



TERMS AND CONDITIONS OF PURCHASE

- EFFECTIVENESS.** The following Terms and Conditions of Purchase (“Terms”) apply to all purchases of goods or services (collectively, the “Goods”) by Agape Plastics, Inc. (“Buyer”) from Seller. Seller will be deemed to have accepted Buyer’s purchase order (“Purchase Order”) and these Terms immediately upon the earlier to occur of (a) the date Seller provides written acceptance of the Purchase Order to Buyer or (b) Seller’s commencement of any work under the Purchase Order, including Seller’s issuance of an invoice or other confirmatory document.
- ENTIRE AGREEMENT; AMENDMENTS.** These Terms together with Buyer’s Purchase Order, and all related exhibits and schedules specifically referenced in the Purchase Order (collectively, the “Contract”), constitute the sole and entire agreement of the parties regarding its subject matter and supersede all prior and contemporaneous statements, understandings, agreements, representations, and warranties, both written and oral, regarding the subject matter. Seller’s acceptance is expressly limited to the terms of this Contract, and all terms and conditions proposed by Seller, including those in Seller’s invoices or any documents subsequently issued by Seller, are expressly rejected by Buyer and are not a part of this Contract. If there is a conflict between the Terms and the terms and conditions of Buyer’s Purchase Order (and related exhibits and schedules), the terms and conditions of the Purchase Order will control. This Contract may only be amended, modified, or supplemented by an agreement in writing signed by an authorized representative of each party.
- NON-EXCLUSIVITY.** This is not an exclusive arrangement. Unless expressly set forth in the Purchase Order, Buyer will have no minimum purchase requirements, and Buyer may, in its sole discretion, acquire Goods from any source.
- DELIVERY; SCHEDULING.** Time is of the essence and deliveries must be made in accordance with Buyer’s logistics requirements in the quantities and at the times specified in the Purchase Order or delivery schedules. Seller is responsible for all costs and expenses incurred because of Seller’s failure to meet Buyer’s delivery requirements. Buyer may revise the delivery schedules at any time or direct the temporary suspension of scheduled shipments. Where quantities and/or delivery schedules are not specified in the Purchase Order, Seller will deliver Goods in such quantities and times as Buyer may direct in subsequent delivery schedules or releases. Buyer will not be required to make payment for Goods delivered to Buyer that are in excess of quantities specified in Buyer’s delivery schedules or releases, or for Goods delivered before the requested delivery date.
- PACKAGING.** Seller will comply in all respects with Buyer’s shipping and packaging requirements as amended or updated from time to time. Unless otherwise provided for in the Purchase Order, Seller is responsible for all charges or costs relating to handling, packaging, storage, and transportation of Goods, all of which are included in the piece price of the Goods. Seller will (a) properly pack, mark, and ship Goods in accordance with the requirements of Buyer, the involved carriers, and laws and regulations of the country of manufacture, the country of destination, and any country in which the Goods will be transported, including, without limitation, laws and regulations governing the handling and transportation of dangerous Goods or hazardous materials; (b) route shipments in accordance with Buyer’s instructions and the

terms and conditions stated in this Contract; (c) provide with each shipment packing slips with Buyer's Contract and/or release number and date of shipment marked thereon; (d) promptly forward the original bill of lading or other shipping documents for each shipment in accordance with Buyer's instructions; and (e) include on bills of lading or other shipping documents the correct classification of the Goods. The marks on each package and identification of the Goods on packing slips, bills of lading and invoices (when required) must be sufficient to enable Buyer to easily identify the Goods purchased.

6. **TRANSFER OF TITLE.** Title to the Goods will transfer to Buyer free and clear of all liens, claims, and encumbrances, at the time risk of loss transfers to Buyer in accordance with the Purchase Order.

7. **INSPECTION.** All Goods will be subject to final inspection and approval by Buyer after delivery or performance. Items that are palletized or in boxes are received and counted as exterior packages only for proof of delivery verification. Buyer maintains the right to validate actual delivery quantities after acceptance of delivery. Short shipment credits will be requested in a timely manner. Buyer may reject any Goods that contain defective material or workmanship, are not in accordance with the instructions, or fail to conform to specifications or samples, even if Buyer has already paid for the Goods. Rejected Goods will be held at Seller's risk, subject to Seller's disposal, or may be returned at Seller's risk and expense at the full invoice price plus transportation charges both ways, if any. Unless requested in writing by Buyer, no rejected Goods will be replaced by Seller, and then only at the lower of the price stated in the Purchase Order or the prevailing price at the time of Buyer's request.

8. **CHANGES.** Whenever Seller has knowledge of a change to any Goods (including product discontinuation), Seller will immediately give Buyer written notice with all relevant information. The word "change" is defined as a deliberate substitution or modification of the: formulation, raw materials, manufacturing site, process or equipment, test specification, method of lot acceptance criteria, shelf life period, packaging, or labeling. Seller will not deliver any Goods that have experienced such change without prior written consent from an authorized representative of Buyer. Failure of Seller to give such notice will be deemed a material breach of the Purchase Order, and upon learning of such change Buyer may reject, or if it has accepted or consumed the Goods, may revoke its acceptance in its sole discretion. Seller will notify Buyer in writing of any change to any applicable Material Safety Data Sheet for the Goods.

9. **FORCE MAJEURE.** Any delay or failure of either party to perform its obligations under this Contract will be excused to the extent that Seller is unable to produce, sell, or deliver, or Buyer is unable to accept delivery, buy, or use, the Goods or services covered by this Contract directly because of an event or occurrence beyond the reasonable control of such party, without such party's fault or negligence (a "Force Majeure Event"), including, if applicable, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, and sabotage; provided that written notice of such Force Majeure Event (including the anticipated duration of the delay) must be given by the affected party to the other party as soon as possible (but in no event more than 10 days after the Force Majeure Event occurs).

10. **PRICING; PAYMENT.**

a. **Prices.** Unless otherwise indicated on the face of the Purchase Order, pricing is inclusive of applicable federal, state, and local taxes, transportation taxes, or other taxes (“taxes”), including but not limited to customs duties and tariffs (“duties”), as well as freight, packaging, insurance, handling, and all other charges (“charges”), whether similar or dissimilar, and, unless prohibited by law, Seller will pay all such taxes, duties, and charges. Unless agreed to in writing by Buyer, the prices charged for the Goods are not subject to increase for any reason, including, but not limited to, increases based upon currency fluctuations, increases in raw material or component pricing, or increases in labor costs or overhead.

b. **Invoices.** Seller will issue invoices to Buyer for the Goods and, unless otherwise specified in the Purchase Order, Buyer will pay all invoiced amounts due to Seller on net 45 day terms from Buyer’s receipt of such invoice, except for any amounts disputed by Buyer in good faith.

c. **Setoff and Recoupment.** Buyer may withhold payment of amounts due under this Contract by reason of setoff or recoupment of amounts owed by Seller to Buyer under this Contract or any other agreement.

11. **WARRANTY.**

a. Seller expressly warrants that during the Warranty Period (defined below): (i) the Goods will strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions, and samples; (ii) the Goods will be free from defects in workmanship and material and will be new and of the highest quality; (iii) Buyer will receive title to the Goods free and clear of any liens, claims, encumbrances, and any actual or claimed patent, copyright, or trademark infringement; (iv) the Goods will be merchantable, safe, and fit for Buyer’s intended purposes, which purposes have been communicated to and acknowledged by Seller; (v) the Goods will be adequately contained, packaged, marked, and labeled; (vi) all services performed by Seller will be performed in a competent, skillful manner in accordance with industry standards; and (vii) the Goods will be manufactured in compliance with all applicable federal, state, and local laws, regulations, orders and agency or association standards, or other standards applicable to the manufacture, labeling, transporting, licensing, approval, or certification, including by way of illustration and not by way of limitation, the Occupational Health and Safety Act, the Fair Labor Standards Act, and any law or order pertaining to discrimination.

b. The warranties in 11.a. above are in addition to all other warranties, express, implied, or statutory. These warranties will survive inspection, test, delivery, acceptance, use, and payment by Buyer and will inure to the benefit of Buyer, its successors, assigns, customers, and the users of Buyer’s products. These warranties may not be limited or disclaimed by Seller. Buyer’s approval of Seller’s design, material, process, drawing, specifications, or the like will not be construed to relieve Seller of the warranties set forth in this Agreement, nor will a waiver by Buyer of any drawing or specification approval request for one or more Goods constitute a waiver of any such requirements for the remaining Goods to be delivered unless stated by Buyer in writing.

c. The “Warranty Period” will begin on the date of receipt of the Goods by Buyer and end on the later of: (i) the date of expiration of any warranty period provided under applicable law for the Goods; (ii) expiration of any warranty applicable to the Goods provided by Buyer to Buyer’s end customer; (iii) the expiration of the warranty provided by Buyer’s customer to its customers for any of their products into which the Goods are incorporated; or (iv) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into this Contract, including in Buyer’s specifications or quality standards.

d. If Buyer experiences any defect, failure, or nonconformity during the Warranty Period, Buyer may take any of the following actions: (i) retain defective Goods in whole or in part with an appropriate adjustment in the price for the Goods; (ii) require Seller to repair or replace the defective Goods in whole or in part at Seller’s sole expense, including all shipping, transportation, and installation costs; (iii) correct or replace the defective Goods with similar items and recover the total cost from Seller, including the cost of product recalls; or (v) exercise all of its other rights at law, in equity, or under the UCC and any other applicable statutes.

12. **TERMINATION FOR CAUSE.** Buyer may terminate all or any part of this Contract without liability to Buyer if Seller: (i) breaches any term of this Contract; (ii) states its intention not to perform or otherwise rejects its obligations under this Contract; or (iii) the occurrence of any one or more of the following or other comparable events: (1) insolvency of Seller (including, without limitation, a circumstance in which Seller’s liabilities exceed its assets or Seller is unable to pay its debts as they come due); (2) appointment of a receiver, trustee, or administrator over Seller or its assets; or (3) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment, or assignment is not vacated or nullified within 10 days after such event. If any failure or breach under the foregoing (i) or (ii) is curable, Buyer will provide Seller an opportunity to cure within a commercially reasonable period of time under the circumstances, in no case exceeding 10 days after Buyer’s notice of the failure or breach to Seller. Seller will inform Buyer immediately should any of the events in the foregoing (iii) occur or Seller becomes aware of events or circumstances likely to give rise to any such events. Seller will reimburse Buyer for all costs and expenses incurred by Buyer in connection with any of these events (regardless of whether Buyer exercises its termination rights with respect thereto), including, without limitation, all legal or other professional fees and costs.

13. **TERMINATION FOR CONVENIENCE.** In addition to any other right of Buyer to terminate a Purchase Order, Buyer may immediately terminate all or any part of the Purchase Order at any time and for any reason by giving written notice to Seller.

14. **TERMINATION CLAIMS.**

a. Upon receipt of notice of termination pursuant to sections 12 or 13, Seller, unless otherwise directed in writing by Buyer, will: (i) terminate immediately all work under the Purchase Order; (ii) transfer title and deliver to Buyer the usable and merchantable finished Goods, work in process, and raw materials/components that Seller produced or acquired in accordance with firm release amounts under the Purchase Order and which Seller cannot use in producing Supplies for itself or for others; (iii) take actions reasonably necessary to protect property in Seller’s possession in which Buyer has an interest; and (iv) upon Buyer’s request,

cooperate with Buyer in effecting the resourcing of the Goods covered by the Purchase Order to an alternative supplier designated by Buyer.

b. Upon termination of a Purchase Order by Buyer under section 13, Buyer will pay to Seller the following amounts without duplication: (i) the Purchase Order price for all previously ordered, finished, and completed conforming Goods which have not previously been paid for; (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Buyer in accordance with subsection 14.a.; and (iii) Seller's reasonable actual cost of carrying out its obligations under subsection 14.a.(iv).

c. Upon termination under section 12, Seller will not be entitled to any further payments from Buyer.

d. Except as expressly set forth in this section 14, Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, ancillary exit charges, or general and administrative burden charges resulting from termination of the Purchase Order or otherwise. Buyer's obligation to Seller upon termination will not under any circumstances exceed the obligation Buyer would have had to Seller in the absence of termination.

15. INTELLECTUAL PROPERTY INDEMNIFICATION:

a. Seller will defend, indemnify, protect, and save harmless Buyer, its parents and affiliates, and their respective successors, assigns, customers and users of the Goods (collectively, "indemnitees"), from and against all suits at law or in equity, damages, claims, and demands alleging that the Goods furnished under the Purchase Order, the method of manufacturing such Goods, the method of performing services, or use of the Goods, infringes any intellectual property right of any third party, including any United States or foreign patent, trademark, copyright, trade secret, or other proprietary right. In the event that either the sale, use, or provision of such Goods is enjoined due to such actual or alleged infringement, Seller will at its own expense either procure for the indemnitees the right to continue using such Goods, replace same with equivalent non-infringing Goods, modify such Goods so they become non-infringing, or remove same and refund the purchase price, including transportation, installation, removal, and other charges incidental thereto, as mutually agreed upon between Buyer and Seller. In making this purchase Buyer does not recognize the validity of any patent.

b. "Intellectual Property" means all industrial and other intellectual property rights comprising or relating to: (i) patents; (ii) trademarks; (iii) internet domain names, whether or not trademarked, registered by any authorized private registrar or governmental authority, web addresses, web pages, website and URLs; (iv) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, databases, and other specifications, and documentation; (v) trade secrets; and (vi) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any

of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction in any part of the world.

16. **LIABILITY AND INDEMNIFICATION.** Seller assumes all risk and liability for the Goods delivered hereunder and will defend, indemnify, and hold harmless the indemnitees from any loss, expense, claim, or liability for property damages or personal injury, including death, of whatsoever nature or kind caused by or contributed to in any way by the Goods, Seller or its employees, agents, or subcontractors.

17. **QUALITY CERTIFICATION.** Seller represents and warrants that it has a quality system in place that is compliant with ISO9001:2004/TS16949 requirements.

18. **ASSIGNMENT; NO THIRD PARTY BENEFICIARIES.** Seller may not assign or delegate any of its rights or delegate any of its obligations under this Contract without the prior written consent of Buyer. Any purported assignment or delegation in violation of this section is void. This Contract is for the sole benefit of the parties and their permitted successors and assigns, and nothing in this Contract, express or implied, is intended to or will confer any legal or equitable right on any other person or entity whatsoever.

19. **SEVERABILITY.** If any term of this Contract is invalid or unenforceable under applicable law or regulation, such term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such applicable law or regulation, and the remaining provisions of this Contract will remain in full force and effect.

20. **REMEDIES; NO WAIVER.** The remedies provided to the parties herein are cumulative and in addition to any other remedies provided by law or equity. The failure of either party at any time to require performance by the other party of any provision of this Contract will not affect the right to require such performance at any time thereafter, nor will the waiver of either party of a breach of any provision of this Contract constitute a waiver of any subsequent breach of the same or any other provision. Seller acknowledges and agrees that money damages are not a sufficient remedy for any actual, anticipatory, or threatened breach of any Purchase Order by Seller with respect to its delivery of Goods to Buyer or performance of the services and that, in addition to all other rights and remedies which Buyer may have, Buyer will be entitled to specific performance and temporary, preliminary, and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

21. **LIMITATION OF LIABILITY.** In no event will Buyer be liable to Seller for any lost profits or for any incidental, consequential, special, exemplary, or punitive damages. Without limiting the foregoing, the parties further agree that: (a) with respect to a claim arising out of or in connection with the termination of any Purchase Order, Seller's damages, if any, will be limited to the damages set forth in section 14 (Termination Claims); and (b) with respect to all other claims, Seller's damages will be limited to the cost charged by Seller for the Goods giving rise to the claim or upon which the breach is based.



22. **GOVERNING LAW AND JURISDICTION.** This Contract and any claims relating to the Goods provided under this Contract will be governed by and construed under the laws of the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), as amended, and any conflict of law provisions that would require application of another choice of law. The state and federal court(s) having jurisdiction over Ottawa County, Michigan will have exclusive jurisdiction and venue over any action or proceedings related to this Contract and Seller irrevocably and unconditionally submits to the exclusive jurisdiction of those courts and service of process under applicable law.

23. **HEADINGS.** The headings in this Contract are for reference only and do not affect the interpretation of this Contract.

Effective January 1, 2015

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