

TERMS OF SALE

THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY. BY PURCHASING ANY OF OUR PRODUCTS YOU ACCEPT AND ARE BOUND BY THESE TERMS OF SALE.

1. Acceptance.

These terms and conditions of sale (these “Terms”) apply to the purchase of our products (the “Products”) by you (the “Buyer”). These Terms are subject to change by Radical Plastics, Inc. (referred to as “Seller”, “us”, “we”, or “our” as the context may require) without prior written notice at any time, in our sole discretion. **The latest version of these Terms will be posted on <http://www.radical-plastics.com/termsandconditions> (the “Site”) and you should review these Terms prior to purchasing any Products. Your continued purchase of our Products after a posted change in these Terms will constitute your acceptance of and agreement to such changes.**

2. Buyer’s Terms.

All orders placed pursuant to Seller’s proposal must be in writing. All orders from Buyer will be deemed to be subject to these Terms set out herein and any terms and conditions specified by the Buyer shall be ineffective.

3. Payment Terms and Purchase Price.

For Buyers with current, approved credit, as determined in Seller’s sole discretion, payment terms are net **[15/30]** days from date of invoice on open accounts. Terms of payment for Buyers not meeting such credit requirements determined by Seller shall be at the sole discretion of the Seller. Shipments and deliveries by Seller shall at all times be subject to the approval of and requirements of the credit department of Seller, including the requirement that Buyer pay part or all of the purchase price in advance. If any payment is past due, we may: impose a service charge of the lesser of the maximum amount allowed by applicable law or 1.5% per month, hold or decrease shipments of Products, terminate a sale, stop Products in transit, and/or suspend further performance under these Terms and/or any other agreement with Buyer. All purchase prices are within our sole discretion and, unless otherwise agreed by us in writing, any quoted purchase prices may be increased to the extent that our cost of any product sold hereunder may be increased, including, but not limited to, as a result of: (1) any agreements, codes, or legislative enactments made or enacted pursuant to federal, state or municipal legislation; or (2) increase in the cost of labor, transportation, or raw materials. Buyer is responsible for any excise, levy, or other taxes which Seller may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the Products covered hereby, and Buyer agrees to pay the amount thereof on the same terms as it shall pay the quoted purchase price. Buyer agrees to pay for Seller’s attorney’s fees and expenses and other collection costs in the event collection or other enforcement efforts become necessary or appropriate in Seller’s discretion. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.

4. Security Interest.

Buyer shall not acquire any title, property right, or ownership interest in any Product invoiced by Seller to Buyer, and Buyer shall not have any right to transfer, sell, pledge, or otherwise dispose of such Product or any interest therein, unless and until such Product have been paid in full by Buyer. In order to secure all amounts due from Buyer to Seller in an order, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products not paid for in full in an order, wherever located, as well as all proceeds (including insurance proceeds) of the foregoing, notwithstanding that the Products have been delivered to Buyer. The security interest granted under this provision constitutes a purchase money security interest. Buyer hereby authorizes Seller to execute and file a UCC-1 financing statements or similar instrument describing the Products, and any other document which may be requested by Seller to evidence its security interest.

5. Shipment.

Unless otherwise agreed in writing by the parties, delivery terms are FOB Shipping Point. Buyer assumes all risk of loss or damage upon delivery by Seller to the carrier at the point of shipment. Scheduled dates of delivery are determined from the date of Seller’s acceptance of any order or orders placed by Buyer and are estimates of approximate dates of delivery, not a guaranty of a particular date of delivery.

6. Force Majeure.

Seller shall not be liable for any damages caused by failure or delay in shipping the Products described herein, nor be deemed to have defaulted or breached these Terms, for any failure or delay in our performance under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers, supply chain delays or inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

7. Warranty.

THE PRODUCTS HAVE BEEN TESTED ACCORDING TO ASTM D6954 AND EN17033. SELLER WARRANTS THAT THE PRODUCTS SHALL CONFORM TO THE DESCRIPTION STATED ON THE INVOICE PROVIDED BY THE SELLER. THE FOREGOING WARRANTY IS SELLER'S SOLE WARRANTY WITH RESPECT TO THE PRODUCTS. SELLER DOES NOT GUARANTEE THE PRODUCT'S PERFORMANCE DUE TO DIFFERENT CONDITIONS SUCH AS ACCIDENTS, CLIMATIC CONDITIONS, ETC. SELLER IS NOT RESPONSIBLE FOR ANY LOSS RELATED TO THE USAGE AND SPEED OF DEGRADATION OF THE PRODUCTS. IT IS THE BUYER'S RESPONSIBILITY TO MAKE TRIALS AND TESTS PRIOR TO USING IN ORDER TO VALIDATE THE PRODUCTS IN SPECIFIC USAGE CONDITIONS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. **SELLER'S LIABILITY FOR BREACH OF WARRANTY HEREUNDER IS LIMITED SOLELY TO THE REPLACEMENT OF THE DEFECTIVE PRODUCT, WHICH SHALL BE RETURNED TO SELLER TRANSPORTATION CHARGES PREPAID BY BUYER; AND THE FAILURE TO GIVE NOTICE OF A WARRANTY CLAIM WITHIN THIRTY (30) DAYS FROM DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS IN RESPECT OF SUCH PRODUCT. THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDY OF BUYER AND THE SOLE LIABILITY OF SELLER UNDER THIS WARRANTY.**

8. Limitations of Liability.

SELLER'S LIABILITY TO BUYER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED IN ANY CASE THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE PRICE STATED FOR THE PRODUCTS IS CONSIDERATION FOR LIMITING SELLER'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER AN INVOICE TO THE BUYER MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE DATE OF SUCH INVOICE. WITHOUT LIMITATION OF THE FOREGOING, IN NO EVENT WILL SELLER BE RESPONSIBLE OR LIABLE FOR (A) PENALTIES OR PENALTY CLAUSES OF ANY DESCRIPTION, OR (B) INDEMNIFICATION OF BUYER OR OTHERS FOR COSTS, DAMAGES OR EXPENSES ARISING OUT OF OR RELATED TO THE PRODUCTS.

9. Claims.

Claims by Buyer for shortages or errors in delivery must be made within five (5) days after the delivery of the Products.

10. Governing Law, Jurisdiction and Venue.

All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts. The exclusive venue for all actions

to enforce or interpret the provisions of these Terms will be the state or federal courts having jurisdiction over Suffolk and Middlesex Counties, Massachusetts.

11. Waiver of Jury Trial.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THESE TERMS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

12. Assignment.

You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation in violation of this Section 12 is null and void. No assignment or delegation relieves you of any of your obligations under these Terms.

13. No Waiver.

The failure by us to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of Seller.

14. No Third Party Beneficiaries.

These Terms do not and are not intended to confer any rights or remedies upon any person other than you.

15. Notices.

To You. We may provide any notice to you under these Terms by (i) posting to the Site or (ii) e-mail, facsimile transmission, overnight courier, US mail, or personal delivery. Notices we provide by posting will be effective upon posting. Notices sent by e-mail will be effective when we send the e-mail. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided by U.S. mail will be effective three business days after they are sent. Notices provided by personal delivery will be effective immediately. It is your responsibility to keep your contact information current. To Us. To give us notice under these Terms, you must contact us as follows: (i) by e-mail to info@radical-plastics.com; or (ii) by personal delivery, overnight courier or registered or certified mail to Radical Plastics, Inc., 100 Cummings Center, Suite 240D, Beverly, MA 01915. We may update the email address or address for notices to us by posting a notice on the Site. Notices provided by e-mail will be effective when the e-mail is sent. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.

16. Severability.

If any provision of these Terms is invalid, illegal, void or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms.

17. Entire Agreement.

These Terms will be deemed the final and integrated agreement between you and us governing the sale of our Products.