

RPC Terms and Conditions of Use



1. DEFINITIONS.

- (a) "Agreement" means these Terms, the RPC Use Agreement which references these Terms and any and all documents referenced therein.
- (b) "Approved Users" means, for purposes of an Open Loop Customer, those entities to which RPCs may be shipped by Customer and which are explicitly approved by Tosca or listed on the Tosca Website, as amended by Tosca from time to time.
- (c) "Closed Loop" refers to a Customer who does not Transfer RPCs to an Approved User.
- (d) "Customer" means the entity executing the RPC Use Agreement.
- (e) "Customer Location(s)" means those locations authorized to receive RPCs for or on behalf of Customer, as agreed by Tosca and Customer.
- (f) "Issue" means the provision of an RPC to the Customer.
- (g) "Long Hold Fee" is the same amount as the RPC Use Fee identified in the RPC Use Agreement.
- (h) "Lost RPC" means (i) an RPC which has been destroyed, lost, stolen, or conveyed, (ii) any RPC which is issued to the Customer and is not transferred to an Approved User (in the case of an Open Loop Customer) or returned to, or collected by, Tosca within 180 days, or (iii) in the case of an Open Loop Customer, an RPC which is a Rejected RPC and is not collected by, or returned to, Tosca within 72 hours or whose disposition is not reported to Tosca within 72 hours.
- (i) "Open Loop" refers to a Customer who Transfers RPCs to Approved Users.
- (j) "Order(s)" means Customer's purchase-related documentation, regardless of the manner in which such Orders are made or documented.
- (k) "Rejected RPC" means an RPC which a user does not accept at the time of delivery by Customer.
- (l) "RPC(s)" means those sizes of any foldable reusable plastic containers, estimated at 60cm X 40cm, Issued to Customer by Tosca for the purpose of packing, storing, handling and transporting product.
- (m) "Suggested Repackers" means those entities engaged in repacking goods and which are listed on the Tosca Website, as may be amended by Tosca from time to time.
- (n) "Terms" means these RPC Terms and Conditions of Use.
- (o) "Tosca" means Tosca Services, LLC.
- (p) "Tosca Website" means www.tosca.com.
- (q) "Transfer" means the passing of responsibility for the RPCs from Customer to an Approved User as permitted by this Agreement.
- (r) "Website" means https://customerportal.tosca.com/Default/Tosca_Terms_Conditions.pdf

2. SCOPE. Upon execution of the RPC Use Agreement and at the time of issuance of each Order, Customer agrees to these Terms. Each Order shall be subject to acceptance by Tosca. The Agreement shall apply to all shipments of RPCs delivered by Tosca to the Customer. Unless otherwise agreed by Tosca in writing, any additional or conflicting terms contained in, attached to or referenced in any Order are expressly rejected by Tosca. All Orders are conditioned on acceptance of these Terms. The current version of the Terms, upon posting to the Website, supersedes all prior versions. Tosca reserves the right to change the Terms at any time, in Tosca's sole discretion, without notice, provided that the Terms applicable to an Order shall be those posted on the Website as of the date the Order is submitted to Tosca.

3. DELIVERY. Tosca agrees to use commercially reasonable efforts to Issue and deliver RPCs to Customer Locations within the time specified in an Order, provided that such Order has been accepted by Tosca. Tosca shall not be liable for any delays, loss or damages in transit. Notwithstanding anything to the contrary in these Terms, Tosca may refuse to load/unload, transfer or handle any RPCs under any conditions that it deems, in its sole discretion, unsafe, including (without limitation) conditions caused by drivers, personnel, equipment, procedures or weather conditions.

4. LIMITED WARRANTY AND ACCEPTANCE. Tosca warrants that RPCs will be of reasonable quality, except as to defects which a reasonable visual examination would reveal, and will conform to Tosca's then current specifications at the time of Issue. Customer's exclusive remedy for any claim arising out of this Agreement shall be limited, at Tosca's option, to: (a) replacement of the nonconforming RPCs, or (b) refund of the portion of the fees paid by Customer to Tosca attributable to such nonconforming RPCs. Upon receipt of delivery, Customer shall inspect the RPCs, at its sole cost and expense, for compliance with Tosca's specifications and for in transit loss or damage. If the RPCs are found to be deficient, defective or damaged, Customer shall notify Tosca in writing within 72 hours of delivery and Tosca will credit Customer for the Use Fees and any freight costs incurred by Customer in returning such RPCs to Tosca. If Tosca is not notified within such time, then the RPCs shall be conclusively deemed to be delivered to and accepted by Customer. EXCEPT AS PROVIDED IN THIS SECTION, THE RPCS ARE PROVIDED 'AS IS' AND TOSCA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

5. RETURNS. A Customer may elect, at any time, to return full pallets of unopened, undamaged, clean and unused RPCs to a location designated by Tosca. Customer shall pay for all freight and delivery costs associated with returning such RPCs to Tosca. Tosca shall refund Customer the Use Fees invoiced for such returned RPCs less a Restocking Fee set forth in the Agreement. Returned RPCs shall conform to the Return requirements posted on the Tosca Website.

6. TRANSFER. A Closed Loop Customer's responsibility for the RPCs shall end upon the return to or collection of the RPCs by Tosca. An Open Loop Customer's responsibility for the RPCs shall end upon Transfer of the RPCs to an Approved User. A Transfer will be accepted by Tosca when the RPCs have been transported to, and the Customer's goods have been accepted by, an Approved User, as evidenced by a Bill of Lading signed by the Approved User. Tosca may refuse to accept a Transfer if it is to an entity other than an Approved User.

7. REJECTION. If any third party rejects a shipment of Customer's goods which includes Tosca RPCs, then such Customer shall notify Tosca of such disposition within 72 hours of rejection and, at Customer's discretion and expense, shall either deliver any Rejected RPCs to a Suggested Repacker or arrange for emptied RPCs to be returned to, or collected by, Tosca. Any Rejected RPCs not collected by or returned to Tosca within 72 hours, or whose disposition is not reported to Tosca within 72 hours, will incur a Lost Fee. The Suggested Repackers list is provided by Tosca as a convenience only, and Tosca is not endorsing any Suggested Repackers, nor shall Tosca be responsible for their performance. Customer shall bear all risk related to its use of Suggested Repackers. This Section 7 shall not apply to Closed Loop Customers.

8. RISK OF LOSS AND DAMAGE. All international shipments shall be governed by the ICC INCOTERMS Delivery at Terminal ("DAT"), so Tosca shall pay charges up to the nominated terminal, then Customer shall be responsible for all charges thereafter, including, but not limited to, customs clearance, customs import charges, delivery, etc., and Customer shall have their customs and delivery agent take over from the nominated terminal. Risk of loss and damage shall pass from Tosca to Customer upon Tosca's delivery of RPCs to the terminal(international shipment) or Customer Location(domestic). Thereafter, Customer bears the risk of loss, theft, damage or destruction from any cause whatsoever until Transfer to an Authorized User (in the case of an Open Loop Customer), or return to, or collection by, Tosca. If at any time, any RPCs are declared to be "Lost RPCs" by Tosca, a Lost Fee may be charged by Tosca. However if any such Lost RPCs are located and returned to Tosca within sixty (60) days of being declared as Lost RPCs, then Tosca will credit Customer's account in the amount of the Lost Fee paid by Customer.

9. INVENTORY AND AUDIT. Each week, Customer shall provide a detail of all RPCs transferred during the previous calendar week to other parties including Approved Users and non-Approved Users. Notifications shall include the date and destination of each RPC, the quantity, the name and address of the User, the BOL number / PO number, and the date of Transfer. All Transfers shall be subject to acceptance by Tosca as provided herein. Additional fees will be charged for unreported transfers. Tosca will have the right to conduct physical audits of Customer's inventory of RPCs at each Customer Location at a mutually agreeable time and date, but in any case, at least once per calendar quarter and at the time of expiration or termination of this Agreement. Any Issued RPCs which are not accounted for by the audit will be declared Lost RPCs and will incur a Lost Fee. Customer must notify Tosca within thirty (30) days regarding end of season inventory for return. Additionally, Customer agrees that any RPCs held by Customer greater than sixty (60) days shall be subject to a Long Hold Fee for each subsequent sixty (60) day period until such time as such RPC is Transferred to an Approved User, or returned to, or collected by Tosca.

10. BILLING AND PAYMENT TERMS. Tosca will invoice Customer, and Customer agrees to pay, the fees and charges set forth in this Agreement. Unless otherwise provided in writing, payment terms are net thirty (30) calendar days from the date of invoice in U.S. currency. All prices are exclusive of applicable federal, state, local and foreign sales, use, excise, value added and other taxes, and any current or future tax or other governmental charges applicable to this

Agreement that Tosca is required to pay or permitted to collect shall be for Customer's account. Any amounts which remain unpaid after the due date shall be subject to a late charge of 1.5% compounded monthly, or the maximum rate allowed by law, whichever is less. Customer's obligation to pay amounts due shall be absolute and unconditional, and shall not be subject to any delay, reduction, set-off, counterclaim or recoupment for any reason whatsoever.

11. OWNERSHIP. Each RPC shall remain at all times the sole and exclusive property of Tosca and is provided to Customer solely for its temporary and single use as permitted in this Agreement. Customer shall have the right to use the RPCs one time until the time of Transfer or return to Tosca, and shall not use RPCs multiple times or for purposes other than as expressly permitted by this Agreement. Each multiple use is subject to an additional Use Fee. Further, Customer shall not dispose, transfer, assign, sell, sublease, encumber or otherwise convey any RPC without Tosca's prior written consent. Payment of a Lost Fee, or any other event, does not constitute a transfer of any property right or other interest in the RPCs. In addition, Tosca is and shall remain the exclusive owner of its trademarks and trade names appearing on the RPCs, with all right, title and interest therein being reserved by Tosca. Customer shall not remove, cover, alter or deface any trademarks or trade names affixed to the RPCs by Tosca without Tosca's consent. Customer shall not mark the RPCs nor attach any item(s) to the RPCs in any manner, and shall reimburse Tosca for the costs of removing such marks or items.

12. LIMITATION OF LIABILITY. IN NO EVENT SHALL TOSCA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, LOST PROFITS, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, INFRINGEMENT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOSCA'S TOTAL LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO TOSCA FOR THE SPECIFIC RPCS GIVING RISE TO THE CLAIM.

13. INDEMNIFICATION. Customer shall indemnify, defend and hold harmless Tosca and its affiliates, subsidiaries and their respective officers, directors, members, and employees (collectively, the "Indemnitees") from and against, any and all claims, demands, suits, damages, losses, liabilities, obligations, costs and expenses (including court costs and attorneys' fees) ("Claims") arising out of or relating to: (a) Customer's breach of any provision of the Agreement; or (b) Customer's handling, use, alteration, distribution, transfer or marketing of RPCs. This indemnification applies notwithstanding the fact that third parties or any of the Indemnitees may be partially responsible for the Claim; provided, that the Customer shall not be obligated to indemnify Indemnitees to the extent such Claims arise solely out of the Indemnitees' negligence or willful misconduct.

14. CUSTOMER'S DEFAULT. If: (a) Customer fails to make any payment when due; (b) Tosca determines, in its sole discretion, that the credit of Customer or of any person or entity providing credit support for Customer's obligations hereunder is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any document supporting Customer's obligations to Tosca; or (c) Customer breaches any other material term hereof, then Tosca may, immediately upon notice and in its sole discretion: (i) declare immediately due and payable any amounts owed by Customer, (ii) cancel any Orders then pending, (iii) suspend further shipment and delivery to Customer of any Order, and/or (iv) terminate the Agreement. Customer shall pay Tosca's reasonable costs of collection, including attorneys' fees and court costs. The foregoing rights shall be cumulative, alternative and in addition to any other rights or remedies to which Tosca may be entitled at law or in equity.

15. EXCUSE OF PERFORMANCE. Any delay or failure of performance by Tosca shall not be a breach of these Terms if and to the extent such performance is prevented or delayed due to events beyond Tosca's reasonable control, including (without limitation) compliance with law or government authority, military action, terrorism, riots, civil disorders, fires, severe weather conditions, accidents, labor strikes, lockouts and shortages, computer system failures, loss of electronic data, unavailability of materials, facility shutdowns, or delays in transportation. Tosca's obligations shall be suspended, without liability, for so long as such event continues. Tosca may allocate and distribute RPCs among its customers in such proportion as Tosca determines in its sole discretion.

16. ASSIGNMENT. The Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties; provided, however, that Customer shall not assign its rights or delegate the performance of its obligations under the Agreement without Tosca's prior written consent, which shall not be unreasonably withheld.

17. COMPLIANCE WITH EXPORT LAWS. Except as permitted by applicable laws, Customer will not export or re-export RPCs outside the U.S., directly or indirectly, to any party or destination declared an embargoed/restricted party or destination by the U.S. government. Further, if RPCs are transferred by Customer outside the U.S.: (a) Customer shall be responsible for determining U.S. export control classification and licensing requirements and obtaining any required licenses, (b) Customer shall ensure that the RPCs comply with the laws of the country of destination, including any applicable health, safety, registration, environmental or other requirements, and (c) upon Tosca's request, Customer shall provide documentation sufficient to verify the final destination of RPCs delivered to Customer hereunder.

18. CONFIDENTIALITY. "Confidential Information" includes (without limitation) the pricing, terms, specifications, force majeure allocations and other technical, business and sales information provided pursuant to, or in connection with, this Agreement or the use of RPCs hereunder. Except as permitted by the disclosing party in writing, each party shall: (a) limit its use of the other party's Confidential Information only for the purpose of performing its obligations hereunder, (b) limit disclosure of Confidential Information only to those of its employees who need to know such information, and (c) not disclose to any third party, directly or indirectly, any Confidential Information received from the other party during the Term of this Agreement and for a period of three (3) years thereafter. Upon request, each party promptly shall return all Confidential Information previously supplied by the other party, destroy any and all copies and provide written confirmation certifying such destruction.

19. 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.

20. GOVERNING LAW/JURISDICTION. The Agreement shall be governed by the laws of the State of Georgia, USA, without regard to its conflict of laws principles, and the courts of Fulton County, Georgia shall have exclusive jurisdiction. The parties consent to jurisdiction of such courts, and waive any objections to venue in such courts.

21. WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF, OR RELATED TO, THIS AGREEMENT.

22. MISCELLANEOUS. No waiver of any provisions hereof by either party will be valid unless the same is in writing and signed by such party. . If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of its other provisions. No course of dealing, course of performance or usage of trade shall be considered in the interpretation or enforcement of the Agreement. The following Sections of these Terms shall survive the expiration or termination of the Agreement for any reason: 10, 11, 12, 13, 17, 18, 19, 20, 21 and 22.

(End of Terms)