

## TERMS AND CONDITIONS OF SALE

1. "Seller" shall mean ACTION PLASTICS, INC., an Illinois corporation. "Buyer" shall mean the customer executing or otherwise accepting any proposal or estimate from Seller. Acceptance of any order is subject to credit approval by Seller, specific written acceptance of the order by Seller and, when applicable, Seller's "Vendor" shall mean manufacturers, vendors, or other third parties that provide goods to Seller for resale to Buyer.
2. TERMS AND CONDITIONS OF SALES.

Absent a separate writing executed by an authorized officer of Seller, these Terms and Conditions of Sale and any proposal or estimate provided by Seller constitute the complete contract and shall be governed by the substantive law of the state of Illinois, without giving effect to its conflicts of laws principles. The United Nations Convention on the International Sale of Goods will not apply.

BY REQUESTING A QUOTE FROM SELLER OR PRESENTING AN ORDER TO SELLER, BUYER CONFIRMS THAT THESE TERMS & CONDITIONS SHALL GOVERN ALL PURCHASES OF GOODS OR SERVICES ("PRODUCTS" AND/OR "MATERIAL") BY BUYER FROM SELLER, AND NO CHANGES OR ADDITIONAL OR DIFFERENT TERMS (CONTAINED IN A PURCHASE ORDER ACCEPTED BY SELLER, OR OTHERWISE) WILL CHANGE THESE TERMS & CONDITIONS UNLESS ACKNOWLEDGED IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NO SELLER EMPLOYEE OR AGENT HAS THE AUTHORITY TO MODIFY THESE TERMS AND CONDITIONS VERBALLY. SELLER OBJECTS TO AND REJECTS ANY TERMS BETWEEN BUYER AND ANY OTHER PARTY, AND NO SUCH TERMS, INCLUDING BUT NOT LIMITED TO ANY GOVERNMENT REGULATIONS OR "FLOWDOWN" TERMS, SHALL BE A PART OF OR INCORPORATED INTO ANY ORDER FROM BUYER TO SELLER, UNLESS AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

### 3. PRICE AND PAYMENT.

Buyer agrees to pay the prices quoted by Seller and is responsible for additional applicable shipping and handling charges, taxes, and duties. Seller shall collect applicable taxes unless Buyer submits a valid tax exemption certificate, and indicates which Products are covered by it. Payment will be due in U.S. Dollars within thirty (30) days of the invoice date unless alternate terms are offered and established by seller on a customer by customer basis. Payment is not contingent on Buyer's ability to collect or obtain funds from any other party. Credit card sales are billed at the time of purchase, with a **3-1/2% convenience fee**. Buyer expressly represents it is solvent at the time it places any purchase order with Seller. Buyer agrees to pay a charge on all amounts past due at the rate of 1 ½% per month (18% per year) or the maximum lawful rate, whichever is less. In the event of non-payment and/or any other breach by Buyer of these Terms and Conditions, Buyer agrees to pay Seller's costs of collection or other enforcement, including reasonable attorney fees and court costs, if any, incurred by Seller, and all applicable interest charges.

### 4. DELIVERY.

Any delivery dates Seller quotes are estimates. Seller cannot guarantee delivery on a specific date. As to Products delivered by Seller's truck or other vehicle, title passes upon delivery at the place Buyer receives possession; and, thereafter, all risk of loss or damage shall be on Buyer. All shipments of Products not delivered by Seller's truck or other vehicle shall be deemed shipped F.O.B. shipping point and, as a result, Buyer takes title and assumes responsibility for risk of loss or damage at Seller's point of shipment for such sales. Claims for Products damaged in transit are Buyer's sole responsibility when not delivered by Seller's truck or other vehicle.

### 5. WARRANTIES AND CLAIMS.

SELLER warrants that all Products sold are new and, upon payment in full by Buyer of the Products, free and clear of any security interests or liens. Services performed will be in accordance with generally acceptable industry standards. Fabricated parts will comply with the agreed specifications in writing. If any Products fail to conform to the warranty specified in the preceding two sentences, Seller may, at Seller's option, either replace the Products or refund the purchase price. This is

Buyer's exclusive remedy and Seller's sole liability for breach of warranty. Buyer should not return Products until Seller agrees that Buyer may do so. Seller makes no independent warranties other than those set forth herein. **SEE BELOW FOR WARRANTY DISCLAIMER OF SELLER**

**VENDOR'S WARRANTIES:**

Seller shall assign to Buyer any assignable Vendor warranties and/or remedies provided to Seller by its applicable Vendor, but only to the extent permitted by Seller's Vendors.

**BUYER UNDERSTANDS THAT FABRICATION SERVICES PERFORMED BY SELLER WITH RESPECT TO ANY VENDOR SUPPLIED PRODUCT MAY VOID VENDOR WARRANTIES.**

**INTELLECTUAL PROPERTY INFRINGEMENT**

Any suggestions Seller makes about possible articles, designs or uses of products do not give Buyer a license under any patent covering such articles, designs or uses, nor are they a recommendation for use of such products, articles or designs which may infringe any patent.

**SELLER DISCLAIMS ANY AND ALL WARRANTIES AND/OR INDEMNIFICATIONS AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY NATURE. SELLER SHALL, IF GIVEN PROMPT NOTICE BY BUYER OF ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT WITH RESPECT TO ANY PRODUCTS SOLD HEREUNDER, REQUEST THE MANUFACTURER TO GRANT FOR THE BUYER SUCH WARRANTY OR INDEMNITY RIGHTS AS THE MANUFACTURER MAY CUSTOMARILY GIVE WITH RESPECT TO SUCH PRODUCTS.**

**LIMITATIONS: SELLER DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, IMPROPER INSTALLATION OR PRODUCT MODIFICATION, MIS-REPAIR OR MISAPPLICATION.**

**THERE ARE NO OTHER WARRANTIES WRITTEN OR ORAL, EXPRESS, IMPLIED OR BY STATUTE. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. NO OTHER COSTS ARE ASSUMED BY SELLER UNLESS AGREED TO, IN ADVANCE, IN WRITING.**

CLAIMS: Claims for any nonconforming Products or Material must be made by Buyer, in writing, within **five (5)** days of Buyer's receipt of such Products and must state with particularity all material facts concerning the claim then known to Buyer. Failure by Buyer to give notice within such **five (5)** day period shall constitute an unqualified acceptance of such Products by Buyer, and a waiver of any right to reject or revoke acceptance of such Products.

6. LIMITATION OF CLAIMS.

Seller will not be responsible for any harm arising out of Buyer's purchase, possession or use of any Products supplied by Seller or any technical advice Seller may offer.

UNLESS APPLICABLE LAW OTHERWISE REQUIRES, SELLER'S TOTAL LIABILITY TO BUYER OR TO ANY OTHER PERSON, RELATING TO ANY PURCHASES GOVERNED BY THESE TERMS AND CONDITIONS, FROM THE USE OF THE PRODUCTS FURNISHED OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEB SITE), IS LIMITED TO THE PRICE OF THE PRODUCTS GIVING RISE TO THE CLAIM. SELLER WILL NOT BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF ANY SUBSTITUTE FOR THE PRODUCTS BUYER BOUGHT, CLAIMS OF THIRD PARTIES OR INJURY TO PERSONS OR PROPERTY.

7. CUSTOM PRODUCTS.

If Buyer orders non-stock products from Seller or products made by Seller or Seller's Vendor to Buyer's specifications or design ("Custom Products"), Seller is not responsible for verifying or confirming the accuracy of specifications provided to Seller for such Custom Products. All Custom Products are sold on a "FINAL SALE" basis only, and no cancellations, returns, refunds or credits are allowed.

8. TECHNICAL ADVICE AND OTHER SERVICES.

Buyer is responsible for the design, processing, testing and labeling of any product that Buyer makes using Products Buyer buys from Seller, and Buyer will not rely on anything on Seller's web site or any statement by Seller about the suitability of Products Seller provides other than these terms and conditions. Product cross-reference comparisons do not

imply that Products are perfectly comparable. COMPARED PRODUCTS ARE NOT REPRESENTED OR WARRANTED AS FUNCTIONAL OR PERFORMANCE EQUIVALENTS. Buyer shall review all Products prior to purchase and use to determine suitability for Buyer's or its customer's intended use. By purchasing Products, Buyer represents and warrants that it has tested and investigated Products sold by Seller enough to form an independent judgment concerning their suitability for the use intended by Buyer and will not make any claim against Seller based on Seller's advice, statements, information, services or other recommendations. Jurisdictions have varying laws, codes and regulations governing construction, installation, and/or use of products for a particular purpose. It is Buyer's responsibility to review all applicable laws, codes, and regulations for each relevant jurisdiction to be sure that the construction, installation, and/or use involving the Products are compliant.

#### 9. INTELLECTUAL PROPERTY.

Buyer, by placing an order with Seller for fabrication or other services, warrants and represents that: (i) it is the rightful owner of any intellectual property which it has communicated, or will communicate, to Seller for use in the performance of such fabrication or other services and that it has the right to permit Seller to use any such item of intellectual property; and (ii) it has the right to provide such parts and related intellectual property (included but not limited to drawings, prints, or samples) to Seller for fabrication or replication or other services. Buyer hereby agrees to release, indemnify, and hold harmless Seller, its affiliated companies and their respective shareholders, directors, officers, employees and representatives against, and hold each such indemnified party harmless from, any liability, loss, cost, damage or expense (including, without limitation, reasonable fees and expenses of attorneys and experts and other costs of defense) resulting from, or arising out of, any claim that Seller's receipt or use of any such item of intellectual property constitutes an infringement of any third party's rights or is otherwise in any way unlawful. Buyer shall have no right, title, or interest in the trade names, trademarks, trade dress, copyrights, patents, domain names, product names, catalogs or any other intellectual property rights reserved by Seller, or any trademarks or service marks owned by Vendors of Seller. Buyer shall have no right to copy or use any of the intellectual property of Seller or its suppliers without Seller's written permission.

## 10. EVENTS BEYOND SELLER'S CONTROL.

Seller will not be responsible if events beyond Seller's reasonable control occur which make it impossible or commercially unreasonable for Seller to perform, including so-called "Acts of God" events, Vendor delays, and raw material shortages. Should shipments be held or stored beyond the delivery date for convenience of Buyer, Seller may, at its option, assess reasonable charges for any expense incident to such delay.

## 11. EXPORTS.

Buyer is responsible for compliance with all United States export control rules and regulations. Buyer shall not name Seller as shipper or exporter of record in connection with the export of any Products purchased from Seller. Buyer shall ensure that Products Buyer receives from Seller are exported by Buyer only in compliance with applicable laws, including U.S. export control laws. Buyer certifies that it will not use, or knowingly support the use by others of, such products, technology or software in the design, development, production or use of nuclear, chemical or biological weapons, land mines or ballistic missiles.

## 12. ELECTRONIC COMMERCE.

Buyer may not share any password, access code or similar credential which may be issued to it by Seller, and Seller reserves the right to suspend or revoke any such credential. Buyer is solely responsible for ensuring the security and integrity of its ordering process. Any information provided by Seller via any Internet site or electronic communication (i) is subject to correction or change without notice, and (ii) is provided for the sole use of Buyer for purposes of facilitating individual transactions involving the purchase and sale of Seller's Products. Buyer agrees that it shall not rely upon any such information for any purpose other than making individual purchases and will not seek to assert such information against Seller for any other purpose. Seller may issue electronic invoices for any purchases of Products made using the Internet, e-mail or any other computer-based electronic communications method, and agrees to honor such invoice as if it had been delivered in writing.

## 13. TERMINATION; SUSPENSION.

Seller may terminate this agreement or adjust Buyer's payment terms effective immediately upon written notice to Buyer in the event: (a) Buyer

fails to pay any Seller invoice, within the time provided in these Terms and Conditions; (b) Buyer generally fails to pay its debts as they become due; (c) Seller reasonably believes Buyer's creditworthiness has deteriorated or Buyer is insolvent (whether based on the reasonable belief by Seller that Buyer's liabilities exceed its assets; the existence of a bankruptcy, assignment for the benefit of creditors or other similar proceeding involving Buyer; a liquidation of a significant portion of the assets of Buyer or otherwise); and (d) of a sale of a majority of the assets, or a change of control of the ownership, of Buyer. If Buyer is in default hereunder, including by failure to pay invoices, Seller may suspend shipments of Product, require cash in advance of deliveries and/or reduce payment terms until all invoices are current and Seller receives adequate assurance of future performance.

#### 14. GENERAL.

Cancellation of any order, or return of any conforming Product purchased hereunder, will be subject to acceptance by Seller and to a restocking charge in accordance with Seller's policy then in effect. Neither course of performance or dealing, nor usage of trade, nor prior writings or agreements shall be used to qualify, explain, or supplement any of these terms and conditions. Failure by either party, at any time or from time to time, to require the performance by the other of any term hereof shall not constitute a waiver of such term or provision. The invalidity, in whole or in part, of any term herein, shall not affect any other term, each of which shall be enforced to the full extent permitted by law. Buyer may not assign or transfer any rights or obligations governed by these Terms and Conditions without the prior written consent of Seller. Notice shall be deemed properly given if sent by email, facsimile, overnight courier mail, hand-delivered, or registered mail with return receipt. Seller shall be entitled to reference Buyer as a customer of Seller and utilize photographs of Buyer's applications utilizing Seller's products in Seller's marketing materials.