



Houston Plastic Products
13026 Rosecrest Drive
Houston, TX 77045
713-723-1104

Houston Plastic Products Corporation Standard Terms and Conditions of Sale

All sales by Houston Plastic Products Corporation and its subsidiaries (Seller) are subject to Buyer's acceptance of these Standard Terms and Conditions of Sale. Unless superseded on the face of Seller's Sales Acknowledgement, these Standard Terms and Conditions are a part of any contract to sell materials or services by Seller and **Seller specifically objects to any different or additional terms contained in any purchase order or other instrument prepared by Buyer, including Buyer's published Terms and Conditions of Sale, if any.** Acceptance by Buyer of any products or services furnished by Seller shall be deemed a full acceptance by Buyer of all these Standard Terms and Conditions.

A. PRICE AND PAYMENT TERMS:

1. Seller reserves the right, by giving notice to Buyer at any time before delivery or performance, to increase the price of the products or services to reflect any increase in the cost to Seller, which is due to any factor beyond the control of Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities, or specifications for the products or services which are requested by Buyer, or any delay caused by any instructions of Buyer, or failure of Buyer to give Seller adequate information or instructions.

2. Any taxes or charges which Seller may be required to pay or collect under any existing or future law upon or applicable to the sale, purchase, lease, furnishing, manufacture, processing, transportation, delivery, storage, use or consumption of the products or services (other than income taxes, franchise taxes, gross margin taxes and other taxes imposed on Seller and measured by Seller's net income) shall be for the account of Buyer.

3. Unless otherwise agreed to in writing, all invoices are payable Net 30 without discount or offset, and Seller shall be entitled to recover payment, notwithstanding that delivery may not have taken place and title to the products has not passed to Buyer. Where the parties have entered in progress payment terms, Seller shall invoice Buyer in accordance with such terms and Buyer shall make payments in accordance with this Section A.3.

4. If Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to:

- a) cancel the sale or suspend any further deliveries or services to Buyer;
- b) apply any payment made by Buyer to amounts due under any obligation of Buyer to Seller as Seller may determine fit, in Seller's sole and absolute discretion (notwithstanding any direction from Buyer); and
- c) charge Buyer interest (both before and after any judgment) on the amount unpaid, at the lesser of two per cent per month or the maximum non-usurious rate allowed by law, until payment in



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full is made (a part of a month being treated as a full month for the purpose of calculating interest).

B. DELIVERY TERMS:

1. Seller shall make delivery of all products EXW at Seller' facility (INCOTERMS 2020). All risk of loss or damage shall pass to Buyer at the time and place Buyer is notified that products are ready for delivery or are delivered to a carrier for shipment to Buyer. Notwithstanding delivery and the passing of risk in the products, or any other provision of these Standard Terms and Conditions, title to the products shall not pass to Buyer until Seller has received payment in full (in cash or cleared funds) of the price of the products and services and for which payment is then due.

2. Seller will use its reasonable commercial efforts to deliver the products or services on or before the agreed delivery date, as adjusted in accordance with the terms hereof. Time for delivery shall not be of the essence unless previously agreed to in writing by Seller and set forth on the face of Seller's Sales Acknowledgement.

3. Seller is not liable for delays in delivery or failure to make delivery caused by the elements, acts of God, acts of Buyer, acts or failures to act of any governmental authority (including but not limited to delays, priorities, allocations or restrictions upon the use of transportation, materials or labor, public curfews, shelter in place orders, shut-ins, lockdowns and other directives), breakdowns of equipment, strikes or other differences with workers, fires, floods, explosions or other casualties, governmental regulations or requirements, public health events, contagions, epidemics, pandemics (whether known or unknown) or quarantines, orders bearing priority rating established pursuant to law, shortages or failure of raw materials, supplies, fuel, power or transportation, attacks on Seller's or its affiliates digital infrastructure (such as malware, virus attacks, hacker attacks, or exploitation of vulnerabilities), or other causes beyond the reasonable control of Seller, whether similar or dissimilar to those enumerated, and whether or not foreseeable, and any delivery date will be extended accordingly.

4. Upon request, Seller will store completed or partially completed products for a period of up to 60 days following the "Need By" date at no charge to the Buyer. Seller shall be entitled to charge a reasonable storage fee for any completed or partially completed products that are stored at Buyer's request for more than 60 days after the "Need By" date or because of Buyer's failure to take delivery. All completed or partially completed products stored at Seller facilities shall be a bailment for the benefit of the bailor and shall be at the sole risk and cost of Buyer except for any loss caused by the gross negligence or willful misconduct of Seller.



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C. WARRANTY TERMS:

1. Subject to the limitations hereafter set forth, Seller warrants the products and services sold by it to be free from defects in workmanship or material for 60 days from the earlier of shipment of products from the factory, or commencement of storage of the products on behalf of Buyer or the completion of performance of services in the case of services. Any claim by Buyer based on any defect in workmanship or material shall be sent in writing to Seller within 10 days from the date of delivery or performance of service or, where the defect was not apparent on reasonable inspection, within 10 days of discovery of the defect during the warranty period. If Buyer does not notify Seller accordingly, Seller shall not be liable for such defect and Buyer shall be bound to pay the full invoice as if the products and services have been delivered and performed without defect. Seller's obligation under this warranty for any products or services confirmed by Seller to be defective in workmanship or materials is limited to, at Seller's option, repairing or replacing such products, or reperforming such services, or refunding the amount which Seller received from Buyer for the defective products or services. In no event shall Seller be liable for special, indirect, incidental or consequential damages including loss of profits, environmental damage, remediation claims or third-party costs including, but not limited to, excavation, testing or removing products whether or not caused by the negligence or fault of Seller, and in no event shall Seller's liability exceed the amount paid by Buyer for the defective products or services. IT IS EXPRESSLY AGREED THAT THIS WARRANTY SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. TO THE FULL EXTENT ALLOWED BY LAW, SELLER DISCLAIMS ANY WARRANTY TO ANY PERSONS OTHER THAN BUYER.

2. Seller shall not be liable under the above warranty if the product or service has been subject to misuse, negligence, accident, modification, heating, bending, welding, or alteration of any kind, or has not been properly designed, operated or installed in accordance with Buyer's use, intent, instructions or has been operated under conditions more severe than or otherwise exceeding those set forth in the specifications for the product or service.

3. Seller shall not be liable under the above warranty if the total invoice for the products and services has not been paid in full by the due date for payment.

4. The above warranty shall not apply to parts, materials or equipment not manufactured by Seller. The Buyer shall only be entitled to the benefit of any such warranty or guarantee given by the manufacturer to Seller. In addition, this warranty shall not apply to services not performed directly by Seller's employees.



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D. INDEMNITY TERMS:

1. Buyer agrees to indemnify, defend and hold harmless Seller, its subsidiary companies, and their respective directors, members, managers, officers, employees, contractors and agents from and against any losses, injuries, damages, costs, charges, fines, penalties, claims, causes of action, expenses (including reasonable attorney fees and costs of investigation and litigation) relating to the purchase, installation or use of products or services provided by Seller other than repair or replacement of defective products or services in accordance with and as limited by the warranty set forth in these Standard Terms and Conditions (the “Indemnified Losses”), whether such claims are made by Buyer, its customers, their respective parent or subsidiary companies, or their respective owners, directors, members, managers, officers, employees, contractors or agents.

2. Buyer acknowledges and agrees that the purchase price for the products and services provided by Seller would be greater if Seller was responsible for any Indemnified Losses. Accordingly, IT IS THE INTENTION OF THE PARTIES THAT THE FOREGOING INDEMNIFICATION APPLY NOTWITHSTANDING THE SOLE, JOINT OR CONCURRENT NEGLIGENCE OF SELLER, ITS PARENT AND SUBSIDIARY COMPANIES, AND THEIR RESPECTIVE OWNERS, DIRECTORS, MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, CONTRACTORS AND AGENTS.

3. Buyer specifically and expressly waives any rights or remedies against Seller under Chapter 82 of the Texas Civil Practice and Remedies Code, regardless of whether Seller is deemed a seller or manufacturer thereunder.

E. OTHER COMMERCIAL TERMS:

1. Buyer represents that it currently has in place, Workers’ Compensation, Employers’ Liability and Comprehensive General Liability Insurance, including insurance coverage for premises operations, independent contractors, completed operations, contractual liability (including coverage of the indemnity obligations under these Standard Terms and Conditions), personal injury liability, property damage, XCU hazards liability and owned and non-owned automobile liability coverage in amounts sufficient to cover anticipated risks arising from the products and services provided by Seller. Such insurance is written on an “occurrence” basis and endorsed to name Seller as an additional insured and to provide Seller with at least thirty (30) days’ notice of any change in or cancellation of such policies.

2. Products and services shall be subject to Seller’s stated manufacturing variations. All data published by Seller are based upon information believed reliable; however, Seller does not warrant the accuracy of same. All measurements and weights are subject to reasonable tolerance variations. Seller reserves the right to make changes to the products which are required to



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conform with any applicable statutory requirements or which do not materially affect their quality, design or performance.

3. Seller retains for itself exclusively all intellectual proprietary rights in and to all designs, engineering details and processing and other data concerning the services or products sold by it. No such intellectual property will be deemed to be “work made for hire”. Nothing contained herein, nor any statements or expressions of Seller or its affiliates shall be construed as issuing a license with respect to any intellectual property of Seller.

4. Buyer represents that the products (including any description or other technical materials relating to the products) will not be exported from the United States of America to any country or delivered to any foreign national (including any resident of the United States that is controlled by a foreign national) except in accordance with a duly issued and effect export license and all applicable laws governing the export of material from the United States of America. Seller has no obligation to obtain an export license with respect to any products or services.

5. The partial invalidity of any of these Standard Terms and Conditions shall not affect the validity and applicability of the remainder thereof and any part of these Standard Terms and Conditions that is found to be illegal or unenforceable in any jurisdiction shall be replaced in such jurisdiction by a legal and enforceable provision that satisfies, as nearly as possible, the intention of the illegal or unenforceable provision.

6. Headings in these Standard Terms and Conditions are for convenience only and shall be disregarded in interpreting the meaning of the text.

7. These Standard Terms and Conditions shall be construed, performed and enforced under the laws of the State of Texas and the Federal laws of the United States applicable therein, excluding any conflict of law principles or rules which would impose any law or laws of another jurisdiction. Seller and Buyer hereby irrevocably submit to the exclusive jurisdiction of the courts sitting in Harris County, Texas, and their respective appellate courts. Buyer and Seller expressly waive any claim that such courts do not have jurisdiction over such disputes or that venue in Harris County, Texas is not proper or is inconvenient. Seller specifically objects to and excludes any application of the United Nations Convention on Contracts for the International Sale of Goods.

8. If Seller commences any action for the collection of amounts due, Seller shall be entitled to recover its reasonable attorney’s fees and expenses of such action under Section 38.001 of the Texas Civil Practices and Remedies Code, notwithstanding that Buyer is not an individual or corporation.

9. Any controversy or claim arising out of or relating to the purchase of the products and services or the breach hereof, at the option of Seller, shall be subject to by binding arbitration by a single



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arbitrator in Houston, Texas according to the Commercial Arbitration Rules of the American Arbitration Association (AAA).

10. Buyer shall not assign its rights or obligations under these Standard Terms and Conditions without Seller's prior written consent.

11. No failure to exercise, or delay in exercising any rights, remedies, power or privilege under these Standard Terms and Conditions shall cause or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

12. No statement or recommendation made or assistance given by Seller or its representatives shall constitute a warranty by Seller or a waiver or modification of any of the provisions hereof or create any liability for Seller. There are no understandings or agreements between Buyer and Seller relative hereto which are not fully expressed herein and neither Buyer nor Seller is relying upon any statement or other representation of the other party that is not set forth in these Standard Terms and Conditions. Neither course of dealing between the parties nor usages of trade shall be relevant to the interpretation of these Standard Terms and Conditions. These Standard Terms and Conditions and the document into which they are incorporated contain the entire agreement of the parties regarding the subject matter hereof. Buyer has read and is relying on its own informed and knowledgeable judgment and the advice of its legal counsel regarding the legal effect of these Standard Terms and Conditions.