

## **Conditions of Sale**

January 1<sup>st</sup>, 2012

- 1) Unless otherwise shown herein, all terms are F.O.B. (EXW) Barku Plastics LLC's facilities, hereinafter referred to as [ Seller(s)] and Net 30 days at Seller's prices in effect on the date of shipment. Raw material content in plastic goods sold and fluctuations in piece part pricing are controlled by quarterly Chemical Market Associates Inc. (CMAI) Index monitoring and will be adjusted accordingly. Seller reserves the right to increase or decrease the price on all or any portion of this order due to increased or decreased cost of material or labor. Seller reserves the right to make corrections due to typographical, clerical, engineering oversights or because of incomplete information from Buyer. This quotation notwithstanding, all orders are subject to acceptance at Seller's plant. If Buyer or paying entity shall fail to make any payments in accordance with the terms hereof, Seller may cancel this order as to any undelivered items, and in addition to its other rights and remedies but not in limitation thereof, at Seller's option, defer or withhold shipments or deliveries hereunder (or under any other contract with Buyer) except upon Seller's receipt of cash before shipment or such security as Seller deems satisfactory.
- 2) Unless otherwise shown as included in the piece price, such price does not include any freight, freight rate increases and/or added expense resulting from compliance with Buyer's shipping instructions whether or not reflected in Buyer's order; the expense of intra-city delivery to rail siding on shipments by rail; any applicable manufacturer's sales, use or value added taxes; import or export duties; the expense of special preparation for export including export packaging, consular invoices, export declarations, certificates of origin, insurance in transit or similar items; and examination or inspection charges incident to inspection by other than Seller's employees or agents. Buyer will be invoiced for those items where applicable; import licenses, foreign exchange and customs approval required in connection with the purchase, delivery or payment of goods, raw materials, sub-components and products (hereinafter referred to as "goods") are to be obtained by and provided at Buyer's expense. In no event shall Buyer's shipping instructions waive any term or condition as to delivery herein.
- 3) In the case of Injection Dies, fixtures, any complete tooling/ dies or inserts purchased from Seller are Buyers property, Seller will maintain routine maintenance on tooling while molds remain in current production status, all other modifications or repairs will be the sole responsibility of the Buyer.
- 4) Deliveries shall be considered made when the goods hereunder, or any part thereof, are either loaded on inland carriers evidenced by transportation receipts or placed in storage, whichever shall be earlier in time. At that time title to and risk of loss of the goods shall pass to Buyer. Seller shall not be responsible for delay in or failure of deliveries resulting from any cause beyond Seller's control, including without limitation: fire, act of God or force majeure, riot, civil demonstrations, insurrection, war or national emergency, strike or labor dispute, freight embargo or transportation delay, shortage of labor, inability to secure fuel, material, supplies or power at current prices or on account of shortage thereof, demands exceeding Seller's manufacturing or delivery capacity, or any governmental law, act, order, rule or regulation issued by any official or governmental agency (local, state, federal or foreign) affecting the conduct of Seller's business and with which Seller in its judgement or discretion deems it advisable to comply whether or not it may have any legal duty to do so. Buyer agrees to inspect, at Buyer's expense and risk, all goods before acceptance, and to agree to acceptance of goods unless any loss or damage in transit is fully noted on the delivery bills and receipts. Seller assumes no responsibility for damage to or loss of goods occurring during shipment or delivery, and Buyer agrees to make all claims against carrier for any such damage or loss.

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- 5) Cancellation or change/modification in any order for goods or tooling by Buyer shall not be effective without notice received, agreed to, and confirmed in writing by Seller. In the event Seller in its sole discretion approves Buyer's cancellation or change of an order, Buyer agrees to pay a reasonable cancellation charge. Seller's prior written consent must be obtained before returning any goods.
  
- 6) **SELLER EXPRESSLY EXCLUDES ALL WARRANTIES, GUARANTEES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, MATERIALS, WORKMANSHIP, DESIGN AND SUITABILITY OF GOODS FOR A SPECIFIED OR INTENDED PURPOSE BY BUYER.** In lieu of all warranties, goods sold hereunder (other than items purchased by Seller from others) will be repaired or replaced F.O.B. point of origin or the purchase price will be refunded at Seller's option if return or rejection in writing is made within thirty (30) days after receipt of order (1) if such goods are proven defective because of faulty material or workmanship, or (2) if such goods are of Seller's design and prove to be unsuitable for the purpose for which they are ordinarily intended or used.
  
- 7) The purchase of a Tool from Seller will include shipment, at Seller's expense, five (5) parts from each cavity to be evaluated by Buyer. All subsequent sampling of tool, if needed shall incur a sampling Set-Up fee to be paid by Buyer. If required Buyer to be responsible for all Shipping costs of Raw Materials to Tool Shops. All costs for shipping sample parts when qualifying tool to be at the expense of the Buyer.
  
- 8) Seller does not assume any liability for failure of goods manufactured and sold by others and used in conjunction with Seller's services or goods or used in compounding mixes to be sold by Seller, and Buyer's sole recourse shall be against the manufacturer.
  
- 9) In the event machine capacity available at Seller's facility is such that due dates of goods sold to Buyer may be delayed Seller reserves the right at Seller's sole discretion to outsource services to Industry Affiliates. Seller and Affiliates assume the same responsibilities as the Seller would be accountable for if goods or services were produced at the Seller's facility.
  
- 10) Seller does not assume any liability for damage resulting from services performed by others or a faulty installation, misuse or misapplication of goods sold by Seller or items upon which Seller has performed services. Where Seller marks parts as requested by Buyer, Seller is relying on information provided by others and is not responsible for accuracy of such marking. Buyer agrees to indemnify and hold Seller harmless from all liability and expense arising out of or attributable to such faulty installation, misuse, misapplication or mismarking.

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- 11) Seller shall not be liable for prospective profits or special, indirect, or consequential damages, or for the cost of any corrective work done without Seller's prior written approval. Seller's total liability hereunder in no event shall exceed the purchase price of the goods or services specified herein. Seller's prior written consent must be obtained before returning goods for replacement or credit.
- 12) Buyer hereby indemnifies, agrees to hold harmless and defend Seller (including any of Seller's divisions, subsidiaries, or affiliates) from and against any and all liabilities, claims (founded or unfounded), losses, damages, costs and expenses (including without limitation, consequential damages and reasonable professional fees) resulting from Buyer's specification, design or improper use of the goods, Buyer's omission or neglect, or infringement or misapplication by Buyer of proprietary or other information furnished regarding such goods sold by Seller whether or not the goods or information originated with Seller. Upon request, Seller will endeavor to furnish such technical advice as it has available in reference to the use of the goods by Buyer. It is expressly understood that any technical advice furnished by Seller with reference to the use of the goods is given gratis, and Seller assumes no obligation nor shall Seller be liable for the advice given or results obtained, all such advice being given are accepted at Buyer's risk.
- 13) All orders for custom injection moldings are subject to an over or under run of 10%.
- 14) Any action by Buyer under or for breach of this agreement must be commenced within ninety (90) days after the cause of action has occurred.
- 15) Buyer's order is accepted on the terms and conditions stated herein and Seller's acceptance of Buyer's order is expressly made conditioned upon Buyer's assent to such terms and conditions. No agreement or understanding, oral or written, shall be binding on Seller (whether contained in Buyer's purchase forms or otherwise), other than set forth herein, if such shall in any way modify or waive the terms or conditions herein, unless hereafter made in writing and signed by Seller's authorized representative. Waiver by Seller of any default hereunder shall not be deemed a waiver by Seller of any other or subsequent default which may thereafter occur.
- 16) These terms and conditions shall be construed and enforced in accordance with the laws of Bradley County in the State of Tennessee.