, matter, or event including, without limitation, Customer’s receipt of payment from any third party. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Supplier, whether relating to Supplier’s breach, bankruptcy or otherwise.

**5. Shipment and Delivery.** Delivery of all Products shall be made F.O.B. origin and all freight and shipping charges are the responsibility of and shall be paid by Customer. Manner of shipping and routing of shipments is at the discretion of Customer unless otherwise agreed upon in

writing by Supplier and Customer. Products will be delivered within a reasonable time after receipt of Customer’s purchase order, but Supplier shall not be liable for any delays, loss or damage in transit. Supplier reserves the right to make delivery of Products in installments; all such installments will be separately invoiced and paid for when due, without regard to subsequent deliveries. Quantities that exceed or are less than the contracted quantity within 10% of the quantity ordered shall constitute fulfillment of the order.

**6. Title and Risk of Loss.** Title to the Products and any risk of loss associated with the Products shall pass to Customer at the time of delivery of the Products to the carrier for shipment to Customer. As collateral security for the payment of the purchase price of the Products, Customer hereby grants to Supplier a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. In the event Customer or its agent or representative picks up the Products at Supplier’s place of business or Supplier delivers the Products, title and risk of loss shall pass to Customer at the time of pick up by Customer, its agent or representative, or shipment by Supplier. With regard to Products that are returned to Supplier, title and risk of loss remain with Customer until receipt and acceptance of the Products by Supplier. All claims for damage and shortage in transit shall be made by Customer with the carrier, and Customer holds Supplier harmless for all such claims.

**7. Cancellation.** No order accepted by Supplier may be cancelled or modified by Customer except upon the written agreement of Supplier.

**8. Reliance.** Supplier may rely upon all information, data, dimensions, blueprints, schematics, diagrams, specifications, or other drawings or representations, whether oral or in writing, provided by or on behalf of Customer and shall have no responsibility to make any independent inquiry or investigation thereof. Supplier assumes no obligation or liability for any advice or assistance given or results obtained; all such advice or assistance is given and accepted at Customer’s risk.

**9. Inspection and Acceptance.** Customer shall have ten (10) calendar days from receipt of the Products to inspect the Products for conformance with the specifications set forth in Supplier’s quotation, order acknowledgement or as may otherwise be mutually agreed by the parties (the “**Specifications**”). Customer may reject Products that do not substantially conform to the Specifications (“**Non-Conforming Products**”). All rejections shall be made in writing to Supplier and shall provide sufficient detail as to the reason for such rejection.

**10. Returns.** To return Non-Conforming Products, Customer shall contact Supplier for a Return Material Authorization (“**RMA**”) number. No returns will be accepted without an RMA number. Supplier has sole discretion to determine, after examination, whether returned Products are Non-Conforming Products, and Supplier’s determination shall be binding on Customer. Customer’s sole and exclusive remedy for returned Products that have been found to be Non-Conforming Products shall be either, in Supplier’s sole discretion: (i) replacement of the returned Products; and/or (ii) reimbursement of the amount paid by Customer for the returned Products.

**11. Limited Warranty; Disclaimer of Warranties.** Supplier warrants that, upon delivery, all Products shall materially conform to the Specifications. Supplier hereby passes through to Customer any and all warranties for Products manufactured by third parties only to the extent permitted by the original manufacturer. **EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 11, ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF SUPPLIER, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE), OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE WITH RESPECT TO THE PRODUCTS ARE HEREBY EXCLUDED AND DISCLAIMED, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW.** Supplier shall not be liable for a breach of the warranty set forth in

this Section 11 if: (i) Customer makes any further use of such Products after giving such notice; (ii) the defect arises because Customer failed to follow Supplier's oral or written instructions as to the storage, handling, shelf life or use of the Products; or (iii) Customer alters or repairs such Products without the prior written consent of Supplier.

**12. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, (A) IN NO EVENT SHALL SUPPLIER, ITS AFFILIATES AND EACH OF IT AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, HAVE ANY LIABILITY OR RESPONSIBILITY ON ANY CLAIM, WHETHER GROUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), ANY THEORY OF STRICT LIABILITY OR OTHERWISE, FOR LOSS OF PROFIT OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND, WHETHER OR NOT FORESEEABLE AND REGARDLESS OF LEGAL THEORY, TO ANY PERSON OR ENTITY, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT AND (B) THE ENTIRE LIABILITY OF SUPPLIER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY THEORY OF STRICT LIABILITY OR OTHERWISE) UNDER THE AGREEMENT SHALL NOT EXCEED THE TOTAL PRICE PAID BY CUSTOMER TO SUPPLIER FOR THE PRODUCTS WHICH GIVE RISE TO THE CLAIM.**

**13. Indemnity.** In addition to all other rights and remedies available to Supplier at law or in equity, Customer assumes the entire responsibility and liability for and agrees to indemnify, defend and hold harmless Supplier, its officers, directors, equity holders, agents, employees, successors and assigns from and against all and all claims, liabilities, damages, losses, and expenses, including attorneys' fees, in connection with or arising, directly or indirectly, out of: (i) any actual or alleged improper use of any Product, (ii) any negligence, omissions, or willful misconduct of Customer or any of its employees, agents or representatives, and (iii) any allegation that Products supplied pursuant to Customer's design or specifications infringe a patent, copyright, trademark, trade secret, or other proprietary right of a third party, whether such are provided alone or in combination with other products or processes. Customer shall not settle any such suit or claim without Supplier's prior written approval.

**14. Confidential Information.** Customer agrees that all information and data disclosed or submitted by Supplier under or pursuant to the Agreement, including, without limitation, that contained in drawings or specifications, is proprietary to Supplier and will not be used by Customer for any purpose other than fulfilling the Agreement, without Supplier's prior written consent.

**15. Force Majeure.** Supplier shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Supplier including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. Upon any of the above events, Supplier will have the additional right to extend the time to provide the Products under the Agreement or to cancel any open purchase orders without any resulting liability to Customer.

**16. Attorneys' Fees.** In the event of a dispute between the parties with regard to or arising out of the Agreement which results in litigation, the prevailing party shall have its attorneys' fees, professionals' fees, and costs paid by the losing party, and such sum may be added to any judgment entered in the litigation. A party's right to the foregoing shall not merge with but shall survive the entry of judgment, and shall extend to appeals and collection.

**17. Assignment.** Customer shall not assign, delegate, or otherwise transfer any of its rights or obligations under the Agreement without the prior written approval of Supplier. Any such assignment, delegation, or transfer without Supplier's prior written consent shall be void. Supplier may assign, delegate, or transfer any and all of its rights and obligations under the Agreement at any time and without prior written consent of Customer.

**18. Severability.** If one or more of the provisions of the Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such provision shall be modified or amended to the extent necessary to remove the invalidity, illegality, or unenforceability. If the amendment or modification of such provision is impossible, the Agreement shall be construed as if it never contained the invalid, illegal, or unenforceable provision, and such provision shall not affect any other provision of the Agreement.

**19. No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

**20. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**21. Governing Law.** The Agreement shall be construed and enforced exclusively in accordance with the substantive and procedural laws of the State of Michigan, without regard to principles of conflicts of law, and without regard to rules of construction relating to which party drafted the Agreement. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**22. Exclusive Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Michigan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**23. Waiver.** No claim or right arising out of a breach of these Terms by Customer may be discharged in whole or in part by a waiver of the claim or right, unless the waiver is in writing signed by an authorized representative of Supplier. Supplier's waiver or acceptance of any breach by Customer of any provisions of the Agreement shall not constitute a waiver of, or an excuse for, nonperformance as to any other provision nor as to any prior or subsequent breach of the same provision.

**24. Entire Agreement.** The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The Agreement constitutes the complete and exclusive statement of the terms of the contract between the parties and the final expression of the terms of such contract, and shall supersede all prior and contemporaneous agreements, inducements or conditions, express or implied, oral or written. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term in the Agreement. Supplier's acceptance or acquiescence in a course of performance rendered by Customer pursuant to the Agreement shall not be relevant to determine the meaning of this contract even though Supplier has knowledge of the nature of the performance and opportunity for objection.

**25. Supplier.** As used herein, "Supplier" shall mean any one or more of the following entities that has delivered these Terms to Customer in connection with the supply of Products: Oliver Products Company, Oliver-Tolas Healthcare Packaging, Inc. or Mangar Industries, Inc.

**26. Commercial Transaction.** Customer acknowledges, agrees, represents and warrants that the provision of Products to Customer by Supplier and the transactions contemplated by the Agreement are commercial transactions and not for personal, family or household use.