

## TERMS AND CONDITIONS

- 1. Applicability.** This purchase order is an offer by GAR Plastics, Inc. ("GAR") for the sale of the goods specified on the face of this purchase order (specifically, the "Goods") to the party to whom the purchase order is addressed (the "Buyer") in accordance with and subject to these terms and conditions (the "Terms"); together with the terms and conditions on the face of the purchase order, the "Order"). This Order constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Buyer's acceptance to the terms of the Order, which shall prevail over any terms or conditions contained in any other documentation and expressly exclude any of Buyer's documents or general terms and conditions of sale. These Terms apply to any repaired, replacement, or returned Goods provided by GAR hereunder. This Order does not obligate GAR to any exclusivity requirements, or future purchases.
- 2. Acceptance.** This Order shall become a binding contract upon GAR and Buyer upon acceptance thereof either by acknowledgment or performance. If Buyer does not accept the Order within the timeframe set forth in the Order, the Order will lapse. GAR may withdraw the Order any time before it is accepted by Buyer. Buyer's use of its form purchase order shall not be deemed to modify or amend any of the terms, conditions, covenants or agreements contained herein and shall merely be deemed to be an offer to purchase.
- 3. Title and Risk of Loss.** Unless Buyer picks up Goods at GAR's principal place of business, all sales are F.O.B., point of destination. Buyer takes title and assumes responsibility for risk of loss or damage upon picking up Goods or at the point of destination for such sales.
- 4. Amendment and Modification.** No change to this Order after acceptance is binding upon GAR unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of GAR.
- 5. Price.** Prices are subject to change by GAR from time to time. Prices for Goods on order but unshipped on the effective date of any price change will be adjusted to those in effect on the date of eventual shipment. Buyer agrees to pay all additional applicable shipping and handling charges, taxes, and duties as stated on the invoice from GAR.
- 6. Payment Terms.** Buyer agrees to pay all charges according to the payment terms established in each invoice for Goods it acquires from GAR. Unless otherwise set forth in the Order, payments shall be made in cash or other immediately available funds within thirty (30) days of the date of the invoice. GAR may withhold or cancel scheduled shipments at any time if any portion of Buyer's account with GAR is overdue. If Buyer fails to pay by the required date, GAR shall be entitled to interest from the day on which payment was due at the lesser rate of 1.5% per month or the maximum allowable rate by law. Title to Products shall transfer to buyer only upon receipt by GAR of complete payment.
- 7. No Returns; No Refunds.** Goods are returnable only if erroneously shipped, damaged prior to shipment by GAR, or with the written consent of GAR. All Goods erroneously shipped by GAR or that were damaged prior to shipment by GAR must be returned with the original package intact and otherwise in unused, resalable condition. Any Goods that have been modified or adulterated cannot be returned. All returns must be made within 10 days of the invoice date and include undamaged packaging and proof of purchase. GAR reserves the right to charge a restocking fee for handling Goods that are erroneously returned. GAR's sole liability for any returned Goods will be acceptance of their return and issuance of credits.
- 8. Warranties; Disclaimer.** GAR warrants materials to be free from defects in materials and workmanship for one year. GAR will replace any Goods which after inspection by GAR are found defective in material or workmanship. GAR's obligation with respect to any defective Goods is limited solely to replacement. **IN NO EVENT WILL GAR BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST PROFITS, GOOD WILL, LABOR OR ANY OTHER CONSEQUENTIAL OR SPECIAL DAMAGES. GAR WILL NOT BE RESPONSIBLE FOR ANY DEFECT IN ANY GOOD OR MATERIALS PURCHASED FROM A THIRD PARTY AND RESOLD TO BUYER, AND BUYER AGREES TO LOOK SOLELY TO THE ORIGINAL MANUFACTURER FOR ANY WARRANTY OR CLAIM. NO REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY GAR TO BUYER OTHER THAN THOSE EXPLICITLY SET FORTH IN THE ORDER. ANY OTHER REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND WAIVED BY THE BUYER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE.**
- 9. Limitation on Liability.** GAR's liability for any claim of any type, including, without limitation, claims based upon the negligence of GAR, for any and all loss, damage, or personal injury arising out of or in any way connected with the Order shall in no event exceed the original purchase price actually paid by Buyer for the Goods. GAR shall not be subject to any other obligations or liabilities, whether alleged to be arising out of breach of contract, warranty, tort (including negligence), strict liability or any other theory of law, with respect to Goods sold or rendered by GAR, or any undertakings, acts or omissions relating thereto. Claims under this section may result from the manufacture, sale, delivery, resale, operation or use of any material manufactured, furnished, or sold in connection with GAR's performance under the Order. The foregoing limitations of liability shall also apply to patent infringement claims. Additionally, GAR shall not be liable for, and Buyer expressly assumes, all responsibility for all personal injury and property damage resulting from the use, ownership and operation of any Good purchased from GAR. The foregoing limitations are intended to be an allocation of the risks between the parties which is a part of the bargain between the parties and is reflected in the price charged to Buyer by GAR for the Goods purchased under the Order.
- 10. Indemnification.** Buyer agrees that the Goods will be used for commercial use only. Buyer agrees that the Goods purchased hereunder shall be used exclusively by duly qualified personnel in a safe and reasonable manner in accordance with any instructions provided by GAR and for the purpose for which the Goods were intended. Further, the Goods shall be operated in compliance with applicable government labor and safety standards. Buyer agrees to indemnify, defend and hold GAR harmless from and against any and all claims, demands, actions, causes of action, judgments, and costs, including, without limitation, reasonable attorney's fees through appeals, arising out of or in connection with the use of the Goods by Buyer, unless caused by GAR's gross negligence.
- 11. Intellectual Property.** Unless otherwise expressly agreed in writing, GAR shall retain exclusive rights to all proprietary information, technologies, trade secrets, inventions, copyrights, trademarks, trade dress and service mark rights, patents, patent applications, or patentable ideas (hereinafter "Intellectual Property") developed in connection with the Goods provided pursuant to the Order. None of GAR's pre-existing Intellectual Property shall transfer pursuant to the Order. All drawings and technical documents relating to the Goods or their manufacture submitted by GAR, prior or subsequent to the formation of the Order, shall remain the property of GAR. Drawings, technical documents or other technical information received by Buyer from GAR shall not be used for any other purpose than that for which they were provided and may not, without the consent of GAR, be copied, used, reproduced, transmitted or communicated to a third party.
- 12. Confidentiality.** Buyer shall maintain in strict confidence and safeguard all confidential and proprietary information, including without limitation, commercially valuable notes, summaries, reports, analyses, drawings, research, and software. Buyer acknowledges the confidential and proprietary nature of such materials and acknowledges the irreparable harm that could result if it were disclosed to a third party or used for unauthorized purposes without written consent. Except where required by law, Buyer shall use such confidential and proprietary information only for the purpose of concluding the business contemplated by the Order and shall use the same degree of care as with its own proprietary and confidential information, which shall be at least a reasonable standard of care, and to prevent disclosure of the confidential and proprietary information, except to the parties' personnel to the extent necessary to perform under the Order. Buyer acknowledges that money damages would not be a sufficient remedy for any breach of this section. Accordingly, in the event of any such breach, in addition to any other remedies at law or in equity that GAR may have, GAR shall be entitled to equitable relief, including injunctive relief or specific performance or both.
- 13. Buyer's Financial Stability.** Each Order by Buyer shall constitute a representation that the Buyer is solvent and has the financial ability to make payment for the Goods ordered when delivery is tendered by GAR. In the event Buyer is unable or unwilling to provide GAR with evidence satisfactory to GAR of Buyer's ability to make payment, if requested by GAR, GAR shall be under no obligation to undertake to either start or complete any task associated with the Goods ordered by Buyer. If Buyer's financial condition does not at any time, in the sole opinion of GAR, justify continued performance by GAR, GAR may require full or partial payment in advance. In the event of Buyer's voluntary or involuntary bankruptcy, insolvency, or placement in a receivership, GAR shall be entitled to cancel any Order then outstanding and shall be entitled to receive all cancellation charges owed hereunder. The remedies set forth herein shall be in addition to any remedy provided to GAR by any federal or state law.
- 14. Cancellation.** The Contract may not be cancelled by Buyer unless agreed to in writing by GAR and upon payment by Buyer of a reasonable cancellation charge. Cancellation charges may, in addition to other factors, take into consideration loss of profits, labor and cancellation fees suffered by GAR with its suppliers, whether or not the Goods are specialty items, and the overhead invested by GAR in processing the order.
- 15. Storage.** If Buyer shall, for any reason, request delay in delivery, the Goods shall be placed in storage by GAR at the Buyer's sole risk and expense. GAR may, in addition to all other applicable charges, charge the Buyer for such storage together with all costs of handling, transportation and retransfer to GAR for delivery to Buyer at the then prevailing commercial rates. GAR shall have a Warehouseman's Lien on all Goods which are stored pursuant to this provision with all rights and remedies established by the laws of the State of Wisconsin relating to the foreclosure and sale of property subjected to such liens.
- 16. Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event").
- 17. Assignment.** Any purported assignment or delegation by Buyer of its rights or obligations under the Order without the prior written consent of GAR shall be null and void. GAR may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Buyer's prior written consent.
- 18. No Third-Party Beneficiaries.** This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and no one else.
- 19. Governing Law and Jurisdiction.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provisions and shall be in a forum of competent jurisdiction in Wisconsin federal or state courts. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- 20. Cumulative Remedies.** The rights, remedies, and warranties in this Order are cumulative and in addition to any other rights, remedies, and warranties available at law or in equity or otherwise.
- 21. Severability.** Any provision found by a court of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of any law and all other provisions shall remain in full force and effect.