

Cuyahoga Molded Plastics Corporation
Terms and Conditions of Sales

1. **Offer: Acceptance.** All quotations covering Seller's goods are made and all agreements or purchase orders for said goods are accepted on the condition that the terms and conditions set forth herein shall be applicable thereto and shall supersede any provision on the Buyer's purchase order or other documents received by Seller which are at variance with or purport to be in addition to these terms and conditions. All such additional or varying provisions of Buyer's purchase order shall be deemed to be material deviations herefrom and of no force or effect. In any event, Buyer shall be deemed to have assented to all terms and conditions contained herein if part or all of the goods described herein are accepted by Buyer. All quotations are for immediate acceptance and are subject to approval if issued by a salesman or selling agent of Seller.

2. **Prices.** Prices are net and not subject to trade or other discounts and do not include local, state, or federal taxes or costs of special packaging and insurance, which, when applicable, shall be paid by the Buyer. Prices are subject to equitable adjustment upward at any time before delivery should economic factors beyond Seller's reasonable control, such as the price of materials or government actions, necessitate such action.

3. **Payment.** Unless otherwise specified on Seller's invoice, the amount thereof (other than with regard to molds and related equipment) shall be due and payable within 30 days of the invoice date. With regard to molds and related equipment, Buyer shall pay one third of the total purchase price upon Seller's acceptance of the order, one third upon Seller's completion of the mold, and one third when the same has been approved by Buyer. If, in the judgement of Seller, the financial condition of Buyer at any time does not justify shipment on the terms originally specified, Seller may require full or partial payment in advance or may ship C.O.D. and, in the event of Bankruptcy or insolvency of Buyer, Seller shall be entitled to cancel any order then outstanding and shall be entitled to reimbursement for all costs and expenses theretofore incurred, plus incidental and consequential damages. Payments not received when due are delinquent. Interest at a rate of 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is less, may be assessed on a monthly basis on delinquent accounts, and Buyer agrees to pay same.

4. **Shipment.** The goods shall be shipped F.O.B. Seller's factory and Seller shall exercise sole discretion in selecting a method of shipment, unless preferred method of shipment is specified in writing by Buyer and Seller does not object to such method by notice to buyer. Title to the goods shall pass buyer upon delivery thereof by Seller to the carrier or delivery service. Thereupon Buyer shall be responsible therefor.

5. **Quantity.** Buyer agrees to accept over-runs of goods not exceeding 10% of the quantity ordered, and such over-runs or under-runs shall be paid or discounted, respectively, pro rata.

6. **Time of Delivery.** Quoted delivery dates are Seller's best estimates of when the goods will be shipped. Seller assumes no liability for losses, expenses, incidental, or consequential damages due to delays.

7. **Warranty.** Seller warrants that the goods shall be free from defects in material and workmanship for a period of 90 days from the date of shipment. Within the warranty period Seller agrees to repair or replace such goods which are returned to Seller with shipping charges prepaid and which are determined by Seller to be defective. This warranty shall not apply to any goods that have been subjected to misuse, negligence, or accident, or misapplied, modified or improperly installed.

8. **DISCLAIMER; LIMITATION OF LIABILITY.** EXCEPT AS SET FORTH IN PARAGRAPH 7, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, NOR ANY AFFIRMATION OF FACT OR PROMISE IS MADE BY SELLER WITH RESPECT TO GOODS. SELLER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL LOSSES, DAMAGES OR EXPENSES, DIRECTLY OR INDIRECTLY ARISING FROM A SALE, HANDLING OR USE OF THE GOODS, OR FROM ANY OTHER CAUSE RELATING THERETO, AND SELLER'S LIABILITY HEREUNDER IN ANY CASE IS EXPRESSLY LIMITED TO

THE REPLACEMENT (IN THE FORM ORIGINALLY SHIPPED) OF GOODS NOT COMPLYING WITH THIS AGREEMENT OR, AT THE SELLER'S ELECTION, TO CREDITING BUYER WITH AN EQUAL AMOUNT TO THE PURCHASE PRICE OF SUCH GOODS, WHETHER SUCH CLAIMS ARE FOR BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE.

9. **Claims – Notice of Defects.** Buyer agrees to accept delivery of the goods unless they do not conform to the description herein or are defective. Seller will give consideration to settlement of Buyer's claims, but in no event shall Seller be liable on any claims unless notice of the claim is received by Seller within the following time limitations. 30 days after delivery for shortages in weight or count, and, on all other claims. 30 days after use or 90 days after delivery, whichever is earlier. Buyer shall afford Seller prompt and reasonable opportunity to inspect all goods as to which any is made. If Seller and Buyer are unable to reach settlement of any claim relating to goods covered hereby, Buyer must institute legal action against Seller within one year after such claim arises and thereafter, all such claims shall be barred notwithstanding any statutory period of limitations to the contrary.

10. **Tolerances.** All dimensions shall be subject to commercial tolerances unless otherwise specified by Buyer and provided that Seller does not object to such specifications.

11. **Patents.** Seller makes no warranty that the goods will be delivered free of the rightful claim of any party by way of infringement or the like. Buyer shall notify Seller if making, using or selling the goods will constitute infringement of a patent, and Buyer shall indemnify Seller, its successors and assigns against all liabilities, expenses and damages resulting from any claim of infringement of any patent. If Seller determines, in its sole discretion, that making using or selling the goods would result in the infringement of any patent, Seller reserves the right to withdraw the quotation and to cancel this agreement, without liability on the part of the Seller.

12. **Molds and Related Equipment.** Buyer shall furnish molds and related equipment in accordance with the descriptions as outlined in the quotation, or shall authorize Seller, at the expense of Buyer, to construct the same, Buyer shall pay for all preparatory work done on molds or related equipment, and shall pay for any repairs thereof or changes thereto.

13. **Changes.** Prices are subject to adjustment if Buyer requests change in specifications, quantities or delivery requirements. All of the terms and conditions of this invoice shall apply to goods to which such changes are made, and no modification in the terms and conditions hereof shall be binding on Seller unless contained in writing signed by an officer of Seller and expressly stating both that such terms are being modified and the nature of such modification.

14. **Cancellation.** Buyer may cancel this order, in whole or in part, upon both written notice to the Seller and Payment of cancellation charges, which charges shall be the sum of: (1) the price of all goods that have been delivered and not previously paid for, plus (2) the actual cost incurred by Seller that is properly allocable to the goods not delivered at the time of decrease or cancellation, including, without limitation, the costs of molds or related equipment and materials purchased for use in producing such goods, plus (3) the profit, including reasonable overhead, that Seller would have made from full performance by Buyer, plus (4) the costs of engineering, molds, prototypes and similar items produced for Buyer, plus (5) the reasonable costs incurred by Seller in making settlement and effecting collection hereunder. Buyer may require delivery of any goods for which payment is made.

15. **Effect of Breach on Risk of Loss.** Breach of this agreement by Seller shall have no effect on the provisions controlling the risk of loss of the goods and Sections 2-510(1) and 2-510(2) of the Uniform Commercial Codes shall have no effect on this agreement.

16. **Information.** Buyer shall assert no claim, other than a claim for patent infringement against Seller with respect to any information that Buyer may have disclosed or may hereafter disclose (in accordance with Paragraph 11 above) to Seller in connection with the goods to be provided hereunder. All such disclosures shall be nonconfidential and shall be received free from all restrictions, except restrictions provided under the patent law.

17. **Nondelivery.** Seller shall not be liable for any failure to deliver hereunder when delivery has been made impractical by fire, embargo, strike, difference with employees, accidents, Acts of God, failure, inability to secure materials from usual sources of supply or any other circumstances beyond Seller's control, either of the foregoing nature or of any other nature.

18. Interpretation. Rights and liabilities arising out of this agreement shall be determined under the Uniform Commercial Code as enacted in Ohio, and the courts of Ohio shall have exclusive jurisdiction over disputes arising from this agreement.

19. Compliance with Laws. Seller shall comply with all applicable federal, state and local laws, and specifically represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

20. Miscellaneous. This agreement and the terms and conditions stated herein contain the entire agreement between the parties relating to the subject matter hereof, and any representation, promise, condition, affirmation of fact, course of prior dealing and usage of trade not incorporated herein shall not be binding on either party. Except as may be expressly provided to the contrary in writing, the provisions of this contract are for the benefit of the parties hereto and not for any other person.