

## TERMS AND CONDITIONS OF PURCHASE

THE PLASTEK GROUP, 2425 WEST 23<sup>RD</sup> STREET, ERIE, PA 16506

NOTICE TO SELLERS: THE FOLLOWING TERMS AND CONDITIONS ARE INCORPORATED INTO EVERY PURCHASE ORDER ISSUED BY PLASTEK INDUSTRIES, INC., UNLESS SPECIFICALLY OBJECTED TO BY SELLER IN WRITING, THESE TERMS AND CONDITIONS SHALL SOLELY AND EXCLUSIVELY GOVERN THIS ORDER.

1. **Parties.** The terms "Purchaser" shall denote PLASTEK INDUSTRIES, INC., its successors and assigns, and the term "Seller" shall denote the party named as "Vendor" on Purchaser's Purchase Order as well as the successors, assigns, divisions, subsidiaries, and affiliated companies and any other party in privity with or claiming through the party so named.
2. **Acceptance and Modification of Agreement.** This Purchase Order becomes a binding contract subject to the terms and conditions hereof when accepted by acknowledgment of Seller or delivery of materials, products or services in whole or in part, provided, however, that no contract shall be formed unless Seller assents to the terms and conditions contained herein. Such assent shall be deemed to have been given if Seller ships goods or services without specifically objecting to these terms. The formation of a contract is hereby made expressly conditional upon such assent, and any different or additional terms or conditions contained in any quotation, acknowledgment or other document of Seller are hereby expressly rejected. Purchaser will consider Seller's request for changes only if such requests are in writing and are directed to specific clauses in Purchaser's Purchase Order. No change shall be binding upon Purchaser unless accepted in a writing signed by authorized representatives of both Purchaser and Seller specifically referring to the change. Delivery of any materials or services without such acceptance shall indicate Seller's withdrawal of its request for changes. Purchaser's signature on any acknowledgment, invoice or other standard document of Seller constitutes merely an acknowledgment of receipt of same and does not indicate Purchaser's acceptance of or agreement to any terms or conditions contained therein.
3. **Delivery, Risk of Loss.**
  - a. Time of delivery is of the essence of this Purchase Order. Deliveries are to be made in both the quantities and at the times specified herein or if no quantities or times are specified, pursuant to Purchaser's instructions. Neither party shall be liable for any default due to acts of God or of the public enemy; acts of federal, state, or local governments or any agencies thereof; fire; flood; epidemic; quarantine restrictions; strikes or freight embargoes, provided that such events do not occur as a result of the party's fault or negligence, and further provided that it takes all necessary actions, such as those enumerated below, to mitigate any delay. Acceptance by Purchaser of a late delivery of either the whole or part of this Purchase Order shall not constitute a waiver of its claim for any damages resulting from the late delivery. Among other things, if Seller's deliveries are so far behind schedule that purchaser finds it necessary to call upon Seller for premium transportation, Seller shall be liable for the difference between specified and premium transportation. Seller, among other things, shall perform overtime work and establish extra shifts without additional costs to Purchaser if necessary to maintain delivery dates. Should delivery not be effected as requested, Purchaser reserves the right to purchase elsewhere and charge Seller with any loss thereby incurred or to cancel the order.
  - b. Seller shall bear and be responsible to Purchaser for any and all risk of loss or damage to the goods ordered hereunder until completion of delivery and unloading at Purchaser's plant, irrespective of any allocation between Purchaser and Seller of responsibility for transportation charges. Seller shall be required to package, load and insure the goods such that they are adequately protected from damage during transit.
4. **Price.**
  - a. **Taxes.** Except as may be otherwise provided in this Purchase Order, the price of the goods purchased under this order includes all applicable federal, state or local taxes as well as any and all export or import duties or similar charges imposed by any country, and all such taxes shall be itemized separately on Seller's invoice. Seller agrees to pay any and all such taxes, duties and/or charges which are in excess of the price stated in the Purchase Order.
  - b. **Transportation.** Unless otherwise provided in the Purchase Order, all transportation charges on goods purchased hereunder, including loading and unloading, shall be paid by Seller and must be prepaid whenever possible.
  - c. **Extra Charges.** No extra charges of any kind, including charges for boxing or cartage, will be allowed unless specifically agreed to by Purchaser in writing.
  - d. **Invoices.** Duplicate copies of Seller's invoices, together with the original bills of lading or express receipts properly signed by carrier representatives shall be mailed not later than the day after each shipment is made. Individual invoices shall be issued for shipments applying against each purchase order. Monthly statements must be mailed as soon as possible after the first of each month to Purchaser. Invoice payment dates and discount periods (if any) shall be computed from the date of Purchaser's receipt of the goods or Purchaser's receipt of Seller's invoice, whichever is later.
  - e. **Quantity.** The quantity of material, except as otherwise indicated on the face hereof, must not be exceeded without authority in writing being first obtained from Purchaser.
  - f. **Changes.** Purchaser shall have the right at any time to make changes in this Purchase Order by written notice to Seller, and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller's cost or time of performance of this Purchase Order, Seller shall notify Purchaser immediately and negotiate an adjustment, which adjustment shall be limited to the cost of material, direct labor incurred, and the additional time required, as a result of the change order. All such adjustments shall be subject to audit in accordance with Paragraph 7 hereof. No additional charge for delay in delivery shall be allowed and any claims for adjustment due to change orders shall be irrevocably waived if not submitted to Purchaser within 30 days of Seller's receipt of the change order.
  - g. **Termination at Purchaser's Option.** Purchaser may terminate this Purchase Order in whole or in part by written, telegraphic or telex notice of termination, whereupon Seller will terminate pursuant to the notice the work started under the Purchase Order. Seller will promptly advise Purchaser of the quantities of applicable work and material on hand or purchased specifically for this Purchase Order prior to termination and of the most favorable disposition that Seller can make thereof. Seller will comply with Purchaser's instructions regarding disposition of such work and material. Within thirty (30) days after receipt of such notice of termination, Seller will submit all its claims pursuant thereto. Purchaser will have the right to verify such claims at any reasonable time by inspecting and auditing the records, facilities, work or materials of Seller relating to this Purchase Order. Purchaser will pay Seller the Purchase Order price of finished work and the direct cost to Seller (excluding profits, overhead or losses) of work in process and raw material purchased specifically for this order, based on any audit Purchaser may conduct according to Generally Accepted Accounting Principles, less, however, (1) the reasonable value or cost (whichever is higher) of any items used or sold by the Seller without Purchaser's consent; (2) the value of any defective, damaged or destroyed work or material and (3) the amount received or reasonably expected to be received by Seller for usable and/or saleable raw materials or work in process which can be used or disposed of by Seller in a commercially reasonable manner in mitigation of its claim. Purchaser will make no payment for finished work, work in process or raw materials fabricated or procured by Seller in excess of Purchaser's written release. Payment under this clause will constitute Purchaser's only liability in the event this Purchase Order is terminated as provided herein. Seller's acceptance of such payment will constitute an acknowledgment that Purchaser has fully discharged such liability. The provisions of this clause will not apply to any termination by Purchaser for default by Seller or for any other cause allowed by law under this Purchase Order.
  - h. **Termination for Default.** Purchaser may cancel all or any part of the undelivered portion of this Purchase Order if Seller does not make deliveries as specified, if Seller breaches any of the terms hereof, including the warranties of Seller, or if Seller fails to make progress so as to endanger performance by Seller under this order in accordance with its terms or performance by Purchaser under the terms of any contract, the performance of which requires the proper and timely performance of this order by Seller. In addition, Purchaser may cancel this Purchase Order if any of the following events occur: insolvency of seller, filing of voluntary or involuntary petition in bankruptcy by or against Seller, appointment of a Receiver of Trustee for Seller, or execution by Seller of an assignment for the benefit of creditors. In the event of termination under this section, Seller agrees to deliver to Buyer on demand all raw materials and work in process acquired in order to perform under this order. Buyer may then complete the work, deducting the cost of such completion from the price, or in the alternative, pay to Seller the reasonable cost of such raw materials and work in process.
  - i. **Inspection, Certification and Records.**
    - a. All materials or products (which terms throughout this Purchase Order include without limitation raw materials, components, intermediate assemblies and end products) shall be subject to inspection and test by the Purchaser and its customer (which term throughout this clause shall include without limitation the Government, including surveillance and/or regulatory agencies) to the extent practicable at all times and places including the period of manufacture and, in any event, prior to final acceptance by Purchaser and its customer. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance.
    - b. If any inspection or test as specified in this Purchase Order is made on the premises of the Seller or its supplier, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests on the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay the work.
    - c. Final acceptance or rejection of the goods shall be made as promptly as practicable after delivery, except as otherwise provided in this Purchase Order, but failure to inspect and accept or reject goods or failure to detect defects by inspection shall neither relieve Seller from responsibility for such goods as are not in accordance with the Purchase Order requirements nor impose liabilities on Purchaser therefor.
    - d. In case any goods are defective in design, materials, workmanship or otherwise not in conformity with the requirements of this order. Purchaser shall, in addition any other rights or remedies, have the right to (i) reject the same and rescind the order in whole or only as the rejected goods, (ii) reject the same and require the correction thereof by Seller, or (iii) accept the same and deduct from the amount due Seller the cost of remedying such defects. If Purchaser elects the foregoing (ii), Seller shall at no expense to Purchaser promptly correct or replace the same with goods or services conforming to the requirements of this order in accordance with Purchaser's instructions, and if Seller shall fail promptly to do so Purchaser may either: (1) replace or correct such goods and charge Seller the cost occasioned Purchaser thereby or (2) terminate this order for default in accordance with Paragraph 8 of these terms and conditions. Rejected items which have been reworked shall not be resubmitted for acceptance without concurrent notice of their prior rejection. No inspection, testing, approval (including design approval) or acceptance shall relieve Seller from responsibility for all defects or other failure to meet the requirements of this order or for any warranties.
    - e. Seller agrees that when specifications or drawings of Purchaser or its customer require the maintenance of records of materials, parts, assemblies and/or manufacture. Seller agrees to maintain records of the same, including drawing number, serial number, if any, and testing of such materials, parts, assemblies and/or manufacture, and will maintain such records for at least four (4) years from the date of completion of this Purchase Order.
    - f. Purchaser reserves the right to require Seller to certify compliance of the goods with Purchaser's required specification. In the event that Purchaser's testing indicates that goods do not meet the specifications as certified, Seller shall accept the return of such goods with full refund to Purchaser and shall reimburse Purchaser for any costs or losses incurred as a result of the non-compliance.
  10. **Warranty.** Seller warrants that it shall have good and merchantable title to all goods sold hereunder and that all goods shall be delivered free from all liens and encumbrances. Seller further warrants that all materials, products or services furnished pursuant to this Purchase Order will be free from defects in material or workmanship and will be in conformity with the requirements of this Purchase Order, including drawings and specifications, if any, and with any representations made by Seller. Seller further warrants that such materials, products or services will be merchantable and fit for the purpose for which they are sold and, where design is Seller's responsibility, will be free from defects in design. Purchaser's approval of Seller's design or materials shall not be construed to relieve Seller of the warranty set forth herein. Without limitation of any rights which Purchaser may have at law by reason of any breach of warranty, goods which are not as warranted may at any time within twelve (12) months after delivery be returned at Seller's expense. Purchaser, at its option, may require Seller either to replace such goods at no increase in price (Seller must pay all repacking, transportation, and handling charges both ways) or to refund the purchase price and any charges in connection therewith. In any event, Seller shall pay all costs incurred by Purchaser for disassembly and reassembly operations caused by a breach of warranty.
  11. **Patents, Trademarks, Trade Secrets and Copyrights.** Seller agrees to defend, indemnify and save harmless the Purchaser, its officers, agents, successors, assigns and customers against all damages, claims, demands, or liability of any kind, including attorney's fees and costs, for actual or alleged infringement or misappropriation of any trade name trademark, trade secret, copyright or patent arising in connection with the possession, sale or use of any materials, products or services ordered.
  12. **INDEMNITY. SELLER SHALL FOREVER DEFEND, INDEMNIFY AND HOLD PURCHASER, ITS EMPLOYEES AND CUSTOMERS, AND USERS OF PURCHASER'S OR SELLER'S PRODUCTS, THE PRIME CONTRACTOR AND THE GOVERNMENT, IF APPLICABLE, HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, DAMAGES OR LOSSES INCLUDING ALL INCIDENTAL AND CONSEQUENTIAL DAMAGE, ATTORNEY'S FEES, LATE CHARGES, FINES AND/OR PENALTIES) OF ANY KIND ARISING OUT OF OR ALLEGED TO HAVE ARISEN OUT OF OR IN CONNECTION WITH THE MANUFACTURE, USE OR SALE OF THE GOODS PROVIDED HEREUNDER OR SELLER'S PERFORMANCE OF OR FAILURE TO PERFORM THIS CONTRACT, INCLUDING ALL WARRANTIES ARISING HEREFROM, OR OUT OF THE CONDITION OR USE OF THE GOODS.**
  13. **Work on Purchaser's Premises.** If Seller's work under this order involves performance of work by Seller on the premises of Purchaser, Seller shall take all necessary precautions to prevent the occurrence of any personal injury, including injury to employees of Purchaser or Seller or to third parties, or property damage during the progress of such work and except to the extent that any such injury is due solely and directly to Purchaser's negligence, shall defend and indemnify Purchaser against all loss which may result in any way from any act or omission of the Seller, its agents, employees, or subcontractors, and Seller shall maintain such workmen's compensation, public liability and property damage insurance and employer's liability and comprehensive insurance as will protect Purchaser from said risk and from any claims, including claims under any applicable workmen's compensation and/or occupational disease act. Prior to commencing work on Purchaser's premises, Seller shall confer with Purchaser's Safety Director on appropriate safety procedures to be observed by Seller's and/or Purchaser's employees in connection with the work and shall provide to and obtain from Purchaser's Safety Director copies of all written safety programs or procedures which OSHA regulations require the parties to exchange or coordinate.
  14. **Purchaser's Property.** Unless otherwise agreed in writing, all tools, molds, fixtures, equipment or material of every description furnished to Seller by Purchaser or specifically paid for by Purchaser, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Purchaser. This includes all copyrights in plans and/or drawings furnished to or by Purchaser. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as property of Purchaser and shall be safely stored separate and apart from Seller's property Seller shall not substitute any property for Purchaser's property and shall not use such property except in filling Purchaser's orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Purchaser, and shall be subject to removal at Purchaser's written request. In the event of removal, Seller shall prepare such property for shipment and shall redeliver to Purchaser in the same condition as originally received or produced by Seller, reasonable wear and tear excepted. Seller shall permit Purchaser to enter its facilities at any time during Seller's hours of operation to retrieve and remove any property of Purchaser.
  15. **Reservation of Rights and Remedies.** The exercise by Purchaser of any of the rights or remedies provided for herein shall not have the effect of waiving any other rights, remedies or damages to which Purchaser may otherwise be entitled at law or in equity, including all rights, remedies and damages available under the Uniform Commercial Code, all of which remedies Purchaser hereby expressly reserves.
  16. **Set-Off.** Purchaser shall be entitled at all times to set-off any amount owing at any time from Seller to Purchaser or any of its affiliated companies against any amount payable at any time by Purchaser in connection with this Purchase Order.
  17. **Compliance with Laws.** Seller shall comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the following:
    - a. **Fair Labor Standards Act.** In accepting this Purchase Order, Seller shall be deemed to present that the materials and products to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and unless otherwise agreed in writing Seller shall insert a certificate on all invoices submitted in connection with this Purchase Order stating that the materials and products covered by the invoice were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Sections 6, 7 and 12.
    - b. **Equal Employment Opportunity.** In accepting this Purchase Order, Seller shall be deemed to represent that Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or non-job related handicap and that Seller will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, or non-job related handicap, such action to include but not be limited to the following: employment, upgrading, demotion, transfer-recruitment or recruitment advertising, layoff or termination, rates or pay or other forms of compensation. Seller further shall be deemed to represent and warrant that it will comply with other applicable requirements of E.O. 11246 and E.O. 13375, and all regulations promulgated thereunder, including 41 C.F.R. §§60-1.4, 60-1.7, 60-1.8, 60-1.11, 60-1.40, 60-250 and 60-741, all of which, together with any amendments thereto are hereby incorporated by reference.
    - c. **Occupational Safety and Health Law.** In accepting this Purchase Order, Seller agrees that any equipment to be provided by Seller pursuant to this Purchase Order shall comply in all respects with the Occupational Safety and Health Act of 1970 and regulations and standards promulgated thereunder, as well as state and local laws or regulations related to safety requirements. Seller agrees to so certify on all of its invoices. Seller specifically agrees to defend, indemnify and hold Purchaser harmless from any and all claims, demands, costs, damages, expenses (including attorney's fees), fines, penalties or other liabilities resulting from the goods' noncompliance with applicable health and/or safety laws, rules, regulations, standards or requirements. Furthermore, Seller shall provide Purchaser with current Material Safety Data Sheets for all goods provided under this Purchase Order. Seller agrees, when performing work on Purchaser's or its customer's premises, to comply with, observe and enforce all applicable worker health or safety standards, rules and regulations.
  18. **Products, Methods and Manufacturing Processes.** Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the Purchaser incident to the placing and filling of this Purchase Order shall not, unless otherwise specifically agreed upon in writing by the Purchaser, be deemed to be confidential or proprietary information and, accordingly, shall be acquired free from any restrictions.
  19. **Confidential Information of Purchaser.** Unless specifically agreed to in writing by the Purchaser all molds, fixtures and tooling and all specifications, plans, drawings and all other documents submitted by or on behalf of Purchaser shall be considered to be confidential and proprietary information of Purchaser and to contain trade secrets of Purchaser, and Seller shall not disclose any of the same to any person, except to its employees who have a need to know to fill the Purchase Order, and the same shall not be used by Seller for any other purpose than to fill this Purchase Order.
  20. **Waivers.** Any waiver of strict compliance with the terms of this Purchase Order shall not be a waiver of Purchaser's right to insist upon strict compliance with the terms of the Purchaser Order thereafter.
  21. **Governing Law; Forum.** This Purchase Order, and the rights and obligations of the parties thereto, shall be determined in accordance with the laws of the Commonwealth of Pennsylvania and shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Any litigation arising out of or relating to this Purchase Order shall be decided exclusively in the state or federal courts located in Erie County, Pennsylvania, and Seller hereby waives any objections as to the personal jurisdiction or proper venue of such courts. Litigation would include "Consequential Damages" which pertain to Legal Fees, Lost Income, Lost time and Lost Labor.
  22. **Integration.** This Purchase Order (including any specifications or other documents incorporated or referred to herein) constitutes the entire contract and understanding between Purchaser and Seller concerning the subject matter hereof and any representation, promise, course of dealing, trade usage or other agreement, oral or written, express or implied, not contained or incorporated herein will not be binding on either party. This Purchase Order may only be modified by a written document of subsequent date signed by both Purchaser and Seller and separately setting forth the specific term or terms hereof to be modified and the language of the modification.