

## TERMS AND CONDITIONS OF SALE

IMPERIAL PLASTICS INC. ("Seller")

**THESE TERMS AND CONDITIONS GOVERN THE SALE OF PRODUCTS BY SELLER AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION FROM BUYER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NEITHER SELLER'S ACKNOWLEDGMENT OF A PURCHASE ORDER NOR SELLER'S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.**

1. **DEFINITIONS.** "Buyer" means the person or entity identified on the front side of the Seller's invoices, quotations, or order confirmations. "Products" means the items described on the front side of any invoice, quotation or order confirmation which Buyer has purchased or may purchase. "Purchase Order" means any purchase order or other communication from Buyer by which Buyer indicates its intent to purchase Products. "Seller" means Imperial Plastics, Inc., an Ohio corporation with its principal offices in Rittman, Ohio.

2. **ORDERS.** Orders shall be initiated by Buyer issuing a Purchase Order or otherwise placing an order by electronic means acceptable to Seller. Purchase Orders shall identify the Products, specifications of the Products, quantity of the Products, method of packing and shipment and required delivery dates. All orders are subject to acceptance by Seller by either acknowledgment to Buyer or commencement of performance.

3. **PRICES.** Prices shall be as specified by Seller and shall be applicable for thirty (30) days unless otherwise noted. Notwithstanding the foregoing, prices are based on current labor and material prices and shall be subject to change with notice to the Buyer prior to Seller's acceptance of the order. Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import duties. If Seller shall be liable for or shall pay any of the foregoing, the same shall be paid by Buyer to Seller in addition to the price of the Products. In the event the Buyer claims an exemption from any tax, a valid tax exception certificate must be furnished to the Seller.

4. **PAYMENT.** All payments under the terms herein, unless otherwise noted, are due and payable in United States funds 10 days net from date of invoice. In case payment is not made as agreed, Buyer agrees to pay; (a) Interest on past due payments from the time they are due at the rate equal to the lesser of (i) 18% per annum, or (ii) the maximum rate permitted by law and (b) any and all costs and expenses of collection including reasonable attorney's fees incurred by the Seller in its efforts to recover such amounts so due and owing. Nothing herein shall be deemed to provide for the payment of any amount not legally collectible by the Seller. The Seller shall have no obligation to extend credit or grant deferred payment terms with respect to any order except as may be specifically in writing agreed by the Seller prior to acceptance of such order. If Seller believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, Seller may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any Products already shipped and all work on Products to date. Buyer agrees to submit such financial information from time to time as may be

reasonably requested by Seller for the establishment and/or continuation of credit terms. Until the purchase price and all other sums due from Buyer are paid in full, Seller retains a security interest in the Products and in all proceeds of said Products. Buyer hereby authorizes Seller to file financing statements evidencing the Seller's security interest in the Products.

5. **DELIVERY AND TITLE.** All shipments by Seller are FCA (Incoterms 2000) Seller's plant and all transportation charges shall be paid by Buyer in addition to the price of the Products unless otherwise agreed in writing by Seller. Subject to Seller's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Seller shall use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's required delivery dates. Buyer acknowledges that delivery dates provided by Seller are estimates only. If Buyer delays delivery of any Products, Seller may invoice Buyer for said Products, and hold them at Buyer's risk and expense pending instructions from Buyer. If Buyer accelerates the project, delays the project due to late data or late approvals, or impacts Seller's means, methods, sequences and techniques of construction, such action shall be grounds for changing price and schedule pursuant to Section 7 below. Seller reserves the right to make deliveries in installments. Delivery of a quantity which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.

6. **ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS.** Inspection and acceptance of the Products shall be Buyer's responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by Seller within ten (10) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery.

7. **CHANGES.** The Buyer may request order changes with respect to the quantity, shipping or date of delivery of the Products prior to actual shipment of the Products from the Seller's plant. If such changes result in increased cost or time to complete the manufacture of the Products or if there is a decrease in the quantity requested which invalidates any discounts offered by Seller, then the price and timing of the original order shall be adjusted accordingly and the Buyer agrees to pay any such increased cost. Unless otherwise agreed, prices for the Products are based on standard specifications of Seller. Once orders have been accepted by Seller, no changes with respect to specifications will be made or allowed unless they are requested by the Buyer and accepted by Seller in writing and the new price and delivery time resulting therefrom are agreed upon in writing. Additional costs for the changes, including costs for additional tooling or engineering, will be reflected in the new price.

8. **CANCELLATION.** The Buyer may make requests for cancellation or suspension of orders after they have been accepted by providing such request in writing to Seller. However, no orders will be accepted by Seller with the understanding they may be later canceled and Seller reserves the right to refuse such requests for cancellation or suspension of orders. If and when cancellations are approved by Seller, Buyer agrees it will immediately and fully reimburse Seller for cancellation charges which are determined in the sole discretion of Seller.

9. **LIMITED WARRANTY.** Seller warrants to the Buyer that Products manufactured by Seller shall conform to the specifications, description or samples, if any, supplied to the Buyer for a period of one year from the date of shipment. This Limited Warranty does not cover Products which are used in a manner and for purposes which the applicable Product is not intended to be used, nor does it cover damage caused by accident, abuse or improper storage or maintenance. **SELLER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO (A) THE MERCHANTABILITY OF PRODUCTS, (B) THE FITNESS OF PRODUCTS FOR ANY PARTICULAR PURPOSE OR**

**USE OF BUYER OR THE END-USER, (C) ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE AND (D) CONDITION, DESIGN, QUALITY, DURABILITY OR SUITABILITY OF ANY BUYER GOODS SUBMITTED TO SELLER FOR BUYER'S PURPOSES.** Buyer's sole and exclusive remedy for nonconforming Products shall be, at Seller's option, the replacement or repair of the Products or refund of purchase price (without interest).

10. **LIMITATION OF LIABILITY.** Buyer's recovery from Seller for any claim shall not exceed Buyer's purchase price for the Product giving rise to such claim, irrespective of the nature of the claim, whether in contract, tort, warranty, negligence, strict liability or otherwise. Seller shall not be liable for and Buyer shall indemnify and hold Seller harmless from any claims based on Seller's compliance with Buyer's designs, specifications or instructions used in providing the Products or modification of any Products by parties other than Seller.

11. **DISCLAIMER OF DAMAGES.** Buyer shall not in any event be entitled to, and Seller shall not be liable for indirect, special, incidental or consequential damages of any nature including, without limitation, business interruption costs, removal and/or reinstallation costs, procurement costs, loss of profit or revenue, loss of data, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers, even if Seller has been advised of the possibility of such damages.

12. **FORCE MAJEURE.** No party shall be responsible for any failure to comply with the terms of this Agreement, or for any delay in performance of, or failure to perform under this Agreement where such failure or delay is due to causes beyond the control of the party sought to be charged. The parties' obligations shall be suspended during any such period to the extent of any such inability to perform. Events beyond the control of a party shall include, but not be restricted to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war (declared or undeclared), rebellion, insurrection, sabotage, epidemic, quarantine restrictions, lock-outs, labor disputes, labor shortages, transportation embargoes or failures or delays in transportation, inability to secure at a reasonable price or in a commercially reasonable manner necessary raw materials or machinery, acts of God, acts (including laws, regulations, disapprovals or failure to approve) of any government

13. **PATENT.** The Seller shall defend any suit or proceeding brought against the Buyer so far as based on a claim that any item manufactured by Seller and furnished hereunder constitutes an infringement of any United States Patent, if notified promptly in writing and given authority, information and assistance (at the Seller's expense) for the defense of same, and the Seller shall pay all damages and costs awarded therein against Buyer. In case the item is in such suit held to constitute infringement and the use thereof enjoined, the Seller shall, at its own expense, and at its option, either procure for the Buyer the right to continue using said item, or replace same with a non-infringing item, or modify it so it becomes non-infringing, or remove said item and refund the purchase price. These provisions do not apply when the item is furnished in accordance with designs supplied by the Buyer.

14. **OWNERSHIP.** The specifications, drawings, manufacturing data and other information transmitted between Seller and Buyer in connection with Seller's quotation and any resulting sale are the property of the originating party and are to be treated as Trade Secrets or Confidential Information pursuant to Section 15 below. Equipment, dies, molds or other personal property supplied by Buyer to Seller shall remain the property of the Buyer unless otherwise agreed in writing. The Buyer owns the rights to all parts produced from specific tooling developed to produce proprietary parts and for accounting purposes owns the part development cost value. Imperial Plastics Inc owns all intellectual property used to develop and produce parts. Intellectual property includes drawings, manufacturing data, and the physical tools created and developed by Imperial Plastics Inc.

15. **CONFIDENTIALITY.** Each party acknowledges that, in the course of its dealings with the other party hereunder, it will be made aware of, be exposed to or otherwise receive: (1) business, scientific, technical or manufacturing information, (2) product specifications, drawing, manufacturing data, (3) marketing materials, financial information, and listing of names, addresses or customers or potential customers or (4) Product defect, design defect, pending recall or similar information (collectively, "Trade Secrets or Confidential Information"). The parties agree that except (1) to the extent necessary to fulfill its obligations hereunder, (2) to the extent any such information shall become generally available in writing to the general public (other than by breach of this provision) or (3) to the extent required by a court of competent jurisdiction or necessary to comply with any applicable law, regulation or order, neither party shall communicate, divulge, or use the Trade Secrets or Confidential Information for the benefit of another person. Each party shall require all employees to whom such Trade Secrets or Confidential Information are disclosed to agree, to the same extent as each party has agreed hereunder, to maintain the confidentiality of such Trade Secrets or Confidential Information and not disclose them to others. The parties agree that money damages alone will not be a sufficient remedy for any breach of the provisions of this Section 15 and that in addition to all other remedies, the non-breaching party will be entitled to injunctive or other equitable relief as a remedy for any such breach.

16. **EXPORT CONTROL.** The sale, resale or other disposition of Products are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

17. **DEFAULT.** Each of the following shall constitute an event of default (hereinafter "Event of Default") hereunder, (a) Buyer shall fail to remit any payment due to the Seller when due, (b) actual or anticipated breach or default by either party of any material term hereof, (c) either party shall become insolvent, make, an assignment for the benefit of creditors or any petition in bankruptcy or any action under any reorganization, insolvency or moratorium law, or any other law or laws relating to or for the relief of debtors shall be commenced or filed against or for such party, or (d) any receiver, trustee, custodian or similar official shall be appointed to take possession of the properties of either party. If any Event of Default shall occur, the non-defaulting party, at its option, may (a) proceed by appropriate court action or actions either at law or in equity to enforce performance or to recover damages for the breach of the defaulting party, or (b) immediately, by notice in writing to the defaulting party terminate all pending orders. An Event of Default for any reason whatsoever shall not relieve either party of any obligation due to the other party on, or accrued as of, the date of such termination and the obligations of the parties contained in Sections 4, 9, 10, 11, 13, 14, 15, 17 and 18 shall survive any such Event of Default. The remedies herein provided shall be cumulative not exclusive, and shall be in addition to all other remedies in its favor existing at law or in equity.

18. **CHOICE OF LAW AND JURISDICTION.** This Agreement 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.