



Pro Seal & Plastics, LLC
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Terms & Conditions of Sale

1. General

- A. Applicability.** These Terms and Conditions of Sale constitutes the entire agreement between Pro Seal and Plastics, LLC, an Indiana limited liability company ("Seller") and the customer ("Buyer") for the purchase products (the "Products") described in any applicable purchase order accepted by Seller (each, an "Order"). Except to the extent expressly agreed to by Seller in a writing signed by an authorized officer of Seller, any different, conflicting or additional terms contained in an Order, Order acknowledgment, sales agreement or other document shall be void. Seller shall not be deemed to have waived any provision of these Terms and Conditions of Sale by failing to object to provisions that may appear on, be incorporated by reference in, or attached to an Order. Seller hereby reserves the right to accept each Order, and each acceptance shall be conditional upon the acceptance by Buyer of these Terms and Conditions of Sale. Any revised and follow-on orders accepted by Seller shall be deemed to be an Order and subject to these Terms and Conditions of Sale. Seller's acknowledgement of receipt of the revised or follow-on orders shall not constitute acceptance.
- B. Orders** are binding only after acceptance by Seller by issuance of a Sales Order Confirmation. Verbal purchase orders shall not be deemed accepted until confirmed by Seller by issuance of a Sales Order Confirmation.
- a. Prices are effective for 45 days from the quote date unless otherwise stated and are subject to change without prior notice.
 - b. Orders are subject to the minimum order quantity requirements.
 - c. Blanket Purchase Orders will require a mutually agreed upon release schedule. All Blanket Purchase Orders expire within 12 months from the date of issue.
 - d. Delivery times for non-stock items vary greatly by manufacture and item type. An estimated lead-time will be noted on the Sales Order Confirmation.
 - e. Seller reserves the right to over or under ship by 10% of the confirmed quantity and invoice accordingly.
 - f. Contract pricing is per the written agreement and is to be review annually.
- C.** Seller reserves the right, without prior notice, to:
- a. Change any price.
 - b. Discontinue any item.
 - c. Discontinue shipments to any customer for any reason with or without cause.
 - d. Resolve any inconsistencies, errors, omissions, conflicts or ambiguities.
 - e. Change and/or revoke any provision contained herein.
- D.** The **Minimum Order Value** (MOV) is \$100 of total product per Order. If the purchase order value is less than \$100, a MOV Charge to reach the minimum order value may be added to the Sales Order Confirmation. If Buyer refuses to accept the MOV Charge, then Seller must be notified in writing within 24 hours and the Order may be cancelled at no cost. Otherwise, the MOV Charge is deemed accepted by Buyer and will be invoiced accordingly.

2. Payment Terms

- A.** Payment terms are Net 30 Days unless otherwise specified on the quote, order confirmation, agreement and/or invoice.
- B.** Special item orders may require a partial or full payment in advance.
- C.** Orders requiring a tooling charge may require advanced payment.

- D. Bank wire transfer payments will require an additional \$25.00 wire transaction charge to cover the inbound banking transaction cost of the wire transfer.
- E. Seller reserves the right to revoke any credit terms at any time with or without cause.
- F. **The remittance must include the invoice number for proper account reconciliation.**
- G. Past due invoices are subject to a late payment charge of 1.5% per month, or the maximum amount permitted by law.
- H. Invoices that are 90 days past due will be sent to a collection agency or attorney to assist in collection of the past due account. Buyer will be responsible to pay any and all cost of collection; including, but not limited to, collection agency fees, attorney fees and court costs.
- I. To secure payment of all sums due or otherwise, Seller retains a security interest in all products delivered to Buyer and this Terms and Conditions of Sale is deemed to be a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller and its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to protect its security interest.

3. Shipping

- A. All shipments are **FOB** Seller or Seller's supplier, unless a prior written agreement specifies otherwise.
- B. Buyer assumes title, control and all risk upon transfer to a common carrier.
- C. Buyer is responsible for inspecting the merchandise upon receipt and insist that visible damage be noted on its copy of the freight bill.
- D. If any Product has been lost or damaged in transit, Buyer must file the claim with the carrier in a timely manner.
- E. Freight and insurance charges are invoiced to Buyer or shipped freight collect to Buyer providing appropriate carrier account information is on file.
- F. A \$5.00 packaging and handling charge may be imposed to each shipment
- G. Delivery dates are approximations only, based on standard, requested shipping methods, and Seller accepts no liability for any delays in delivery.
- H. Products subject to any Order shall be deemed accepted by Buyer ten (10) days after Buyer receives shipment of the Products. After such acceptance, Buyer shall not have the right to revoke such acceptance.

4. Returns & Claims

- A. No returns shall be accepted without a Seller Return Materials Authorization Number (RMA #) clearly affixed to the shipping carton. The RMA # is good for 30 days from the date of issue.
- B. Authorized returns are to be shipped to Seller prepaid and insured for the product's full value.
- C. Products returned for a warranty claim must include Seller Invoice Number.
- D. Returned items shall be inspected by Seller and if found to be defective, shall be handled under Seller's standard warranty policy (below).
- E. All non-defective items returned are subject to a restocking fee.
- F. A Credit Memo will be issued for any accepted return or defective item.

5. **Modification.** If Buyer requests changes to the Order, the delivery date, or any other changes which, in Seller's judgment, impacts its costs, risks or other matters, then Buyer and Seller must agree to the changes in writing or the order shall be deemed cancelled in accordance with Section 6. The parties shall have a reasonable time to agree to any changes proposed by Buyer and to agree upon a new delivery date caused by these changes.

6. **Cancellation.** Buyer may direct Seller to terminate work under an Order, in full or in part, at any time by written notice to Seller that states the extent and effective date of the termination of the Order. Upon receipt of such a notice of termination or modification of an Order, Seller will with reasonable promptness stop work under the Order. Buyer agrees to pay Seller for completed products that conform to the requirements of the Order and do not exceed the amounts called for by the Order. In addition, Buyer agrees to pay Seller for partially completed and in-process Products if they conform to the requirements of the Order and do not exceed the amount authorized in said Order together with raw materials and component parts held in anticipation of filling the cancelled portion of the Order.

7. Tooling

- A. Unless otherwise agreed in writing, all tooling, dies, special dies, patterns, patents, jigs, gages, fixtures, drawings, designs, samples, tooling aids, molds and/or any other property furnished, created, invented or developed by Seller in connection with an Order (the "Tooling") is the property of and owned exclusively by Seller and/or its suppliers. Seller shall maintain a lien for monies owed hereunder on all Tooling and/or material not owned by Seller for any amounts owing by Buyer. Buyer will pay on demand all (i) personal property taxes, (ii) sales and use taxes and (iii) excise taxes in each case to the extent on any such Tooling and/or materials owned by Buyer in possession of Seller and/or its suppliers.
- B. Exclusive rights may be forfeited, and tooling may be disposed of in any manner, if two (2) consecutive years have elapsed without a purchase order being placed which utilizes the applicable tooling. Seller and/or its suppliers shall not be responsible for any loss or damage to such property while in their possession.

8. Warranty

- A. Seller represents and warrants to Buyer as follows: (1) that the Product will be free from defects in workmanship at the time of delivery; and (2) Seller will convey good title to the Products, free from any lawful third party security interest, lien or encumbrance. **These are the exclusive warranties provided by Seller, and Seller disclaims any and all other warranties, expressed or implied, including, but not limited to, any implied warranty of merchantability and fitness for a particular purpose.**
- B. These warranties will survive any inspection, delivery acceptance, or payment by Buyer for a period of one (1) year. Seller makes no warranty concerning: (1) the design and/or application of the Products; and (2) the performance, suitability or material and workmanship of the Products. Payment for Products will not waive breaches of the warranty provided by Seller.

9. Limitation Of Remedy

- A. Seller liability arising from or in any way connected with the item sold or this contract shall be exclusively to repair or replacement of the item sold or refund of the purchase price paid by the customer at Seller's sole option.
- B. In no event shall Seller be liable for any incidental, consequential or special damages of any kind or nature whatsoever, including but not limited to lost profits arising from or in any way connected with this agreement or items sold hereunder, whether alleged to arise from breach of contract, express or implied warranty, or in tort, including without limitation, negligence, failure to warn or strict liability.

10. Indemnification. Buyer at its expense will indemnify and hold Seller harmless with respect to every claim, demand, suit, litigation, cost and expense (including reimbursement of Seller's reasonable attorneys' fees) that may be brought against or incurred by Seller: (A) for any alleged infringement by Buyer of any present or future patent, copyright, industrial design right or other proprietary right; (B) based on Buyer's activity under an Order or the acts or omissions of Buyer; (C) arising from the use by Buyer of the Products (i) alone, (ii) in combination by reason of their content, design or structure, or (iii) in combination in accordance with Buyer's recommendations or instructions; or (D) for any alleged violation of applicable State or Federal laws and regulations relating to the use of the Products. Buyer will investigate and defend or otherwise handle every such claim, and at Seller's request, assist Seller in Seller's investigation, defense, or handling of any such claim. Buyer will pay all expenses and damages or settlement amounts that Seller may sustain by reason of each such indemnified claim. Buyer's obligations will apply even though Seller furnishes all or any portion of the design and specifies all or any portion of the processing used by Buyer.

11. Limitation on Assignment. Buyer may not assign its rights or obligations under this agreement without the prior written consent of Seller.

12. Force Majeure. Seller does not assume the risk and is not liable for delay or failure to perform any of Seller's obligations by reason of events or circumstances beyond its reasonable control (hereinafter "Events of Force Majeure"). Events of Force Majeure shall include without limitation: accidents, strikes or

labor disputes, acts of any government or government agency, acts of nature, delays or failures in delivery from carriers or suppliers, shortages of materials, or any other cause beyond Seller's reasonable control.

- 13. Waiver and Severability.** Failure to enforce any provision of this agreement will not invalidate that provision; nor will any such failure prejudice Seller's right to enforce that provision in the future. Invalidation of any provision of this agreement by legislation or other rule of law shall not invalidate any other provision herein. The remaining provisions of this agreement will remain in full force and effect.
- 14. Governing Law.** This agreement and the sale and delivery of all Products are deemed to have taken place in, and shall be governed and construed in accordance with, the laws of the State of Indiana, as applicable to contracts executed and wholly performed therein and without regard to conflicts of laws principles. Buyer irrevocably agrees and consents to the exclusive jurisdiction and venue of the courts of Allen County, Indiana with respect to any dispute, controversy or claim arising out of or relating to this agreement.
- 15. Modification of Terms.** This contract constitutes the entire agreement between Seller and Buyer and the complete Standard Terms and Conditions of Sale which may be modified between parties in writing only. Seller reserves the right, with or without prior notification, to modify its standard Terms & Conditions of Sale at any time. The most recent Terms & Conditions may be requested by calling 260-436-7805, emailing info@ProSealPlastics.com or visiting ProSealPlastics.com