

Imperial Plastics, Incorporated

**PURCHASE ORDER
STANDARD TERMS AND CONDITIONS
(1/2016 version)**

- 1- **Definitions.** The following definitions apply unless otherwise indicated: (a) the “Customer” means Imperial Plastics, Incorporated, a Delaware corporation; (b) the “Supplier” means the legal entity contracting with the Customer; and (c) the “Order” means all terms set forth herein and in the purchase order or other written communication of the Customer to which these Standard Terms and Conditions are attached or referenced therein and are expressly incorporated by reference, including any amendments, supplements, specifications, technical data, quality clauses and other documents referred to in the Order.
- 2- **Acceptance.** The Supplier agrees to be bound by and to comply with all terms set forth in the Order. Any reference on the face of the Order to any bid, proposal, or offer of sale by or of the Supplier is deemed to be limited to the description of the goods and/or services to be provided to the Customer and shall not effect, modify or add to the Order. The Supplier’s acceptance of the Order shall occur upon the earlier of: (a) the Supplier’s signing and returning the Order or an acknowledgment form; or (b) the Supplier’s commencement of manufacturing or shipment of goods or performance of services under the Order.
- 3- **Standard Terms and Conditions.** Upon acceptance, the terms set forth in the Order take precedence over any additional or conflicting terms in any pre-contract negotiations, acknowledgment, purchase order, or other document connected with this transaction unless such additional or conflicting terms are: (a) part of a written supply agreement (“Supply Agreement”), which has been negotiated between the parties and which the parties have expressly agreed may override these terms and conditions in the event of a conflict, and/or (b) set forth on the face of the Order to which these Standard Terms and Conditions are attached or referenced therein. Counteroffers or proposed additions or conflicting terms are expressly objected to and rejected by Customer. Trade usage and course of dealing or performance shall not be employed to vary, explain or supplement the Order.
- 4- **Independent Contractor Status.** Both the Customer and the Supplier intend and specifically agree that the Order does not create any partnership, joint venture, limited partnership, agency or employer-employee relationship between them. Notwithstanding anything herein to the contrary, each party hereto shall be and remain an independent contractor and nothing herein shall be deemed to constitute the parties as partners; neither party will have the authority, or hold itself out as having the authority, to bind the other.
- 5- **Warranty.** The Supplier warrants with respect to goods and services provided under the Order that the Supplier has clear title, free of all liens and encumbrances, and there are no claims of third parties of any nature whatsoever arising out of or related to the goods or services. The Supplier expressly warrants that all goods or services ordered will conform to the specifications, drawings, samples or descriptions furnished to or by the Customer. The Customer reserves the right at any time to direct changes, or cause the Supplier to make changes or to otherwise change the scope of the work covered by the Order, and the Supplier agrees to promptly make such changes; any difference in price or time for performance resulting from such changes shall be equitably adjusted by the Customer after receipt of documentation in such form and detail as the Customer may direct. Goods will be merchantable, of good material and workmanship and free from defects. In addition, the Supplier acknowledges that the Supplier knows of the Customer’s intended use and expressly warrants that all goods covered by an Order which have been selected, designed, manufactured, or assembled by the Supplier, based upon the Customer’s stated use, will be fit and sufficient for the particular purpose intended by the Customer. With respect to services, the Supplier shall be responsible to the generally accepted standards of ordinary and reasonable skill and care usually exercised by similar suppliers at the time and location such services are rendered. Unless specific quality requirements are set forth on the face of the Order, Supplier shall provide and maintain a quality control system to an industry-recognized quality standard for the goods and/or services covered by the Order. Supplier shall keep complete records of all quality control inspection work and make such records available to Customer and its customers during the performance of the Order and for a period of up to six (6) years after final payment. Any disclaimer of warranty contained in the Supplier's purchase orders, acknowledgment, invoices or otherwise are waived and of no force or effect. The warranty period shall commence on the date of the Customer’s acceptance of the goods or services and extend for the longest term provided by applicable law or as otherwise agreed by the parties and set forth on the face of the Order.

- 6- **Inspection and Remedies.** Upon reasonable notice to the Supplier, the Customer (or the Customer's customer) shall have the right, but not the obligation, to inspect goods and services at times and places designated by the Customer before, during or after delivery or performance. If an inspection takes place at the premises of the Supplier or its suppliers, the Supplier shall provide, at the Supplier's expense, all reasonable facilities and assistance to such inspectors. The Supplier shall maintain a test and inspection system reasonably acceptable to the Customer. If the Customer determines that any goods provided or services performed under the Order are defective or fail to conform to the requirements of the Order (including the Supplier's warranties and covenants under these Standard Terms and Conditions), the Customer may reject or revoke acceptance of such goods or services and may, at its option and sole discretion: (i) terminate any remaining part of the Order (as provided hereunder); (ii) repair such goods, in which event all related costs and expenses (including, without limitation, material, labor and handling costs) and other reasonable charges shall be for the Supplier's account; (iii) return such goods to the Supplier for repair or replacement by the Supplier (at the Supplier's risk of loss and expense of unpacking, examining, repacking, and reshipping); and/or (iv) retain such goods or services at an adjusted price mutually agreeable to both the Customer and the Supplier. These remedies are in addition to any other remedies provided hereunder, at law, or in equity.
- 7- **Inventory.** The Supplier shall not anticipate delivery by purchasing materials or manufacturing goods in excess of what is reasonably required to meet the Customer's delivery schedule.
- 8- **Price; Payment.** The Supplier shall furnish the goods and services covered by the Order in accordance with the prices stated on the face of the Order. Unless an Order specifies otherwise, the prices in the Order are firm fixed prices, stated in U.S. Dollars, and the Supplier is liable for and shall pay all taxes, impositions, changes and exactions imposed on or measured by an Order except for applicable sales and use taxes that are separately stated on the Supplier's invoice. Prices shall not include any taxes, impositions, charges or exactions for which the Customer has furnished a valid exemption certificate or other evidence of exemption. The Supplier warrants that all prices charged to the Customer are as low as any net price now given by the Supplier to any other customer for similar goods or services (like quantities and under similar circumstances), and if at any time during the contract period lower prices are quoted anyone for similar goods or services, such lower net prices shall, from that time, be substituted for the prices contained herein. The Supplier shall deliver duplicate invoices to the Customer immediately upon shipment of goods or completion of services. Unless otherwise provided elsewhere in the Order, payment will be: (a) net 60 days from the date of the Supplier's invoice; or (b) upon receipt of the goods or services, if later.
- 9- **Delivery.** The Supplier shall be responsible for ensuring the proper packaging, marking and shipping of goods. All goods shall be shipped prepaid, insured for the Supplier's full price and F.O.B. to the Customer's location designated on the face of the Order or other address provided in writing to the Supplier by the Customer. No charges will be allowed for packing, crafting, freight and any other services unless so specified in the Order. The Supplier shall at all times comply with the Customer's written shipping instructions. Unless otherwise directed, all items shipped on the same day from and to a single location must be consolidated on one bill of lading or air bill, as appropriate. The Supplier shall submit all required shipping papers to the Customer prior to final payment. Purchase order numbers shall appear on all correspondence, shipping labels, and shipping documents wherever possible.
- 10- **Time for Performance.** Time is of the essence and failure to deliver goods or services in accordance with an Order, if unexcused, shall be considered a material breach of any contract between the Supplier and the Customer. The Supplier shall notify the Customer in writing immediately of any actual or potential delay to performance. No acts of the Customer, including, without limitation, modifications of an Order or acceptance of late deliveries, shall constitute a waiver of this provision. The Customer also reserves the right to refuse or return at the Supplier's risk and expense shipments made in excess of the Customer's Orders or in advance of required schedules or to defer payment on advance deliveries until scheduled delivery dates.
- 11- **Termination for Convenience.** The Customer may, by notice in writing, terminate an Order or work under an Order for convenience and without cause, in whole or in part, at any time, and such termination shall not constitute default. In the event of partial termination, the Supplier is not excused from performance of the non-terminated balance of work under the Order. The Supplier shall be reimbursed for actual, reasonable, substantiated and allowable costs of materials, goods and labor that were incurred prior to the Supplier's knowledge of such termination, provided that the Supplier takes reasonable steps to mitigate its damages. The Customer may take immediate possession of all work so performed upon written notice of termination to the Supplier.

- 12- **Termination for Default.** The Customer may, by notice in writing, terminate an Order in whole or part at any time, in the event of: (i) the Supplier's breach of any one or more of the terms of the Order (including the Supplier's warranties and covenants under these Standard Terms and Conditions); (ii) the Supplier's breach of a Supply Agreement, if any; (iii) the Supplier fails to make progress so as to endanger performance; (iv) Supplier fails to provide adequate assurance of future performance; or (v) the Supplier ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against the Supplier or a receiver for the Supplier is appointed or applied for, or an assignment for the benefit of creditors is made by the Supplier. In the event of partial termination, the Supplier is not excused from performance of the non-terminated balance of work under the Order. Any termination under this paragraph 12 adjudged to be wrongful shall be deemed to then be a termination for convenience under paragraph 11, but with the Customer having the right to avail itself of all of its remedies under the Order, at law or in equity.
- 13- **Force Majeure.** Any non-performance or delay in performance of any obligation of the Supplier or the Customer under the Order will be excused to the extent such failure or non-performance is a result of any cause preventing performance of an obligation under the Order which is beyond the reasonable control of the Supplier or the Customer, and which, by the exercise of due diligence, could not be overcome, including, without limitation, fire, flood, embargo, explosion, acts of a governmental authority, and acts of God ("Force Majeure"). In no event shall the Supplier's ability to sell goods or services at a better price or the Supplier's economic hardship in buying raw materials necessary to manufacture products at a commercially reasonable price constitute Force Majeure. If the Customer or the Supplier is affected by Force Majeure, it will (a) promptly provide written notice to the other party, explaining the full particulars and the expected duration of the Force Majeure, and (b) use commercially reasonable best efforts to remedy the interruption or delay if it is reasonably capable of being remedied. If a Force Majeure extends for more than sixty (60) days, the Order may be terminated upon written notice by the party not declaring Force Majeure without any liability on its part.
- 14- **Customer's Property & Information.** All tools, dies, molds, templates, equipment, specifications, data, drawings, designs, software or materials furnished by the Customer to the Supplier or paid for by the Customer, including replacements and materials attached thereto, shall remain and be marked as the personal property of the Customer. Such items shall be separately stored and insured by the Supplier, and the Supplier assumes all risk of loss and liability arising out of or related to the items, until such items are returned to the Customer. These items shall be used by the Supplier only for filling the Customer's order and are subject to immediate removal, at the Customer's written request, with each item to be delivered (at the Supplier's expense) in its original condition, reasonable wear and tear excepted. The Supplier shall provide to the Customer, without restriction on use or disclosure, all information and documents that the Supplier has or shall develop or acquire related to the work the Supplier is performing under the Order. Such information and documents shall be deemed to be "works for hire" and be the property of the Customer, with the Customer having a right of use for any purpose, without liability to the Supplier.
- 15- **Confidential Information.** For the purposes of the Order, "Confidential Information" shall mean (a) any and all trade secrets, confidential or proprietary information of, or relating directly or indirectly to, the Customer which are received from or on behalf of the Customer, in whatever form maintained (written, documentary, computerized, oral or otherwise), including but not limited to the material, methodologies, data, computations, technical information, trade secrets, trademarks, software, computer code, source code, object code, methods of operation, know-how, ideas, plans, drawings, designs, blueprints, reports, analyses, business and marketing plans and information, sales information, development plans, customer lists, financial information and projections, and contracts; and (b) all notes, memoranda, summaries, and other similar materials, in whatever form maintained, whether documentary, computerized, oral or otherwise, prepared by or for the benefit of the Customer that, directly or indirectly, contain or otherwise reflect, in whole or in part, any of the Confidential Information described above; (c) any and all information relating to the Customer's business and affairs, any and all information relating to the identity, business and affairs of the Customer's customers, potential customers, employees or authorized agents and any and all materials of the Customer which may come into the Supplier's possession or into the possession of any of the Supplier's employees, agents or sub-contractors. Notwithstanding the foregoing, Confidential Information shall not include information that is (i) available to the public without fault of the Supplier, (ii) known to the Supplier prior to its receipt from the Customer as evidenced by the Supplier's written records, and (iii) available to the Supplier from another source without breach of any agreement or violation of law. The Supplier agrees not to disclose Confidential Information to any third party and will use such information only as is necessary to perform its obligations under the Order and

will not use the Confidential Information for the benefit of anyone other than the Customer. Upon the Customer's request, the Supplier will promptly deliver to the Customer all such Confidential Information. The Supplier agrees to limit its internal distribution of Confidential Information to its employees who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by the Supplier's employees of nondisclosure agreements with provisions no less restrictive to those set forth herein. In no event will the Supplier use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care, to prevent the unauthorized use or disclosure of the Confidential Information. The Supplier further agrees not to use the Confidential Information except in the course of performing under the Order.

- 16- **U.S. Export Controls.** The Order and all items furnished by the Customer to the Supplier in connection herewith shall at all times be subject to the export control laws and regulations of the United States including, but not limited to, 10 CFR Part 810 and U.S. Export Administration Regulations. The Supplier agrees and gives assurance that no items, equipment, materials, services, technical data, technology, software or other technical information or assistance furnished by the Customer, or any good or product resulting therefrom, shall be exported or re-exported by the Supplier or its authorized transferees, if any, directly or indirectly, except to the consignee(s), if any, specified on the Order, unless in accordance with applicable U.S. export laws and regulations. The aforesaid obligations shall survive any satisfaction, expiration, termination or discharge of any other contract obligations. Upon receipt of the Customer's Order, the Supplier shall provide to the Customer, the country of origin and the appropriate export classification codes including, if applicable, the Export Control Classification Number (ECCN) and the Harmonized Tariff Codes of each and every one of the goods supplied hereunder in sufficient detail to satisfy applicable trade preferential or customs agreements, if any. The Supplier represents and warrants that the country of origin of all goods shall be as set forth in the Supplier's quote unless the Supplier obtains the Customer's prior written consent.
- 17- **Infringement.** The Supplier warrants that all work, materials, services, equipment, parts and other items provided by the Supplier pursuant to an Order, which are not of the Customer's design, shall be free from claims of infringement (including misappropriation) of third party intellectual property rights and that any use or sale of such items by the Customer or any of the Customer's customers shall be free from any claims of infringement. The Supplier may replace or modify infringing items with comparable items acceptable to the Customer of substantially the same form, fit and function so as to remove the source of infringement. If the use or sale of any of the above items is enjoined as a result of claims, suits, or actions alleging infringement, the Supplier, at no expense to the Customer, shall obtain for the Customer and its customers the right to use and sell said items.
- 18- **Compliance with Law.** The Supplier warrants that the materials to be furnished and/or the services to be rendered under an Order shall be manufactured, sold, used and rendered in compliance with all relevant federal, state, local law, orders, rules, ordinances, and regulations. Any good shipped to the Customer will be produced in compliance with the Fair Labor Standards Act of 1938, as amended.
- 19- **Responsibility and Insurance.** The Supplier shall be responsible for the actions and failure to act of all parties retained by, through, or under the Supplier in connection with performance of an Order. The Supplier shall maintain and cause its subcontractors to maintain such General Liability, Property Damage, Employer's Liability, Workers' Compensation, Professional Errors and Omissions and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance in such amounts as will protect the Supplier (and its subcontractors) and the Customer from said risks. The Supplier shall provide the Customer with certificates evidencing required insurance upon the Customer's request.
- 20- **Indemnification.** The Supplier shall defend, indemnify and hold harmless the Customer, its affiliates and their respective directors, officers, employees, customers, agents, contractors, successors and assigns from and against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, damages, costs, expenses, or liabilities (including attorney fees and other legal expenses) in connection with: (a) any breach by the Supplier of its warranties, covenants or obligations hereunder; and (b) any injury (including death), property damage, or economic loss arising out of or related to (i) defective or nonconforming goods or services supplied by the Supplier under the Order, (ii) acts or omissions of the Supplier or its employees or subcontractors in providing goods to or performing work, including work at the Customer's or its customer's premises or using the Customer's property, unless resulting from the sole negligence of the Customer, or (c) any infringement or contributory infringement under paragraph 17 of a patent, trademark, copyright or other proprietary interest by reason of the manufacture, delivery, license, use or

sale of the goods supplied or services performed under the Order, regardless of whether (a) through (c) above arise in tort (including negligence), contract, warrant, strict liability or otherwise.

- 21- **Enforcement of Restrictive Covenants.** A breach of paragraphs 14, 15, 16 and/or 17 will cause irreparable injury for which adequate monetary remedies are not available to the Customer. Therefore, in addition to any other remedies that may be available, the Supplier agrees that the Customer may obtain a temporary restraining order, preliminary injunction or other equitable relief to prevent or remedy any breach of paragraphs 14, 15, 16 and/or 17.
- 22- **Continuing Obligations.** The Supplier agrees that paragraphs 14, 15, 16, 17, 18, 20 and 21 shall remain in full force and effect beyond the termination or expiration of any contract made between the Customer and the Supplier, and shall be binding on the Supplier's assigns, executors, administrators, and other legal representatives.
- 23- **General.** The Order, together with the terms of any Supply Agreement executed by the parties, shall constitute the entire understanding between the Customer and the Supplier relating to the goods or services provided by the Supplier. The parties agree that the Order and any Supply Agreement between the Customer and the Supplier shall be interpreted and construed in accordance with the laws of the State of Minnesota without reference to any conflict of law principles. All actions or proceedings arising under the Order, or arising out of the operative facts represented by Services performed pursuant to the Order, shall be resolved in the courts of the State of Minnesota, and the parties consent and submit to the exclusive jurisdiction of the federal and state courts seated therein and waive, to the fullest extent permitted by law, any claim that any such action or proceeding is being held or brought in an inconvenient forum. If any provision of the Order is held to be invalid or unenforceable, the Order shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity or enforceability of the remainder of the provisions or the remaining terms set forth in the Order and the remaining provisions of any Supply Agreement between the Customer and the Supplier. A failure of either party to enforce or strictly observe any provision of the Order on one or more instances will not operate as a waiver of the provision as to the future. The rights and remedies reserved to the Customer are cumulative and in addition to any other or further rights and remedies available at law or in equity. The Supplier shall not assign its rights or obligations under the Order or any Supply Agreement between the Customer and the Supplier without the written authorization of the Customer.