

# TERMS & CONDITIONS

## Plaskolite, LLC. Terms & Conditions

### 1. Terms exclusive:

This document, together with the agreements, if any, specified herein, and including the terms and conditions on the reverse hereof, constitutes the complete, exclusive and final agreement of the Buyer identified herein ("Buyer") and Plaskolite, LLC. ("Seller") and may not be added to, modified, superseded or altered except by written agreement or modification signed by Seller's authorized representative, notwithstanding any other additional or modifying terms or conditions which may now or in the future appear on Buyer's order, acknowledgment or other forms (all of which are objected to by Seller without future notification), and notwithstanding any shipments, tenders of delivery, acceptance of payments, or other similar acts of Seller. Buyer's acceptance of any performance by Seller shall be taken as Buyer's acceptance of these terms and conditions  
NO PERSON (EXCEPT AN AUTHORIZED OFFICER OF SELLER) IS AUTHORIZED TO BIND SELLER TO ANY ORDER EXCEPT ACCORDING TO THE TERMS AND CONDITIONS ON BOTH SIDES HEREOF. ACCEPTANCE OF ANY ORDER IS SUBJECT TO FINAL CREDIT APPROVAL BY SELLER.

### 2. Delivery:

Unless otherwise specified herein, delivery of the goods, and services. If any, specified herein ("Goods") shall be F.O.B. point of shipment. Any delivery date specified herein is approximate only. Seller assumes no liability for failure or delay in performance until 5 days after written notice of intention to cancel shall have actually been received by Seller, and Buyer shall be obligated to accept any conforming Goods shipped by Seller during such period. Acceptance of shipment by a common carrier, designated shipper or licensed public truckman, or allocation of Goods to Buyer at premises other than Seller's delivery to Buyer's representative or designee (if Seller's trucks and drivers effect such delivery), or mailing of an invoice by Seller to Buyer, whichever of the foregoing first occurs, shall constitute tender of delivery. Upon tender of delivery, title shall pass to Buyer, subject to Seller's right of stoppage in transit and to any interest of Seller reserved to secure Buyer's payment or performance. In the instance of Goods held subject to Buyer's instructions, Goods for which Buyer has failed to supply shipping instructions, or in any case where Seller, in its sole discretion, determines any part of the Goods should be held for Buyer's account, Seller may invoice the Goods and Buyer agrees to make payment at the maturity of the invoice so rendered. Goods invoiced and held at any location, for whatever reason, shall be at Buyer's risk and Seller may charge for (but is not obligated to carry) insurance and storage at prevailing rates. Partial deliveries shall be accepted by Buyer and paid for at contract prices and terms. When Buyer has declared or manifested an intention not to accept delivery in accordance with any order, no tender shall be necessary but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to deliver and such notice shall constitute a valid tender of delivery.

### 3. Prices:

All prices of the Goods are subject to change or withdrawal without notice. Unless otherwise stated by Seller, prices and pricing policies will be those set forth in Seller's published price lists or Seller's pricing policies in effect at time of delivery. In the event Buyer's order is changed in any respect (if and when permitted by Seller), Seller may adjust the price accordingly. Unless otherwise specified herein, prices are exclusive of any excise, sales, use or similar taxes, duties, quotation fees or other governmental impositions which Seller may be required to pay or collect under any existing or future law upon or with respect to the sale, use, storage, consumption, purchase, transportation or delivery of the Goods and any such applicable taxes, etc., shall be paid by and/or for the account of Buyer.

### 4. Payment, security interest:

Unless otherwise stated herein by Seller, the terms of payment shall be 30 days. Such (or any other) discount terms shall be strictly enforced by Seller. If at any time in Seller's reasonable discretion, Buyer's credit should become unsatisfactory to Seller, cash payments on delivery or other satisfactory security, including security for outstanding balances, may be required of Buyer by Seller as a condition to further deliveries. All installment deliveries shall be separately invoiced and paid for when due. Any payment not made to Seller when due shall be subject to a carrying charge of one and one half percent (1 1/2%) per month on the unpaid balance until paid and Seller may defer further deliveries to Buyer under this order or any other order between Buyer and Seller, or may cancel the undelivered balance or balances under this or any such other order. Buyer shall have no right to offset any amount whatsoever against any payment or other obligation which Buyer may owe to Seller under this order. Seller reserves a security interest in the Goods to secure Buyer's payment of the purchase price and any other charges owed by Buyer, and Buyer agrees that Seller may (but is not obligated to) take such action as Seller deems advisable to evidence and perfect such interest and that Buyer will cooperate with Seller in taking such actions, and Buyer hereby authorizes Seller to file financing statements. All payments shall be made payable to the order of (Plaskolite, LLC, P.O. Box 636087, Cincinnati, OH 45263-6087).

### 5. Casualty and availability of supplies:

Delivery of all or any part of the Goods is contingent upon Seller's ability to obtain goods (including the Goods), supplies, raw materials and services through its regular and usual sources of supply. If by reason of any contingency beyond Seller's control, including (but not limited to) war, terrorist activities or threats, governmental requests, restrictions or regulations, fire, flood, casualty, accident, or other acts of God, strikes or other difficulties with employees, delay or inability to obtain goods (including the Goods), labor, equipment, material and service through Seller's usual sources, failure or refusal of any carrier to transport materials, delay in transport thereof,

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or any other similar occurrence, Seller is not able to meet anticipated deliveries. Seller shall not be liable therefore and may, in its discretion without prior notice to Buyer, postpone the delivery date(s) for a time which is reasonable under all the circumstances.

## **6. Inspections, acceptance, and returns:**

Each delivery of Goods shall be inspected by Buyer for observable damage and/or non-conformity at the time of delivery. Failure to so inspect shall constitute a waiver of Buyer's rights of inspection and shall constitute an unqualified acceptance of the Goods. If, after such inspection, Buyer attempts to reject any Goods, Buyer shall fully specify all claimed damage or non-conformity in a notice of rejection sent to Seller within ten days of Buyer's receipt of the Goods. Buyer's failure to so specify shall constitute an unqualified acceptance of the Goods and a waiver of that damage or non-conformity. No Goods shall be returned to Seller without Seller's prior written agreement and any Goods returned by Buyer shall be returned in the same condition as when delivery was effected by Seller. No deductions for shortages, damages or defective Goods will be allowed without Seller's inspection of the Goods and approval of the deduction. Unauthorized deductions may affect the status of Buyer's account with Seller. Orders entered on Seller's books cannot be countermanded nor deliveries deferred or Goods returned except upon Seller's written consent and upon terms that will indemnify Seller against loss. If Goods are defective, Seller will bear the cost associated with return and restocking. If Goods are not defective, and Seller agrees to accept return of Goods, a minimum of costs of restocking (15%) plus actual cost of return freight will be deducted from any credit due Buyer.

## **7. Patents, etc.:**

Buyer will defend, indemnify and hold harmless Seller, its successors and assigns from and against any and all claims, demands, lawsuits, liability and judgment for loss, costs, damages, fines, penalties and expenses of every kind and nature, threatened, incurred, arising out of or in connection with any alleged infringement of any patent, issued by any country, by any Goods supplied by Seller hereunder and made specially for Buyer; provided that Seller shall give prompt notice to Buyer of any such claim etc. and an opportunity to settle or defend the same as Buyer may see fit; and provided further that Seller shall render every reasonable assistance which Buyer may require of it in connection with such claims, etc. Seller reserves the right to cancel this order, without liability with respect to any Goods, the manufacture, sale and use of which in the opinion of Seller would infringe any patents now or hereafter issued.

## **8. Limited warranty, warranty disclaimers and limitations of remedies and liabilities:**

Seller warrants that the Goods will conform (subject to variations acceptable within the industry) to the specifications set forth

herein. Any Goods determined by Seller to have been defective or not in accordance herewith at time of delivery will be replaced or credited, at Seller's option, provided Buyer has acted in accordance with Paragraph 6 hereof. No item shall be deemed defective or not in accordance herewith if such item conforms to approval samples or previously accepted materials or if such item fits Buyer's parts, jigs, or equipment or otherwise reasonably accommodates the purpose for which the goods are generally intended.

Except as set forth above, Seller make NO OTHER WARRANTIES concerning the Goods whatsoever. SELLER DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE concerning the Goods. Buyer acknowledges and agrees that Seller's obligation described in this Paragraph 8 is the sole remedy bargained for by Buyer IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES. In no event will Seller's liability exceed the paid purchase price of the Goods. Seller's obligations described in this Paragraph 8 shall be BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER FOR ANY LIABILITY WITH RESPECT TO THE GOODS WHETHER ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE. Buyer agrees that NO OTHER REMEDY SHALL BE AVAILABLE to Buyer and IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, including without limitation loss of income, loss of time, loss of sales, cost of replacement items, claims asserted by Buyer's customers, injury to personal property, or injury to any person, whether or not occasioned by Seller's negligence. Buyer agrees to indemnify and hold harmless Seller from any claims brought by Buyer's customers against Seller regarding the Goods, even if such customers have a statutory or other right to assert such claims.

## **9. Statutory compliance:**

Seller continues to attempt to comply with all applicable laws, standards and specifications. However, Seller is not responsible for compliance with any laws, standards or specifications applicable to the Goods, their delivery, use, handling, labeling, transportation or disposal, whether of general or particular application, unless Buyer has furnished specific written notice thereof prior to Seller's entry of Buyer's order.

## **10. Product labels, information:**

Buyer acknowledges that it has received and is familiar with Seller's and any manufacturer's labeling and literature concerning the Goods and will forward such information to its employees, agents, and customers.

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## 11. Permissible variations:

Seller has the right, without giving notice to Buyer, prior to the delivery of Goods to Buyer to make any changes in the composition of the Goods which, in the opinion of Seller, do not affect the general characteristics of properties to the Goods. In addition, Seller may make any change or variation in the Goods which is within governmental or industry standards or specifications applicable at the time of manufacture without giving notice to Buyer. Buyer will accept any Goods which may incorporate any changes in the composition or specifications, and any increase in price resulting from such change will be paid by Buyer. In addition, if the Goods to be supplied by Seller to Buyer hereunder shall be made specifically for Buyer and are not customarily carried in stock by Seller, then a ten percent (10%) overage or underage in delivery of the amount specified herein shall constitute fulfillment of the order and such Goods delivered will be paid for at the unit price specified herein.

## 12. Cancellation:

Seller may cancel or terminate all or part of the contract arising from or evidenced by this document immediately upon the happening of any of the following: Buyer's material delinquency of any of its obligations hereunder or with respect to any other order or transaction with Seller; the insolvency of Buyer; the commencement on any case under Title 11 U.S.C., as amended (the "Bankruptcy Code"), or similar law of another country for, by or against Buyer; the appointment of a receiver for Buyer under any applicable law; Buyer's suspension or termination of business or assignment for the benefit of creditors; or any event, whether or not similar to the foregoing, which in Seller's good faith belief materially impairs the prospect of payment or performance by Buyer hereunder. Seller's rights to cancel or terminate set forth herein may be exercised by Seller without liability.

## 13. Representations by agent or representative:

The terms of this document shall govern the liability and obligations of Seller in regard to the sale of Goods, whether the sale was procured directly by Seller or indirectly through an authorized sales representative. No agent, employee or representative of Seller has any authority to bind Seller to any additional or contrary affirmation or representation concerning the Goods sold under this document. Unless an affirmation or representation is specifically included within this document or is in writing signed by an authorized officer of Seller, it shall not be enforceable by Buyer or by any person claiming by or through Buyer. The ORAL REPRESENTATIONS of Seller's agents and employees DO NOT CONSTITUTE WARRANTIES and do not constitute part of the contract evidenced by this document.

## 14. Miscellaneous:

All sales are subject to approval by Seller's credit department. The contract evidenced hereby will be governed by the local laws of the State of Ohio. If any of the provisions hereof shall be

held invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

BUYER CONSENTS AND SUBMITS TO THE SOLE EXERCISE OF JURISDICTION BY ANY COURT OF COMPETENT JURISDICTION LOCATED IN FRANKLIN COUNTY, OHIO.

No right or interest in the contract evidenced by this document shall be assigned by Buyer and no delegation of any obligation owed by Buyer shall be made without prior written permission of Seller.

The individual rights and remedies of Seller reserved herein shall be cumulative and additional to any other or further remedies provided in law or equity. Waiver by Seller of performance or inaction with respect to Buyer's breach of any provision hereof, or failure of Seller to enforce any provision hereof which may establish a defense or limitation of liability, shall not be deemed a waiver of future compliance therewith or a course of performance modifying such provision, and such provision shall remain in full force and effect as written.

As used herein, "Buyer" and "Seller" include the respective heirs, executors, personal representatives, successors and permitted assigns or each.

Monetary denominations designated herein shall be in U.S. Dollars.

Notwithstanding anything herein to the contrary, the United Nations Convention on Contracts for the International Sale of Goods and the laws of any other jurisdiction shall have no application to the terms and conditions of sale and the actions hereunder and contemplated hereby.

IN ALL CASES CLERICAL ERRORS ARE SUBJECT TO CORRECTION.

## 15. Buyer's obligation to purchase specially manufactured material:

If all or any part of the material to be supplied to Buyer was specially manufactured by Seller for sale to Buyer, then notwithstanding the application of force majeure or Buyer's failure to issue a release for such material, Buyer shall be required to purchase material plus or minus 10% of the original order quantity, and accept delivery of all such material, and any raw material or intermediary procured or produced for manufacture of same. All finished material will be purchased at the price then prevailing. Raw material or intermediaries will be purchased at Seller's cost of procurement or production.

**PLASKOLITE**

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