

TERMS AND CONDITIONS OF PURCHASE

IMPERIAL PLASTICS INC. ("Buyer")

THESE TERMS AND CONDITIONS GOVERN THE PURCHASE OF ALL GOODS PURCHASED BY BUYER AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY QUOTATION, CONFIRMATION FORM, ACCEPTANCE, INVOICE, BILL OF LADING OR OTHER DOCUMENT OR COMMUNICATION ("INVOICE") FROM SELLER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER. NEITHER BUYER'S ACKNOWLEDGMENT OF AN INVOICE NOR BUYER'S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN AN INVOICE SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

1. **DEFINITIONS.** "Buyer" means Imperial Plastics, Inc., an Ohio corporation with its principal offices in Rittman, Ohio. "Goods" means the items and services described on the front side of any Purchase Order. "Purchase Order" means any purchase order or other communication from Buyer by which Buyer indicates its intent to purchase Goods from the Seller. "Seller" means the person or entity identified on the front side of the Buyer's Purchase Order.

2. **ACCEPTANCE.** The Buyer's purchase is expressly made conditional upon Seller's acceptance of the terms and conditions herein, which shall constitute the complete and final agreement between the parties, superseding all other agreements written or oral. This order becomes a binding contract on the terms and conditions set forth herein when accepted by Seller either by acknowledgment or commencement of performance. Goods received by Buyer from Seller shall be deemed to be delivered only upon these terms and conditions.

3. **BILLING AND PAYMENT.** Seller must submit invoices in a form acceptable to Buyer. Invoices covering shipments are to be accompanied by original and duplicate bills of lading or express receipts for shipments. All payments are made conditional and upon acceptance by Buyer of the goods called for hereunder. Discount period, if any, begins the date invoice or material is received by Buyer, whichever is later. Buyer shall be entitled to offset against payments due hereunder any amount owed by Seller to Buyer or arising out of Buyer's claim for damages against Seller from his or any other transaction with Seller. Prices stated hereunder apply as a maximum to all shipments made or services rendered hereunder. Buyer shall have no obligation to honor invoices for goods or services at any increased price until such increase shall have been accepted and confirmed in writing by Buyer. Unless otherwise specified, there shall be no additional charges in excess of the prices stated hereunder.

4. **CHANGES.** Buyer may at any time make changes in (a) the method of shipment or packing, (b) drawings, design, or specifications, and (c) quantities of Goods ordered. If any such change causes an increase or decrease in the cost of or the time required for, performance by Seller, an equitable adjustment shall be made. Seller's claim for such adjustment must be made within 30 days from Seller's receipt of notice of the charge. Nothing herein shall excuse Seller from proceeding with the order as changed.

5. **DELIVERY.** The terms of delivery are as stated on the face of this order. The obligation of Seller to meet the delivery dates, specifications and quantities set forth herein is of the essence of this order. Deliveries are to be made both in quantities and at times specified herein, or, if not, such quantities and times are as specified pursuant to Buyer's written instruction. Unless otherwise

herein agreed, Buyer will not accept COD shipments. Seller shall notify Buyer immediately of any delay in delivery or shipment. Shipments in greater or lesser quantity than ordered may be returned at Seller's expense, unless written authorization is issued by Buyer. If Seller's deliveries fail to meet schedule, Buyer, without limiting its other rights or remedies, may either direct expedited routing or charge excess cost incurred thereby to Seller or cancel all or part of this order. Goods which are delivered in advance of schedule are delivered at the risk of Seller and may, at Buyer's option, (a) be returned at Seller's expense for proper delivery, (b) have payment therefor withheld by Buyer until the date that goods are actually scheduled for delivery, or (c) be placed in storage for Seller's account until delivery dates specified herein.

6. **PACKING AND TRANSPORTATION.** All articles ordered shall be packed by Seller in suitable containers for protection in shipment and storage. Prices set forth in this order include all charges for Seller's packing and crating and for transportation to FCA (Incoterms 2000) point. Seller must pay transportation charges both ways on rejected material and/or equipment.

7. **ADVANCE MANUFACTURE.** Seller shall not manufacture or purchase or hold Buyer in any way accountable for purchase of raw materials in advance of its normal flow time or deliver any articles in advance of the delivery schedule set forth in this order or as modified by separate delivery schedule without Buyer's written permission.

8. **INDEMNITY.** Seller shall indemnify and hold Buyer harmless against all loss on account of claims of injuries to persons or damage to property based in whole or in part upon a defect in the goods or from any act or omission of Seller, its agents, employees and subcontractors. Further, Seller agrees to indemnify and hold harmless the Buyer, its successors and assigns, against any and all claims, liabilities, costs and expenses (including, but not limited to, court costs, attorneys' fees, inspectors' fees, or costs of testing) incurred by Buyer in connection with or related to any recall, inspection, tests, replacement or correction of the goods or any and all parts or equipment in which the goods are incorporated when such recall, inspection, tests, replacement or correction result from or are related to, in whole or in part, a defect or alleged defect in the goods.

9. **ASSIGNMENT AND SUBCONTRACTING.** Seller will not assign or subcontract (in whole or in part) this order without Buyer's written consent.

10. **INSPECTION.** Articles ordered are subject to final inspection and approval by Buyer at its plant. Such final inspection and approval shall not be conclusive as regards latent defects, fraud or such gross mistakes as amount to fraud and shall not be deemed to alter or affect the obligations of Seller or the rights of Buyer under the clause hereof entitled "WARRANTY". The furnishing by Buyer of materials or its inspection of Seller's work in process shall not relieve the Seller from responsibility regarding defects in the articles ordered or other failure to meet the requirements of this order. Notwithstanding anything to the contrary contained in this paragraph, final inspection and approval by Buyer shall not occur until the articles ordered are accepted by the government in accordance with the provisions of the government contract or subcontract under which this order is placed.

11. **WARRANTY.** Seller warrants that the Goods furnished under this order (i) shall be free of any defect in design, workmanship and material, and shall be merchantable and fit for the ordinary purposes for which such materials and/or equipment are used, (ii) shall be free from defects of title, (iii) shall be of the kind and quality described in the specification, drawings, description or samples furnished and (iv) that such services, materials and/or equipment are produced and/or supplied in compliance with the law. This warranty shall run to Buyer, its customers and users of Buyer's products.

12. COMPLIANCE WITH LAWS. In the performance of this order, Seller will comply with all national, state, and local laws and regulations governing the manufacture, transportation, import, export, and/or sale of Items and/or the performance of Services in the course of this order, including, but not limited to import/export regulations, regulations applicable to hazardous materials or protection of the environment, and labor laws, as applicable.

13. PATENT INDEMNITY. Seller warrants that the Goods and services supplied hereunder do not and will not infringe on any United States or foreign patent, trademark or copyright. In case such goods or services now or in the future constitute patent, copyright or trademark infringement, Buyer may, at its sole option, pursue any remedy or remedies available at law or in equity, including, without limitation, requiring Seller to either procure for Buyer the right to continue using such goods, modify them so that they become non-infringing and/or remove them and refund the total purchase price thereof. Seller agrees to indemnify and save harmless Buyer and its customers from and against any and all liability, loss, damage, costs, or expense of whatsoever nature or character including reasonable attorney's fees whether incurred defending the claim or when enforcing Buyer's rights of indemnity, arising out of or occasioned by any claim or suit for damages, injunction or other relief, on account of the furnishing or use of any article, material, tool, appliance, method or process protected by patents, trademarks or copyrights of the United States, in performance of this order. Seller shall, at Buyer's request, but at Seller's expense, assume the defense of such claim, suit or process.

14. REPRODUCTION RIGHTS. Buyer does not grant or convey to Seller, by virtue of this order, any reproduction right in or to articles called for hereunder, or any right to use designs, drawings, or other information belonging to Buyer or supplied by or on behalf of buyer for use in the performance of this order, in the production, manufacture or design of any articles for anyone other than Buyer.

15. CANCELLATION. Buyer may terminate this order at any time, in which event if there has not been a breach by Seller, it may pay to Seller the proportionate part of the purchase price representing Goods previously delivered and accepted. Acceptance of any portion of the Goods ordered shall not bind Buyer to accept any future shipment nor deprive Buyer of the right to revoke acceptance and return previously delivered Goods, nor waive its right to reject future deliveries. Seller shall have no right to substitute for returned or rejected Goods without Buyer's written instructions and agreement. Buyer shall not be liable for any consequential or incidental damages or the loss of any claims for anticipated profits on the unfinished or unshipped portion of Goods. Buyer expressly reserves all rights and remedies entitled to it under law or in equity.

16. CONFIDENTIALITY. The parties acknowledge that in the course of this engagement they will have access to and/or be in possession of Confidential Information of the other. "Confidential Information" shall mean information regarded by that party as confidential, including information relating to is past, present or future research, development or business affairs and any proprietary products, materials or methodologies. Each party shall hold in confidence, in the same manner as it holds its own Confidential Information of like kind, all Confidential Information of the other to which it may have access hereunder. Access to Confidential Information shall be restricted to those of the party's personnel with a need to know and engaged in a permitted use.

17. LIMITATION OF LIABILITY. Under no circumstances shall Buyer be liable for any anticipated profits or for incidental or consequential damages.

18. CHOICE OF LAW AND JURISDICTION. This order and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Ohio, without giving effect to the conflict of laws rules thereof.

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY OHIO STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN CUYAHOGA COUNTY, OHIO, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH OHIO STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

19. **MISCELLANEOUS.** No rights, duties, agreements or obligations hereunder may be assigned or transferred by either party unless in connection with the transfer of all or substantially all of the assignor's business or upon written consent of the other party. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their permitted successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.