BALL METAL BEVERAGE - TERMS AND CONDITIONS OF SALE
Cold Filled Beverages
(Soft Drinks)
Effective April 2003

I. WARRANTIES.

A. General Warranty. SELLER warrants to BUYER that its cans and ends are free from defects in material and workmanship, and conform to SELLER’s specifications.

B. FDA Warranty. SELLER further warrants to BUYER that its cans and ends are manufactured from materials which are presently listed as acceptable for food contact uses under the Federal Food, Drug and Cosmetic Act and regulations issued thereunder. Specifically, beer containers and ends are suitable for packaging alcoholic beverages of FDA Type VI-A under conditions of use C and nonalcoholic beverage containers and ends are suitable for packaging nonalcoholic beverages of FDA Type VI-B under conditions of use B. However, this warranty does not apply unless BUYER’s application and processes meet all appropriate requirements and limitations (including, but not limited to, those listed under 21 C.F.R. § 175.300 and 21 C.F.R. § 174.5) and the good manufacturing practices set forth in 21 C.F.R. Part 110 for food and beverage containers.

C. Warranty Conditions. SELLER further warrants its cans and ends, if used for typical cold filled beverages, for a one year period from filling. A typical cold filled beverage is defined as having:

1. a pH range of 2.3 to 4.50 for soft drinks;
2. a pH range of 4.2 to 4.50 for beer and ales;
3. a chloride content of no more than 50 ppm;
4. a copper content of no more than 0.3 ppm;
5. no less than 1.8 volumes and no more than 4 volumes of carbonation for soft drinks;
6. a filling temperature below 80º F; and
7. an alcohol content of less than 20% by volume.

Beverages and filling conditions which do not meet these criteria must be submitted for review and advance written agreement between SELLER and BUYER to qualify for the above warranties.

The above warranties remain in effect only so long as all of the following conditions are met:

1. there are no changes in the beverage formulation or pH;
2. the temperature of the beverage does not exceed 100º F or go below 32º F while stored in the filled, seamed cans;
3. no more than 2 cc of air in the can for carbonated beverages or 2% oxygen for beverages filled with a nitrogen headspace;
4. the combination of temperature, carbonation and fill volume does not produce an internal pressure of more than 90 psi;
5. the ends are used within one year of manufacture;
6. the cans and ends are stored before filling in a manner which protects them from solid, airborne and flavor contamination, and moisture; and
(7) The fill volume for a 12 ounce can does not exceed 12.06 ounces or 356.6 ml. For cans with stated contents other than 12 ounces, the fill volume does not exceed more than 2 ml over that stated volume.

The above warranties do not cover perforations due to stress corrosion cracking, secondary (outside to inside) corrosion, or dome staining. Flavor, odor and color of the filled beverage are not warranted.

D. Disclaimer. THE ABOVE WARRANTIES EXTEND ONLY TO BUYER. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

E. Export. The above warranties apply only to cans and ends manufactured for domestic use in the United States or Canada. Exporting filled product in cans and/or ends manufactured for domestic use voids all warranties and the SELLER shall not be responsible for any damages. Cans and ends to be used for filled product intended for sale or export outside of the United States or Canada must be identified as such before any warranty applies. Specific conditions of use should be discussed with SELLER’s sales representative, to determine whether those conditions mandate special treatment regarding gauge, coating type, coating weight or any other necessary specification changes for the cans or ends. After BUYER and SELLER have agreed on the appropriate specifications, SELLER will issue a warranty that its cans and ends meet such specifications.

II. LIMITATIONS AND REMEDIES.

A. Notice. BUYER must notify SELLER of any breach of warranty claims without undue delay. SELLER shall not be liable for any such claims unless notice of the claim is received by SELLER within 12 months after the date of filling. Failure to make a claim within such period shall constitute a waiver of the claim.

B. Preserving Evidence. BUYER must preserve all goods and other evidence in its possession or control that is related to any breach of warranty claims and provide SELLER the opportunity to inspect, test and sample such goods and other evidence prior to destruction or alteration. Failure to comply with this provision shall constitute a waiver of the claim.

C. Limitations on Liability. After delivery by SELLER, BUYER shall be responsible for shipping, handling, storing, and filling the cans and ends in a manner which protects them from damage. SELLER shall not be liable under any circumstances for any damages resulting from such shipping, handling, storage, and filling, including, but not limited to, (1) damages resulting from solid, airborne, flavor, moisture, and other contamination; (2) damages resulting from BUYER’s filling operations (such as improper use of the cans or ends or faulty closure or end assembly); and (3) damages to filled product resulting from shipping and handling (such as filled product perforation due to stress corrosion or crushing, outside to inside corrosion, or corrosion caused by trapped moisture in shrink wrapped filled product), or exposure to adverse weather, road or storage conditions.

D. Remedies. As its sole liability, SELLER shall be responsible only for damages resulting directly from SELLER’s breach of the warranties in IA, B and C above, but in no event shall SELLER’s liability on any claim exceed BUYER’s actual cost of the defective cans, ends and their contents. SELLER shall not be liable for any other
damages (including, but not limited to, special, punitive, direct, indirect, incidental or consequential), except for third party bodily injury claims.

III. GRAPHIC ARTS POLICY. It shall be the BUYERS responsibility to supply camera ready artwork to the SELLER. The procedures for handling BUYER's artwork are set forth in SELLER's Graphic Arts Policy attached hereto and incorporated herein by reference. SELLER reserves the right amend its Graphic Arts Policy from time to time and will notify BUYER of any such amendments.

IV. LABELS. The BUYER and SELLER shall agree upon label decoration, UPC bar codes, embossing and incising for cans and ends. This agreement shall become the BUYER's specification to the SELLER. It is the BUYER's responsibility to ensure that labeling, incising, UPC bar codes, and embossing complies with all appropriate requirements, including state, local and federal deposit laws and regulations, and trademark, service mark and certification mark requirements and rights of third parties. BUYER understands and acknowledges that there may be a significant level of variation among bar code scanners in their ability to scan UPC bar codes, depending upon the manner in which the codes are printed on the aluminum cans. It is BUYER's responsibility to insure that the UPC bar codes specified herein are compatible with the bar code scanners used by BUYER, its distributors or others, including at the ultimate point of sale of BUYER's product to consumers.

V. CUSTOMER ASSISTANCE. Customer Assistance functions specifically requested by BUYER, such as overhauls, changing chucks and rolls, new equipment installation or size conversion will be provided by SELLER on as available basis and will be invoiced by SELLER and promptly paid for by BUYER. The rates will be as follows:

- $60.00 per hour: 7:00 a.m. - 5:00 p.m., Monday-Friday
- $90.00 per hour: for overtime (hours in excess of eight in a 24-hour period) and hours before 7:00 a.m. or after 5:00 p.m., and Saturdays
- $120.00 per hour: Sundays and holidays

Expenses: BUYER will also be billed for and pay actual expenses (airfare, lodging, meals, rental car) incurred by SELLER.

The hourly rate will start from the time the customer assistance representative reaches the customer location and continues until the job is complete or the representative departs. BUYER agrees that all customer assistance functions shall be subject to the terms and conditions set forth SELLER's standard Customer Assistance Agreement, which is incorporated herein by reference.

VI. TITLE AND RISK OF LOSS. Responsibility for title and risk of loss shall remain with the SELLER until tender of delivery if cans and ends are sold - FOB destination. Title and risk of loss become the BUYER's responsibility at the shipping point when cans and ends are sold FOB shipping point. SELLER's documents will specify the FOB points.

VII. PRODUCTION. There shall be a minimum production or shipping order quantity of 20 pallets per label, including end orders. Orders of less than minimum quantities will be subject to a reasonable surcharge by SELLER which BUYER agrees to pay.

VIII. INVENTORY. Normal inventory rotation of each label, including end inventories, is six months. Reasonable warehouse charges for inventory exceeding this limit will be billed by SELLER to the BUYER on a monthly basis. BUYER agrees to pay such charges.
IX. PACKAGING. BUYER is responsible for the return of all reusable packaging materials. Failure to return materials in good usable condition will result in a charge to the BUYER for replacement value. BUYER agrees to promptly pay such charges.

X. TAXES. BUYER is responsible for all sales, use, value added, import, export and property taxes.

XI. EXCUSABLE FAILURE TO PERFORM. Both parties shall be excused for failure to perform any part of this Agreement (other than payment obligations) due to events beyond their control, provided each party shall have exercised all reasonable effort to avoid such events. These events shall include, but not be limited to, fire, riots, and other civil disturbances, sabotage, strikes, labor disputes, labor shortages, work stoppages, injunctions, transportation embargoes or delays, shortage or failure of material or machinery, acts of God, acts or regulations or priorities of the Federal, State or local government or branches or agencies thereof.

XII. NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries to this agreement.

XIII. APPLICABLE LAW. BUYER and SELLER agree that this agreement bears a reasonable relationship to the state from which SELLER’s invoices are issued and that the laws of such state shall apply in the interpretation and enforcement of this agreement. BUYER and SELLER expressly disclaim applicability of the United Nations Convention the International Sales of Goods.

XIV. INTEGRATION. These Terms and Conditions and SELLER’s letter to BUYER setting forth price, quantity and FOB point constitute the entire agreement between BUYER and SELLER, superseding any and all prior communications, representations or agreements, written or oral and shall apply until further written notice from SELLER. Any term and conditions in BUYER’s order which are in addition to or inconsistent with the terms and conditions of this agreement shall not be binding on SELLER or shall not be considered applicable to the sale or shipment of the goods described herein. This agreement may not be amended without the express written consent of an authorized official of SELLER.

Authorized Signature ___________________________ Date __________