



**BEMISAL, S.A. DE C.V.**  
SOLUCIONES, IMAGEN Y CALIDAD DE EMPAQUES...

## Bemisal, S.A. DE C.V.: Sales Terms and Conditions

1. **GENERAL:** (a) These terms and conditions of sale (“Terms”) by and between Bemisal, S.A. de C.V. (“Seller”), and you (“Buyer”), together with the express, written, agreed-upon product identification, product description, quantity, payment term, delivery point, and delivery date (“Order Information” and collectively with the Terms, the “Agreement”), shall conclusively be deemed to (i) be the final, complete, and exclusive statement of the agreement of the parties with respect to the purchase and sale of Seller’s products (“Products”), except as expressly noted herein, and (ii) supersede all prior or concurrent agreements, arrangements, understandings, or other discussions, written or oral, between Buyer and Seller with respect thereto, notwithstanding (1) the absence of Buyer’s acceptance or ratification in writing of these Terms or (2) any prior course of dealing between Buyer and Seller to the contrary. Buyer’s signature of this document, placement of an order for Product, acceptance of delivery of Product, or payment for any Product shall constitute Buyer’s acceptance of the Agreement. Any Order Information or other terms contained in any Buyer documentation or otherwise communicated by Buyer as described above shall be subject to the limitations contained in Section 1(b) below.  
(b) These Terms the Order Information will take precedence over any inconsistent, conflicting, or additional terms or conditions contained in any communication or document from Buyer, regardless of when Buyer receives these Terms and regardless of whether these Terms are received by Buyer before or after Buyer communicates to Seller any inconsistent, conflicting, or additional terms, and Seller hereby notifies Buyer of its objection to and rejection of any terms or conditions of Buyer, whether or not material, that are in conflict with, inconsistent with, or in addition to these Terms or the Order Information.
2. **PRICES:** Unless otherwise agreed in writing by Seller, prices for Product shall be increased in proportion to any increase in material and labour costs from the date on which the price was quoted by Seller to Buyer through the date of shipment. Buyer agrees to make payment in full for all Products in accordance with the terms specified by Seller in the Order Information. Payments must be made without set-off, unauthorized deduction or counterclaim, free and clear of (and without deduction for) any liens, claims, or restrictions whatsoever. All taxes, fees, levies, assessments, or other charges imposed by any local, provincial, or federal government or other relevant authority upon the production, sale, use, import, export, ownership, provision, or shipment of Product shall be for the account of Buyer. Buyer agrees to indemnify and hold Seller harmless from and against liability for payment of any and all such taxes, fees, penalties, or other such charges that are made against or are incurred by Seller.
3. **TITLE:** Title to Product shall remain with Seller until Product is paid for in full by Buyer. If Buyer fails to pay any amount due under the Agreement (whether by acceleration or otherwise)

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or otherwise fails to perform any obligation of Buyer hereunder, Buyer shall be deemed to be in default and Seller shall have all of the rights and remedies available to it under applicable law and under Section 9 (Termination) of these Terms.

4. **RISK OF LOSS, INDEMNITY, AND CLAIMS:** Buyer shall bear all risks of loss of or damage to Product commencing from the time Product is delivered in good order into the custody of a carrier for transportation. Buyer is urged to examine carefully all deliveries immediately upon delivery and before signing for receipt. If any Product is visibly damaged or if there are any shortages of Product delivered, Buyer must have written confirmation of the damage or shortages noted on the freight bill or other receipt by the agent of the carrier. Signing for receipt without notation of damage to, or shortages of, Product shall constitute conclusive evidence of receipt of Product in satisfactory condition and in the quantities specified in the freight bill or other receipt. Any claim of damage in transit or for shortages must be made promptly by Buyer against the carrier and Seller shall have no responsibility or liability therefor. If any Product is lost, disappears, or is damaged or destroyed, in whole or in part, for any reason while in the possession of Buyer or any carrier, and before payment in full therefor, and Seller suffers any loss by virtue thereof, Buyer shall indemnify and hold harmless Seller from such loss. If any such loss is covered by (i) insurance to which Buyer is a beneficiary, or (ii) recourse by Buyer against any other party, then any such claim and any proceeds payable with respect thereto shall automatically vest in Seller.
  
5. **DELIVERY:** Seller may make partial deliveries and submit invoices therefor. Subject to Section 8 below, Seller will make reasonable commercial efforts to meet delivery dates quoted or acknowledged. Seller will not, however, be liable for any failure to meet such dates. Buyer acknowledges that at the time of purchase and during the delivery time of purchased product, he fulfills all legal requirements to import the product into his territory; and therefore has no legal impediment, or otherwise, whatsoever to perform any and all import operations and receive product. Seller shall have no responsibility for delivery delays and expenses do to import restrictions Buyer may have; and if delays and expenses thereof take place, Buyer shall indemnify Seller for whatever expenses, costs, fees which had to be paid by Seller.
  
6. **OVERRUNS AND UNDERRUNS.** Unless otherwise specified by Seller in writing, overruns or underruns of up to ten percent of the total amount of Product purchased under the Agreement shall be deemed conclusively to constitute fulfillment of the Agreement, provided that Seller shall invoice Buyer for the amount of Product actually delivered.



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7. WARRANTIES, LIMITATIONS, AND EXCLUSIONS OF LIABILITY:

- A. Seller warrants good and marketable title to Product and that Product is as described on Seller's invoice. Unless otherwise specified on Seller's invoice, Product shall substantially conform to the applicable specifications of Seller.
- B. If Product is not as described on Seller's invoice or does not substantially conform to the applicable specifications, Seller, at its option, will either replace nonconforming Product or refund the purchase price of nonconforming Product, provided that Buyer gives written notice describing the alleged nonconformity, error, or deficiency with reasonable particularity within ten days after receipt of Product. In addition, Seller, at its option, may either inspect the allegedly nonconforming Product at Buyer's premises or require Buyer, at Seller's expense, to pack and ship properly such allegedly nonconforming Product to Seller at the address specified on Seller's invoice or, at the option of Seller, to such other address as may be specified by Seller. Any course of dealing between the parties to the contrary notwithstanding, any claim by Buyer shall be deemed waived and absolutely barred unless presented in such manner to Seller within such ten-day period, and any failure of Buyer to give written notice of any claim to Seller within such ten-day period shall be deemed to constitute an unqualified acceptance of the Product. No such giving of notice by Buyer shall entitle Buyer to withhold payment due or to refuse to accept further deliveries.
- C. THE WARRANTIES EXPRESSLY SET OUT IN SECTION 7(A) ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES AND CONDITIONS. ANY OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT ARE HEREBY EXCLUDED. NO OTHER WARRANTIES OR REPRESENTATIONS ARE MADE BY SELLER. IN THE CASE OF PRODUCT, IF A SAMPLE WAS SHOWN OR PROVIDED, THAT SAMPLE WAS USED MERELY TO ILLUSTRATE THE GENERAL TYPE AND QUALITY OF PRODUCT AND NOT TO REPRESENT THAT PRODUCT WOULD NECESSARILY CONFORM TO SAMPLE.
- D. BUYER'S REMEDIES EXPRESSLY SET OUT IN SECTION 7(B) ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S SOLE OBLIGATION FOR ANY BREACH OF THE WARRANTIES SET FORTH IN SECTION 7(A), AND, EXCEPT AS AND TO THE EXTENT PROVIDED IN SECTION 7(B), SELLER SHALL NOT BE LIABLE IN CONTRACT, TORT, DELICT, OR OTHERWISE FOR ANY LOSS, DAMAGE, OR EXPENSE OR FOR ANY INJURY TO PERSON OR PROPERTY OF BUYER OR OTHERS ARISING OUT OF THE POSSESSION, THE USE OF, OR THE INABILITY TO USE PRODUCT OR IN ANY WAY WHATSOEVER RELATED TO PRODUCT OR BY REASON OF ANY BREACH OF THE AGREEMENT (FUNDAMENTAL OR OTHERWISE) OR ANY FAILURE OR DELAY IN PERFORMANCE BY OR NEGLIGENCE OF SELLER, ITS EMPLOYEES, AGENTS, OR OTHERWISE, EVEN

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- IF SELLER OR ITS EMPLOYEES OR AGENTS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGE, EXPENSE, OR INJURY. IN PARTICULAR (BUT WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING), SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OR FOR ANY LOSS OF USE, LOSS OF PROFITS, LOSS OF BUSINESS REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, OR FOR ANY LIABILITY TO A THIRD PARTY INCURRED BY BUYER OR FOR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND WHATSOEVER.
- E. SELLER SHALL NOT BE LIABLE FOR ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT OR OTHER PROPRIETARY RIGHT WHETHER THROUGH THE USE OF PRODUCT OR THE MATERIALS OR ARTICLES MADE THEREFROM BY BUYER OR OTHERS, EITHER ALONE OR IN CONJUNCTION WITH OTHER MATERIALS, OR OTHERWISE IN ANY WAY WHATSOEVER.
- F. Buyer assumes all risk and liability for all loss, damage, or expense, and for any injury to person (including bodily injury or death) or property of Buyer or any other person or entity, arising out of the possession or the use of, or the inability to use, Product or in any way whatsoever related to Product (including, without limitation, for damages of the nature referred to in Section 7(D), and Buyer agrees to indemnify and hold harmless Seller and its officers, directors, employees, agents, successors, and assigns from any and all claims, actions, suits, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees and court costs) arising out of Buyer's or its employees', agents', or customers' use, handling, possession, export, distribution, or sale of Product.
8. **FORCE MAJEURE:** Without limiting any other provision herein, Seller will not be liable for any delay in shipment or failure to ship Product or for any damage suffered by reason thereof, whether such delay or failure, directly or indirectly, is due to accident (in manufacture or otherwise), fire, flood, or other acts of God, wars, acts of terrorism, riots, civil disturbances, labour stoppages or difficulties, inadequate transportation facilities, shortage of materials or supplies, delay or default on the part of its suppliers, government action, or any other casualty or cause beyond the reasonable control of Seller, which Seller in its discretion declares to be *force majeure* resulting in such delay or failure. In such event, Seller, at its option, may cancel the Agreement or delay performance thereunder for any period reasonably necessary due to the foregoing, during which time the Agreement shall remain in full force and effect. Seller shall have the further right then to allocate its available resources, materials, and products among its customers and for its use in such manner as Seller may consider fair and equitable.
9. **TERMINATION:** Seller shall have the option to terminate the Agreement immediately upon written notice to Buyer if Buyer's

account with Seller is in arrears, or if Buyer, except in circumstances contemplated in Section 5, does not accept delivery of any Product shipped. Without prejudice to any rights or remedies Seller may also have under the Agreement or at law, Seller may, by providing thirty (30) days written notice to Buyer, terminate the Agreement, without any liability whatsoever, if: (i) Buyer fails to accept conforming products supplied hereunder; (ii) a voluntary or involuntary petition in bankruptcy or winding up is filed against Buyer, any proceedings in insolvency or bankruptcy (including reorganization) are instituted against Buyer, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or (iii) Buyer violates or breaches any of the provisions of the Agreement. Upon occurrence of any of the events referenced above, all payments to be made by Buyer under the Agreement shall become immediately due and payable. In the event of any termination of the Agreement, Sections 3, 4, 6, 7, 16, and 17 of these Terms shall survive.

10. **INTEREST, ACCELERATION OF INDEBTNESS, AND SETOFF:** Interest on all amounts due under the Agreement (whether by acceleration or otherwise) shall accrue from the due date at the lesser of 18% per annum (1 1/2% per month) or the highest rate of interest permitted by law until all amounts payable to Seller are paid in full. If Buyer is in arrears with respect to any other dealings or transactions with Seller, then, notwithstanding anything to the contrary, any indebtedness hereunder shall automatically become due and payable in full without any notice from Seller to that effect. Seller shall have the right to set off against any amounts which may at any time be payable by it to Buyer any amount due from Buyer to Seller under the Agreement.
11. **RETURN OF PRODUCT:** No return of Product to Seller will be accepted, whether under warranty or otherwise, unless previously authorized in writing by Seller.
12. **PRODUCT IMPRINT AND INTELLECTUAL PROPERTY RIGHTS:** Seller reserves the right to display visibly or attach its imprint, trademark, or other markings to all Products unless it receives written notice to the contrary from Buyer prior to production. In any event, Seller shall have the right at all times, for the sake of production controls, to print its codes and production markings to all products. All intellectual property rights covering Product, including without limitation any and all designs and data included in, with, or comprising Product, and all ownership rights in and to such intellectual property rights, shall remain solely and exclusively with Seller or its third party suppliers, whether or not it was developed specifically for the Buyer. **NOTHING CONTAINED IN THE AGREEMENT,**

NOR THE SALE BY SELLER OF THE PRODUCT ORDERED HEREUNDER, IS INTENDED TO GRANT TO, CONVEY TO, OR CONFER UPON BUYER OR BUYER'S CUSTOMERS, OR UPON ANYONE CLAIMING UNDER BUYER, A LICENSE, EXPRESS OR IMPLIED, UNDER ANY PATENT RIGHT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT OF SELLER COVERING OR RELATING TO THE PRODUCTS OR ANY COMBINATION, MACHINE, OR PROCESS IN WHICH SAID PRODUCTS MIGHT BE OR ARE USED.

13. **CUSTOM PRODUCT:** Any design or manufacture of Product by Seller for the unique needs of Buyer, or to Buyer's specifications or requirements shall be the subject of a separate written agreement between Seller and Buyer.
14. **WAIVER:** No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is in writing signed by the aggrieved party. Waiver by either Seller or Buyer of a breach by the other of any provision of the Agreement shall not be deemed a waiver of future compliance therewith, and such provision shall remain in full force and effect.
15. **MODIFICATION:** The Agreement (including these Terms) may be modified only by written instrument signed by both Buyer and Seller.
16. **FORUM SELECTION AND CONSENT TO JURISDICTION:** Except as noted below, Buyer agrees that all actions or proceedings arising in connection with the Agreement shall be tried and litigated exclusively in the courts located in San Salvador, El Salvador, and buyer expressly consents to the exclusive jurisdiction of the courts in that city. Buyer agrees that, except as noted below, the forum and venue selection of San Salvador, El Salvador, is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of the Agreement in any jurisdiction other than that specified in this paragraph, except with the express written consent of Seller. Buyer expressly waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the courts located in San Salvador, El Salvador, shall have *in personam* jurisdiction and venue over the parties for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to the Agreement. Buyer hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph pursuant to the Notice requirements set forth below. The parties further agree that any action or proceeding arising in connection with the Agreement may be brought and litigated in a

court located outside of San Salvador, El Salvador, and that such court shall have jurisdiction over any such action or proceeding, only with the express written consent of the Seller.

17. **APPLICABLE LAW:** The Agreement shall be construed, governed, and enforced by and in accordance with the internal laws of the state in which Buyer's principal offices are located. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to the Agreement.
18. **SEVERABILITY OF PROVISIONS:** In any event that one or more of these Terms should be found to be invalid, illegal, or unenforceable in any respect, such Term(s) shall be severed from the Agreement and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
19. **HEADINGS:** The use of headings herein is for convenience of reference only and does not affect the interpretation hereof.
20. **LANGUAGE:** Buyer acknowledges that, although these Terms are written in the English language, Seller reserves the right to require that any document or notice relating to the Agreement to be drafted in the Spanish language.
21. **NOTICES:** All communications under the Agreement shall be in writing or by confirmed fax, and shall be deemed to have been duly given upon (i) personal delivery, (ii) upon deposit in the mail if mailed by certified mail, return receipt requested, postage prepaid, (iii) upon deposit with a recognized courier with next-day delivery instructions, or (iv) upon confirmation of transmission, if sent by confirmed fax, to the address or fax number provided in the purchase order or such other address or fax number either party may specify by notice sent in accordance with this Section.
22. **RELATIONSHIP OF THE PARTIES:** Nothing contained in the Agreement shall be deemed to make either party the agent or representative of the other party or both parties joint venturers or partners for any purpose. Neither party shall have the authority to make any statements, representations, or commitments or to take any actions that are binding on the other party, except as may be explicitly authorized in writing by such other party.