

## **DN PLASTICS CORPORATION TERMS OF SALE**

•**AGREEMENT DEFINED** The attached agreement, when accepted by Buyer, shall, together with these Conditions of Sale, constitute the entire "Agreement" between SELLER and BUYER and shall take precedence over any differing terms in any other documentation. No terms, conditions or representations other than those set out in this Agreement including, but not limited to terms, conditions or representations made by any employee, agent or representative of SELLER shall be binding on SELLER unless expressly agreed to in writing and signed by SELLER.

•**PRICE AND PAYMENT TERMS:** The price and terms of payment will be as specified for the Product in the Agreement. If payment of the amount is not received by SELLER when due, any outstanding amount shall bear interest at the monthly rate of 1.5%, payable on the first day of default and monthly thereafter until paid in full. Any tax (other than income), duty or other governmental charge now or hereafter imposed on the Product or on any raw material used in manufacturing the Product or on SELLER or required to be paid or collected by SELLER by reason of the manufacture, importation, sale, use or disposal of such Product or raw material, will be paid by the BUYER in addition to the price. BUYER also shall pay to SELLER on demand all expenses, including reasonable legal fees, incurred by SELLER in protecting or enforcing any of its rights under the Agreement.

•SELLER may, at its sole discretion, grant credit to the BUYER in respect of Product purchased hereunder upon such terms and conditions as SELLER may establish from time to time. BUYER agrees and acknowledges that SELLER may at any time refuse to grant or extend credit to BUYER or that SELLER may demand immediate payment of all indebtedness outstanding hereunder. SELLER reserve a security interest under the Uniform Commercial Code in all resin compound delivered ot buyer for which payment has not been made.

•**WARRANTIES:** The warranties described in this paragraph are in lieu of all other warranties. SELLER warrants that the Product supplied by SELLER to BUYER shall be in accordance with SELLER's standard product specifications, when delivered. SELLER warrants that all products delivered under this Agreement will have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT HTAT PURPOSE IS KNOWN OT SELLER, AND ALL OTHER WARRANTIES AND CONDITIONS, EXPRESSED OR IMPLIED, NOT SPECIFICALLY STATED IN THE AGREEMENT, ARE EXCLUDED FROM THE AGREEMENT.

•**DELIVERY:** Shipments of product will be made at the delivery point specified in this Agreement. BUYER will promptly load or unload each shipment at its own risk and expense, including any demurrage or detention charges. From the time of delivery of the Product, title to and risk of loss of, or damage to Product from whatever cause shall

pass to BUYER. Each delivery shall be considered to be a separate and independent transaction.

- INTENDED FOR USE OF BUYER:** Product is sold by the SELLER for the sole use of the BUYER and BUYER agrees not to resell or redirect delivery points of Product without express prior consent of SELLER.

- ACCEPTANCE, ENTIRETY AND RELEASE:** SELLER's acceptance of BUYER's order or proposal is expressly conditional on BUYER's assent to the terms of this Agreement and SELLER rejects any terms of BUYER'S order or proposal which differ from or are in addition to them. BUYER's assent to the terms of this Agreement will be conclusively presumed by BUYER's acceptance of Product delivery. This Agreement, as of its beginning date, contains the complete and exclusive Agreement of SELLER and BUYER concerning the Product, and supersedes all prior understandings and representations (oral and written) between parties concerning the Product and, except for any indebtedness or indemnity obligation to BUYER to SELLER, each releases the other from all claims arising in connection with any such prior contract.

- LIABILITIES-CLAIMS-INDEMNIFICATION:** BUYER shall inspect all Products before use and BUYER assumes all risks incident to non-conforming Product. Receipt by BUYER of Product delivered hereunder shall be considered acceptance of same and a waiver by BUYER of claims with respect thereto, unless BUYER gives SELLER written notice of claim within 30 days after the date such Product was delivered. SELLER's total liability under this Agreement, whether based on Agreement, negligence or any other legal theory, will not exceed the purchase price of the Product involved in the claim and NEITHER PARTY WILL BE LIABLE FOR ANY PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. BUYER assumes all risk and responsibility for handling of the Product, for the results obtained by the use of the Product in a manufacturing process or otherwise, and for the results obtained by the use of the Product in combination with other substances, irrespective of the fact that such use or handling of product is in accordance with any descriptive, advice or suggestion of SELLER. BUYER is not authorized to deduct any charges from SELLER'S invoices. All invoices are due in full, any amounts for returned goods will be credit by SELLER. The provisions of this article will survive termination of the Agreement. BUYER will indemnify SELLER against any liability (whether strict or otherwise) for any claim, loss or expense, direct or indirect, on account of injury, disease or death of persons (including BUYER's employees) or damage or property (including BUYER's) arising out of Buyer's transportation, storage, sale, use in any manufacturing process or disposal of the product.

- EXCUSES FOR NONPERFORMANCE:** Either SELLER or BUYER will be excused from the obligations of this Agreement to the extent that performance is delayed or prevented by any circumstances (except financial), direct or indirect, reasonable beyond its control including fire, floods, accidents, explosion, mechanical breakdowns, strikes or other labor trouble, plant shutdown, unavailability of or interference with the usual means of transporting the Product in compliance with any law, regulation, order,

recommendation or request of any governmental authority. In addition, SELLER will be so excused in the event it is unable to acquire from its usual sources and on terms it deems to be reasonable, any material necessary for manufacturing the Product. If because of such circumstances, there should be a shortage of any Product from any of SELLER's sources, SELLER will not be obligated to change its supply point for BUYER or to purchase in order to perform this Agreement and may apportion its available Product among itself, its affiliates and all its customers in such equitable manner as it deems fair and reasonable. Quantities of Product consequentially not shipped will be deducted from the applicable remaining quantity obligation.

•REMEDIES: If BUYER fails to pay, when due, any invoice or any other indebtedness to SELLER (whether or not under this Agreement), or fails, within 30 days of receiving notice of a breach of other obligations hereunder, to remedy such breach, SELLER may, in addition to any other remedies, suspend shipments, change terms of payment or terminate this Agreement forthwith by notice to BUYER and commence litigation to obtain and collect a judgment against BUYER for lost profits. BUYER's obligation to perform will not be limited to any waiver by SELLER.

•NOTICES: Notice by either SELLER or BUYER shall be mail or facsimile addressed to the other party as its address in this Agreement and will be considered given three days following the time it is deposited with the Postal Service in the case of mail and when faxed in the case of facsimile.

•SEVERABILITY OF WAIVER: Should any provision of the Agreement be or become illegal or unenforceable, such provision shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon SELLER and BUYER as though such provision had never been included. Any waiver by SELLER of any breach if nay term or condition of this Agreement shall not be construed as or be deemed to be waiver of any future breach of such term and condition.

•ASSIGNMENT: This Agreement may not be assigned in whole or in part by BUYER without the prior written consent of SELLER, which consent shall not be unreasonably withheld.

•GOVERNING LAW: This Agreement will be interpreted and the rights, obligations and liabilities of the parties determined in accordance with the laws of Tennessee.

### **DN Plastics Terms of Purchase**

THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

1. DEFINITION: "Supplies" means the goods, works, materials or services furnished hereunder to Buyer.

2. BILLING AND SHIPPING: All Supplies shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure the lowest transportation cost, while providing adequate protection for the purchased Supplies, and no additional charge shall be made to the Buyer therefore unless otherwise stated on the purchase order hereof.

All invoices will be paid on the basis of the terms of payment indicated on this purchase order. Payment date shall be determined from the later of the delivery date or the invoice date, provided that invoices covering materials shipped prior to the specified date will not be paid unless otherwise agreed until their normal maturity after the date specified for delivery.

3. ACCEPTANCE: This purchase order constitutes Buyer's offer to Seller and shall become a binding contract subject to the terms and conditions set forth herein upon Seller's acceptance either by written acceptance or by the commencement of requested performance followed by timely notice thereof to Buyer. Acceptance of the purchase order is expressly limited to the terms hereof and any variance from those terms shall not be binding on the Buyer unless agreed to in writing by Buyer. This purchase order, when accepted, contains the entire agreement of the parties, which agreement may not be modified except by written agreement of both parties. Any specifications referred to in this purchase order are incorporated herein and made a part hereof as though fully set forth.

By acceptance of this purchase order, Seller agrees that the prices contained herein are not in excess of Seller's list, catalog or published prices; that such prices are not higher than prices charged to other purchasers for similar materials or equipment, and that the said prices are not in excess of the prices provided by any applicable law, government decree, order or regulation.

4. DELIVERY: Seller hereby acknowledges that time is of the essence in the performance of this contract and except as herein specified, delivery shall be strictly in accordance with the delivery schedule. If Seller's deliveries fail to meet such schedule with the result that Buyer elects to call upon Seller for Air Express shipments, Seller shall pay the difference between freight and Air Express rates.

5. DELAYS AND DEFAULTS: Seller shall not be liable for delays or defaults in furnishing Supplies hereunder, and Buyer shall not be liable for failure to accept same if such delays or defaults on the part of Seller, or such failure on the part of Buyer, are due to (1) acts of God or public enemy, (2) acts of United States or any state or political subdivision thereof, (3) fires, floods, explosions or other catastrophes, (4) epidemics and quarantine restrictions, (5) strikes, slowdowns, or labor stoppages of any kind, (6) freight embargoes, (7) unusually severe weather, (8) delays of a supplier due to such causes, or (9) causes beyond the control and without the fault or negligence of Seller and in furnishing Supplies or of Buyer in accepting Supplies hereunder, provided that when the Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay shall be given immediately to Buyer.

6. NOTICE OF LABOR DISPUTES: Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof, including all relevant information with respect thereto to Buyer.

7. WARRANTY: THE SELLER EXPRESSLY WARRANTS THAT THE SUPPLIES COVERED BY THIS PURCHASE ORDER SHALL BE FREE FROM DEFECT IN MATERIAL AND WORKMANSHIP, SHALL BE FIT AND SUFFICIENT FOR THE PURPOSE FOR WHICH THEY ARE INTENDED AND SHALL CONFORM TO SPECIFICATIONS, DRAWINGS, OR DESCRIPTIONS HEREIN SET FORTH OR FURNISHED BY BUYER. THE WARRANTIES AND REMEDIES PROVIDED FOR HEREIN SHALL BE IN ADDITION TO THOSE IMPLIED BY LAW AND SHALL EXIST NOTWITHSTANDING THE ACCEPTANCE BY THE BUYER OF ALL OR PART OF THE SUPPLIES IN RESPECT TO WHICH SUCH WARRANTIES AND REMEDIES ARE APPLICABLE. THE WARRANTIES OF SELLER SHALL RUN TO BUYER AND/OR ITS CUSTOMERS.

NEITHER ACCEPTANCE OF THE SUPPLIES PURCHASED HEREBY NOR ANY INSPECTIONS THEREOF SHALL WAIVE ANY BREACH OF WARRANTY WHETHER EVIDENT AT SUCH TIMES OR NOT.

8. INDEMNITY: Seller shall indemnify Buyer against liability and hold Buyer harmless from any and all claims, demands, suits, proceedings, actions, costs, damages, and expenses arising out of, connected with or resulting from the use of the Supplies.

9. INSPECTIONS: All Supplies are subject to final inspection and approval at Buyer's plant or other places designated by Buyer in writing notwithstanding prior inspections. Such inspection shall be made within a reasonable time after delivery. Payment for any item hereunder shall not be deemed an acceptance hereof. Buyer reserves the right to reject and refuse acceptance of Supplies which are not in conformity with the instructions, specifications, drawings and data or Seller's warranty (express or implied) and to return said Supplies at Seller's expense. Seller shall not replace or correct Supplies defective unless so directed by Buyer in writing. Inspection cost for Supplies found to be defective shall be charged to Seller. If Seller received a written direction from Buyer to correct the defect, Seller shall promptly correct the defect in the time frame required by Buyer. In addition, Seller shall be responsible for all costs resulting from the defective Supplies, including, without limitation, the following: Rework, material, labor, and freight incurred in repairing the Supplies and all other components damaged as a result of the defect. Buyer reserves the right to inspect Seller's facility by buyer itself or its representative.

10. TERMINATION:

A. For Default

1) Buyer may terminate this purchase order, any part thereof, by written notice of default to Seller under any of the following circumstances:

a) If Seller fails to perform within the time specified.

b) If Seller fails to comply with other provisions of this purchase order and does not cure any such failure within a period of ten (10) days after receipt of notice from Buyer specifying such failure.

c) If Seller becomes insolvent or makes a general assignment for the benefit of creditors or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief for debtors or in the event a receiver is appointed for Seller's property or business.

2) In the event of such termination, Buyer may purchase or manufacture similar Supplies and/or require Seller to transfer title and deliver to Buyer any and all property produced or procured by Seller under this purchase order and Seller shall be liable to Buyer for any excess cost to Buyer.

B. Any termination by Buyer, whether for default or otherwise shall be without prejudice to any claims for damages or other rights of Buyer against Seller.

C. Seller shall continue performance of this purchase order to the extent not terminated. Any provisions for delivery or acceptance of the Supplies in installments shall not make severable the obligations of the Seller.

D. In addition to the foregoing, Buyer may terminate this purchase order, in whole or in part, by giving Seller at least thirty (30) days advance written or electronic notice. Upon receipt of such notice, Seller shall stop work immediately and promptly terminate all orders and subcontracts insofar as they relate to this purchase order. Within thirty (30) days after termination, Seller may submit to Buyer its written claim for any charges due to Seller. Failure to submit the claim within this time of period will constitute a waiver of all Sellers' claims arising out of the termination. Nothing in this paragraph shall limit Buyer's right to challenge, where appropriate, the validity of any such claimed charges.

11. PATENTS: Unless the design for the articles shall have been furnished by the Buyer to the Seller, and used by the Seller in manufacturing the Supplies, the Seller agrees to hold harmless and indemnify the Buyer from and against any and all suits, claims, judgments and costs of any kind or character whatsoever instituted, made or recommended against the Buyer for any alleged infringement of any patent or copyright by any person or persons whomsoever, on account of the manufacture, sale or use the Supplies covered by this purchase order in violation of any right or rights claims under any such patents or copyrights, provided that the Seller is notified in writing promptly after such claim is made.

12. COMPLIANCE WITH LAW: Seller guarantees that in the performance of this purchase order it will comply with the provisions of all applicable federal, state and local laws, regulations, rules and orders. Seller represents that the Supplies to be furnished pursuant to this purchase order were or will be produced in compliance with the requirements of the Fair Labor Standard Act of 1938, as amended, Executive Order 11246, as amended, all equal opportunity laws and regulations, and all applicable employment laws and regulations. Seller guarantees that it will comply with all export laws and regulations of the United States and any other applicable jurisdiction, meaning Country of Origin, Country of Manufacture and Country of Sale.

13. TECHNICAL DATA: All drawings, specifications and other technical data or information furnished by Buyer hereunder shall remain the property of Buyer and shall not be disclosed to others or used for manufacturing purposes, for other than Buyer's order, without Buyer's prior written permission.

14. REMEDIES: The remedies reserved in this purchase order shall be cumulated and additional to any other or further remedies provided in law or equity.

15. INCONSISTENCIES: In the event the printed conditions hereof are inconsistent with the typed, stamped and/or written provisions on the purchase order hereof, the written, stamped and/or typed provisions shall govern.

16. ASSIGNMENT: Seller shall not assign this purchase order or any monies due or to become due hereunder unless so permitted by the prior written provision on the purchase order hereof without written consent of Buyer.

17. INFORMATION: Seller agrees that none of the details connected with this purchase order shall be published or disclosed to any third party (except as is necessary for performance of this purchase order) without Buyer's written permission.

18. TAXES: Federal, state or local taxes of any nature which are billed to Buyer shall be stated separately in Seller's invoice.

19. GOVERNING LAW: The contract resulting from acceptance of this purchase order is to be construed and governed according to the laws of the State of Tennessee.

20. NON-WAIVER: No waiver of any provision or waiver of any failure to perform any provision of this purchase order shall be effective unless consented to by Buyer in writing, nor shall such waiver constitute a waiver of any provision or failure to perform.