

TERMS AND CONDITIONS

1. **COMMERCIAL TRANSACTION:** Buyer acknowledges it is a merchant with bargaining power equal to Seller's bargaining power. Buyer agrees that the terms contained herein are commercially reasonable and conscionable.
2. **ACCEPTANCE OF TERMS:** This acknowledgement contains the terms and conditions of the contract between Buyer and Seller. The transaction of business following receipt of this acknowledgement constitutes express acceptance of the terms herein. Terms contained in Buyer's purchase orders are expressly rejected and shall not bind Seller nor affect or invalidate any terms contained herein. Terms and conditions herein shall not be modified except upon Seller's express written agreement. All orders are subject to acceptance by Seller.
3. **QUOTATIONS:** Quotations are based upon the completion of Buyer's order in one production run. Prices will vary if multiple preproduction samples are requested. This price quotation shall not apply if Buyer orders an amount less than the original quoted quantity. Alternations or modifications of the original quotation or specifications, including changes in quantity, material, design, or other features, must be communicated in writing by Buyer to Seller. Such changes may increase prices. Buyer shall be liable for and reimburse Seller for any and all work in process, accepted or not accepted, at the time of Seller's receipt of notice of changes. All prices are F.O.B. Seller's plant. Buyer shall arrange for transportation of goods. Buyer is responsible for goods after removal from Seller's facility. This quotation expires and is null and void sixty (60) days from the date specified on quotation.
4. **PAYMENT OF PURCHASE PRICE:**
 - A. Purchase orders for tooling. See quote for actual terms.
 - B. Purchase orders for production of parts. Purchase price is due and owing thirty (30) days from the invoice date. Accounts thirty (30) days past due will be charged interest at a rate of 1.5% per month, 18% per annum unless the Seller agrees, in writing, to vary these terms. Payment must be according to the above terms. Time is of the essence. If Buyer fails to follow the payment schedule(s) above or if Seller anticipates Buyer may be unable to perform hereunder, Seller may terminate this contract, defer, discontinue or suspend shipments, or demand adequate assurance of Buyer's performances.
5. **LIEN, RIGHT OF DETAINER AND RIGHT OF REPOSSESSION:** Seller shall have a security interest and a lien on molds, tools, patterns, dies, parts, materials, or other goods in Seller's or Buyer's possession. Said security interest and lien shall be security for payment for any goods or services (including work-in-process and materials ordered for production for which Seller has not been paid (whether invoiced or not). If Buyer fails to pay the full purchase price of goods or molds, Seller shall have the right to repossess unpaid for goods or, at Seller's discretion, exchange the mold with a quantity of goods whose value equals the mold value. The value of the mold is determined by its invoice price. The value of goods is determined by Seller's choice of the raw material cost or the invoice price of the goods.
6. **QUANTITIES:** All shipments and orders are approximate. As is commercially reasonable, shipments may vary ten percent (10%) more or less than ordered. This provision may not be altered except by Seller's express written agreement.
7. **SAMPLES:** The initial sample run shall establish acceptable standards for Buyer's order. Buyer shall provide sample approval prior to production runs. Absent written approval, Seller's written acknowledgement shall constitute sample approval.
8. **BUYER'S RESPONSIBILITY FOR SELECTION OF MATERIALS AND DESIGN:** Selection of materials, design and usage shall be the sole responsibility of Buyer. Any suggestions or recommendations made by Seller regarding materials, design or usage shall be strictly gratis and shall not in any manner alter or diminish Buyer's exclusive responsibility and liability for selection of materials, design or usage. Seller makes no warranty of any kind, whether expressed or implied, regarding selection of materials, design or usage.
9. **RIGHT OF INSPECTION:** Buyer has ten (10) days from the delivery of goods within which to inspect goods for reasonable conformity to preproduction samples. Written notice of nonconformity or rejection must be delivered to Seller within ten (10) days of delivery. Buyer acknowledges that perfect conformity is not possible. Conformity shall be determined by the general standards of the plastics industry.
10. **TOOLING:** Tools, dies and molds are considered Buyer's property and shall be for Buyer's use only. Buyer is responsible for insuring Buyer's property.
 - A. Tooling that is designed and built by Seller is intended to operate in special machines and fixtures. The charges to the Buyer as set forth in this quotation represent only the Buyer's proportionate cost thereof.
 - B. Seller will retain tooling without storage charge to Buyer and for exclusive use in connection with production orders of customer. In the event Buyer has not placed production orders with Seller such that Buyer's tooling has not been used for two (2) years or more, Seller may charge Buyer for reasonable storage fees.
 - C. If tooling has not been used for a period of 3 years, it shall be considered obsolete and shall become the property of Seller upon 90 days written notice to Buyer, unless Buyer, within said 90-day period, shall take possession of tooling.
11. **INSERTS, COMPONENTS, MOLDS:** Inserts, component parts or molds supplied by Buyer shall exceed by five percent (5%) the number required to fill the order, shall be delivered F.O.B. Seller's acceptance. Seller assumes no liability for damages to Buyer's mold or parts caused by defective items supplied by Buyer. Seller may ship and bill goods without inserts, components or molds if said items are not supplied in accordance with Seller's production schedule.
12. **TAXES:** Seller's prices do not include federal, state, local or any other taxes. Buyer shall promptly pay said tax upon Seller's written demand.
13. **BUYER'S CHANGE OF DELIVERY DATE:** If Buyer changes or alters the date of product shipment or delivery after submission of a purchase order, Seller reserves the right to cancel the order and/or collect monies from Buyer sufficient to cover the cost of inventory purchased in contemplation of processing Buyer's order.
14. **CANCELLATION OF ORDERS:** All cancellations must be in writing. Buyer shall be responsible for all work in-process and/or completed up to Seller's receipt of Buyer's cancellation. Buyer's responsibility includes but is not limited to liability for work-in-process, materials received, production runs, restocking fees, tooling, shipping and any other costs incurred by Seller prior to receipt of cancellation, plus a fifteen percent (15%) surcharge on said costs. Buyer shall make payment pursuant to this provision within ten (10) days of cancellation.
15. **LIMITATION OF WARRANTIES AND REMEDIES:** SELLER EXCLUDES ALL WARRANTIES WHATSOEVER WITH REGARD TO GOODS PRODUCED FOR BUYER'S ORDER. SELLER EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES; INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS, IMPLIED WARRANTY OF DESIGN, AND ALL OTHER IMPLIED WARRANTIES. SELLER EXPRESSLY EXCLUDES ALL EXPRESS WARRANTIES EXCEPT AS STATED HEREUNDER. ALL GOODS ARE SOLD "AS IS." Buyer's sole remedy in any action at law based on performance hereunder (other than an action based on breach of a warranty, which warranties are expressly excluded) shall be limited to the repair or replacement of nonconforming goods or parts or, at Seller's option, a refund of the purchase price. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR ANY CONSEQUENTIAL OR ECONOMIC DAMAGES OR LOSS, LOST PROFITS OR CONSEQUENTIAL DAMAGES FOR PERSONAL INJURY; BUYER AGREES THAT THIS PROVISION IS CONSCIONABLE.
16. **INDEMNIFICATION, HOLD HARMLESS:** Buyer agrees to defend, indemnify and hold harmless the Seller, its employees, agents, representatives and subcontractors from and against any and all claims, suits, actions, losses, liabilities, damages, costs, attorney's fees and other expenses of any kind whatsoever arising out of or related to any product manufactured, designed or produced by Buyer and into which Buyer (or another party at Buyer's direction) incorporated or intended to incorporate the product manufactured by Seller. This provision shall apply to all claims and actions, whether based in strict liability, Buyer's or Seller's negligence, breach of implied or express warranty, infringement of patents or trademarks, or any other legal theory. Buyer agrees that said defense will be provided by counsel of Seller's choice.
17. **INSURANCE, RISK OF LOSS:** Buyer shall purchase and maintain product liability and comprehensive general liability insurance to cover claims arising out of the use of products into which Buyer incorporated Seller's products. Said insurance shall extend to Seller and Seller's employees, agents, representatives and subcontractors. Seller's failure to require proof of said insurance shall not constitute a waiver of this requirement. Buyer is responsible for all risk of loss to molds, work in progress, and finished goods while in the possession of Seller or its agents or subcontractors.
18. **FORCE MAJEURE:** Seller is not responsible for delays or nonperformance if the delay or nonperformance is caused by acts of God, floods, fires, explosions, storms, transportation difficulties, strikes, lockouts or other labor or industrial disturbances; wars; laws, rules, orders or actions of any courts, agency or other instrumentality of any government; reduction or unavailability of supplies, products or materials; failure of performance by raw material suppliers, tooling subcontractors, or any other subcontractor upon whom Seller may rely; failure of presupposed conditions, commercial impracticability, or any other cause(s) beyond Seller's control. In the event of any condition listed or similar to those listed, Seller shall have the right to suspend delivery or allocate materials among customers in any manner which Seller determines is reasonable.
19. **LAW:** This contract shall be interpreted and governed by the laws of the State of Minnesota. Any disputes arising out of business conducted hereunder shall be venued in the district courts of the State of Minnesota.
20. **ENTIRE AGREEMENT:** This document contains the entire agreement between the parties hereto. All prior or contemporaneous oral agreements between the Seller and Buyer are contained within this document. Any subsequent oral or written agreements between the parties shall not modify or alter the terms hereunder unless such changes are in writing and signed by the Seller.
21. **SEVERABILITY:** The invalidity or unenforceability of any provision of this contract shall not affect the validity of any other provision.