



PM MOLD COMPANY INC. TERMS AND CONDITIONS OF SALE

1. General. The Terms and Conditions of Sale outlined herein shall apply to the sale by PM Mold Company Inc. ("Company") to sell the goods and/or services described herein to the buyer to which it is directed (Buyer") in accordance with these terms and conditions of sale (these "Terms and Conditions") No additional or different terms or conditions will be binding upon Company unless specifically agreed to in writing. Company hereby objects to any such additional or different terms or conditions contained in any purchase order or other communication heretofore or hereafter received from Buyer. No accepted offer may be cancelled or altered by Buyer except upon terms and conditions accepted by Company in writing.

Any clerical errors in Company's quotations, acknowledgements or invoices are subject to correction by Company. This document, incorporated by reference into the Quote agreed to by Buyer, and such Quote shall be the entire agreement between the parties on the subject of the transactions described herein (this "Agreement"). Company's rights and remedies hereunder shall be cumulative.

2. Governing Law. **THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL BE GOVERNED EXCLUSIVELY BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS, INCLUDING THE UNIFORM COMMERCIAL CODE, WITHOUT GIVING EFFECT OR REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

3. Prices. The prices stated herein are based on the quantities specified for delivery in a single lot unless otherwise indicated herein. All prices are payable in U. S. Dollars and are subject to change upon notice and are subject to adjustment by Company for any change made by Buyer and approved by

Company in quantities, delivery or other terms hereof, and the price of goods on order but unshipped will be adjusted to the price in effect at the time of shipment. All prices are F.O.B Company's factory or other place of manufacture. Price does not include freight charges and installation services unless otherwise stated in the quotation or confirmation.

4. Payment Terms. Upon execution of an order, Buyer shall make a down payment of $x\%$ ¹ of the total order purchase price upon signing of such order. Unless otherwise agreed by Company in writing, or unless specifically set forth in a Company Quote, payment terms are remaining outstanding balance net thirty (30) days after shipment of the order or any portion thereof except when Company requires payment in advance; provided, however, that payment of the full amount of any invoice shall become immediately due and payable in the event that any payment thereon is not made when due. Buyer agrees to pay a late charge of 1.5% per month (or the highest rate allowed by law, whichever is less) on any late payments. In the event that any payment thereon is not made when due, Company reserves the right to stop all shipment and manufacturing of any order that Buyer has placed. Company may demand that Buyer makes all payments of the full amount of any invoice that has a remaining outstanding balance net thirty (30) days after shipment of the order and before Company resumes the shipment and manufacturing of any order that Buyer has placed. Payments are to be made only at Company's main office, unless otherwise agreed in writing. Should any payment, subsequent installment or the balance due (collectively, the "Balance Due") remain unpaid by Buyer and the Company has not referred collection of the Balance Due to an attorney then the Company shall have the right to charge all costs and fees the Company incurs by a third-party company collecting on behalf of the Company to the Buyer. If the Company engages an attorney to collect any Balance Due, Buyer agrees to pay all costs, including attorneys' fees, arising in connection with the collection of late payments.

In the event that Company is unable to collect on unpaid balances, Company may avail itself of the lien protections and remedies provided under the Illinois Tool and Die Lien Act, 770 ILCS 105/0.01 *et seq.*, including but not limited to repossession of the tools, molds and other items sold to Buyer.

5. Taxes and Other Charges. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Company and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Company is required to pay any such tax, duty, custom, fee, interest or charge, Buyer shall reimburse Company therefor on demand.

¹ The percentage of down payment required pursuant to this paragraph 4 will be specified in a specific purchase order.



6. Shipment, Risk of Loss and Title. Unless otherwise specified in writing by Buyer, Company shall place the goods in the possession of a carrier and make such a contract for their transportation as may be reasonable, having regard for the nature of the goods and good commercial standards. If Buyer does not specify the carrier upon placement of the order, Company shall have the right to designate the carrier. Risk of loss of the goods shall pass to Buyer at the time the goods are tendered for shipment. Title to the goods shall remain with Company until payment in full is received by Company. Cancellation, modification, suspension or delay in shipment of Buyer's order will not be accepted on terms that will not fully indemnify Company against loss.

7. Delivery and Claims. Unless otherwise provided in this document, goods shall be delivered to Buyer F.O.B. Company's loading dock in Schaumburg, Illinois. Buyer shall bear all expenses paid or incurred by Company in delivering the goods. Shipments, deliveries and performances of work shall at all times be subject to the approval of Company's credit department. Company reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. All delivery dates are approximate. All claims for shortage or other errors in delivery must be made in writing within ten (10) business days after delivery of the goods with respect to which the claim is made, and failure to give such notice shall constitute unqualified acceptance and waiver of all such claims by Buyer. Any claims for loss or damage to goods in transit shall be made to the carrier and not to Company.

8. Cancellation. In the event of a cancellation of an order, any completed portion of the order will be invoiced and payable at the price specified herein within 30 days of invoice. All special materials, tooling, and equipment procured for the performance of the order will be invoiced and payable in the amount of Company's cost.

In addition to the invoice, in the event of a cancellation of an order, Company shall have the option of invoicing the Buyer a cancellation fee equal to 15% of the purchase order.

In the event of an approved cancellation by Buyer, Company shall have the option (in lieu of the preceding sentences) to keep any down payment received as liquidated damages. The parties agree that the liquidated damages in the previous sentence are appropriate because (1) the parties by inserting the provision intend to agree in advance to the settlement of damages that might arise from the breach; (2) the amount of liquidated damages is reasonable at the time of this agreement,

bearing a close relationship to the damages which might be sustained by Company in the event of any cancellation by Buyer, and (3) actual damages would be uncertain in amount and difficult to prove in such an event.

9. Force Majeure. Company shall not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond Company's reasonable control, including, without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, flood, fire, accident, strike, slowdown, war, act of terrorism, riot, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by such cause beyond Company's reasonable control. Nothing outlined in this section shall affect any payment obligations of the parties.

10. Assignment. The Company shall have the right to assign all of its right, title and interest in this Contract without notice to the Buyer. Buyer shall not assign or transfer this Contract without the prior written consent of the Company.

11. Containers. Pricing includes packaging in accordance with industry standard practices and as per applicable quotes and purchase orders. An extra charge may be imposed for compliance with special packaging instructions. All returnable containers used in connection with shipments of Company's goods are the property of Seller and are loaned to Buyer. Buyer shall use such containers only for reasonable storage of Company's goods originally delivered therein and shall return such containers in good condition when empty. Buyer will pay return freight charges on such empty containers from points in the continental United States.

12. Security Interest. Buyer hereby grants to Company a UCC §9 Security Interest in all Equipment identified in the Contract between the parties. The Contract between Company and Buyer shall be sufficient to satisfy the requirement of a written agreement under UCC §9-203. Buyer hereby agrees that granting the Security Interest includes attachment of the Buyer's Equipment. Company has provided value to Buyer as defined under UCC §1-201(44) and the parties agree that this consideration is sufficient. The Equipment provided to Buyer by Company shall continue at all times to remain as personal property, and at no time shall become real property, a fixture or any part of the improvements in which they were installed no matter how they have been attached or integrated into the existing structure of the Buyer. Company reserves all rights and interests and this UCC §9 Security Interest in the Equipment as a way to secure payment of all the unpaid amounts due as well as any other obligations of the Buyer. Buyer hereby grants to the Company the limited authority to



file a UCC-1 and UCC-2 Financing Document with the State and County in which the property is located to perfect its security interest in the Equipment. Buyer agrees upon request to do all things and acts necessary to perfect and maintain said Security Interest and shall protect Company's interest by adequately insuring the Equipment against loss or damage from any cause.

13. Warranty. Company warrants that all goods delivered hereunder shall at the time of delivery to the carrier shall be free from defects in materials and workmanship. If any such goods shall be proved to Company's satisfaction to be nonconforming to such warranty at the time of delivery, then the affected good will be repaired or replaced free of charge, or Company will refund the purchase price of the affected product. Such repair, replacement or refund (whichever Company determines, in its discretion, to provide) shall be Company's sole obligation and Buyer's exclusive remedy for any nonconformity or deficiency in goods furnished hereunder and shall be conditioned upon Buyer's return of such goods to Company. In order for any warranty provided in this section to be applicable and effective, Buyer must provide documentation of all maintenance performed by Buyer in accordance with the agreed upon maintenance schedule. ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY DISCLAIMED.

14. Time Limitation for Claims by Buyer. All claims for breach of this contract including all claims for breach of warranty shall be made within one hundred eighty (180) days after delivery of the goods that are the subject of such claim or shall be forever barred. This provision does not extend any statute of limitation period. Instead, this provision is intended to shorten the statute of limitations in most instances. It is solely Buyer's responsibility to determine whether the goods are suitable for any given application, purpose or use that may be intended by Buyer for such goods. Accordingly, any description of the goods (other than the specifications), whether in writing or made orally by Company or Company's employees, representatives or agents, is for the sole purpose of identifying the goods and shall not be construed as an express warranty by Company.

15. Infringement. Company will, at its expense, defend any suits that may be instituted against Buyer for alleged infringement of any U.S. patent, trademark or copyright relating to Company's own products and goods provided by Company, and pay any final damage award therein, provided Buyer shall have made all payments then due hereunder, shall

give Company immediate notice in writing of any such suit, shall transmit to Company immediately upon receipt all processes and papers served upon Buyer, and shall permit Company, through its counsel, to defend or settle the same either in the name of Buyer or in the name of Company, giving Company all needed information, assistance and authority to enable Company to do so. Further, if the result of any such suit is a determination or acknowledgement of infringement, then Company shall, at Company's option (i) obtain for Buyer the right to continue to use the goods purchased from Company, (ii) replace the same with non-infringing goods, (iii) modify such goods so that they are non-infringing, or (iv) remove such goods and refund to Buyer the undepreciated portion of the purchase price. To the extent that any goods that Company furnishes to Buyer are manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer, Company shall not be liable for, and Buyer shall indemnify and hold harmless Company from and against, any and all losses, liabilities, damages, claims and expenses (including attorneys' fees and other costs of defense) incurred by Company as a result of any claim of patent, trademark, copyright or trade secret infringement, or infringement or any other proprietary rights of third parties.

16. Confidential Information. All proprietary and confidential information, including manufacturing or business information, supplied by Company shall remain Company's property. Such information shall not be reproduced, used or disclosed to others by Buyer without Company's prior written consent. Confidential information shall not include information Buyer can demonstrate: (i) is generally available to the public other than as the result of disclosure by Buyer in violation of this agreement or any other confidentiality obligation; (ii) is legally in Buyer's possession at the time of receipt from Company; or (iii) is obtained by Buyer from a third party who is in lawful possession of the information and who has the right to make disclosure thereof, but only if the third party has authorized Buyer's use thereof. Immediately upon termination of this agreement, all confidential information together with any copies thereof shall be returned to Company.

17. Waiver; Setoff. No claim or right arising out of a breach hereof can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in a writing signed by the aggrieved party. Company may set off any amount due from Buyer against any amount which may become due to Buyer hereunder. Neither Buyer nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts, which become payable to Company under this Agreement or otherwise.



18. Limitations on Damages. Except as otherwise agreed in writing by Company, Company's liability with respect to the goods and/or services sold hereunder shall be limited to the warranties provided in Section 13. And, with respect to any breaches of its contract with Buyer, shall not be greater than the contract price of the goods or services that are the subject of the claim.

COMPANY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR CONTINGENT DAMAGES WHATSOEVER, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO GOODS AND/OR SERVICES SOLD BY COMPANY, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND COMPANY HEREBY DISCLAIMS ALL SUCH DAMAGES.

Without limiting the generality of the foregoing provision, Company specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of goods or any associated equipment, cost of capital, cost of substitute goods, facilities or services, down-time, shut-down or slow-down costs, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages.

19. Indemnification. Buyer shall indemnify Company and hold Company harmless from all losses, costs and expenses (including reasonable attorney's fees) incurred by Company in the defense of any lawsuit, proceedings or claims that may be asserted against Company based upon alleged defects in or failures of the Equipment where such defects or failures are the result of the actions of persons or companies other than Company.

Buyer shall indemnify Company against any and all losses, liabilities, damages and expenses (including reasonable attorney's fees) which Company may incur as a result of any claim by Buyer or others arising out of or in connection with the goods and/or services sold hereunder and based on (i) product or service defects not proven to have been caused solely by Company's negligence or (ii) any actual or alleged infringement of any third party's intellectual property rights arising from or related to the production of products in accordance with Buyer's design or specifications.

20. Governing Language. The English-language version of these Terms and Conditions shall govern and control any translation hereof into any other language.

21. Tooling. Tooling billed to Buyer becomes the property of Buyer upon payment in full. Company shall be responsible only for general maintenance for any tools and molds left at Company's premises, but shall not be responsible for any special maintenance, wear and tear, or other deterioration outside of warranty for such tools left at Company. Company shall not be responsible for general maintenance or any special maintenance, wear and tear, or other deterioration outside of warranty for tools and molds not left at Company's premises. Replacement or rebuilding required at the end of the tooling's normal useful life may be billed at additional cost to Buyer. Tooling revisions due to changes in normal useful life may be billed at additional cost to Buyer. Tooling revisions due to changes in specifications, tolerances, or other Buyer requirements will be done at additional cost to Buyer.

22. Over-Runs and Under-Runs. Unless otherwise specified on the order, over-runs or under-runs not exceeding 10% of the quantity ordered are acceptable.

23. Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

24. Severability. In the event that one or more of these terms or conditions of this Agreement is held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.

25. Exclusive Jurisdiction and Venue. The Circuit Court of Cook County, Illinois shall have exclusive jurisdiction of any dispute between the parties regarding this Agreement and all related issues. The Buyer hereby submits itself to this court's jurisdiction. In the event of a lawsuit, Buyer and Company each agree not to file any motion or defense asserting that the Circuit Court of Cook County, Illinois does not have jurisdiction over the parties and the subject matter.

The Circuit Court of Cook County, Illinois shall have exclusive venue of any dispute between the parties regarding this Agreement and all related issues. The Buyer hereby submits itself to this court's venue. In the event of a lawsuit, Buyer and Company each agree not to file any motion or defense asserting that the Circuit Court of Cook County, Illinois is not a court of proper venue.

26. Non-reliance. The Parties acknowledge and expressly represent and warrant that they have relied solely upon their own judgment, together with advice of their counsel and their advisors when deciding whether to agree to the terms the



Agreement. Each Party further acknowledges and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other Party has been relied upon by it unless specifically contained and incorporated herein.

27. Mandatory Mediation. For any claim that exceeds \$10,000, prior to filing any lawsuit, the dispute shall first be subject to a non-binding, one day mediation session conducted in Chicago, Illinois by a single, disinterested mediator appointed by J.A.M.S. ("JAMS") in accordance with its rules. Unless otherwise agreed by the parties, the mediation shall commence within 15 business days of the effective date of the Notice of Dispute. No document submitted, nor anything stated by either party, during the mediation shall be admissible or discoverable in any subsequent arbitration proceeding or other civil adjudication relating to the dispute. The costs of mediation shall be shared equally by the parties.

28. Attorneys' Fees Award. If Buyer or Company commences legal proceedings to enforce any of its rights, the prevailing party shall be entitled to recover its out-of-pocket costs and expenses including reasonable attorneys' fees, court costs and other costs and fees from the other Party.

29. Authority to Bind. Buyer warrants to Company that it has the authority to execute and accept the Contract for the Equipment and Services, as well as the authority to order modifications, upgrades, repairs or alterations to the Equipment to be installed. Buyer's execution, delivery and performance of this transaction and all related documents do not in any way conflict, violate or constitute a default under any other Agreements, Articles of Incorporation, By Laws, Operating

Agreements, Partnership Agreements or any other instrument which is binding upon the Buyer.

30. Notices. Except as otherwise set forth in this Agreement, all notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be in writing and will be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with a nationally renowned (e.g., Federal Express, UPS) overnight delivery service for next day delivery, or (iii) five (5) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested. Notices to Company shall be sent to PM Mold Company Inc., 736-800 Estes Avenues, Schaumburg, Illinois 60193, or such other address for such purposes of which Company notifies Buyer. Notices to Buyer for breach or termination of this Agreement shall be sent to such address for Buyer set forth on the initial Order by Buyer, or such alternative address for such purposes of which Buyer provides BUYER written notice. In addition, BUYER shall have the right to send Buyer notices (other than notices for breach or termination) to Buyer's email address set forth on BUYER's Buyer contact list. Such email notification shall be deemed delivered on the day sent unless returned to sender.

31. Integration. This Contract represents the entire agreement between the parties and supersedes all prior negotiations and agreements relating to the subject matter hereof. No terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall be binding upon Company unless made in writing and signed and approved by an officer of Company. No modification of any of these terms will be affected by Company's shipment of goods following receipt of Buyer's purchase order, shipping request or similar forms containing printed terms and conditions conflicting or inconsistent with the terms herein.