

## GENERAL TERMS AND CONDITIONS OF SALE

The following terms and conditions (the "General Conditions" or this "Agreement") apply to any sale of products (the "Products") of Pleiger Pastics Company.

1. **GENERAL.** **THESE GENERAL CONDITIONS, TOGETHER WITH ANY NONCONFLICTING PROVISIONS IN SELLER'S QUOTATION, ARE INTENDED BY THE PARTIES AS THE FINAL EXPRESSION, AND CONTAIN THE COMPLETE AND EXCLUSIVE STATEMENT, OF THE TERMS AND CONDITIONS OF THIS AGREEMENT SUPERSEDING ALL PREVIOUS OR SIMULTANEOUS COMMUNICATIONS EITHER ORAL OR WRITTEN.** Any quotation by Seller is an offer which may only be accepted in full by Purchaser. In the event the Purchaser's purchase order or other form states terms additional to or different from those set forth in this document, this writing shall be deemed notification of objection to such additional or different terms. Accordingly, this Agreement is expressly made conditional on Purchaser's acceptance and assent to the conditions contained on the face and attached hereto. Acceptance of the condition contained herein shall be deemed to have occurred at the earlier of (i) seven calendar days from the date specified on Seller's acknowledgment form unless written notice of objection is received by Seller prior to lapse of such seven day period, (ii) Seller's identification of existing goods as goods to which this Agreement refers, or (iii) onset of Seller's manufacture of future goods. This Agreement cannot be waived, varied, modified or amended, except in a writing signed by an authorized representative of Seller, nor shall this Agreement be waived, varied, modified or amended by any subsequent course of conduct between the parties.

2. **PRICE.** Unless otherwise stated, applicable prices for the Products sold hereunder are net EX WORKS (INCOTERMS 1990) Seller's factory in Washington, Commonwealth of Pennsylvania ("EX WORKS"), with freight and insurance for Purchaser's account, and shall be those prices in effect at the time Seller accepts Purchaser's order except as provided below. Because Seller's prices are based upon costs and conditions existing on the date of acceptance, prices are subject to change as those conditions change. Accordingly, all orders are subject to increase in price of materials and labor while completing the work hereunder.

3. **TAXES.** Prices exclude all duties, taxes, tariffs, or other governmental charges which now are, or hereafter may be, imposed upon the sale or use of the Products. All such duties, taxes, tariffs, or other charges paid by Seller shall be for Purchaser's account. Any exemption claimed from the application of such duties, taxes, tariffs, or other charges should be plainly designated on the face of orders placed with Seller and accompanied by exemption certificates where required.

4. **PAYMENT.** All payments will be due at our place of payment in cash, without any deductions or set-off, within 30 days from the date of invoice. Seller may require payment to be made through an irrevocable letter of credit in favor of and acceptable to Seller and established by Purchaser at its expense.

5. **DELINQUENT PAYMENTS.** In the event Purchaser fails to make any payment when due, in addition to all other sums payable hereunder, Purchaser shall pay to Seller the reasonable costs and expenses incurred by Seller in connection with all actions taken to enforce collection or to preserve and protect Seller's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees, court costs and other expenses. In

addition, to the extent permitted by Purchaser's local law, interest on all amounts unpaid after thirty (30) days may be charged at the monthly rate of 1 1/2 percent or the highest rate permitted by law, whichever is lower. If any invoice is not paid when due, Seller may suspend delivery of Products or other performance with respect to Purchaser without liability or penalty.

6. TITLE AND SECURITY INTEREST. Seller reserves, and Purchaser hereby grants to, and creates in favor of, Seller, a first priority purchase money security interest in each Product (or the equivalent under Purchaser's local law), including all component parts added by modification or repair, and all proceeds from the sale thereof, until full payment is received. Purchaser agrees to sign upon request, and hereby authorizes Seller to sign on its behalf and as its attorney in fact, any documents necessary to perfect Seller's security interest. Upon resale, Purchaser agrees to take, and immediately assign to Seller, a perfected security interest in each Product.

7. COMMENCEMENT OF FABRICATION. Seller will not, and is under no obligation to, commence fabrication of any Products ordered hereunder until:

- (a) All complete contract plans, drawings and specifications have been delivered to Seller;
- (b) All detail drawings submitted by Seller have been finally approved by all authorities whose approval is required;
- (c) Seller has received all necessary information from other trades which affect or are related to our work or Products;
- (d) Seller shall have received after completion of (a), (b) and (c), reasonable notice to commence fabrication of such Products; and
- (e) All credits or debits for changes in quantity or design of material furnished shall have been accepted in writing by Purchaser.

8. SHIPMENT; DELIVERY; CLAIMS. Unless otherwise agreed in writing by the parties, shipment and delivery of the Products shall be made EX WORKS. Accordingly, costs for shipment, insurance or similar charges shall be borne by the Purchaser. Delivery of the Products by the first carrier shall constitute delivery to Purchaser. As of such delivery to the first carrier, risk of loss is transferred to Purchaser, and all claims for loss or damage in transit or for non-delivery shall be made by Purchaser against the carrier. Notwithstanding the EX WORKS designation, Seller reserves the right to select any mode of transportation. At Seller's option, Products may be shipped in advance of requested shipment date or in installments or partial lots. Any delivery information (including time for shipment) is approximate. Seller's sole responsibility will be to use reasonable commercial efforts to meet specified shipment dates. Purchaser expressly acknowledges that Seller shall not be liable for any loss or damage resulting from a failure to deliver or delays in delivery caused by a labor dispute (including a strike, slowdown or lockout), fire, flood, or governmental act or regulation, riot, inability to obtain supplies, materials or shipping space, plant breakdown, power failure, delay or interruption of carriers, accidents, government regulations, including without limitation, failure to obtain export licenses, acts of God or other causes beyond Seller's control. **NOTWITHSTANDING THE ABOVE, SELLER SHALL NOT BE LIABLE FOR ANY DAMAGE OR PENALTIES WHATSOEVER, WHETHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, RESULTING FROM SELLER'S FAILURE TO DELIVER OR DELAY IN DELIVERY FOR ANY REASON.**

9. INSPECTION. Within five business days of receipt of the Products, Purchaser shall inspect the Products to check for shortages or any other nonconformity. Unless Purchaser shall thereafter notify Seller in writing of any nonconformity (other than that relating to loss or damage in transit, which claims shall be made directly to the carrier) within ten business days of inspection, Purchaser shall be deemed to have accepted the Products without any qualifications and cannot, thereafter, reject the Products for any reason. In any event, Products accepted and used shall be deemed to have been accepted in good condition and in compliance with the specification and order therefor.

10. CANCELLATION AND FAILURE TO TAKE DELIVERY. This Agreement cannot be canceled or postponed by Purchaser except with Seller's consent and upon terms that will indemnify Seller against loss. Accordingly, in the event Purchaser cancels this Agreement or any part thereof, Purchaser shall pay Seller the greater of (i) a charge equal to 65% of its total price or, in the event only a part of the Agreement is being cancelled 65% of the total price for such cancelled Products, or (ii) an amount equal to the actual and consequential damages incurred by Seller, including without limitation Seller's anticipated profit and expenses already incurred by Seller in performing or preparing to perform the work required by Purchaser's order. In the event Purchaser fails to take delivery of the Products within the time period set forth on the written Product readiness notification from Seller to Purchaser, Purchaser shall pay Seller the sum of (i) a monthly charge equal to 1 1/2% of the total price or, in the event only a part of the Agreement is being postponed by Purchaser, a monthly charge equal to 1 1/2% of the total price for the Products subject to such postponement, and (ii) reasonable postponement charges; e.g. Seller's idle time, warehousing expense, etc.

11. WARRANTY. Subject to the warranty limitation set forth in Section 12 below, Seller warrants that the Products sold hereunder will substantially conform to the applicable specifications and will be free from defects in material and workmanship for six months after shipment EX WORKS, under normal and proper use and service. Shop drawings prepared by Seller and approved by Purchaser shall be deemed the correct interpretation of the work to be performed even when not consistent with the plans and specifications.

12. WARRANTY LIMITATION. The Warranty and remedies for breach of warranty provided for in these General Conditions extend only to the original installation and do not cover, and Seller shall not be liable for, (i) abnormal wear and tear or damage caused by improper installation and maintenance or installation, maintenance and/or use contrary to the instructions (including without limitation the information set forth on Seller's material safety data sheet) published by Seller, (ii) storage of Products in a wet or damp area or unprotected from weather and other job conditions, (iii) any cause beyond the control of Seller, including without limitation conditions caused by movement, settlement or structural defects of the building in which the Products are installed, fire, wind, hail, flood, lightning or other acts of God, intentional acts, accidents, negligence or exposure to harmful chemicals, pollutants or other foreign matter or energy, (iv) repair or damage caused by anyone except personnel authorized by Seller, or (v) any scratches, abrasions or other damage to the finish of painted items after they leave Seller's factory. Items repaired or replaced and designs

corrected under warranty are warranted only for the remainder of the original warranty period. Any general Product literature is for illustrative purposes only and does not amount to a warranty of any kind. Our advice to Purchaser relating to the technical usage of the Products, whether provided orally or in writing or through the provision of test results, will be given in accordance with our best knowledge at that time, but shall at all times be deemed to be a non-binding announcement. This also applies to advice given with respect to the intellectual property rights of others. Such advice does not relieve Purchaser from the obligation to check and confirm for himself the suitability of the Products for the intended process and/or purpose(s). Purchaser accepts full responsibility for the selection of the Products to achieve intended results.

**THE WARRANTY SET FORTH IN SECTION 11 IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER WARRANTIES, GUARANTEES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, SPECIFICALLY EXCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

13. REMEDY. Purchaser's sole and exclusive remedy, and Seller's only obligation for breach of warranty for Products furnished hereunder, shall be, at Seller's option in its sole discretion, to (i) repair or replace the defective item or part which fails within the six months' warranty period in Section 11, free of charge, provided that Purchaser promptly gives notice to Seller of such failure and, only after receipt of prior written authorization from Seller, returns such item or part to Seller, freight prepaid, to the place designated in Seller's return authorization, and upon examination Seller finds such to have been defective or (ii) issue a credit equal to the invoiced sales price for the defective item or part which fails within the six months' warranty period in Section 11. Purchaser must pay for related costs of making the repair or replacement, including the costs of removal, installation or reinstallation of the Products. In the event Purchaser claims that the Products are defective, it must allow Seller's personnel access and permission to inspect the Products at the site of installation or use.

14. DISCLAIMER; LIMITATION OF LIABILITY, TIME FOR CLAIMS. Purchaser understands and agrees that Seller shall not be liable for INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL OR OTHER SIMILAR DAMAGES including but not limited to loss of profit or revenues, damage for loss of the use of the Products, damage to property, claims of third parties, including personal injury or death suffered as a result of use of Products or failure of Seller to warn, or to adequately warn, against the dangers of the Products or to instruct, or to adequately instruct, about the safe and proper use of the Products, whether or not Seller has been advised of the potential for such damages. The total liability of Seller to Purchaser from any cause whatsoever, whether arising under contract, warranty, tort (including negligence), strict liability, products liability or any other theory of liability, will be limited to the lesser of Purchaser's actual damages or the purchase price paid to Seller for the Products that are the subject of Purchaser's claim. However, this limitation of liability does not apply to damages resulting from personal injury caused by Seller's negligence. All claims against Seller must be brought within one year after the cause of action arises, and Purchaser expressly waives any statute of limitations which might apply by operation of law or otherwise.

15. RESALE OF PRODUCTS. Upon resale of any Products sold hereunder, Purchaser agrees to extend to its customers no greater warranties than those contained herein and limit its liability and remedies to the same extent as those set forth herein. Notwithstanding the provisions set forth in the preceding sentence, if Purchaser extends to its any customers warranties in excess of those set forth herein or fails to limit its liabilities and remedies to the extend provided for herein, Purchaser will be solely liable for all claims and liabilities resulting therefrom.

16. PURCHASER SPECIFICATIONS. Seller assumes no liability for any errors or omissions in any specifications provided by Purchaser, including any errors or omissions made by Seller in the interpretation of any such specifications. Any items included in any specifications provided by Purchaser and not listed and priced on Seller's proposal or invoice are not part of this Agreement. Purchaser hereby agrees, at its own expense, to defend, indemnify and hold harmless Seller against any and all losses, costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorneys' fees, arising out of or resulting from, directly or indirectly, any injury or death to persons or damage to property caused by the designs, specifications or instructions provided by or required for Purchaser which are incorporated by Seller into the Products.

17. INTELLECTUAL PROPERTY. We retain all copyrights and other ownership rights with respect to all illustrations, drawings, models, plans, software, samples, and other documentation (collectively "Pleiger Documentation"). All Pleiger Documentation may not be copied or made available to others without our express written consent and must be returned to Seller postage prepaid without delay (i) without any notice if an order is not placed or (ii) at any time upon our request. If the proprietary rights of third parties are violated by the production of the Products based on drawings, models, samples or other information provided by Purchaser, Purchaser agrees to indemnify and hold Seller, its officers, agents, employees and principals, harmless from all claims, expenses, liability, loss, or damages incurred by or threatened against Seller, its officers, agents, employees and principals, including without limitation all investigation costs and expenses, with respect to such claims, liability, loss, or damages. We shall be entitled to demand an appropriate remuneration for Pleiger Documentation provided by Seller to Purchaser, if an order is not placed with Seller in response to such Pleiger Documentation.

18. EXPORT CONTROLS. Purchaser warrants that it is and will remain in compliance with all export and reexport requirements of the United States of America and any other applicable export and reexport laws and regulations (collectively the "Export Laws"). Purchaser additionally warrants that it has not been, and is not currently, disbarred, suspended, prohibited or impaired from exporting, reexporting, receiving, purchasing, procuring, or otherwise obtaining any product, commodity or technical data regulated by any agency of the government of the United States of America. In particular, Purchaser hereby gives assurance that unless notice is given to and prior authorization is obtained as required by the Export Laws, Purchaser will not knowingly reexport, directly or indirectly, the Product or any technical data shipped by Seller to Purchaser or the direct product thereof to any country or any recipient prohibited to receive the Products under the Export Laws.

19. SEPARABILITY; INVALIDITY. If any portion of this Agreement shall for

any reason be held by a court of competent jurisdiction to be invalid and unenforceable, the valid and enforceable provisions will continue to be given effect and bind the parties hereto.

20. GOVERNING LAW. This instrument shall be deemed an agreement made under the laws of the Commonwealth of Pennsylvania, and for all purposes shall be construed and enforced in accordance with, and governed by the laws of, the Commonwealth of Pennsylvania without regard to its conflict of laws provisions and excluding the United Nations Convention for the International Sale of Goods. All actions arising hereunder shall be instituted in Allegheny County, Commonwealth of Pennsylvania.

21. SUCCESSION. The provisions of this Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.