

PLASTIC MOLDING TECHNOLOGY INC. TERMS & CONDITIONS

- 1. Interpretation:** No terms and conditions other than the terms and conditions contained herein shall be binding upon Plastic Molding Technology, Inc. ("Seller") unless accepted in writing by Seller. All terms and conditions contained in any other oral or written communication which are different from or in addition to the terms and conditions herein are hereby rejected and this document is the complete and exclusive statement of the terms, save for purchase orders submitted by Buyer which are consistent with this document and which are accepted by Seller.
- 2. Price:** Prices quoted will be valid for a period of thirty (30) days. Prices are based on current material costs. Fluctuations in material costs and availability may affect price. Packing is bulk packed only unless otherwise stated. All tooling costs are subject to the terms outlined on quotation. A monthly charge of one and one half percent (1.5%) (or the highest rate allowed under applicable law) on all sums outstanding may be added (at Seller's sole discretion) to each past due amount and Seller shall be entitled to all costs of collection (including reasonable attorneys' fees).
- 3. Taxes:** Prices do not include sales, use or duty taxes, now or hereafter enacted, applicable to the goods sold. All such taxes will be paid by the Buyer or Buyer will provide Seller with a proper tax exemption certificate.
- 4. Terms, Title and Method of Payment:** Terms of payment shall be 30 days from date of invoice or as otherwise stated on invoice. Parts shall be ordered on reasonable notice to Seller, Ex Works Seller's plant. Title to the goods shall remain with the Seller until the Buyer receives and pays for the goods in full. Credit can be changed or withdrawn by Seller at any time. Seller reserves the right to make deliveries in installments and contract shall be enforceable as to any such installment. Pro rata payments are due as shipments are made. Delay in delivery or default of any installment shall not relieve the Buyer of its obligation to accept and pay for the remaining deliveries. These payments are due from the date when Seller was prepared to make such shipments. All claims for delay in delivery shall be deemed waived unless presented to Seller in writing with thirty (30) days after delivery of each shipment. Acceptance of shipment by common carrier shall constitute delivery (at which time risk of loss shall shift to Buyer) and Seller shall not be liable for goods in transit.
- 5. Fulfillment:** Delivery of ten percent (10%) more or less than the quantity specified shall constitute fulfillment of Buyer's order and Buyer shall take and pay for excess not exceeding ten percent (10%). Claims for damage, shortage or errors in shipping must be reported within ten (10) days following delivery to Buyer. Buyer shall inspect all parts within fifteen (15) days of receipt and after that time all products are deemed to be accepted.
- 6. Force Majeure:** Seller is not responsible for damages or delays in performance caused by events beyond its control including but not limited to Acts of God, acts of governmental entities, material supply limitations, labor interference, failure of machinery or delays in transportation.
- 7. Molds, Dies, Tools, and Other Equipment:** Tools, dies and other equipment furnished Seller by Buyer shall be at Buyers' risk and expense. Changes in molds, dies, and tools made necessary by changes in specifications already accepted by Seller shall be at Buyer's expense and Buyer shall assume all risk. Seller agrees to maintain all molds, dies, and tools in operation during their normal productive life except that the Seller's liability to do so shall be limited to a period of one year after completion of the last order produced on the molds, dies, and tools. Seller shall in no way be liable for the continued existence or availability of any such molds, dies, or tools after expiration of such period. Buyer shall pay any unpaid costs of any molds, dies, or tools furnished by Seller upon Buyer's demand for delivery thereof. A removal fee may be charged upon removal of any tool by Buyer. Seller shall have a lien upon and a security interest in any of Buyer's molds, dies, tools or property in the possession of Seller to secure all unpaid balances due and owing from Buyer to Seller. If Buyer's account for molds, dies, tools, or parts remains unpaid for a period of sixty (60) days, Seller shall have the right to use the same to make parts there from. If Buyer fails to remove any tooling or other property from Seller's facility within a reasonable period (but in no event longer than 30 days) after notice from Seller, Seller shall be entitled to assess a reasonable storage fee and/or dispose of or return such tooling or property to Buyer at Buyer's sole expense. If Seller has purchased any specialty or unique raw materials or components specifically to service Buyer, Seller may invoice Buyer for such materials or components at its cost and subject to the further payment terms set forth herein.
- 8. Inserts:** Unless specifically stated otherwise, any inserts required are to be furnished by customer f.o.b. or point of production (location whereof will be stated by Seller when order is accepted and confirmed), all charges prepaid. All inserts are subject to Seller's approval as to design. All inserts must be uniform, accurate and free from burrs, and Seller will be responsible for damages to tools or molds caused by defective inserts, nor for molded parts in which inserts furnished by Buyer are found defective after molding. Inserts furnished must be in quantity at least ten percent (10%) more than number indicated as necessary for completion of Buyer's order. If Seller shall include inserts in its quotation, prices are based on current materials and plating costs and may vary accordingly. No tapping, assembling, inserts or machine work are included in this quotation unless specified in the quote.
- 9. Mold Removal:** Before removal of molds from Seller, costs incurred by Seller for mold maintenance and repair not otherwise recovered by Seller, shall be paid by Buyer to Seller along with all other costs and amounts due from Buyer to Seller. Mold or maintenance charges may be waived at Seller's discretion. Buyer acknowledges Seller's right to a molder's lien with respect to all amounts due Seller, as provided by applicable law.
- 10. Assistance:** If upon Buyer's request Seller assists in submitting suggestions concerning design, construction or composition of molded parts, Seller shall not be liable for any suggestions adopted by Buyer in whole or in part nor shall any such assistance or suggestion be deemed to modify or supplement the Warranty, unless Seller is separately paid for such assistance, where upon a separate limited warranty will be provided.
- 11. Tolerances and Gauges:** Unless otherwise specified herein, tolerances are subject to commercial variations generally prevailing in the industry. If special gauges are required, Buyer will furnish them at its expense.
- 12. Limited Warranty:** Seller's exclusive and limited warranty is the goods will conform to those written specifications provided by Buyer and accepted in writing by Seller for a period of ninety (90) days from the delivery of such goods to Buyer (the "Warranty"). OTHER THAN THE WARRANTY, SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS, AND THE BUYER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Warranty applies only to the extent that any nonconforming Products have been properly handled, used, installed and/or maintained. Some dimensional variance from design specifications is expected. Molded parts shall be deemed acceptable if they are made to and are unchanged from approved samples with respect to dimensional variations from the original specifications. Seller recommends that Buyer independently test the Products to determine suitability for the intended use and of any materials used in the manufacture of the Products (and Buyer is not relying upon Seller to determine said suitability). The goods covered by this contract are purchased as molded parts only. If any model or sample was shown Buyer, such model or sample was used merely to illustrate the general type and quality of goods and not to represent that the goods would necessarily conform to the model or sample. Unless Seller is separately paid to provide design or material selection assistance (and then only to the extent Seller does so in writing), Seller is not responsible for any loss, cost or damage resulting from design or material selection assistance.
- 13. Limitation of Liability:** Repair or Replacement of defective parts or equivalent credit for amount paid shall be the Buyer's exclusive remedy. Credit will be allowed on molded parts rejected by customer and found by Seller to be defective, provided claim of defect is made within thirty (30) days after shipment and return of goods is authorized by Seller in writing. No credit will be allowed on any molded parts which have been altered or defaced in any way, or upon which any additional operation has been performed. SUBJECT TO THE FOREGOING LIMITATIONS, SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS OR ANY SERVICE PROVIDED BY IT TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES AND/OR PRODUCT(S), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Seller's limited ninety (90) days warranty liability shall arise only upon the return of the defective parts at Buyer's expense in exchange for a quantity of such parts free from such defects or at Seller's option the refunding of the purchase price.
- 14. Indemnity:** Buyer warrants that it is the owner or has legal rights to the design of the parts ordered, that the design is free from product defects and that it has complied with all applicable laws and regulations relating to its design, manufacture, development, marketing and sale of the products. Buyer agrees to indemnify and hold Seller harmless from any loss, cost, liability damage or expenses including but not limited to all attorney fees, resulting from (i) infringement or misappropriation (or claimed infringement or misappropriation) of patents, trademarks or other intellectual property rights, (ii) from claims that result from the sale, distribution, use or misuse of the molded parts, or (iii) Buyer's breach of or noncompliance with any provision of this agreement. When Buyer orders goods for third parties, Buyer shall be licensed to have made the purchase for the third party. Seller is authorized to manufacture such articles under Buyer's license, and Buyer will be responsible for such royalties as may be due.
- 15. Changes:** Buyer's order after acceptance by Seller will not be subject to cancellation, change, or reduction in amount, nor to any suspension by Buyer of deliveries without Seller's prior written consent.
- 16. PPAP:** All cost associated with the initial Production Part Approval Process (PPAP) for new mold builds shall be borne by Seller. All cost associated with annual layouts of the PPAP or any other annual PPAP revalidation shall be paid for by Buyer.
- 17. Proprietary Processes/Techniques:** All processes and manufacturing techniques, developed, created, and utilized by Seller for the production of any parts or tooling, including any improvements thereto, shall belong to Seller.
- 18. Raw Materials:** In the event that any raw material specified for incorporation into the parts shall become unavailable, Seller shall notify Buyer and Buyer may direct Seller in writing to substitute available material for that originally specified, with Buyer assuming any and all consequences resulting from such substitution.
- 19. Law:** The validity, construction and performance of these terms and conditions or any sale made hereunder shall be governed by the laws of the State of Texas. The parties irrevocably consent to the jurisdiction of the State of Texas in El Paso County and the federal courts for such jurisdiction.
- 20. Final Expression:** This written agreement is the complete and exclusive expression of the entire agreement between Seller and Buyer. All oral expressions between the Buyer and Seller not set forth in writing are not part of this agreement.
- 21. Modifications and Amendments:** All modifications and amendments to this agreement must be in writing and signed by both the Buyer and Seller. It is understood that changes in design or delivery may increase the cost of the production parts and may also cause delay in the time required for performance.
- 22. Agents' Authority:** Other than the signatory for Seller in this quote, no agent, employee or representative of the Seller has any authority to bind the Seller to any affirmation, representation or warranty concerning goods sold under this quote, and any other affirmation, representation or warranty shall not in any way be enforceable by the Buyer.
- 23. Assignment:** No right or interest in this contract shall be assigned by either Buyer or Seller without the written permission of the other party, and no delegation of any obligation owed, or of the performance of any obligation, by either Buyer or Seller shall be made without the written permission of the other party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purpose unless made in conformity with the paragraph.