

PETOSKEY PLASTICS TERMS AND CONDITIONS OF PURCHASE

- **CONTRACT**, Petoskey Plastics will herein be identified as “Buyer” throughout this document. Seller’s execution of this order as herein provided shall constitute Seller’s acceptance hereof and agreement to a contract containing the terms and conditions set forth herein.

THIS CONTRACT IS TO BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN WITHOUT GIVING EFFECT TO CHOICE OF LAW PRINCIPLES AND IT IS AGREED THAT SELLER SHALL EXERCISE ANY RIGHT OR REMEDY HEREUNDER EXCLUSIVELY IN, AND HEREBY CONSENTS TO THE JURISDICTION OF THE STATE OF MICHIGAN COURTS OF EMMET COUNTY.

- **PACKAGING AND TRANSPORTATION**, Unless otherwise specified on the face hereof, all charges for packing, crating, hauling, storage, and transportation to point of delivery are included in the purchase price. All shipments must be accompanied by packing slips containing a description of the articles, the purchase order number and the plant to which the shipment is consigned. Any unnecessary expense resulting from misrouted shipments shall be charged to Seller.
- **WARRANTY**, Seller warrants that the material or articles covered by this order, together with all related packaging and labeling and other material furnished by Seller, (a) will conform to all of the specifications, drawings or samples furnished by Buyer and will be fit and sufficient for their intended purpose, (b) will function properly and be free from defects in design, material and workmanship, (c) will conform in all respects with all applicable federal, state and local laws, orders, and regulations, including, without limitation, those regarding occupational safety and health, and (d) will not infringe or encroach upon Buyer’s or any third party’s personal, contractual or proprietary rights, including, without limitation, patents, trademarks, copyrights, rights of privacy, or trade secrets, Such warranty shall be in addition to those available at law and shall survive any acceptance by Buyer of all or part of the material or articles covered by this order.
- **TOOLING**, All tooling or molds prepared by Seller in connection with this order shall be the property of Buyer. Seller shall, at its sole expense, maintain all tooling or molds in good condition and repair at all times. Upon demand by Buyer and without regard to whether such demand constitutes a breach of contract, Seller agrees to turn over any or all tooling or molds at once and without any charge whatsoever.
- **TIMING, INSPECTION, AND REJECTION**, Time is of the essence in the performance of Seller’s duties under this order, 100% on time delivery is required. All material shall be received subject to Buyer’s inspection and right to rejection. Buyer also reserves the right to either accept or reject all or part of any premature shipments. Any expenses incurred by Buyer in handling and storing premature shipments shall be deducted from the purchase price. Defective material will, at Buyer’s option, either be held for Seller’s instruction and at Seller’s risk or returned at Seller’s expense. Unless otherwise directed by Buyer to Seller in writing, material returned as defective shall not be replaced without a new order. Payment for material prior to inspection shall not constitute an acceptance thereof. Written notice of defects shall be given by Buyer to Seller within a reasonable time after delivery to Buyer.
- **HOLD HARMLESS**, Seller agrees to reimburse, indemnify, hold harmless and defend at its expense (or to pay attorneys’ fees incurred by Buyer) Buyer and its affiliates from and against any and all loss, damage, cost, charge or expense or claim which Buyer may suffer or sustain or be in any way subject to on account of (a) any claim of infringement of patents, copyrights, trademarks, or specification, and (b) injury to, or death of, any persons or damage to or loss of property arising out of any use, possession or sale of the material or articles or performance of this Contract by Seller, its servants, employees, agents or representatives.
- **INSURANCE**, If the accomplishment of this order requires the performance of services or labor in the plants or on the premises of Buyer, Seller agrees to provide and maintain insurance coverage, until the work is completed and accepted by Buyer and to furnish certificates from its insurance carriers showing that it carries insurance in the following minimum limits:
 - a. Workers Compensation Insurance covering Seller’s statutory obligation in the state where the work is to be performed.
 - b. Employers Liability Insurance with limits of:

Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
 - c. Automobile Liability Insurance with a combined single limit for Bodily Injury and Property Damage Liability of \$1,000,000 per accident covering Seller’s owned, non-owned and hired automobiles.
 - d. Commercial General Liability Insurance written on an occurrence policy form that includes coverage for Seller’s operations, personal injury, XCU (explosion, collapse and underground), independent contractors, contractual and products/completed operations with the following minimal limits of liability:
 1. General Aggregate \$2,000,000
 - Products/Comp. Ops. Agg \$2,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$1,000,000
 - Fire Damage \$500,000
 - Medical Expense \$10,000
 - Umbrella \$1,000,000
 2. Products/Completed Operations Liability must be maintained for not less than two years after acceptance of Seller’s work.
 3. Deviations. Any deviation from the above policy limits must be approved by the Buyer in writing.
 4. Combined Limits General Liability and Auto Liability limits must be attained by individual policies or by a combination of underlying policies with umbrella and/or excess liability policies.

- e. Commercial Umbrella Liability with a limit of at least \$1,000,000 occurrence limit and \$1,000,000 aggregate limit to apply over the above underlying coverage as specified in a – d above.

Other Requirements

- a. Certificates of Insurance. Seller shall provide Certificates of Insurance to Buyer on an Accord Certificate form 25S before beginning Seller's work, or within five (5) business days of executing this contract, whichever is earlier. The foregoing coverage shall be evidenced by the Certificate of Insurance acceptable to Buyer. Such certificate shall be issued by an insurance carrier with an A.M. Best rating of "A-" or better and be sent to the Risk Management Department, Petoskey Plastics, Inc., One Petoskey Street, Petoskey, MI 49770. The Certificate of Insurance shall provide that the coverage thereon shall not be substantially modified or cancelled without thirty (30) days prior written notice to Centerline Engineering Risk Management Department.
- b. Cancellation. The policies of insurance shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to Owner. The words "endeavor to and but failure to mail such notice shall impose no obligation or liability of any kind upon the company its agents or representative" must be stricken or removed from the notice of cancellation.
- c. Additional Insured. Seller shall name Buyer as additional insured party on the General Liability policy using CG2010 or its equivalent and shall not restrict coverage to Seller's "ongoing operations". This may also be accomplished by using the current version of CG2026 or CG2033 in conjunction with CG2037. If CG2010 is not used, the endorsement must be specified on the Certificate of Insurance and a copy of the endorsement made immediately available upon request.

Waiver of Subrogation

Owner and Contractor waive all rights against each other, and any of their respective consultants, subcontractors, and sub-contractors, agents and employees, for damages caused by perils to the extent covered by insurance, except such rights as they may have to the insurance proceeds. Contractor shall require similar waivers from its subcontractors.

Subcontractor Insurance. Seller represents that its subcontractors of any tier will provide and maintain the same insurance coverage and conditions as required of Seller. Seller shall provide copies of Certificates of Insurance to the Buyer if requested by Buyer.

- **EXCUSABLE DELAYS**, Neither party shall be liable for unavoidable delays not due to its fault or negligence. Each party shall give written notice to the other party within a reasonable time after the beginning of any such delay. Seller shall notify Buyer in writing at least six months in advance of the expiration date of any union contract to which Seller is a party.
- **CANCELLATION**, Buyer may cancel this order in whole or in part on account of defects in material, equipment, workmanship or quality, if materials or articles are not shipped as scheduled, or if Seller should make an assignment for the benefit of creditors, or a receiver should be appointed, or if proceedings in bankruptcy or for corporate reorganization should be filed by or against Seller, or upon Seller's failure to comply with any of the terms or conditions of this order.
- **CHANGES**, Buyer may make changes in quantities, drawings, specifications, delivery schedules, method of shipment and packaging, and may terminate work on this order for its own convenience, in whole or in part, by written or telegraphic notice at any time. In order to assure the timely delivery of materials purchased hereunder, Seller will upon request by Buyer manufacture materials in excess of Buyer's current orders to serve as a reserve for shipment, at such inventory reserve level as may be set by Buyer from time to time, to meet Buyer's requirements and to meet any unforeseen delays due to any reason whatsoever. Until such items have been purchased by Buyer from Seller, the same shall remain the property of Seller, and shall be held by Seller at its sole risk and expense. The quantity shipped pursuant to this order or any release issued hereunder shall not exceed the specified quantity without the prior written consent of Buyer.
- **COMPLIANCE WITH LAWS AND REGULATIONS**, Seller agrees that it will comply with all relevant federal and state laws and regulations applicable to the production, sale and delivery of the goods or the furnishings of any labor or service called for by this order, and any provisions required thereby to be included herein shall be deemed to be incorporated herein by reference. Without limiting the generality of the foregoing: a) Incorporated herein by reference are the contract provisions of paragraphs (1) through (7) of Section 202 of Executive Order 11246 of September 24, 1965 and the rules and regulations of the Secretary of Labor issued pursuant thereto. To the extent required by such regulations, Seller will file (unless filed within the last 12 months) Standard Form 100 with the appropriate federal agency and will develop and/or maintain a written affirmative action program for each of its establishments in accordance with the regulations of the Secretary of Labor issued pursuant to Executive Order 11246, as amended, (b) Seller certifies that the goods called for by this order have been or will be produced in compliance with the requirements of the Fair Labor Standards act of 1938, as amended, and a certification evidencing such compliance shall be printed, stamped or typed on Seller's invoiced, (c) Seller shall comply with federal laws, rules, and regulations applicable to subcontractors and government contractors, including those relating to contracting with small and disadvantaged business concerns (Pub L. 95-507); equal employment opportunity and affirmative action in the employment of women (Executive Order 11375), the handicapped (29 U.S.C. 793), and certain veterans (38 U.S.C. 2012); contracting with business concerns operating in areas of surplus labor (41 CFR 1-1.805) and contracting with women-owned business concerns (Executive Order 12138).

- **DEDUCTIONS AND SET OFF**, Any sums payable to Seller shall be subject to all claims and defenses of Buyer, whether arising from this or any other transaction, and Buyer may set off and deduct against any such sum all present and future indebtedness of Seller to Buyer. Buyer shall provide a copy of the deduction voucher(s) for debits taken by Buyer against Seller's account as a result of any returns or adjustments. Seller shall be deemed to have accepted each such deduction unless Seller, within 90 days following receipt of the deduction voucher, notifies buyer in writing as to why a deduction should not be made and provides documentation of the reason(s) given.
- **DISCOUNTS**, The discount date, if any, shall be established by date of receipt of materials or mailing date of invoice, whichever is later. Neither this order nor any release issued hereunder may be filled at a higher price without the prior written consent of Buyer.
- **PATENTS AND PROPRIETARY INFORMATION**, Seller shall keep confidential all drawings, specifications, data, formulas, processes, sub-suppliers and other information furnished by Buyer or prepared by Seller in connection with the performance of this purchase order and Seller shall not use or divulge such information for the benefit of any other party. Seller agrees that all information disclosed by Seller to Buyer in connection with this order is part of the considerations of this order and such information is not to be treated as confidential and that Seller shall assert n claims (other than for patent infringement) for the use or disclosure of such information by Buyer, its assigns or its customers. Seller acknowledges that Buyer's employees have no authority to accept any information in confidence.
- **MISCELLANEOUS**, (a) All rights granted to Buyer hereunder shall be in addition to and not in lieu of Buyer's rights arising by operation of law. (b) Any provisions of the Order which are typewritten or handwritten by Buyer shall supersede any contrary or inconsistent printed provisions herein. (c) Should any of the provisions of this order be declared by a court or competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provisions.
- **MSDS**, MSDS sheets must accompany shipments where applicable. All containers must be labeled in accordance with OSHA Reg. 29 CFR 1910.1200 and Section 4.6.1 of QS-9000.
- **NOTICES**, All notices to Buyer hereunder shall be delivered in writing to the Purchasing Department.