

TERMS AND CONDITIONS OF SALE

- 1. **EFFECTIVENESS**. The following Terms and Conditions of Sale ("Terms") apply to all sales of goods or services (collectively, the "goods") by Agape Plastics, Inc. ("Seller") to Buyer. Buyer will be deemed to have accepted these Terms immediately upon the earlier to occur of (a) the date Buyer provides written acceptance of this Contract (defined below) to Seller or (b) Buyer's request that Seller commence any work under this Contract, including Buyer's issuance of a purchase order or other confirmatory document.
- 2. **BUYER'S PURCHASE ORDERS**. Buyer may from time-to-time issue purchase orders ("Purchase Orders") to Seller for the goods. The Purchase Orders may specify any one or more of the following basic terms: (i) a list of the goods to be purchased; (ii) the quantity of each of the goods ordered; (iii) the requested delivery date; (iv) the unit price for each of the goods to be purchased; (v) the billing address; and (vi) the delivery location (collectively, the "Basic Purchase Order Terms"). Seller may accept or reject any Purchase Order, and no Purchase Order is binding on Seller unless Seller has accepted same.
- 3. **ENTIRE AGREEMENT; AMENDMENTS**. These Terms together with Seller's quotation and all related exhibits and schedules, and the Basic Purchase Order Terms, if any (collectively, the "Contract"), constitute the sole and entire agreement of the parties regarding its subject matter and supersedes all prior and contemporaneous statements, understandings, agreements, representations, and warranties, both written and oral, regarding the subject matter. Buyer's acceptance is expressly limited to the terms of this Contract, and other than the Basic Purchase Order Terms, all terms and conditions proposed by Buyer, including those in Buyer's Purchase Orders or any documents subsequently issued by Buyer, are expressly rejected by Seller and are not a part of this Contract. In the event of a conflict between the Terms and the terms and conditions of Seller's quotation (and related exhibits and schedules), the terms and conditions of the quotation will control. This Contract may only be amended, modified, or supplemented by an agreement in writing signed by an authorized representative of each party.
- 4. **RISK OF LOSS; TRANSFER OF TITLE**. All goods sold under this Contract are sold Ex Works (Incoterms 2010) Seller's facility. Title to goods sold under this Contract passes to Buyer upon tender of such goods to Buyer or its agent at Seller's facility.

5. **PRICING; PAYMENT**.

a. **Prices**. All prices for goods are exclusive of, and Buyer is solely responsible for, and will pay, and will hold Seller harmless from, all taxes, assessment, and duties, whether federal, state, or local, with respect to, or measured by, the manufacture, sale, shipment, use, or price of the goods (including interest and penalties thereon). Buyer will make all payments in US dollars by check or wire transfer in accordance with the wire transfer instructions on the face of Seller's invoice(s). If the cost to Seller for raw materials or services required for the production of the goods materially increases, as determined by Seller in its sole discretion, Seller may reasonably adjust the purchase price for the goods to account for such increased costs. Pricing for the goods is based upon the annual volume projections provided by Buyer and included in Seller's quotation for the goods. If Buyer's orders deviate unreasonably from the annual volume projections as determined by Seller in its sole discretion, Seller may reasonably adjust the price of the goods to account for any additional costs incurred by Seller because of such deviation.



- b. **Invoices**. Seller will issue invoices to Buyer for the goods and 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. Buyer will notify Seller in writing of any disputed invoice amounts within five business days after Buyer's receipt of such invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes.
- c. Late Payments. Except for amounts that Buyer has successfully disputed, Buyer will pay interest on all late payments at the highest interest rate permissible under Michigan law, calculated daily and compounded monthly. Buyer will reimburse Seller for all reasonable costs incurred in collecting late payments, including, without limitation, attorneys' fees and costs. In addition to all other remedies available under this Contract, at law, or in equity (which Seller does not waive by the exercise of any rights under this Contract), if Buyer fails to pay any amounts when due under this Contract, Seller may: (i) suspend the delivery of any goods; (ii) reject Buyer's orders for additional goods; (iii) cancel accepted orders for goods; or (iv) terminate this Contract in accordance with Section 9.
- d. **Setoff and Recoupment**. Buyer may not 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 or for any other reason.
- 6. **SECURITY INTERESTS**. Buyer hereby grants Seller a security interest in all goods purchased hereunder and the proceeds therefrom to secure Buyer's payment obligations under this Contract. Buyer acknowledges that the security interest granted under this Section 6 is a purchase money security interest under Michigan law and that Seller may file a financing statement for such security interest. Seller may also file financing statements and other documents to perfect statutory lien rights (such as tooling and artisans' liens) against Buyer and its property. Buyer will execute any financing statements and other documentation reasonably necessary for Seller to perfect its security interests and lien rights.

7. **LIMITED WARRANTY**.

- a. **Limited warranty**. Seller warrants to Buyer that for a period of 60 days from the date of shipment of the goods: (i) the goods will conform to the specifications set forth in this Contract; (ii) the goods will be free from material defects in material and workmanship; and (iii) other than the security interests granted to Seller in Section 6, Buyer will receive good and valid title to the goods, free and clear of all liens and encumbrances.
- b. **Exclusive Remedy**. Buyer agrees that its exclusive remedy against Seller and Seller's entire liability for any breach of the limited warranty in Section 7(a) will be limited to repair or replacement of the nonconforming or defective goods, provided Buyer promptly ships, at its expense and risk of loss, the allegedly nonconforming or defective goods to Seller for inspection and testing by Seller. If Seller's inspection and testing reveals, to Seller's reasonable satisfaction, that such goods are nonconforming or defective and any such defect has not been caused or contributed to by any of the factors described under Section 7(c), Seller will in its sole discretion, and at its expense: (i) repair or replace such nonconforming or defective goods; or (ii) credit or refund the purchase price of such nonconforming or defective goods less any applicable



discounts, rebates, or credits. If Seller exercises its option to repair or replace, Seller will ship to Buyer, at Seller's expense, the repaired or replaced goods. Buyer has no right to return for repair, replacement, credit, or refund any goods except as set forth in this Section 7(b). THIS EXCLUSIVE REMEDY WILL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE AS LONG AS SELLER IS WILLING TO REPAIR OR REPLACE THE NONCONFORMING OR DEFECTIVE PARTS.

- c. Warranty Limitation. The warranties under Section 7(a) do not apply where: (i) Buyer did not notify Seller of the alleged nonconforming goods within 15 days after discovery of the alleged nonconforming or defective goods; (ii) the goods have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by Seller; (iii) the goods have been reconstructed, repaired, or altered by anyone other than Seller or its authorized representatives; or (iv) the goods have been used with any third-party product or hardware that has not been previously approved in writing by Seller. Products manufactured by third-parties ("Third Party Products") may be contained in, incorporated into, attached to, or packaged together with the goods. Third Party Products are not covered by the warranty in Section 7. For the avoidance of doubt, Seller makes no representations or warranties with respect to any Third Party Products. OTHER THAN THE LIMITED WARRANTY IN 7(a) ABOVE, SELLER MAKES NO WARRANTIES WHATSOEVER REGARDING GOODS MANUFACTURED TO SPECIFICATIONS PROVIDED BY BUYER (I.E. BUILD TO PRINT GOODS), INCLUDING, BUT NOT LIMITED TO, THE FIT, FINISH, FUNCTION, OR PERFORMANCE OF SUCH GOODS.
- d. ALL OTHER WARRANTIES DISCLAIMED. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 7(a), SELLER MAKES NO WARRANTY WHATSOEVER REGARDING THE GOODS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF.
- 8. **LIMITATION OF LIABILITY**. SELLER WILL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES AND PROFITS. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SET FORTH IS BUYER'S EXCLUSIVE ALTERNATIVE REMEDY IF THE LIMITED REMEDY OF REPAIR OR REPLACEMENT FAILS ITS ESSENTIAL PURPOSE. THE PARTIES AGREE THAT THIS ALTERNATIVE REMEDY WILL BE ENFORCEABLE EVEN IF THE LIMITED REMEDY OF REPAIR OR REPLACEMENT FAILS ITS ESSENTIAL PURPOSE.
- 9. **TERMINATION FOR CAUSE**. Seller may terminate all or any part of this Contract, without liability to Buyer, if Buyer: (i) breaches any term of this Contract (including, without



limitation, its payment obligations); (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 Buyer (including, without limitation, a circumstance in which Buyer's liabilities exceed its assets or Buyer is unable to pay its debts as they come due); (2) appointment of a receiver, trustee, or administrator over Buyer or its assets; or (3) execution of an assignment for the benefit of creditors by Buyer, provided that such petition, appointment, or assignment is not vacated or nullified within 15 days after such event. If any failure or breach under the foregoing (i) or (ii) is curable, Seller will provide Buyer an opportunity to cure within a commercially reasonable period of time under the circumstances, in no case exceeding 10 days after Seller's notice of the failure or breach to Buyer. Buyer will inform Seller immediately should any of the events in the foregoing (iii) occur or Buyer becomes aware of events or circumstances likely to give rise to any such events. Buyer will reimburse Seller for all costs and expenses incurred by Seller 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). Upon termination of this Contract by Seller because of Buyer's breach, Buyer will reimburse Seller for all reasonable costs incurred by Seller related in any way to raw materials or services purchased by Seller for use in the production of goods for Buyer.

10. INTELLECTUAL PROPERTY.

- a. **Intellectual Property**. "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 trademarks, 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.
- b. **Seller's Intellectual Property Rights**. Buyer acknowledges and agrees that any and all of Seller's rights in Intellectual Property are the sole and exclusive property of Seller or its licensors and Buyer shall not acquire any ownership interest in any of Seller's Intellectual Property under this Contract. Buyer will not: (i) take any action that might interfere with any of Seller's rights in or to Seller's Intellectual Property, including Seller's ownership or exercise thereof; (ii) challenge any right, title or interest of Seller in or to Seller's Intellectual Property; (iii) make any claim or take any action adverse to Seller's ownership of Seller's Intellectual Property; or (iv) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the goods or any of Seller's Intellectual Property.



- 11. **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).
- 12. **ASSIGNMENT; NO THIRD PARTY BENEFICIARIES**. Neither party may assign or delegate any of its rights or delegate any of its obligations under this Contract without the prior written consent of the other party. 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.
- 13. **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.
- 14. **NO WAIVER**. The failure of either party at any time to require performance by the other party of any provision of this Contract will in no way 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.
- 15. **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 Buyer irrevocably and unconditionally submits to the exclusive jurisdiction of those courts and service of process under applicable law.
- 16. **HEADINGS**. The headings in this Contract are for reference only and do not affect the interpretation of this Contract.

Effective January 1, 2015