

## TERMS AND CONDITIONS OF SALE

**TERMS OF ACCEPTANCE:** SELLER'S QUOTATION OR ACCEPTANCE IS EXPRESSLY LIMITED TO ACCEPTANCE OF THE TERMS CONTAINED HEREIN. BUYER'S ACCEPTANCE OR DELIVERY OF, OR PAYMENT FOR, SELLER'S GOODS SHALL CONSTITUTE BUYER'S AGREEMENT TO THESE TERMS. TERMS THAT ARE PRINTED ON OR CONTAINED IN A PURCHASE ORDER OR OTHER FORM PREPARED BY BUYER WHICH ARE ADDITIONAL TO, IN CONFLICT WITH, OR INCONSISTENT WITH THE TERMS CONTAINED HEREIN ARE REJECTED BY SELLER AND SHALL HAVE NO FORCE OR EFFECT.

**SECURITY INTEREST:** Seller retains a purchase money security interest under the Uniform Commercial Code as enacted in the State of Ohio in goods sold to BUYER until payment in full has been made. In the event of default by Buyer under this Agreement, Seller shall have all the rights and remedies of a secured creditor under Ohio U. C. C. provisions. Buyer agrees to execute financing statements and other documents as Seller may request in order to perfect Seller's security interest.

**WARRANTY DISCLAIMER:** Seller warrants that goods will be free from material defects. Seller further warrants that goods will conform to the dimensional specifications of the Agreement. NO DESCRIPTIONS OTHER THAN THOSE REFERENCED HEREIN SHALL BE DEEMED A WARRANTY OR OTHERWISE HAVE ANY LEGAL EFFECT. IF SAMPLES WERE EXHIBITED TO BUYER, THEY WERE FOR GENERAL INFORMATION PURPOSES ONLY AND SHALL NOT BE DEEMED A WARRANTY BY SAMPLE OR MODEL OR OTHERWISE HAVE ANY LEGAL EFFECT. THE WARRANTIES SET OUT HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS. SELLER SHALL HAVE NO TORT LIABILITY TO BUYER WITH RESPECT TO ANY OF THE GOODS AND SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING FROM ANY PRODUCT DEFECT, DELAY, NONDELIVERY, RECALL OR OTHER BREACH. Seller will, at its option, repair or replace any goods which fail to meet the warranties in this Agreement, provided Seller is promptly notified of any defect and such goods are returned freight prepaid and insured by Buyer to Seller's plant within six (6) months after delivery. Repaired or replaced goods will be returned to Buyer, freight prepaid and insured by Seller. Goods not qualifying for repair or replacement under this Warranty will be returned at Buyer's risk and expense. Seller may charge at its standard rates for handling of such goods. THIS PARAGRAPH STATES BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.

**FORCE MAJUERE:** Seller shall not be liable to Buyer for any delay or failure in performance caused by acts beyond Seller's control, including but not limited to: acts of God, war, vandalism, sabotage, accidents, fires, floods, strikes, labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts or equipment, material, labor, or transportation, acts of any unit of government or a governmental agency, or any similar cause.

**LIMITATION OF LIABILITY:** THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, OR OTHERWISE WITH RESPECT TO THE GOODS, OR ANY SERVICES IN CONNECTION WITH THE GOODS, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PARTICULAR GOODS. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES AND PROFITS, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR SELLER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS BUYER'S EXCLUSIVE REMEDY.

**BUYER'S OBLIGATION IF ORDER CANCELLED:** If Buyer cancels an order before accepting and paying for all parts manufactured by Seller, Buyer shall be responsible for paying Seller for costs Seller incurred within 180 days prior to Buyer's cancellation, including: (1) any parts ordered and in inventory, (2) any unused packaging materials, (3) any unused materials used to make the parts, including but not limited to compounds, metal hardware, and special chemicals, and (4) Seller's costs and expenses in connection with any repairs or maintenance made to the molds and tooling used to make the parts. BUYER HAS NO RIGHT TO THE RETURN OF THE MOLDS AND TOOLING UNTIL IT HAS PAID ALL OUTSTANDING RECEIVABLES AND IT HAS PAID THE EXPENSES SET FORTH IN THIS PARAGRAPH. This provision is intended to supplement, and not replace, any and all other remedies Seller may have under the U.C.C.

**COMPLETE AGREEMENT:** THIS AGREEMENT CONTAINS THE FULL UNDERSTANDING OF THE PARTIES AND SUPERSEDES ALL OTHER AGREEMENTS, WRITTEN OR ORAL, REGARDING ITS SUBJECT MATTER. NO ADDITIONAL TERMS, CONDITIONS, CONSENT, WAIVER, ALTERATION, OR MODIFICATION SHALL BE BINDING UNLESS IN WRITING AND SIGNED BY BOTH PARTIES.

**INDEMNIFICATION:** Buyer shall be responsible for all goods and materials upon receipt from Seller and Buyer shall be liable for all claims, losses, costs, expenses, and other damages resulting from or arising out of the acts or omissions of Buyer and relating to the goods or materials. Buyer expressly agrees to indemnify and hold Seller harmless from any and all loss, costs, liability, expense, and attorneys' fees arising from the acts or omissions of Buyer. Further, Buyer shall indemnify and hold Seller harmless from and against any and all such claims, losses, costs, expenses, and other damages resulting from or arising out of any failure of Buyer or Buyer's employees, agents, and subcontractors (other than Seller) to comply with any applicable governmental regulations and/or statutes.

**REMEDIES:** The rights and remedies herein reserved to Seller are cumulative and in addition to any other or further rights and remedies available at law or in equity. No waiver of any breach by Buyer of any provision of these terms will constitute a waiver of any other breach of such provision.

**SEVERABILITY:** If any provisions of these Terms and Conditions of Sale shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any other provisions herein, which together shall be construed as if such illegal and unenforceable provision or provisions had not been included herein.

**GOVERNING LAW:** The Contract formed by acceptance of Buyer's Order shall be governed by and construed in accordance with the laws of the State of Ohio. Any and all actions, claims or lawsuits relating to the contract formed by acceptance of the Buyer's Order shall be subject to the exclusive jurisdiction of either the Court of Common Pleas, Geauga County, Ohio or the United States District Court for the Northern District of Ohio.