

**FABRIK MOLDED PLASTICS**  
**TERMS AND CONDITIONS OF SALE**

1. **EFFECT OF THESE TERMS AND CONDITIONS OF SALE.** The following terms and conditions shall apply to all quotations, purchase orders and order acknowledgments relating to the sale of Fabrik Molded Plastics, Inc.'s ("Seller) goods. Seller's customer is referred to herein as "Buyer." Seller shall not be deemed to have waived any of the following terms or conditions, even if Seller fails to object to any contrary or inconsistent provision appearing on, attached to, or incorporated by reference in any purchase order or other document issued by Buyer. Buyer's ordering, acceptance or use of any goods of Seller shall constitute its acceptance of the following terms and conditions without modification. Terms and conditions in an any document issued by Buyer, including a purchase order, inconsistent with or in addition to these terms and conditions of sale are not binding upon Seller (unless specifically agreed to in writing by Seller) and Seller objects to any such terms and conditions of Buyer.

2. **QUOTED TERMS.** All quoted terms are subject to correction at any time for clerical error, and may be modified or withdrawn by Seller, with or without notice, at any time prior to written acceptance by Buyer. All quotations shall be deemed withdrawn if not accepted in writing by Buyer within 30 days. Quoted prices are based upon information provided by Buyer, including Buyer's estimated annual use, and may be retroactively and prospectively adjusted in the event of any change in any such information. Quoted prices may also be increased at any time to reflect increases in Seller's production and material costs. All agreements and orders are subject to the written approval of an officer of Seller.

3. **PRICES.** Unless otherwise agreed upon in writing by Seller, all prices, payments and references thereto shall be in U.S. dollars. All prices are subject to adjustment to reflect material increases in the price of raw materials or precious metals included within the goods, labor costs, Buyer's changes in the design or specification of the goods so long as those changes have been accepted by Seller, or changes in cycle times that deviate from Seller's estimate. Such adjustment shall take place 30 days after written notice thereof is provided by Seller to Buyer. Seller reserves the right to invoice goods at prices in effect on the delivery date. Prices do not include sales taxes, use or excise tariffs, taxes, import or export duties or taxes, finance fees, value added taxes, special permits or licenses, or similar charges ("Taxes" or "Tariffs") imposed by any governmental entity. Buyer shall either pay such Taxes or Tariffs or provide Seller with acceptable exemption certificates. Additionally, unless otherwise agreed upon in writing by Seller, prices do not include any charges for services such as assembly, special packaging, insurance, brokerage fees, installation, or product orientation or training. Buyer, at its expense, shall be solely responsible for arranging and effectuating shipments to all destinations outside the U.S.A.

4. **PAYMENT.** Unless otherwise agreed upon in writing by Seller, Seller shall have the right to issue invoices to Buyer upon readiness of goods for delivery by Seller, and all invoices shall be due and payable NET 30 DAYS from date of invoice without regard to delays of transportation, inspection or acceptance. Should Seller deem Buyer's

financial position or payment practices to be unsatisfactory, cash payment or other security may be required. If Buyer fails to meet such requirements, Seller may discontinue the production and delivery of goods to Buyer and treat such failure at any time thereafter as reasonable grounds for the lawful termination of any pending order. Interest shall accrue on any overdue payment at the rate of 1.5% per month, or at the maximum lawful rate of interest, whichever is less. Buyer agrees that Seller may terminate all obligations if Buyer is delinquent on payments owed to Seller and which remain uncured five (5) days after written notice to Buyer.

5. **PACKAGING.** Unless otherwise agreed upon in writing by Seller, all goods ordered by Buyer shall be packed and boxed in bulk at Buyer's expense. Any additional or special packaging shall be at the expense of Buyer.

6. **DELIVERY.** Buyer shall accept delivery of all orders as production is completed. Seller's delivery of up to 10% over or under quantities quoted shall constitute fulfillment of the order. All orders shall be EXW (as defined in Incoterms of the International Chamber of Commerce) at Seller's facility in McHenry, Illinois, U.S.A., or where applicable, the plant of Seller's subcontractor.

7. **TITLE AND RISK OF LOSS.** All goods supplied by Seller shall have marketable title, free and clear of any security interest, lien, or encumbrance of any third party, other than Seller's molder's lien. Title to the goods, and risk of loss, shall pass to the Buyer upon notice to Buyer of readiness of the goods for delivery. Freight and shipping obligations shall have no bearing on transfer of title or risk of loss. Claims for damages or shortages attributable to Seller must be filed with Seller within 30 days following receipt of goods or notice of loss, whichever occurs first, and must be accompanied by Seller's packing slip and a detailed description of the claim. After such 30-day period, Buyer shall be deemed to have irrevocably accepted the goods, if not previously accepted.

8. **MOLDS AND TOOLING.** Buyer shall own title to all molds, subject to the payment of amounts owed for the manufacturing of such molds and payment of all amounts due to Seller. Buyer shall bear all risk of loss and damage to, and shall keep insured for their full replacement value, all molds, dies, tooling and other equipment of Buyer. Seller is not liable for any direct or indirect consequential damages. Buyer should supply Seller with a certificate of insurance evidencing adequate insurance coverage of such items. The removal of such items from Seller's facilities shall be subject to 120 days' prior written notice to Seller and Buyer's prior payment of a portion of the original tooling and set-up costs which Seller, in its reasonable judgment, deems appropriate, along with all other amounts due Buyer from Seller. If any mold, die, tooling or other equipment of Buyer is inactive for 12 consecutive months, Seller may charge a storage fee to Buyer for those items. If Buyer fails to remove any tooling, molds, dies or other equipment of Buyer from Seller's facility within a reasonable period of time (but in no event longer than 30 days) after notice from Seller, Seller shall be entitled to assess a reasonable storage fee and/or dispose of or return such items to Buyer at Buyer's sole expense.

9. SECURITY INTEREST. Buyer hereby grants Seller, and Seller shall retain, a security interest in all molds, dies, tooling and other equipment furnished by Buyer, which shall include Seller's molder's lien, and in all goods shipped by Seller, until Seller receives payment in full of all sums due. At Seller's request, Buyer shall execute and deliver to Seller any instruments (including Uniform Commercial Code financing statements) which Seller deems necessary to protect Seller's security interest. If Buyer fails to execute and deliver any such document, Buyer hereby irrevocably authorizes Seller to execute and file such document on behalf of Buyer as its attorney-in-fact and appoints Seller as its attorney-in-fact for such purpose. Buyer acknowledges Seller's right to a molder's lien with respect to all amounts due Seller, as provided by applicable law.

10. MODIFICATION OR SUSPENSION OF ORDERS. Requests by Buyer for any modification or change of any order, including, but not limited to, any change in specifications, quantities or delivery obligations, shall be subject to Seller's written acceptance, and may result in adjustments to prices and delivery schedules, and obsolescence of materials, parts, and packaging.

Any request by Buyer to suspend any order or delay any delivery shall be in writing, and shall be subject to the written consent of Seller. Such suspensions or delays may result in adjustments to prices, payments and delivery schedules. The time required for the subsequent completion of any order may exceed the period of suspension or delay due to Seller's scheduling constraints or other reasons. If a requested suspension is more than 30 days in duration, Buyer shall pay Seller pro rata for the portion of the order completed, work in progress, and also pay Seller the cost of any unused materials ordered and/or purchased by Seller to complete the order. In the event that production has proceeded to the point where Seller deems that it cannot reasonably reschedule completion, or the request for suspension is received less than 70 days prior to scheduled delivery, the order shall be completed, invoiced and placed in storage at Buyer's expense. Title to the goods shall thereupon transfer to Buyer. In the event Seller is otherwise unable to deliver the goods when ready due to any other action or inaction of Buyer, Seller shall so notify Buyer.

11. OBSOLESCENCE. Buyer agrees to purchase all raw materials, work in progress, packaging, and parts purchased by Seller and which cannot be repurposed or returned at no cost to seller. Buyer agrees to purchase the foregoing at the original cost to Seller, including taxes, shipping, and related charges. Buyer agrees to purchase such materials, parts, packaging, work in progress, and finished goods that become obsolete regardless of forecast(s).

12. CANCELLATION OF ORDERS. Any cancellation of an order shall be in writing. Buyer shall pay Seller pro rata for the portion of the order completed, work in progress, and materials. Buyer shall also pay Seller the cost of any unused materials purchased by Seller to complete the order. In the event that Buyer has not taken delivery of a sufficient quantity of goods to enable Seller to recover its upfront capital expenditures, Buyer shall also pay to Seller the amount of such unrecovered expenditures.

13. LIMITED WARRANTY. Except as otherwise specifically set forth herein, Seller warrants only that goods furnished by Seller shall conform to the dimensional and cosmetic specifications set forth on the final order acknowledgment issued by Seller. Buyer represents that it has expertise in the design of the goods and related components, including the selection of materials. Buyer assumes all responsibility for the design of the goods, selection of materials, and the suitability of the goods for the use by Buyer or any other purchase or user of the goods. This limited warranty shall be subject to the limitation of liability set forth herein.

Unless otherwise agreed upon in writing by Seller, this limited warranty shall be in effect during a period of 90 days following the date of shipment of the goods. To obtain consideration under this limited warranty, Buyer must first send written notice to Seller's facility, stating in what respect the goods are believed by Buyer to be defective. Failure to give such notice within the warranty period shall be a waiver of this limited warranty and no assistance or other action thereafter taken by Seller shall be deemed to extend or revive the warranty period.

Any goods believed by Buyer to be defective shall be returned by Buyer to Seller's facility, transportation prepaid, for examination by Seller. No goods shall be returned to Seller unless Buyer first obtains a return authorization from Seller. If, in Seller's sole judgment, the goods returned by Buyer are defective and covered under this limited warranty, Seller shall have the option of repairing or replacing such goods, at Seller's charge, provided that such goods are returned to Seller's facility, transportation prepaid. At Seller's sole discretion, Seller may alternatively direct that any items covered under this warranty be destroyed, with proof of destruction to Seller, at Seller's expense in lieu of being returned to Seller.

This limited warranty shall not apply to goods which, in Seller's sole judgment, have been the subject of negligence, misuse, abuse, accident, misapplication, tampering or alteration; nor shall it apply to goods damaged by acts of God or Force Majeure (defined below), war or civil insurrection, criminal acts, improper assembly, installation, operation, maintenance or storage, or other than normal application, use or service, including, without limitation, failures caused by foreign materials, erosion, or wear and tear.

THIS LIMITED WARRANTY AND THE LIMITATIONS UPON SELLER'S LIABILITY ARE IN LIEU OF ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED BY LAW, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE. No person is authorized to give any other warranty or to assume any other liability on Seller's behalf.

14. LIMITATION OF LIABILITY. Neither party shall, under any circumstances, be liable for damages for injuries to persons or property, loss of product, loss of profits, loss of use, expenses of labor, travel or other items relating to the removal, replacement or recall of defective

goods, damages resulting from the removal of defective goods or the installation of repaired or replacement goods, expenses relating to the transportation of goods to and from Seller's facility, damages resulting from defective inserts furnished to Seller, damages to molds, dies, tooling and other equipment. Neither party be liable for any exemplary, punitive, consequential, incidental, contingent or special damages, whether arising in contract, in tort or under statute, or any other damages or expenses not agreed upon in writing by Seller, even if Seller has been advised of the potential for any such damages or expenses. With the exception of amounts owed to Seller, in no event shall the liability of either party in connection with or arising out of any agreement between the parties, including claims for indemnification, exceed the amounts paid by Buyer to Seller during the twelve (12) months preceding the assertion of any claim by a party. Buyer agrees that the foregoing limitations are a material term necessary for the inducement of Seller to agree to provide goods to Buyer under the terms set forth herein.

15. **PATENT INFRINGEMENT.** If a claim is asserted based on infringement of a United States patent relating to any part of the goods (other than a part based on specifications provided by Buyer), Seller, at its expense, shall either replace or modify such part with a non-infringing part or procure for Buyer the right to use such part, provided that Seller is given a full opportunity to conduct all negotiations in respect of such claims, but in no event shall Seller have any liability for losses arising from any use or nonuse of any infringing part. The foregoing provisions fully set forth Seller's only responsibilities, and Buyer's exclusive remedies, with respect to any infringement by any part of the goods supplied to Buyer, and **SELLER EXPRESSLY DISCLAIMS ANY OTHER WARRANTY AGAINST INFRINGEMENT, WHETHER EXPRESS OR IMPLIED.** Notwithstanding the foregoing, Buyer shall defend and hold Seller harmless from and against any claim of infringement, in part or in whole, for any part of the goods designed or manufactured to Buyer's specifications, including the use thereof in combination with other components, materials or processes and Seller shall have no obligation of indemnification or defense in such circumstance.

16. **INDEMNIFICATION.** Subject to the limitations on liability set forth in Section 14, the parties shall indemnify and hold each other and their respective affiliates, shareholders, members, directors, officers, employees, and agents ("Indemnified Parties") harmless from and against any loss, liability, damage, or expense, including reasonable attorneys' fees ("Losses"), such parties may incur as a result or, arising out of or by reason of any breach, misrepresentation, or nonfulfillment on the part of such party of this agreement. Buyer shall further hold the Seller Indemnified Parties harmless from and against Losses resulting from or relating to Buyer's or Buyer's customers' design, use, marketing, distribution, or sale of the goods.

17. **IMPROVEMENTS.** Unless otherwise agreed to in writing by Seller, any and all Improvements shall be the exclusive property of Seller and Buyer agrees to perform all

actions necessary or desirable to vest and confirm ownership of Improvements in Seller. "Improvements" shall mean any inventions, developments, enhancements, adaptations, advancements and other intellectual property, whether or not patented or patentable, derived from, associated with or relating to the manufacturing and molding process used for the goods, any component thereof, their tooling, or any production process, technique or procedure which may be discovered, developed, invented or acquired by Seller in whole or in part.

18. **PPAP.** All costs associated with the part production and approval process ("PPAP"), including any annual PPAP revalidation, shall be paid for by Buyer.

19. **LEAD TIME.** Delivery lead time will be communicated at the time of order confirmation. Lead times are dependent on PPAP, machine availability, machine capacity, and material availability.

20. **FORCE MAJEURE.** In no event shall Seller be liable for any non-performance, delay in performance, or any other variation from Seller's performance obligations, nor for any loss or damage to any goods supplied to Buyer, when occasioned directly or indirectly by any cause beyond the reasonable control of Seller or its suppliers, vendors, subcontractors, or other representatives or agents, including, but not limited to, communication line failures; power failures; natural disasters or acts of God; pandemics or epidemics; acts of criminals or a public enemy; war; riot; official or unofficial acts; contracts, regulations or restrictions of any domestic or foreign governmental agency; acts of Buyer or its employees, representatives or agents; strikes or labor difficulties; or failures, shortages or delays in Seller's usual sources of labor or materials (including when such sources of materials allocate materials in response to orders for such materials). Seller shall automatically be entitled to a reasonable extension of all periods of performance when delayed by any such cause.

21. **TERMINATION.** Seller and Buyer shall have the right to terminate this agreement and any applicable purchase order upon or after the material breach of any provision of this agreement by the other party if the breaching party has not cured such breach within the 30-day period following written notice of termination by the non-breaching party. Seller also shall have the right to terminate this agreement and any applicable purchase order for any reason or no reason at all with 90 days advance written notice to Buyer. Termination of this agreement or any applicable purchase order shall not (a) affect any other rights of either party which may have accrued up to the date of such termination or expiration or (b) relieve Buyer of its obligation to pay to Seller sums due for goods ordered under purchase orders, all inventory and work in process produced, all raw materials and packaging obtained for benefit of Buyer, and any and all tooling or components purchased for Buyer for which Seller has not been reimbursed. The obligations and rights of the parties under this section shall survive termination of this agreement and any applicable purchase order.

22. **INSPECTIONS.** If Buyer is permitted by Seller to inspect Seller's facilities or processes, Buyer shall not

photograph or make any other visual or audio recording thereof.

23. ASSIGNMENT. Unless otherwise agreed upon in writing by Seller, Seller shall have the right to assign or subcontract the performance of any of its obligations under any order. Any attempted assignment by Buyer of any of its rights or obligations under any order shall be null and void in the absence of Seller's prior written consent.

24. INDEPENDENT CONTRACTOR. At all times, Seller shall be deemed an independent contractor of Buyer, and not a partner, joint venturer, employee or agent of Buyer.

25. REGULATORY COMPLIANCE. Buyer shall comply with all applicable laws, regulations and rules governing goods furnished by Seller, including, but not limited to, safety and health standards, environmental regulations, technical standards and export controls.

26. DISPUTES. Buyer and Seller shall use their best efforts to resolve in an amicable manner any dispute arising in connection with any order. In the event that Buyer believes that Seller is not in full compliance with its obligations hereunder, Buyer shall notify Seller in writing and Seller shall take reasonable measures to remedy the alleged non-compliance within 30 days following its receipt of said notice. Any dispute which is not so settled or resolved shall, within a reasonable period of time thereafter, be submitted to arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the arbitrated award may be entered in any court of competent jurisdiction. Allocation of the costs of arbitration shall be determined by the arbitrator, and each party shall bear its own attorneys' fees. Unless otherwise agreed between the parties, arbitration hearings shall be held in McHenry, Illinois, U.S.A. Each party agrees to bear its own attorney's fees, costs, and expenses associated with any dispute, arbitration, or litigation, regardless of whether a party would otherwise be entitled to an award of such fees, costs, and/or expenses.

27. INTERPRETATION. These terms and conditions shall be governed by and construed in accordance with the laws of the State of Illinois, including such State's Uniform Commercial Code, without giving effect to principles of conflict of laws. Whenever any conflict exists between these terms and conditions and any provision of such Uniform Commercial Code, these terms and conditions shall govern, including the disclaimer of implied warranties set forth herein. The section headings contained herein have been inserted for convenience only, and shall not be considered in interpreting any term or condition hereof. If any term or condition contained herein is found to be invalid or unenforceable, it shall be deemed stricken here from without affecting the remaining terms or conditions hereof. Seller's failure to require the performance of any term or condition hereof shall not affect Seller's right thereafter to enforce that or any other term or condition hereof. Both parties have read these terms and have had the opportunity to review them with their legal counsel. All parties agree that in the event of any interpretation of these terms and any related agreement between the parties, neither these terms

nor any related agreement will be construed for or against any party.

28. NOTICE. All notices and other communications required hereunder shall be in writing and delivered by e-mail, facsimile, telegram, overnight carrier, or certified or registered mail, postage prepaid, return receipt requested. Any such notice shall be deemed to have been given on the date it is received during regular office hours at the address listed on the applicable order or at such other address as the affected party may have previously designated for notices.

**Last Revised 8/2021**