

McCANN PLASTICS, LLC - Terms and Conditions of Sale

1. DEFINITIONS.

- A. Buyer: One who purchases Goods from Seller.
B. Seller: McCann Plastics, LLC
C. Distributor: One who merely acts as an intermediary in making a third party's goods available to the Buyer.

2. SALE.

SALE AND DELIVERY OF SELLER'S GOODS ARE CONDITIONED ON THE BUYER'S ACCEPTANCE OF THE DESCRIPTION AND OTHER TERMS AND CONDITIONS OF SALE SET FORTH HEREIN AND IN THE ACCOUNT APPLICATION AND/OR ANY SUBSEQUENT INVOICES OR ACCOUNT STATEMENTS SENT TO THE BUYER BY THE SELLER. NO ADDITIONAL OR DIFFERENT TERMS OFFERED BY BUYER SHALL BE OR BECOME PART OF THIS ORDER, AND ANY SUCH TERMS ARE HEREBY REJECTED. THE TERMS AND CONDITIONS AS STATED HEREIN SHALL NOT BE MODIFIED WITHOUT THE EXPRESS WRITTEN APPROVAL OF SELLER. FAILURE OF BUYER TO IMMEDIATELY OBJECT IN WRITING TO THESE TERMS AND CONDITIONS SHALL BE DEEMED ACCEPTANCE HEREOF AND SHALL CONSTITUTE A WAIVER OF ANY PRIOR OR SUBSEQUENT TERMS OR CONDITIONS REQUESTED BY BUYER.

3. PRICES.

All prices for goods are subject to change or withdrawal without notice. Unless otherwise stated by Seller, prices, terms of payment, and pricing policies will be those set forth in Seller's published price list or Seller's pricing policies in effect at the time of shipment. Specially ordered goods are not subject to cancellation without the consent of the Seller.

4. CREDIT APPROVAL.

All sales and shipments are subject at all times to credit approval by Seller.

5. TAXES.

Any taxes which Seller may be required to pay or collect upon the sale, delivery, storage, processing, use, or consumption of any of the goods covered hereby shall be for the account of Buyer, who shall promptly pay the amount thereof to Seller upon demand.

6. FREIGHT.

Unless otherwise stated herein, all goods are FOB Seller's plant, with all risk of loss or damage in transit after delivery being the responsibility of Buyer. All freight and shipping charges shall be as set forth on the face of the invoice. Seller reserves the right to select the method of shipment. No action taken by the Seller for the benefit of Buyer in the shipping of the goods shall be deemed to modify the condition that all prices and risk of loss are FOB Seller's plant.

7. WARRANTY.

Seller warrants its goods for a period of thirty (30) days from the date of shipment from the factory to be free from defects in material and workmanship under correct use, normal operating conditions,

and proper application. NO EMPLOYEE, DISTRIBUTOR, OR REPRESENTATIVE IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY, OR GRANT ANY OTHER WARRANTY ON BEHALF OF SELLER. SELLER MAKES NO EXPRESS WARRANTIES OTHER THAN THOSE WHICH ARE SPECIFICALLY DESCRIBED HEREIN. Any description of the goods sold hereunder, including any references to Buyer's specifications and any descriptions in catalogs, circulars, and other written material published by Seller, is for the sole purpose of identifying such goods and shall not create an express warranty that the goods shall conform to such description. Any sample or model is for illustrative purposes only and shall not create any express warranty that the goods shall conform to the sample or model. BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF GOODS SOLD HEREUNDER FOR USE BY BUYER. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY STATES SELLER'S ENTIRE AND EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM FOR DAMAGES IN CONNECTION WITH THE SALE OR FURNISHING OF SELLER'S GOODS, THEIR DESIGN, SUITABILITY FOR USE, OR FOR ANY CLAIMED DEFECTS THEREIN. SELLER WILL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, NOR FOR ANY SUM IN EXCESS OF THE PRICE RECEIVED FOR THE GOODS FOR WHICH LIABILITY IS CLAIMED. Claims for defects in material and workmanship shall be made in writing to Seller within ten (10) days of the discovery of the defect. Seller may either send a service representative or have the goods returned to its factory at Buyer's expense for inspection. If judged by Seller to be defective in material or workmanship, the goods will be replaced, at the option of Seller, free from all charges except authorized transportation.

8. PERFORMANCE.

Seller shall not be held responsible for any delay in performance of any order made on the basis of this document resulting in whole or in part from, or made impossible or impracticable by, any cause beyond the control of Seller, including, but not limited to, fire, explosion, accident, breakdown, strike, adverse weather conditions, failure or refusal of any carrier to transport materials, delay in transport thereof, failure of any source of supply to honor orders within time periods customarily or heretofore experienced by Seller in the trade, shortage or lack of material, fuel, power, transportation media, sale or transfer of manufacturing facilities, embargo, or any act of God or action or request of any governmental authority, failure or refusal of any carrier or contractor, or any contingency, delay, failure, or cause beyond Seller's control.

9. SHIPPING.

Specified shipping dates are based upon Seller's estimates, are approximations only, and cannot be guaranteed. Seller shall have no responsibility or liability for damages that may be incurred due to delay in shipment of goods.

10. PATENTS.

The Buyer shall hold the Seller harmless and indemnify it against any expense or loss resulting from infringements of patents or trademarks arising from compliance with designs, specifications, or instructions furnished by the Buyer.

11. SERVICE CHARGE.

A charge of one and one-half percent (1½%) per month (eighteen percent (18%) annually) will be charged on all past-due amounts where permitted by applicable state and federal law. In the event a charge of one and one-half percent (1½%) per month may not be charged under applicable state or federal law, then the maximum amount of service charge permitted under applicable state or federal law shall be charged.

12. CANCELLATION OF ORDER.

The Buyer may cancel its order only with the written consent of the Seller, and only upon the payment of the Seller's normal cancellation charges. If an order is canceled or partially canceled after Seller has started manufacture, Buyer shall pay the total contract price less Seller's cost of manufacturing the unmanufactured material called for by the order.

13. INSOLVENCY.

If, in the sole judgment of Seller, the credit of Buyer shall have, or is likely to become impaired, or it appears to Seller that it does not have a reasonable expectation of being paid at the time and in the amount specified in this Agreement without additional expense or delay, or both, then Seller may, at its option, retain title to the goods manufactured or retain possession of Buyer's goods on which services have been performed until paid in cash, or cancel the order and receive amount as provided in paragraph 12 above, unless Seller receives reasonable assurances of Buyer's ability to perform.

14. BANKRUPTCY.

In the event of any voluntary or involuntary proceedings against the Buyer in bankruptcy or insolvency, or in the event of any proceedings for the appointment of a receiver, trustee, or assignee for the benefit of creditors of the property of the Buyer, Seller may immediately assert any of its legal rights with respect to any order(s), or, at Seller's option, cancel the same unless Seller receives reasonable assurances of Buyer's ability to perform.

15. PAYMENT.

Terms of payment are as specified on the reverse side hereof and/or in the Account Application and/or any subsequent invoices or account statements sent to the Buyer by the Seller. Sales tax, transportation, and labor are not subject to cash discounts. Cash discounts shall be allowed only within the discount period as specified. If not specified, the net amount shall be due thirty (30) days following the date of invoice.

16. RECOVERY OF LEGAL FEES AND COSTS.

In the event it becomes necessary for Seller to file a lawsuit to enforce any of the terms and provisions hereof and Seller is granted

a judgment wholly or partly in its favor, Seller shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

17. NO MODIFICATION.

These terms and conditions, as set forth herein, shall constitute the sole agreement between Buyer and Seller. Any changes which Buyer requests shall be authorized only if in writing and signed by Seller. These terms and conditions shall be binding upon and inure to the benefit of the respective parties, their successors, representatives, and assigns.

18. GOVERNING LAW AND VENUE.

This contract and any questions with respect to the construction, validity, and interpretation to perform it shall be governed by, and determined in accordance with, the laws of the State of Ohio. This contract shall be deemed to be executed in the State of Ohio and is to be performed in Summit County, Ohio, by reason of the payment(s) required to be made to the Seller in Summit County, Ohio. The Buyer covenants and agrees that any legal action or lawsuit brought to enforce any of the terms and provisions hereof shall be venued in Summit County, Ohio.

19. PARTIAL INAPPLICABILITY.

Should any term or condition above, or any portion thereof, be invalid or inapplicable, the balance of such terms and conditions shall govern.

20. NON-WAIVER.

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

21. CORRECTIONS.

Seller reserves the right to make corrections caused by any typographical, clerical, or other inadvertent mistakes, or from changes necessary because of incomplete or inaccurate information received from Buyer.