

TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** The terms and conditions set forth herein shall apply to all purchases of goods by the buyer ("Buyer") from Performance Plastics, Ltd., an Ohio limited liability company ("PPL"). These terms and conditions shall be the exclusive and sole expression of the agreement between PPL and Buyer with respect to the terms and conditions applicable to such purchases and supersede any prior terms and conditions. The terms and conditions contained in any other purchase or sale documentation shall not apply and shall be of no force or effect. No additions to or modifications of any of the terms and conditions hereof shall be effective unless made in writing and signed by both parties.
2. **FINAL AGREEMENT.** These terms and conditions are intended by PPL and Buyer to constitute a final, complete, and exclusive expression of agreement and cannot be supplemented or amended without PPL's written approval. PPL's waiver of any breach, or failure to enforce any of these terms and conditions at any time, shall not in any way affect, limit, or waive PPL's right thereafter to enforce or compel strict compliance with every term and condition thereof. Typographical and stenographic errors in any document prepared by PPL are subject to correction.
3. **PRICES.** Unless otherwise agreed in writing by PPL, all prices: are quoted and shall be paid in U.S. Dollars; are subject to change without notice; are F.O.B. PPL's facility, Cincinnati, Ohio; and do not include any applicable federal, state or local sales, use, excise, value added or similar tax or other charges, which additional charges Buyer agrees to pay. All orders are accepted subject to PPL's quoted price, or in the absence thereof, PPL's price in effect at the time of shipment. All changes in freight rates or transportation charges used by PPL in computing prices and charges occurring after the date of PPL's quote will be for Buyer's account. Buyer agrees to accept either overage or shortage of any quantity of goods not in excess of ten percent, with the price therefor to be adjusted prorata. If any materials used in the production of the goods are furnished by Buyer, ample allowance must be made for reasonable spoilage and wastage, and material must be of suitable quality to facilitate efficient production and meet all specifications.
4. **DELIVERY.** All delivery dates stated by PPL are approximate dates only and estimated in good faith to the best of PPL's ability. Time shall not be deemed to be of the essence in making delivery unless specifically agreed to in writing by PPL.
5. **BUYER'S INSPECTION AND ACCEPTANCE.** Buyer shall make an examination and test of any goods delivered hereunder immediately upon receipt at Buyer's place of business, and failure of Buyer to give notice of any claim within 30 days after Buyer's receipt of such goods at its plant shall be an unqualified acceptance of said goods. Any course of dealing between the parties to the contrary notwithstanding, any claim by Buyer shall be deemed waived unless presented in writing to PPL within 30 days from the date of receipt of the goods to which such claim relates.
6. **CANCELLATION AND TERMINATION.** Acceptance by PPL of Buyer's order will give rise to a binding contract between the parties which, except as otherwise specifically provided herein, may not be cancelled or modified by Buyer without the consent in writing of PPL. In the event Buyer fails to accept goods ordered or advises PPL of its intention not to accept deliveries, Buyer shall be liable for PPL's cancellation charges.
7. **LIMITED WARRANTY; LIMITATION OF REMEDIES.** PPL WARRANTS THAT THE GOODS SOLD TO BUYER SHALL MEET ANY MUTUALLY AGREED WRITTEN SPECIFICATIONS THEREFOR. OTHER THAN THE FOREGOING, PPL SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE EXCLUSIVE REMEDY OF BUYER FOR ANY BREACH OF THE FOREGOING WARRANTY, OR ON ANY CLAIM OF ANY KIND (INCLUDING WITHOUT LIMITATION IN TORT, CONTRACT OR WARRANTY), IS LIMITED TO, AT PPL'S OPTION, REPLACEMENT OF THE NONCONFORMING GOODS OR A REFUND OF THE PURCHASE PRICE ACTUALLY PAID TO PPL THEREFOR, AND PPL SHALL NOT BE LIABLE FOR ANY LOSS, INCONVENIENCE, OR DAMAGE, INCLUDING DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, RESULTING FROM ANY PERFORMANCE OR ABSENCE OF SUCH PERFORMANCE, BY PPL HEREUNDER. IN NO EVENT AND FOR NO CAUSE WHATSOEVER SHALL PPL HAVE ANY MONETARY LIABILITY TO BUYER IN EXCESS OF THE PURCHASE PRICE ACTUALLY RECEIVED BY PPL FOR THE PERTINENT GOODS IN QUESTION.
8. **PAYMENTS.** If, in the judgment of PPL, the financial condition of Buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, PPL may require full or partial payment in advance, and, in the event of the bankruptcy or insolvency of Buyer or in the event that any proceeding is brought by or against Buyer under the bankruptcy laws, PPL shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges. Payment terms on all invoices are net 30. PPL may impose a finance charge on all past due balances equal to the lesser of (i) the maximum rate allowed by law and (ii) 2% per month, equivalent to 24% per annum.
9. **FORCE MAJEURE.** PPL shall not be held responsible for performance or delivery of all or any part of any goods due to federal, state or municipal action, statute, ordinance or regulation, strike or other labor trouble, fire, windstorm or other incidents outside of PPL's control which shall make such performance or delivery impossible or impractical. Buyer agrees to be responsible for all increases in tariffs, duties imposed by law or other government actions.
10. **INDEMNIFICATION.** Buyer agrees to indemnify, defend and hold PPL harmless from and against all judgments, decrees and costs (including attorneys' fees) resulting from Buyer's use and/or resale of the goods delivered hereunder. Further, without limiting the generality of the foregoing, if the goods delivered hereunder are to be manufactured according to Buyer's specifications, Buyer shall indemnify, defend and hold PPL harmless against any claims or liability for patent, trademark or other intellectual property infringement on account of such manufacture.
11. **ATTORNEY'S FEES.** Buyer agrees to pay PPL all costs and expenses of collection, suit, or other legal action, including reasonable attorney's fee, incurred a result of the commercial relationship between Buyer and PPL.
12. **APPLICABLE LAW.** The laws of the State of Ohio, U.S.A. shall govern the applicability of these terms and conditions and any purchase order or contract to which they relate, and shall decide any disputes based in whole or in part on these terms and conditions and the purchase order or any other contract to which these terms and conditions relate. THE UNITED NATIONS CONVENTION FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT, ANY DISPUTE ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, ANY SALE OF GOODS HEREUNDER OR OTHERWISE BY PPL TO BUYER, OR THE RELATIONSHIP GOVERNING THE PARTIES HERETO. Any action, suit or proceeding relating to or arising out of this Agreement or any other agreement, instrument, certificate or other document delivered pursuant hereto or between Buyer and PPL (or the enforcement hereof and thereof), shall be brought and prosecuted as to all parties in, and the parties hereby consent to service of process, personal jurisdiction and venue in the state and federal courts of general jurisdiction located in Hamilton County, Ohio.
13. **FOREIGN SALES.** Buyer shall not sell, consign, give, lease or otherwise transfer the goods or any interest therein, nor in any manner disclose or make the goods available, to any person or entity in violation of any law of the United States of America or any other country, including without limitation, the Export Administration Act, the Nuclear Non-Proliferation Act of 1978, export control regulations of the Bureau of Export Administration of the U.S. Department of Commerce, or export control regulations of the Office of Foreign Assets Control, U.S. Department of the Treasury.
14. **SPECIAL TOOLS.** Unless otherwise expressly agreed in writing by PPL, all intellectual property of PPL developed in connection with or used in the creation of or incorporated in any molds, tools, dies, patterns, jigs and fixtures required for the production of the goods shall remain the sole property of PPL, whether or not Buyer has directly or indirectly paid for such items. PPL is responsible to Buyer for any molds, dies, patterns, fixtures and any other tools or samples furnished to PPL or paid for by Buyer only to the extent of their replacement cost as measured by their value as stated on Buyer's books using generally accepted accounting principles consistently applied, and only if due to the negligence of PPL.