



TERMS AND CONDITIONS

Whereas, it is the mutual desire of the parties hereto that Supplier provide Purchaser with certain goods and incidental services pursuant to the terms and conditions set forth herein.

1. DEFINITIONS.
 - "Purchaser" is T.O. Plastics, Inc.

 - "Supplier" shall mean a business, individual or organization that offers to provide Material to Purchaser.

 - "Agreement" shall mean these Terms and Conditions, Purchase Order if applicable or any attachments, exhibits, appendices, or other documents specifically referenced therein.

 - "Material" shall be defined as any material, equipment, goods, products, services and any other item to be supplied.
2. ACCEPTANCE OF AGREEMENT. Supplier's execution and delivery of this Agreement, acknowledgement or commencement of shipment of Materials, subject to this Agreement, whichever occurs first, shall be deemed acceptance of the terms of this Agreement. Any acceptance of this Agreement is limited to acceptance of the express terms contained herein, and any terms specifically incorporated by reference by Purchaser. In the event of a conflict or inconsistency, such conflict or inconsistency shall be resolved in favor of these terms and conditions.
3. PRICING AND PAYMENT. The Agreement price shall be firm unless otherwise agreed to in writing by Purchaser. Pricing will include all direct, indirect and incidental charges including but not limited to packaging, boxing, and crating. Invoices will be payable 30 days following receipt of acceptable invoice and receipt of Material unless other payment terms have been agreed to in writing. Supplier will give Purchaser benefit of any price reductions prior to date of shipment. All money due or to become due from Purchaser shall be subject to deduction or set-off by Purchaser for any money due Purchaser from the Agreement or any other transaction with Supplier. Price shall be listed on the Purchase Order if applicable, unless otherwise specified elsewhere.
4. TAXES. Supplier is liable for all taxes on all Material furnished by Supplier including, but not limited to, sales, use and excise taxes not agreed to in the purchase order. Purchaser is liable for all sales and use taxes related only to Purchaser-furnished material, if any.
5. SHIPMENT, TITLE, RISK OF LOSS. Supplier shall prepare and pack all Material in accordance with good commercial practice to ensure safe delivery without damage or loss. Supplier shall clearly mark the outside of each shipped container to show Purchaser's Purchase Order number, if applicable. Also include a packing list that includes the part number(s) and quantities shipped.



Unless otherwise agreed to in writing, title and risk of loss shall be Supplier's and shall transfer to Purchaser upon acceptance of Material at destination.

6. DELIVERY. Time is of the essence of this Agreement. If delivery of Material is not completed by the time specified, Purchaser shall have the right to terminate part or all of the Agreement and to purchase substitute Material elsewhere and Supplier shall pay Purchaser for any loss or additional costs incurred. Delivery shall be F.O.B. destination (UCC terms) unless otherwise agreed to in writing.
7. ENTIRE AGREEMENT AND CHANGE ORDERS. This Agreement constitutes the entire agreement between Purchaser and Supplier. Unless otherwise agreed to in writing, Supplier shall make no substitutions for the Material specified. Any additional or different provisions proposed by Supplier are rejected and will not be effective unless executed through a separate agreement issued by or signed by Purchaser.
8. LAWS, REGULATIONS, ENVIRONMENTAL, SAFETY. All Material provided shall be in compliance with all applicable federal, state, local codes, laws, ordinances and regulations including environmental and safety laws, specifications, and standards. Supplier shall provide a current material safety data sheet for any hazardous material sold to Purchaser or used on Purchaser's property. Hazardous waste generated on Purchaser's premises by Supplier under this Agreement, will be the responsibility of Supplier for management of the waste and proper disposal in accordance with EPA and state rules and regulations.
9. ASSIGNMENT. Supplier shall not assign this Agreement or otherwise delegate any Material to be provided hereunder without the prior written approval of Purchaser.
10. CONFIDENTIAL INFORMATION. Supplier shall consider all information furnished by Purchaser to be confidential including related information prepared by third parties. Supplier shall not disclose such information to others or use the information for any other purpose than for this Agreement.
11. WARRANTIES. Supplier warrants that all Material furnished shall conform to all Purchasers' specifications and comply with all applicable laws and regulations. All Material shall be new and free from any defects in materials or design. Further, if Supplier knows or has reason to know the particular purpose for which Purchaser intends to use the Material, Supplier warrants that such Material will be fit for such particular purpose. Work shall be performed in a professional and workmanlike manner. Unless otherwise agreed to in writing, the warranty period is one (1) year from the date of receipt and acceptance of Material by Purchaser or, if applicable, for the period stated in manufacturer's standard warranty, whichever is longer. If a defect or nonconformance in materials, workmanship or design is discovered during the warranty period, Purchaser may, at its option: (a) return the Material to Supplier at Supplier's expense for a full refund of the purchase price; (b) require Supplier to repair or replace the defective product promptly, Supplier paying all costs related to repairing or replacing such Material, including, but not limited to labor, materials, inspection and shipping costs to and from Purchaser's facilities; or (c) exercise any other rights that Purchaser may have in law or in equity. Material that is returned to Purchaser under this warranty after repair or replacement is subject to the same inspection, acceptance and warranty provisions as Material originally delivered. Supplier will



transfer to Purchaser any warranties that the manufacturer or distributor shall make, provided that in the event of a conflict, the warranty providing the most protection to Purchaser shall prevail.

12. **TERMINATION FOR CAUSE.** Purchaser may terminate the Agreement or any part of it for cause for a breach or default of any part by Supplier. Causes for termination shall include, but not be limited to, Supplier's failure to meet delivery dates, schedules or completion dates specified; delivery of Material that is defective, unacceptable or does not conform to the specifications; insolvency or bankruptcy. In the event of termination for cause, Purchaser shall not be liable to Supplier for any amount and Supplier shall be liable to Purchaser for any and all damages sustained by reason of the termination.
13. **TERMINATION FOR CONVENIENCE.** Purchaser may terminate the Agreement or any part of it for its convenience by notifying Supplier of termination. Upon notice of termination, Supplier shall stop all work on the subject of the termination and cause all of its sub-suppliers to stop all such work. Supplier shall be reimbursed for all reasonably incurred actual direct costs resulting from the termination.
14. **FORCE MAJEURE.** Purchaser may delay delivery or acceptance due to causes beyond its control. If delivery of Material by Supplier is delayed as a result of fire, floods, earthquake, hurricane, tornado, acts of terrorism, orders of a governmental body, Supplier must notify Purchaser of such event as soon as it occurs and provide Purchaser a revised schedule. If any delay is unacceptable to Purchaser, Purchaser may cancel this Agreement without any liability.
15. **INDEMNIFICATION.** Supplier agrees to defend, indemnify, release, save and hold Purchaser, its employees, consultants, representatives, agents, officers and directors harmless against all liabilities, claims, suits, proceedings, damages, penalties, forfeitures, expenses and losses including but not limited to attorney's fees, costs of investigation and defense, court costs and settlements arising out of or resulting from the Material purchased. Indemnification shall include, without limitation, claims for property damage, personal injury or death; patent, copyright, trademark and similarity in design or appearance; and from any act, omission or negligence of Supplier, its agents, employees, or subcontractors. This shall apply without regard to whether or not Purchaser is claimed to be negligent or a participant in the cause of the problems or otherwise liable for damage, expense, or losses and whether or not materials, equipment or property are or were owned by Purchaser except for the sole negligence of Purchaser. This provision shall be in addition to any insurance coverage that directly or indirectly protects Purchaser and shall be in addition to the warranty obligations of Supplier. Purchaser may be represented by and actively participate through its own counsel in any such suits, proceedings or settlements if it so desires.
16. **LIMITATION OF LIABILITY.** Purchaser shall not be liable for anticipated profits or for incidental or consequential damages or for any penalties. Any action against Purchaser must be commenced within one year after the event from which the cause of action arose. Purchaser's liability to Supplier shall not exceed the Agreement price.



17. **GOVERNING LAW AND VENUE.** This Agreement shall be construed under and governed by the laws of Minnesota. The exclusive venue for any actions brought under this Agreement shall be in a court of competent jurisdiction in Wright County, in the State of Minnesota.
18. **WAIVER.** Failure to insist on performance of any of the terms or conditions of this Agreement or failure to exercise any rights or waiver of any breach or default does not thereafter waive any terms, conditions or rights whether of the same or similar types or of different types.
19. **ACCEPTANCE, INSPECTION, TESTING & REJECTION.** Purchaser's receipt of any Material or its making of any payment does not constitute acceptance of any defective or nonconforming Material. Purchaser has the right to inspect and test Material and to reject Material which is defective or non-conforming. Purchaser has no obligation to accept rejected Material. It is Supplier's responsibility to arrange for the correction of such Material, and Purchaser has no obligation to compensate Supplier for such until the Material is accepted by Purchaser as corrected. Nothing contained in the Agreement relieves Supplier from the responsibility for testing, inspection and quality control of the Material.
20. **EOUAL OPPORTUNITY REOUIREMENTS.** Purchaser is an equal employment opportunity employer and is a federal contractor. Consequently, the parties agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that these laws are incorporated herein by this reference. The Supplier agrees to comply with the provisions of Executive Order 13496 (29 CFR Part 471), relating to the notice of employee rights under federal labor laws.
21. **INSURANCE.** If Supplier performs any work on Purchaser's property, Supplier shall procure, maintain and pay for insurance at least equal to that described below. If Supplier will operate motor vehicles on Purchaser's property, Supplier shall maintain automobile insurance at least equal to that described below. Supplier shall (1) name Purchaser as additional insured, and (2) include an endorsement waiving the insurer's right of subrogation against Purchaser. Purchaser reserves the right to require Supplier's attest to additional lines of coverage as indicated by unique exposures associated with the work.
 - Workers' Compensation - in accordance with applicable statutory requirements.
 - Employers Liability - \$1,000,000 limit of liability.
 - General liability, including products and completed operations coverage, for bodily injury, and property damage resulting from the Material, with minimum limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate.
 - Automobile liability, bodily injury, and property damage of \$1,000,000.
22. **INDEPENDENT CONTRACTOR.** Supplier is an independent contractor. Unless otherwise agreed to in writing, Supplier shall provide all labor, tools, equipment, materials and facilities as needed. Supplier shall coordinate and supervise the work including any work performed by subcontractors. Supplier's employees, agents, or subcontractors shall not be considered agents,



representatives or employees of Purchaser and shall have no authority to cause or incur any cost or expense to Purchaser. Supplier shall pay Purchaser for all unauthorized cost, expense and use.

23. **LIENS AND SETOFF.** Supplier shall cause installation to occur lien free. For installation of realty improvements, Supplier must provide a lien waiver, (partial or final as applicable) in a form acceptable to Purchaser prior to payment, from itself and all parties providing either or both labor or materials under this Agreement. Supplier shall promptly pay for all materials, supplies and labor employed by it so that the project site is free of materialmen's and mechanic's liens. If any liens, claims or other encumbrances are outstanding against Supplier or Purchaser as a consequence of the Material, Purchaser may set-off against Supplier sufficient amounts to indemnify and hold Purchaser harmless.
24. **DAMAGES.** If Supplier fails to perform its obligations under this Agreement on or before the date or dates (as the case may be) specified for such performance, Purchaser shall have all rights and remedies as specified under the UCC.
25. **ADDITIONAL PARTS.** Purchaser shall have the right to purchase from Supplier additional parts for service requirements at a negotiated price until such time as Purchaser has authorized tool disposition.
26. **MATERIAL FURNISHED.** Title to all Material furnished by Purchaser on other than a charge basis shall at all times be and remain in Purchaser. Supplier agrees to account for all such materials to the sole satisfaction of Purchaser or pay Purchaser for all costs to replace such materials. Material furnished by Purchaser shall be kept separate from other Materials and shall be clearly identified as property of Purchaser. Supplier assumes all liability for loss or damage and agrees to supply detailed statements of inventory as requested. Supplier agrees to notify Purchaser of each receipt of Material furnished, either directly or through a third party, by the Purchaser.
27. **DIES, TOOLS AND PATTERNS.** If a purchase is for special dies, jigs, tools, and patterns for use in the manufacture of goods for Purchaser, or if the price is to be paid for the goods on the face of an order includes the cost of dies, jigs, tools, and patterns for use in the manufacture of goods for Purchaser, then such dies, etc. shall be and become the property of Purchaser, and shall be clearly identified as the property of Purchaser, at any time without further charges of any nature. Such dies, jigs, tools, and patterns shall be kept in good condition by Supplier, without expense to Purchaser, excepting the actual cost of changes due to Purchaser's change of design or specifications, which shall be paid by Purchaser. Such tools, dies, jigs, and patterns shall not be used to fill purchase orders other than those of Purchaser or be disposed of, except with the written consent of Purchaser. Upon cancellation or termination of a purchase order for any reason whatsoever, Supplier shall prepare such tools, dies, jigs, and patterns for shipment and dispose of them as Purchaser shall direct. Supplier agrees to insure against the loss, damage, or destruction of such dies, jigs, tools, and patterns, and will hold Purchaser harmless from any loss, damage, or the like to such dies, etc., and further agrees, at Supplier's expense, to replace or pay Purchaser the cost thereof in the event of such occurrence which is not caused by the fault of Purchaser.



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28. USE OF PURCHASER'S NAME(S). Supplier agrees not to use Purchaser's name, trademarks of the like in Supplier's advertising, or to show parts made for Purchaser in Supplier's advertising with Purchaser's name, or otherwise use Purchaser's name, trademarks or the like to promote Supplier's sales without prior written permission of Purchaser.
29. MISCELLANEOUS. In addition to the other terms in this purchase order, this purchase order expressly includes all implied warranties and all of the buyer's remedies set forth in the Uniform Commercial Code. In the event of any dispute between the parties, such dispute will be settled exclusively in accordance with paragraph 17. The terms of this purchase order are the sole and exclusive terms on which the Purchaser agrees to be bound