



## THERM-O PLASTICS SUPPLIERS TERMS & CONDITIONS

PHONE: (636) 326-4700 <> FAX (314) 395-8671 <> www.topsinc.us

*These terms and conditions govern the sale of Products ("Product or Products") and provisions of services ("Services") by Therm-O Plastics Suppliers, Inc. (T.O.P.S.) and its affiliates ("Seller") as well as by third party vendors and/or service providers of Seller. These terms and conditions ("Agreement") take precedence over Buyer's supplemental or conflicting terms and conditions to which notice of objection is hereby given. Neither Seller's commencement of performance or delivery shall be deemed or construed as acceptance of Buyer's supplemental or conflicting terms and conditions. T.O.P.S. failure to object to conflicting or additional terms will not change or add to the terms of this agreement. Buyer's acceptance of the Products and/or Services from Seller shall be deemed to constitute acceptance of the terms and conditions contained herein.*

**Payment and Credit:** Payment may be made by check, money order, credit card, or wire transfer (all fees are borne by the Buyer). Where Seller has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice (unless otherwise discussed with T.O.P.S.), without offset or deduction. On any past due invoice, Seller may impose interest at the rate of one and a half percent [1.5%] per month. If Buyer fails to make each payment when it is due, Seller reserves the right to change or withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which Seller has extended credit to Buyer. In the event of default by Buyer, Seller shall be entitled to costs, fees, and expenses, including but not limited to recovery of attorney fees, court costs and fees, and collections costs.

**Purchase Orders:** All orders placed by Buyer are subject to acceptance by Seller. Orders may not be cancelled or rescheduled without Seller's consent. All orders must identify the products, unit quantities, part numbers, applicable prices and requested delivery dates of the Products being purchased. Seller may designate certain Products and Services as non-cancelable, non-returnable ("NCNR") and the sale of such Products shall be subject to the special terms and conditions contained in Seller's Customer Acknowledgement, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere. Disputes regarding T.O.P.S. products shall be governed by Missouri Law.

**Acceptance / Returns:** Shipments will be deemed to have been accepted by Buyer upon delivery of the said shipments to Buyer unless rejected upon receipt. Buyer shall perform all inspections and tests Buyer deems necessary as promptly as possible but in no event later than 7 days after delivery of product, at which time Buyer will be deemed to have irrevocably accepted the Products. Any discrepancy in shipment quantity must be reported within 7 days after delivery. Buyer may not return Products without a return material authorization ("RMA") number. RMA valid for 30day from date issued Any product returned by Buyer due to Buyer's error may be subject to a restocking charge OF 15%-25% (MINIMUM OF \$25.00). No labor or packaging charges are refundable. Credit will be issued for future purchases ONLY – no cash refunds.

**Taxes:** Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller's invoice.

**Warranty:** T.O.P.S. warrants that the Products covered hereby shall be free from defects in workmanship and materials, and shall conform to T.O.P.S. specifications as published at the time of order acceptance, or other specifications accepted in writing by T.O.P.S., for an unlimited time following the date of shipment. The foregoing warranty does not apply to any Product subjected to, neglect, accident, modification, or testing or handling by a third party not approved by T.O.P.S.

**Export Control:** Buyer certifies that it will be the recipient of the Products to be delivered by Seller. Buyer acknowledges that the Products are subject to the export/import control laws and regulations of various countries, including the Export Administration Laws of the United States. Products sold by Seller cannot be transferred, sold or re-exported to any part on the Entity List or Restricted Person List of the U. S. Department of Commerce Bureau of Industry and Security, any party designated by the U.S. Treasury Department's Office of Foreign Assets Control, and any party debarred or sanctioned for proliferation or terrorism reasons by the U.S. State Department. Special

packaging for export shipments is available upon request. All fees and charges for foreign shipments are the responsibility of the buyer.

**Limitation of Liabilities:** BUYER SHALL NOT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, LOSS OF PROFITS OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEADS, BUSINESS INTERRUPTION COST, LOSS OF DATA, REMOVAL OR REINSTALLATION COSTS, INJURY TO REPUTATION OR LOSS OF BUYERS, PUNITIVE DAMAGES, IPR INFRINGEMENT, LOSS OF CONTRACTS OR ORDERS OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON (a) SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (b) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN SELLER, or (c) USE IN COMBINATION WITH OTHER PRODUCTS.

**Force Majeure:** Seller is not liable for failure to fulfill its obligations for any accepted Order or for delays in delivery due to causes beyond Seller's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of Product, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Products through its regular sources, which shall be considered as an event of force majeure excusing Seller from performance and barring remedies for non-performance. In an event of force majeure condition, the Seller's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting Seller to any liability or penalty. Seller may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.

**Engineering Assistance:** If engineering assistance are offered or given to Buyer, such assistance is given free of charge and only as an accommodation to Buyer. Seller shall not be held liable for the content or Buyer's use of such technical assistance nor shall any statement made by any of Seller's representatives in connection with the Products or Services constitute a representation or warranty, express or implied.

**TERMS AND CONDITIONS ARE SUBJECT TO CHANGE WITHOUT NOTICE**

**LEGAL NAME OF BUSINESS:** \_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_