

WABASH PLASTICS, INC. SALES TERMS AND CONDITIONS

The relationship between any buyer or purchaser as described in any sales or purchase instruments or agreements entered (collectively "Buyer") with Wabash Plastics, Inc., and their affiliated and related companies, subsidiaries, officers, directors, employees and agents (collectively "Seller") for the purchase of any goods, materials, merchandise, services, items or products covered thereby (collectively "Goods"), is conditioned upon the terms and conditions collectively contained in this instrument, the Seller's quote and invoice as tendered to the Buyer, as they may be amended and supplemented from time to time (collectively "Agreement") all of which are incorporated herein. Any additional or different terms or conditions proposed by Buyer are objected to and will not be binding upon, nor of force or effect on, Seller, unless specifically accepted in writing and signed by an authorized representative of the Seller.

1. **Terms of Acceptance.** If Seller accepts Buyer's order or offer, it does so provided Buyer agrees only to the terms and conditions of this Agreement, all of which are accepted by Buyer; and this Agreement supersedes Buyer's order form, if any; and supersedes and cancels all prior communications between the parties. This Agreement shall become a binding contract either when signed and delivered by Buyer to Seller and accepted in writing contemporaneously with the order by Seller, or at Seller's option, when Buyer shall have given to Seller orders, specifications, delivery dates, shipping instructions or instructions to bill and hold as to all or any part of the Goods herein described, or when Buyer has received delivery of the whole or in any part thereof, or when Buyer has otherwise assented to this Agreement. It is understood that Seller is not agreeing to meet all the Buyer's requirements for the Goods or seeking any type of exclusive supplier relationship by this Agreement.

2. **Representations, Limited Warranties and Disclaimers.** Seller only represents and warrants that the Goods shall be free of rot, rust, electrolytic corrosion and defects in material and workmanship for a limited warranty period of one (1) year after delivery or as otherwise provided for in Seller's product literature for the particular Goods in question (which literature is made a part hereof). Seller's complete responsibility for its warranty is limited to the furnishing of sufficient goods to replace defective Goods. SAID EXPRESSED WARRANTIES ARE THE SOLE WARRANTIES PROVIDED AND SELLER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNLESS OTHERWISE AGREED IN WRITING, SELLER MAKES NO REPRESENTATION OR WARRANTIES

RELATING TO THE DESIGN OR SPECIFICATION OF THE GOODS OR THE MATERIAL FROM WHICH THE GOODS ARE MANUFACTURED; BUYER HEREBY ACKNOWLEDGING THAT DESIGN, SPECIFICATION, AND MATERIAL ARE SOLELY AND EXCLUSIVELY BUYER'S RESPONSIBILITY.

3. **Examination of Goods.** Buyer shall make an examination as to quantity and quality of any Goods delivered hereunder immediately upon receipt and failure of Buyer to give notice of any claims within 30 days after receipt of such Goods shall be an unqualified acceptance of such Goods and a waiver of Buyer of all claims with respect thereto.

4. **Freight.** The Buyer shall pay all freight on all orders for Goods, FOB Evansville, Indiana.

5. **Defective or Non-conforming Goods.** If any Goods are defective or do not otherwise conform, Buyer shall give Seller written notice of such defect or non-conformity and a reasonable opportunity to cure, which opportunity shall be a minimum of 30 days after written notice of defect or non-conformity has been received by Seller.

6. **Seller's Right to Reject, Rescind or Cancel.** Seller shall have the right to rescind all or part of any offer, order or this Agreement if: (a) Buyer breaches or fails to perform any of its obligations under this Agreement; (b) Buyer becomes insolvent; (c) proceedings are instituted by or against Buyer under any federal or state bankruptcy of insolvency laws; (d) Buyer ceases operations; or (e) Seller determines in its sole discretion that it elects to reject, cancel or rescind.

7. **Tooling.** Unless established by a separate agreement entered into by the Buyer and Seller, it is understood that all tooling, molds and dies relating to the Goods (collectively "Tooling"), shall be the property of the Seller. If by a separate agreement the Tooling is established to be the property of the Buyer, it is understood that Seller will reasonably protect said Tooling, and will undertake routine maintenance of said Tooling. Any non-routine maintenance, repair or modification to such Tooling shall be the obligation of the Buyer, and all costs incurred by Seller for such non-routine maintenance, repair or modification will be reimbursed to the Seller by the Buyer. Further, where said Tooling is owned by the Buyer, it will be the Buyer's obligation: (a) to purchase all insurance relating to Tooling, (b) whenever practical to cause, each individual item of Tooling to be plainly marked to denote and indicate it is the Buyer's property, and (c) to be responsible for all taxes and assessments charged with

respect to said Tooling. "Tooling" as used in this Agreement does not include robotics, fixtures, software or other tangible property (collectively referred to as "Manufacturing Ancillaries"), created by Seller to facilitate manufacturing. Manufacturing Ancillaries shall be the property of the Seller.

8. **Buyer's Order Cancellation or Change.** With all orders being individually entered and processed immediately upon receipt, Seller reserves the right to charge back to the Buyer all costs incurred, or in the process of being incurred, by Seller at the time of Seller's receipt of such order cancellation or change from Buyer.

9. **Buyer's Additions.** Seller reserves the right to consider order add-ons as separate and new orders subject to this Agreement.

10. **Shortage Claims.** All claims for shortages must be made within 30 calendar days of date of shipment. All claims for damages or shortages resulting from shipment handling must be made to the carrier.

11. **Returned Goods.** No returned Goods from any source will be accepted by Seller, without written approval, together with shipping instructions, from Seller. If permission is granted, the returned Goods will be subject to a 20% handling charge plus freight cost. Non-standard items or fabricated items are not returnable.

12. **Deductions and Set-off.** Buyer shall have no right of deduction or set off against sums due Seller for Goods which have either been delivered or which Seller has undertaken to manufacture or deliver.

13. **Payment and Pricing Terms.** Buyer agrees to pay the net amount as set forth on the invoice within 30 days, unless other terms are stated in writing expressly agreed to by the parties. Buyer shall assume, in addition to the purchase price, all taxes, however designated, levied or based on such price of the Goods or on this Agreement, including, but not limited to, state and local sales, use, privilege or excise taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by Seller in respect of the foregoing, exclusive, however, of taxes on net income. Unpaid delinquent balances will be assessed a late fee charge of eighteen percent (18%) per month, and will continue to accrue each month on unpaid balances until paid in full. It is understood that any pricing with respect to this Agreement is based upon the information and specifications furnished by Buyer to Seller at the time this Agreement is entered. If any changes in such information or specification occurs, then it is understood the pricing and other terms and conditions of this Agreement may be amended and modified by the Seller.

14. **Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER, ITS EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM ANY AND ALL CLAIMS, DEMANDS, SUBROGATION CLAIMS BY BUYER'S INSURERS, CAUSES OF ACTION, CONTROVERSIES, LIABILITIES, FINES, REGULATORY ACTIONS, SEIZURES OF EQUIPMENT, LOSSES, COSTS, EXPENSES (INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERT WITNESS EXPENSES AND LITIGATION OR ARBITRATION EXPENSES), WHETHER BASED ON STATUTORY OR COMMON LAW, TORT (INCLUDING NEGLIGENCE) OR CONTRACT LAW, WHETHER FOR PERSONAL INJURY OR PROPERTY CLAIMS, ARISING FROM OR IN CONNECTION WITH:

- A. THE ACTS OR OMISSIONS OF THE BUYER AND BUYER'S EMPLOYEES, AGENTS OR REPRESENTATIVES;
- B. THE DESIGNS AND SPECIFICATIONS PROVIDED BY BUYER AND THE MATERIAL(S) SPECIFIED BY BUYER;
- C. THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES;
- D. THE GOODS USE BY THE BUYER'S CUSTOMERS OR OTHER THIRD PARTIES;
- E. THE BUYER'S BREACH OF THIS AGREEMENT;
- F. THE BUYER'S USE, MODIFICATION OR ALTERATION OF THE GOODS; AND/OR
- G. PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY LAW CLAIMS, AND ANY ENVIRONMENTAL LAW CLAIMS (COLLECTIVELY "CLAIMS").

THIS OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND SHALL APPLY WHETHER OR NOT IT IS ALLEGED THAT THE SELLER IN ANY WAY CONTRIBUTED TO THE CLAIMS OR IS LIABLE DUE TO A NON DELEGABLE DUTY. NOTWITHSTANDING THE FOREGOING, THE BUYER SHALL NOT HAVE ANY INDEMNITY OBLIGATION TO THE SELLER WITH RESPECT TO ANY CLAIMS THAT RESULT SOLELY FROM THE NEGLIGENCE OF SELLER AND THIS INDEMNITY PROVISION DOES NOT PURPORT TO INDEMNIFY SELLER SOLELY FOR ITS OWN NEGLIGENCE, BUT RATHER FOR THE NEGLIGENCE OR CONDUCT, WHETHER SOLE OR CONCURRENT, OF BUYER. BUYER, FOR ITSELF AND ITS INSURERS, EXPRESSLY WAIVES ANY AND ALL LIMITATIONS OR LIABILITY CAPS, IF ANY, ON BUYER'S CONTRIBUTION LIABILITY TO SELLER, AND ANY AND ALL STATUTORY OR COMMON LAW LIEN RIGHTS OR CLAIMS AGAINST SELLER, ARISING

FROM ANY APPLICABLE WORKERS COMPENSATION OR DISABILITY ACTS, WHICH BUYER MIGHT OR COULD ASSERT AGAINST SELLER OR SELLER'S INSURERS IN THE EVENT OF THE PERSONAL INJURY OR DEATH OF BUYER'S EMPLOYEES, REPRESENTATIVES OR AGENTS. WITHOUT LIMITING THE FOREGOING, BUYER, FOR ITSELF AND ITS INSURERS, ALSO WAIVES ANY CLAIMS, LIENS OR OTHER RIGHTS IT MAY HAVE AS A RESULT OF BEING SUBROGATED TO ANY RIGHTS OF ITS EMPLOYEES, REPRESENTATIVES OR SERVANTS.

15. **Confidential Information.** Seller and Buyer acknowledge that information to be provided by Seller to Buyer with respect to Seller's business, and information to be provided by Buyer to Seller with respect to Buyer's business and the business of either party's affiliated companies, is of independent economic value, both actual and potential, and Seller and Buyer recognize that disclosing this information could give an economic value to others and could be a serious detriment to Seller and Buyer. This confidential information includes, but is not limited to, any and all tangible and intangible information in whatever form or medium available furnished by Seller to Buyer and furnished by Buyer to Seller, including, but not limited to, computer programs, trade secrets, the fact that discussions between Seller and Buyer are taking place and the nature of such discussions, any and all data, designs, drawings, specifications, methods, processes, techniques, projects, operations, services, trade secrets, marketing, business, technical, or financial information, business records and plans, financial statements and information, customer lists and records, computer programs, receipts and expenditures, know-how, patents and patent lists, referral sources, vendors, management activities, formulas, test results, sales figures, employee names, accounting, pricing, salary information, business plans and strategies, negotiations of contracts, inventories and discoveries, mailing lists and/or any other information related to the operation of Seller or Buyer's business (collectively "Confidential Information").

This confidentiality restriction shall not apply to information which: (a) is or becomes publicly known through no wrongful act of Seller or Buyer, or Seller's or Buyer's officers, directors, consultants, shareholders, owners, partners, independent contractors, representatives, employees and/or agents; (b) is received from a third party without similar restriction and without breach of this Agreement; (c) is shown by documentary evidence to have been independently developed by Seller or Buyer; or (d) is disclosed to a third party by or on behalf of Seller or Buyer without a similar restriction on third party rights. The parties further agree that this Agreement shall not apply to information that is required to be disclosed by law, so long as Seller and Buyer provide the other with written notice prior to making such disclosure and allows Seller and Buyer the opportunity to contest the obligation to make

such disclosure in a Court of proper jurisdiction. If Seller or Buyer bring such a contest and obtains an order protecting Seller or Buyer from sanctions for nondisclosure, Seller and Buyer agree not to disclose such Confidential Information until ordered to do so by the Court.

16. **Liability Limitations.** IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR OR HAVE ANY DUTY FOR INDEMNIFICATION OR CONTRIBUTION TO THE OTHER PARTY FOR ANY CLAIMS FOR STATUTORY OR COMMON LAW INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, TREBLE OR LIQUIDATED DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, REVENUE, PROFIT, BUSINESS OPPORTUNITIES AND THE LIKE, DEPRECIATION OR DIMINUTION IN VALUE, EVEN IF THE PARTY HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. NO CLAIM OF ANY KIND, WHETHER AS TO GOODS DELIVERED OR FOR NON-DELIVERY OF GOODS, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE GOODS RELATING TO WHICH SUCH CLAIM IS MADE.

17. **Severability and Waiver.** If any provision of this Agreement is held to be invalid for any reason, the other terms and conditions hereunder shall remain in full force and effect, and such provision shall be enforced to the fullest extent permitted by law. Seller's waiver of any breach, or failure to enforce any of this Agreement, shall not be deemed to affect, limit or waive Seller's right thereafter to require compliance with this Agreement.

18. **Force Majeure.** Seller shall have no liability or obligation to Buyer of any kind, including, but not limited to, any obligation to deliver Goods as a result of causes, conduct or occurrences beyond Seller's reasonable control, including, but not limited to, commercial impracticability, fire, flood, act of war, terrorism, civil disorder or disobedience, act of public enemies, problems associated with transportation (including car or truck shortages), acts or failure to act of any state, federal or foreign governmental or regulatory authorities, labor disputes, strikes, or failure of suppliers to make timely deliveries of materials, goods or services to Seller.

19. **Termination.** Seller may at its full discretion at any time with or without cause, terminate any order related to this Agreement in whole or in part by written notice to Buyer.

20. **Alternative Dispute Resolution.** Any and all disputes, complaints, controversies, claims and grievances arising under, out of, in connection with, or in any manner related to this Agreement or the relationship of parties hereunder shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The obligation to arbitrate shall extend to any affiliate, subsidiary, officer, employee, shareholder, principal, agent, trustee in bankruptcy or guarantor of a party making or defending any claim hereunder. Any decision and award of the arbitrator shall be final, binding and conclusive upon all of the parties hereto and said decision and award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana, before one (1) arbitrator who shall be an attorney who has substantial experience in commercial law issues. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Indiana (not including the choice of law rules thereof). However, neither party shall institute an arbitration, or any other proceeding to resolve such disputes between the parties before that party has sought to resolve disputes through direct negotiation with the other party. If disputes are not resolved within three (3) weeks after a demand for direct negotiation, the parties shall attempt to resolve disputes through mediation conducted in Evansville, Indiana. If the parties do not agree on a mediator within ten (10) days, either party may request the American Arbitration Association to appoint a mediator who shall be an attorney who has substantial experience in commercial law issues. If the mediator is unable to facilitate a settlement of disputes within forty-five (45) days, the mediator shall issue a written statement to the parties to that effect and the aggrieved party may then seek relief through arbitration as provided above. The fees and expenses of the mediator shall be split and paid equally by each of the parties. In the event of any arbitration between the parties hereto involving this Agreement or the respective rights of the parties hereunder, the party who does not prevail in such arbitration shall pay all the prevailing party's reasonable attorneys' and experts' fees, costs and expenses incurred by the prevailing party in resolving said matter. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings a claim against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving two (2) or more parties. Notwithstanding anything in this arbitration provision to the contrary, Seller may apply to any court of competent jurisdiction for injunctive relief or other interim measures as provided for elsewhere in this Agreement. Any such application to a court shall not be

deemed incompatible or a waiver of this provision. The arbitrator shall be required to make written findings of fact and conclusions of law to support its award. Except as may be required by law, neither a party nor an arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. By execution of this Agreement, the parties consent to the jurisdiction of the American Arbitration Association and waive any objection which either party may have to any proceeding so commenced based upon improper venue or forum non conveniens.

21. **Interpretation.** This Agreement together with instruments incorporated herein by reference, sets forth the entire and only agreement between the parties regarding the subject matter hereof and supersedes any and all prior or contemporaneous agreements, understandings, or proposals whether written or oral, between the parties. As used in this Agreement, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall be meant to include any other gender or entity. The subject headings herein have been placed and arranged for convenience and shall not be considered in any question of interpretation of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be enforced to the fullest extent permissible and the remaining portion of this Agreement shall remain in full force and effect. This Agreement shall inure to the benefit of and be binding upon both Buyer and Seller, their legal representatives, successors and assigns, except as limited herein below. All rights granted to Seller herein shall be in addition to and not in lieu of Seller's rights by operation of the law and the Seller's remedies under law and this Agreement shall be cumulative. In the event of any conflict or inconsistency between this instrument and the Seller's quote or Seller's invoice, or any other attachments or exhibits to the Agreement, the order of priority and precedence for purposes of interpretation shall be the (1) Seller's pricing and delivery terms quote, (2) Seller's attachment, exhibit or amendment of this instrument (3) this instrument (4) the Seller's invoice. **IN THE CASE OF CONFLICT BETWEEN THIS AGREEMENT AND ANY OTHER INSTRUMENT ENTERED BY THE BUYER AND SELLER, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL PREVAIL. THIS PROVISION, AND EACH AND EVERY OTHER PROVISION OF THIS AGREEMENT MAY NOT UNDER ANY CIRCUMSTANCES BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR WAIVED BY A WRITTEN INSTRUMENT TENDERED BY THE SELLER TO THE BUYER.**