

## USED EQUIPMENT AGREEMENT AND BILL OF SALE

THIS USED EQUIPMENT AGREEMENT AND BILL OF SALE ("Agreement") is made as of this \_\_\_\_\_, 2013 ("Effective Date"), between Pactiv LLC, ("Seller"), located at 1900 West Field Court, Lake Forest, Illinois 60045, and \_\_\_\_\_ ("Buyer").

Seller owns and wishes to sell the Equipment (as defined below) to Buyer, and Buyer wishes to purchase such Equipment from Seller, all on the terms and conditions herein provided.

**NOW THEREFORE**, in consideration of the mutual agreements herein contained, Seller agrees to sell, and Buyer agrees to purchase the following described equipment (the "Equipment") currently situated at 1000 Diamond Ave., Red Bluff, CA 96080 (the "Pactiv Facility"): \_\_\_\_\_.

1. The purchase price is \$\_\_\_\_\_ USD payable by Buyer to Seller on or before \_\_\_\_\_, 2013 by either wire transfer to an account designated by Seller in written notice to Buyer or in the form of a certified or cashier's check delivered to the notice address of Seller, attention Chief Financial Officer, if a wire transfer is not elected.

2. Upon receipt of the purchase price, Seller conveys good title to the Equipment to Buyer, free of all liens, claims and encumbrances of any kind, arising by or through Seller, by delivery of written notice of same to Buyer. This is Seller's sole warranty.

3. The Equipment is delivered and sold to Buyer AS IS, WHERE IS, WITH ALL FAULTS. Seller makes no other warranty of any kind, express or implied. ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.

4. Buyer has examined the Equipment, is familiar with its condition, and acknowledges that modifications may be required to comply with OSHA or other applicable law. Buyer is not relying upon any representation or statement of Seller concerning the nature or the condition of the Equipment, or compliance with any OSHA or other applicable laws.

5. The risk of loss and the right of possession shall pass to Buyer upon execution of this Agreement. Title will pass to Buyer immediately upon payment of the purchase price to Seller.

6. Delivery of the Equipment shall occur on an FOB basis at the Pactiv Facility on the date of receipt of the purchase price. Buyer or its outside contractors will perform the dismantling and removal of Equipment in a lawful and workmanlike manner and in compliance with any workplace rules established for the Pactiv Facility.

7. In consideration of the foregoing and other good and valuable consideration, Buyer (including its employees, contractors, agents, successors and assigns) hereby releases, and agrees to defend, indemnify and hold harmless, Seller and its affiliates and their employees and representatives ("Indemnitees") from any claims or suits against, and costs, damages, losses or expenses incurred by, the Indemnitees for:

- Personal injury, death or property damage arising out of Buyer's entering Seller's premises and removing the Equipment or related to Buyer's possession or use of the Equipment after consummation of the sale transaction.
- Personal injury or property damage to any person, including Buyer and Seller or their agents or employees, occurring as a direct or indirect result of Buyer's or any subsequent owner or

operator's use of the Equipment or the presence of same on Buyer's premises or on the premises of any subsequent owner or operator thereof.

- The defense of any other claim of Buyer or Buyer's or any subsequent owner or operator of the Equipment or any other person related to the Equipment or this transaction.
- Any breach of this Agreement by Buyer and any enforcement of this Agreement against Buyer or any other person.

Buyer will pay all costs, damages, losses and expenses (including reasonable attorney's fees and costs) incurred by the Indemnitees for which Buyer indemnifies Seller hereunder and will pay any award with respect to any such claim or agreed to in any settlement, provided that the Indemnitee notifies the Buyer of any claim or suits for which it claims indemnification hereunder, tenders the defense of the same to Buyer and reasonably cooperates in its defense or settlement. Buyer's indemnification hereunder extends to actions or omissions of its employees, contractors, agents, successors and assigns and shall not be assignable or transferable without written consent of Seller.

9. In the event of any breach of this Agreement and any enforcement of this Agreement in a legal action, the prevailing party in such legal action shall be entitled to reimbursement for its reasonable attorneys fees and other costs incurred in such legal action from the non-prevailing party. The court in such a legal action will determine whether and which party prevailed in the legal action and may decide that neither party prevailed in the legal action.

10. This Agreement and Bill of Sale contains the complete final agreement between Buyer and Seller concerning its subject matter. Reference to any communications from Buyer shall not affect the terms and conditions hereof, and no other agreement or purchase order of Buyer in any way modifying any of said terms and conditions will be binding upon Seller unless made in writing and signed by Seller's authorized representative.

11. From and after the Effective Date of this Agreement, Buyer assumes the entire responsibility for compliance with all laws, ordinances and governmental regulations affecting the installation, operation, use, possession or disposition of the Equipment, and Buyer is solely responsible for all sales or other taxes, duties, license fees or charges of whatever nature assessed upon or related to the sale, transportation, use, ownership, insurance, possession, maintenance, repair, replacement or disposition of the Equipment in this transaction.

12. This Agreement and any dispute arising under this Agreement shall be governed by Illinois law, without reference to its conflicts of laws provisions, and venue for any matter relating to the subject of this Agreement shall exclusively be in the State or Federal courts located in Illinois.

13. Neither party shall be liable to the other party or any other person for any failure or delay in the performance of any obligations under this Agreement due to events beyond its reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, sabotage, strikes, lockouts, labor disputes, work stoppages, transportation embargoes or delays, failure or shortage of materials, supplies or machinery, acts of God, acts or regulations or priorities of the federal, state or local government or/and agencies thereof.

**IN WITNESS HEREOF**, the parties hereto executed this Agreement effective as of the Effective Date.

**BUYER:**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**SELLER:**

**PACTIV LLC**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_