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# TERMS OF SALE

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THE FOLLOWING CONSTITUTES THE TERMS AND CONDITIONS OF SALE FOR ALL PRODUCTS MANUFACTURED, DISTRIBUTED AND/OR SOLD BY PLASTIC SERVICES & PRODUCTS, LLC OR ITS SUBSIDIARIES OR AFFILIATES ("PSP"). ACCEPTANCE OF PSP OFFER TO SELL OR PURCHASER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON ACCEPTANCE OF THE PROVISIONS STATED HEREIN. THE PURCHASER'S ACCEPTANCE OF EACH SHIPMENT OF GOODS SHALL BE DEEMED TO BE AN ACCEPTANCE OF THE PROVISIONS HEREOF NOTWITHSTANDING ANY ACT OF PSP, INCLUDING SHIPMENT, ACCEPTANCE OF PAYMENTS, AND NOTWITHSTANDING ANY TERM OR CONDITION CONTAINED IN ANY FORM, AND ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT TO VARY ANY OF THE PROVISIONS HEREIN IS HEREBY DEEMED A MATERIAL ALTERATION AND REJECTED. THE PROVISIONS HEREIN IS HEREBY DEEMED A MATERIAL ALTERATION AND REJECTED. THE PROVISIONS HEREIN MAY NOT BE ADDED TO, MODIFIED, SUPERSEDED, OR ALTERED EXCEPT BY WRITTEN AGREEMENT OR MODIFICATION SIGNED BY AN OFFICER OF PSP, NOTWITHSTANDING ANY TERMS WHICH MAY NOW OR IN THE FUTURE APPEAR ON FORMS OR COMMUNICATIONS, ALL OF WHICH ARE REJECTED WITHOUT FURTHER ACTION. NO PERSON (EXCEPT AN OFFICER OF PSP) IS AUTHORIZED TO BIND PSP TO ANY ORDER FOR ANY GOODS EXCEPT ACCORDING TO THE PROVISIONS HEREIN.

## 1. PRICES

All prices for PSP products are subject to change or withdrawal without notice. Unless otherwise stated, prices, terms of payment and pricing policies will be those of the manufacturer in effect at the time of shipment. PSP reserves the right to make price changes within the periods of contracts, including installment contracts or blanket orders. The cost of packing and crating other than in accordance with the standards of the manufacturer may constitute an additional charge and at discretion be added to the sales price(s). PSP also reserves the right to divide the Purchaser's order into separate shipments and to invoice and otherwise treat each shipment as a separate contract subject to these Terms and Conditions. All sales and shipments are subject at all times to credit approval.

## 2. TRANSPORTATION AND RISK OF LOSS

Unless otherwise agreed in advance in writing by PSP, delivery of products hereunder shall be F.O.B. shipping point, with transportation expenses paid by the Purchaser unless PSP freight prepayment qualifications are met and the risk of loss or damage to products in transit shall fall upon the Purchaser (whose responsibility it shall be to file claims with carrier at delivery to the Purchaser at the Purchaser's premises) upon delivery (a) to designated representative, or (b) to a common carrier or other designated shipper (not including PSP), whichever of the foregoing occurs earlier. PSP, in its discretion, shall select the appropriate transportation method and routing. All orders, unless otherwise agreed in writing, are for shipment at the earliest convenience. Stated delivery dates are approximate and will be calculated from the date that PSP has received all information necessary to permit PSP to proceed with work immediately and without interruption. If any or all products are not delivered when ready due to the request of the Purchaser, PSP reserves the right to invoice Purchaser at any time thereafter and to place such products in storage with all risk of loss or damage borne by the Purchaser and with all expenses and costs attributable thereto for the account of the Purchaser, which shall be payable upon submission of PSP' invoices to the Purchaser.

## 3. DELAYS

PSP shall not be liable for any delays in delivery due or resulting in whole or in part from or made impossible or impractical by any cause beyond the control of PSP including but not limited to fire, explosion, epidemics, accident, material and significant breakdown, strike or labor disputes, adverse weather conditions, loss or damage in shipment, shortage or lack of materials, fuel or power, sale or transfer of manufacturing facilities, embargo, acts (including delay or failure to act) of any governmental authority (de jure or de facto) or any other contingency or delay or failure or cause beyond PSP control. If, due to any such occurrence, PSP is unable to supply total demands for any goods specified, PSP may, but shall not be obligated to, allocate production, inventory and deliveries (in any manner fair and reasonable to the extent that goods are not special or unique) and will notify the Purchaser reasonably that there will be delay or non-delivery.

#### **4. TAXES**

All prices are exclusive of any applicable foreign or U.S.A. federal, state or local sales, use, excise or other taxes, which PSP may be required to pay or collect, under any existing or future law, upon or with respect to the sale, delivery, storage, processing, use or consumption of any of the products covered hereby, which shall be for the account of the Purchaser, who shall promptly pay the amount thereof to PSP upon demand.

#### **5. PAYMENT TERMS AND SECURITY INTEREST**

Unless otherwise agreed in advance and in writing by PSP, payment terms are 2% 10 days, net 30 days. All payments not made within such time may be subject to a carrying charge of 1 ½ percent per month on the unpaid balance or the highest rate permitted by applicable law, whichever is the lesser. Until the entire amount due hereunder is paid, PSP reserves a security interest in all products sold, with all rights, privileges and remedies of a selling secured party in the jurisdiction to which the goods may be shipped or within which they may be kept at any time. In pursuance thereof, the Purchaser agrees to timely execute any documents which PSP may request from time to time in order to give notice of, perfect or otherwise give effect to the existence of said security interest.

#### **6. FINANCIAL RESPONSIBILITY**

If PSP has any reasonable doubt at any time as to the Purchaser's financial condition and ability to perform, PSP, at its option, may (a) decline to make further shipments other than on a cash in advance basis or upon the Purchaser providing other security satisfactory to PSP, or (b) terminate this agreement.

#### **7. RECEIVING AND INSPECTION**

Any claim by the Purchaser based upon or relating to any claimed defect in the products ascertainable upon visual inspection thereof, including without limitation any claim relating to size, type, quantity or shipping damage and the like, must be presented to PSP or its representative within fifteen (15) days following the date of receipt of the product by the Purchaser. The Purchaser's receipt of any product delivered hereunder shall be an unqualified acceptance, and a waiver by the Purchaser of any and all such claims with respect to such product unless the Purchaser gives PSP notice of claim within fifteen (15) days after such receipt. Unless otherwise agreed in advance in writing by PSP, variations in the products as to composition, dimensions, quantity and the like shall be permissible and not cause for the Purchaser's rejection or revocation if within prevailing industry (United States of America) standards. Purchaser assumes all risk and liability for results.

#### **8. TOOLING**

Purchaser will indemnify, defend and hold PSP harmless from and against any liability, damage, loss or expense arising from the use or handling of any tooling supplied or designed by the Purchaser from which products are to be cast or manufactured by PSP.

#### **9. PATENT INDEMNITY**

PSP agrees to protect, indemnify and hold harmless the Purchaser, its successors, assigns, customers and users of its products against any liability, loss, damage or expense whatsoever resulting from any infringement of any United States Letters Patent by any thing, number, material, design, composition, or processing of PSP origin or practice supplied by PSP. With respect to any thing, number, material or design, composition, or processing, specified by Purchaser and not of PSP' origin or practice, the Purchaser agrees to save PSP harmless from any liability, loss damage or expense whatsoever resulting from any infringement of any United States Letters Patent arising out of PSP making, using or selling the same for or to the Purchaser in fulfillment of its orders or contracts. PSP and the Purchaser severally agree to notify the other in writing promptly of any charge of infringement made and of any suit brought in respect to such device or composition and to assume or tender to the other the full control of the defense or settlement of such suit in accordance herewith.

#### **10. WARRANTY**

PSP warrants only to the Purchaser that products furnished of PSP' own manufacture will be free from defects for a period of one year from the date of receipt by the Purchaser of the products. This warranty will not apply to damage resulting from normal wear, improper installation, misuse or neglect. Weight figures shown in PSP' catalogue and price sheets, and documents of sale are approximate only. Product is sold on a per unit basis not on a weight basis. PSP does not warrant any aspect of product representation, installation, modifications or manufacturing carried out by parties other than PSP and the Purchaser hereby indemnifies PSP for any loss, cost or expense to which PSP may be exposed as a result of any such activities by the Purchaser or the Purchaser's customers. PSP' sole obligation for failure to comply with this warranty will be, at its election, to repair or replace the defective product where the Purchaser notifies PSP and such product is made available to PSP for inspection F.O.B. point of manufacture within the one year warranty period. Except to the extent that (1) descriptions of size, quality and type, which may appear on invoices and other documents, and (2) statements of conformity of products with specification of certain industry, government, or professional organizations standards, which may appear as product information disclosures in PSP' literature and documents, may from time to time be construed to be

express warranties, this warranty is in lieu of and excludes all other warranties, express or implied, including merchant ability and fitness for a particular purpose.

#### **11. LIMITATION OF LIABILITY**

Under no circumstances will PSP' liability in the aggregate to the Purchaser under any legal theory, including without limitation, breach of contract or warranty, or commission of any tort, including negligence and strict liability, or claims for indemnification, exceed the invoice price for the affected product. The Purchaser must commence any action at law or in equity against PSP within one year after the product is delivered to the Purchaser. The Purchaser will not have any recourse against PSP for any loss which reasonably could be prevented by cover or otherwise. Exceptions to PSP' warranty and limitation of liability provisions or waivers of the same granted will not constitute a precedent, default or waiver of PSP' rights to enforce such provisions in whole or in part in the future. PSP will not be liable to any person for any indirect, special, incidental, consequential or other damages of any kind whatsoever, whether any claim or potential claim is based upon theories of contract, negligence, or tort and including without limitation, PSP will have no liability for shipping charges, labor, instillation, costs or any other losses or expenses related to or associated with the inspection, repair, or replacement of the warranted products.

#### **12. DEFAULT**

The Purchaser will be in default if (a) the Purchaser fails to pay PSP any amount when due under this agreement, (b) the Purchaser otherwise fails for a period of five days after receiving written notice from PSP to fulfill or perform any provisions of this agreement, (c) The Purchaser becomes insolvent or bankrupt, or a petition is filed voluntarily or involuntarily and not dismissed within 30 days of filing, or (d) the Purchaser makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of the Purchaser's assets are attached or seized under legal process and not released within 30 days thereafter. Upon Purchaser's default, PSP may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (a) make shipments subject to receipt of cash in advance, (b) terminate this agreement and declare immediately due and payable the obligations of the Purchaser for goods previously shipped, notwithstanding any other provision in these terms and conditions, (c) demand reclamation, or (d) suspend any further deliveries until the default is corrected, without releasing the Purchaser from its obligations under this agreement. In any event, the Purchaser will remain liable for all loss and damage sustained by PSP because of the Purchaser's default.

#### **13. OTHER**

(a) PSP accepts no responsibility to the Purchaser or to any person claiming by or through the Purchaser, for compliance with any statute, governmental rule or regulation made applicable to this contract by reason of the Purchaser's intended use of the products unless PSP has received from the Purchaser prior timely written notification of such statute, rule or regulation and has accepted the same by a separate writing signed by an officer of PSP.

(b) PSP' forbearance or failure to enforce any of these conditions as set forth herein or to exercise any right accruing from any default of the Purchaser shall not affect, impair or waive PSP' right if such default continues or if any subsequent default of the Purchaser occurs.

(c) The provisions herein constitute the entire agreement between the Purchaser and PSP and no terms or conditions other than those stated herein and no agreement or understanding oral or written in any way purporting to modify these conditions shall be binding on PSP unless hereafter made in writing and signed by an officer of PSP. All orders are subject to acceptance at PSP' offices. This agreement shall be construed in accordance with the laws of Utah and any disputes arising under these terms and conditions, and the orders to which they pertain, shall be brought exclusively in Salt Lake County, Utah.

(d) The provisions of this agreement shall be considered severable. In the event that any of the provisions, or portions or applications thereof, of this agreement are held to be unenforceable or invalid by any court of competent jurisdiction, all remaining portions shall remain in full force and effect in accordance with the spirit of this agreement.

(e) The rights and obligations of the Purchaser and PSP hereunder shall not be assigned to any third party without the prior written consent of the other party.

(f) Acceptance of the products sold herein shall constitute assent to these conditions and PSP hereby objects to and rejects any and all additional or different terms proposed by the Purchaser, whether contained in the Purchaser's purchasing or shipping release forms or elsewhere. All proposals, negotiations, and representations, if any, made prior and with reference hereto are merged herein, and any proposed additions, modifications, deletions, or changes not in separate writings signed by an officer of PSP are rejected without further action by PSP.

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