

## McCANN PLASTICS, LLC - Terms and Conditions of Purchase

**1. Offer.** This order constitutes an offer to buy goods or services according to the description and other terms set forth on its face and this reverse side. Any conduct by Seller which recognizes the existence of the order, including without limitation, the commencement of any work, delivery of any goods, or performance of any services in accordance herewith, shall constitute acceptance of this order and all of its terms and conditions.

ANY TERMS PROPOSED IN SELLER'S ACCEPTANCE OF BUYER'S OFFER ADD TO, VARY FROM, OR CONFLICT WITH THE TERMS HEREIN ARE HEREBY OBJECTED TO, AND ANY SUCH PROPOSED TERMS SHALL BE VOID, AND THE TERMS HEREOF SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS BETWEEN THE PARTIES AND MAY HEREAFTER BE MODIFIED ONLY BY WRITTEN INSTRUMENT EXECUTED BY THE AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.

If this order has been issued by Buyer in response to an offer, and if any terms herein are additional to, or different from, any terms of such offer, then the issuance of this order by Buyer shall constitute an acceptance of such offer subject to the express condition that the Seller assent to such additional and different terms herein, and that this order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within ten (10) days of the receipt of this order.

**2. Nonwaiver.** Any waiver or failure of Buyer to require strict compliance with the provisions of this order in any respect shall not be deemed a waiver of Buyer's right to insist upon strict compliance in other respects or thereafter in the same respect.

**3. Warranty.** Seller warrants that all goods and services covered by this order will be furnished in strict accordance with the provisions of this order, the specifications and drawings or other descriptions furnished by Buyer; or if not ordered to specifications, the goods will be fit and sufficient for the purpose intended and fall within the standards of all laws and governmental rules and regulations relating to such goods or services, and will be free from defects in design, material, and workmanship.

**4. Inspection.** During the manufacture or after delivery, Buyer may inspect any material or goods which have been, or will be, worked upon, produced, or sold for this order. Goods or services which are nonconforming shall, at Buyer's option, be repaired, replaced, or reperfomed at Seller's sole expense, and any goods or services furnished pursuant to such repair, replacement, or reperformance shall be subject to the same warranty as provided in paragraph 3.

**5. Rejection.** Any goods or services which are rejected or required to be corrected shall be repaired, removed, and/or corrected by and

at the expense of Seller, promptly after notice. If, after being requested by Buyer, Seller fails to promptly replace or correct any defective goods, Buyer (a) may, by contract or otherwise, replace or correct such goods and charge to Seller the cost occasioned Buyer thereby, or (b) may, without further notice, terminate this order for default without waiving any rights or remedies Buyer may have at law or in equity.

**6. Patents.** Seller guarantees full and complete protection against patent litigation, and any and all demands and claims on account of infringements, or alleged infringements, of patented, or alleged patented, articles or inventions used in the material or services specified herein. Such guarantee includes the obligation to provide and pay any and all royalties, counsel fees, litigation expenses, judgments, awards, settlements, and all other costs and expenses incurred in defending Buyer against such demands, claims, and litigation.

**7. Buyer's Premises and Independent Contractor.** If any work under this order is to be performed on Buyer's premises, Seller shall perform such work in accordance with the safety rules of Buyer and applicable Federal, State and Local laws and regulations. Seller shall comply fully with the applicable laws pertaining to workers' compensation and unemployment compensation or insurance, and Seller shall indemnify and save harmless Buyer, its employees, agents, licensees, and invitees from any and all costs, damages, claims, and expenses (including reasonable attorney's fees) of any nature whatsoever relating to:

- (a) injuries, occupational diseases, or deaths of any employee or subcontractor of Seller, to the extent compensable under the workers' compensation laws of any State;
- (b) bodily injuries, deaths, or property damage caused by the negligent or wrongful act of Seller, any subcontractor of Seller, or any employee or agent of either; and
- (c) unemployment compensation or insurance, social security taxes, or other Federal, State, or Municipal taxes, contributions, or benefit payments measured by, or based on, employment of such employees.

The contract created by this order and its acceptance or confirmation are subject to the agreement of the Seller that all persons engaged upon the work hereunder shall be considered servants of the Seller and not of the Buyer.

**8. Indemnification.** Seller shall indemnify, defend, and save harmless Buyer from and against all claims for loss or damage of any kind or for injury to any person or property (and any expenses, including attorney's fees, resulting therefrom) arising out of or in any way related to the condition, use, repair, installation, or design of the goods or services purchased hereunder, whether such claims are based on negligence, breach of warranty, or strict tort liability of Buyer or otherwise, and whether any such goods are in the same mode as when delivered hereunder, or whether they have been used in the manufacture of, or become part of, equipment, machinery, or

goods sold by Buyer, its subsidiaries, constituent companies, or agents to third parties. Seller agrees to, and will assume on behalf of Buyer, upon its demand (without regard to the real or apparent merits of said defense), the defense of any action brought against Buyer.

**9. Buyer's Identification.** Seller agrees that Buyer's identification, such as trademarks, trade names, distinctive markings, or decorative styling, shall be used only on articles supplied to Buyer.

**10. Tools and Materials.** All tools, gauges, dies, fixtures, and patterns furnished by Buyer, or which Buyer specifically authorizes Seller to acquire for work on this order, shall be the property of Buyer. They shall be listed and maintained in suitable condition to do the work by, and at the expense of Seller and returned to Buyer at any time upon request, FOB Buyer's plant. Any material furnished to Seller on a "no-charge" basis shall remain the property of Buyer and be fully accounted for, including scrap. Any such material scrapped because of defective workmanship of Seller shall be replaced or paid for by Seller.

**11. Use of Information.** Any specifications, drawings, sketches, models, samples, tools, technical information, or data furnished to Seller by Buyer shall remain Buyer's property and shall be returned to Buyer upon its request. Seller shall use such information only in connection with this order, agrees to keep the same confidential, and shall not disclose any Buyer-furnished drawings and/or specifications to any person, firm, or corporation other than the Buyer's or the Seller's employees and/or subcontractor, only to the extent reasonably necessary to perform the work hereunder, all having been made aware of the confidential nature hereof, and being bound thereon.

**12. Changes.** Buyer may at any time, by written order, make changes within the general scope of this order, in any one or more of the following: (a) applicable drawings, designs, or specifications; (b) methods of shipment or packing; (c) place or time of delivery, including temporary suspension of shipments; (d) materials, methods, or manner of production or final product; and Seller shall comply therewith. If any such change causes an increase in cost of or time required for performance, an equitable adjustment shall be made in the price or delivery schedule, or both, and this order shall be modified in writing accordingly. Where the cost of property made obsolete or excess as the result of a change is included in the Seller's claim for adjustment, Buyer shall have the right to prescribe the disposition of such property. Any claim by Seller for adjustment hereunder must be asserted within ten (10) days from the date of receipt by Seller of the notification of change. However, nothing in this section shall excuse Seller from proceeding with the order as changed or modified.

**13. Termination.** Buyer may at any time terminate work on this order for its own convenience, in whole or in part, by writing, by telegraph, or by verbal notice promptly confirmed in writing. In that event, any claim arising out of such termination shall be settled exclusively by Buyer reimbursing Seller for costs actually and

properly incurred by Seller for the purchase, assembly, or manufacture of the goods with the due allowance for their salvage value after Buyer has had full opportunity to recommend disposition and audit Seller's costs.

**14. Bankruptcy.** If Seller becomes insolvent or a petition in bankruptcy is filed by or against it, Buyer may elect to terminate this order and shall thereupon be relieved from all liability to any person or persons.

**15. Packing.** No charge for boxing, crating, packing, or cartage will be allowed without specific written approval of the Buyer. All shipments must be adequately boxed with any special handling clearly marked, and the contents protected to prevent damage in transit.

**16. Documents.** SHIPPING DOCUMENTS IN DUPLICATE AND A SEPARATE INVOICE IN TRIPLICATE FOR EACH SHIPMENT ON ORDER MUST BE MAILED TO BUYER'S OFFICE ISSUING THIS ORDER ON THE SAME DAY SHIPMENT IS MADE. When material is invoiced by Seller but shipped by another concern, the invoice shall bear the name of the shipper and die point from which shipment originated. ALL SHIPMENTS MUST CONTAIN PACKING LISTS GIVING DESCRIPTION OF MATERIAL, QUANTITY, AND PURCHASE ORDER NUMBER. Buyer's count shall be accepted as final on all shipments not accompanied by packing lists.

**17. Delivery Date.** Shipment must be made to meet the required date specified. Time is of the essence. Production schedules established or commitments made to satisfy the required date must not contemplate production or procurement in advance of the current lead or procurement time required by such date, without the specific written approval of Buyer. On premature shipments, Buyer may return the goods at Seller's expense, and in any event, payment will be withheld, and any discount period begin to run from the required date which was specified on the order. Buyer, without waiving any other legal rights, reserves the right to cancel without charge, or to postpone delivery of any of the goods or services covered by this order which are not shipped in time to meet the required delivery date. Seller shall not be liable for any damages suffered by Buyer due to Seller's failure to deliver on the required delivery date if such delay in performance is due to causes beyond its control, such as acts of God, war, acts of government, government priorities or allocations, acts of Buyer, fire, flood, strike, sabotage or delay in transportation, if Seller gives Buyer notice in writing of the cause of the delay within a reasonable time after the beginning thereof.

**18. Routing.** Seller shall route shipments as instructed. In the absence of specific routing instructions, such instructions are to be requested from Buyer.

**19. Title.** Unless the face of this order expressly provides otherwise, title to the goods, free and clear of any and all liens and encumbrances, shall pass to Buyer from Seller at the FOB point specified by this order, or at such other point as may hereafter be selected by Buyer. Passage of title to the supplies (or any part thereof) shall not in any way relieve Seller of its obligations under this order, nor be treated as a waiver by Buyer of the right later to

reject any part of the goods which fail to meet the warranty as provided in paragraph 3 hereof. Seller shall assume and pay for any loss or damage to the supplies covered hereby until delivery at the FOB point specified by this order, or until title otherwise passes from Seller to Buyer, whichever occurs later. If any lien or encumbrance is asserted against the supplies, or any part thereof, Buyer shall have the right to discharge the same by (a) filing a bond or other security, or (b) in its discretion, to pay the full amount thereof, whereupon Buyer shall have the right to deduct from the order price the amount thus paid; or (c) if the purchase price has been paid, Seller shall repay to Buyer the amount paid by Buyer to discharge such lien or encumbrance.

**20. Price.** Seller certifies that the amounts invoiced under this order will not exceed the maximum levels established under any applicable government price control program. Any excess shall promptly be refunded.

**21. Government Contract.** If the words "Government Contract" appear on the typewritten portion of this order followed by a contract identification number, the same indicates that the articles ordered hereby are intended for use under the referenced government contract, and therein are incorporated as part of the terms and conditions of this order in addition to the other items herein contained, all applicable provisions required by said contract, or by Federal laws, executive orders, or regulations to be included in contracts for materials, or services by such government contract.

**22. Payment.** Buyer's account with Seller will be paid within sixty (60) days after receipt of invoice or shipment, whichever is received later, except where cash discounts apply or other terms are specified. If the correct invoices do not reach Buyer within three (3) days from invoice date, payment deadlines and any discount periods will be calculated from the date of receipt of the correct invoice.

**23. Taxes.** Any applicable State or Use or Federal Excise Taxes shall be shown separately on the invoice.

**24. Laws and Regulations.** Seller warrants that the goods and/or services furnished hereunder shall be in compliance with all applicable Federal, State, and Local laws and regulations, and Seller will indemnify and hold harmless Buyer against any costs, liability or losses arising out of Seller's noncompliance.

**25. Nonassignable.** This order, or the monies due thereunder, may not be assigned in whole or in part without Buyer's written consent.

**26. Headings.** The Headings herein are for reference only and are not a part of the terms and conditions.

**27. Rights.** Buyer retains generally all rights and remedies granted to it by operation of law in addition to those set forth herein.

**28. Choice of Law.** This order and any questions with respect to the construction, interpretation, or performance shall be governed by and determined in accordance with the laws of the State of Ohio.