

# Terms & Conditions of Sale

1. **Definitions:** "BUYER" means the individual, partnership, firm or corporation to which this order confirmation is addressed. "SELLER" means Mold-Masters (2007) Limited and/or its affiliates and subsidiary companies. "Product" means any service, drawing, component, equipment or system manufactured or supplied by SELLER hereunder.
2. **Entire Agreement:** The order confirmation of which these terms and conditions are a material part constitutes the entire agreement between BUYER and SELLER and supersedes and shall prevail over any oral undertakings, earlier terms or conditions, statements in catalogues or elsewhere, any terms and conditions issued by BUYER in any purchase order or otherwise and any terms implied by statute. Any trade custom, usage or course of dealing shall not vary any term or condition used herein. Issuance of SELLER's order confirmation quoting BUYER's order reference or number shall constitute evidence of the sales contract between the parties and BUYER's acceptance thereof.
3. **Changes:** BUYER's request for any changes to this contract must be in writing. Changes may result in delays and changes in contract price and will be binding on SELLER only when confirmed in writing duly signed by an authorized representative of SELLER.
4. **Cancellation:** This order may not be cancelled by BUYER in whole or in part except with SELLER's written consent and upon payment by BUYER of all costs incurred by SELLER (at SELLER's then standard shop rate) plus a cancellation charge of fifteen (15%) percent of the total value of the contract. SELLER may, in addition to other rights and remedies, cancel or suspend deliveries under this order and any or every other contract with BUYER, in whole or in part, if (a) any debt due and payable by BUYER to SELLER in unpaid; (b) BUYER has wrongfully failed to take delivery of Product under this order or any other contract with SELLER; or (c) BUYER becomes insolvent.
5. **Pricing and Terms:** All prices stated herein are in U.S. funds, FOB SELLER's plant, Georgetown, Ontario, Canada. All shipping, destination charges, levies, duties or taxes based upon price of the Product or its use shall be paid by BUYER. Payment is due in accordance with any applicable progress, advance or other agreed upon payment schedule or, if no such schedule has been agreed to, upon acceptance as specified in paragraph 7 but in no event later than thirty (30) days after date of invoice. If BUYER's financial condition changes adversely, in our judgement, SELLER may cease delivery or production hereunder until satisfactory financial arrangements are made. Interest at the lesser of eighteen (18%) percent per annum calculated and payable monthly or at the lawful maximum rate under applicable laws shall be paid by BUYER of overdue accounts.
6. **Delivery & Risk of Loss:** Any date, period or rate of delivery stated in this order confirmation shall date from receipt by SELLER of BUYER's written confirmation, shall be subject to receipt of all necessary instructions, licenses, letters of credit, deposit payments and other requirements to be performed by BUYER and is intended by SELLER and acknowledged by BUYER as an estimate only, not giving rise to contractual obligation. Delivery may be delayed at any time due to causes beyond SELLER's control and SELLER reserves the right to effect partial shipments, each of which shall be deemed to be sold under a separate contract and no failure of or delay in delivery of any Product therein shall entitle BUYER to treat this contract as repudiation with respect to remaining Product. Delivery to common carrier shall constitute delivery to BUYER at which time the risk of loss shall be borne by the BUYER. BUYER shall insure product against loss or damage by theft, fire, water or other casualty. SELLER may file a copy of this agreement and/or separate financing statement or notices of liens, which BUYER agrees to execute upon SELLER's request.
7. **Acceptance of Product:** Claims relating to quantity, loss of or damage to Product must be made by BUYER within, and will not be accepted by SELLER after fourteen (14) days following the later of delivery of Product to BUYER or any demonstration or acceptance test therefor which has been scheduled and confirmed in writing by SELLER.
8. **Drawings, Designs and Interface:** Any mold drawings submitted by BUYER to SELLER shall be used by SELLER solely to determine the Product to be recommended and/or provided. SELLER shall have no responsibility for checking correctness of mold design or construction nor the interfacing of Product to BUYER's mold, which must all be determined and approved by BUYER's engineers. SELLER reserves the right to implement design changes to Product that do not change its specifications, without notice to BUYER, and to provide such changed Product in fulfillment of BUYER's order.
9. **Warranty:** SELLER warrants that BUYER, upon payment in full for Product, shall acquire good and clear title to Product, free and clear of all liens and encumbrances created by SELLER. SELLER further warrants Product to be free from defects in workmanship and materials for the time period set forth in the product warranty which was provided with the product and which may be obtained on request. Components whose function is to fail by design in order to prevent damage to the product (ex: fuses) are expressly excluded. BUYER shall establish that Product has been properly installed, maintained, and operated according to the operations manual. SELLER makes no warranty about the design, merchantability or fitness for any particular purpose or performance. SELLER's sales personnel may not warrant the products. SELLER's liability and BUYER's sole and exclusive remedy pursuant to any claim of any kind, including but not limited to a claim in contract, negligence or strict liability, against SELLER, shall be (a) the repair or replacement at SELLER's option of defective products or parts thereof, or (b) a refund of the price allocable to the defective product or part thereof if SELLER is unable to effectively repair, replace or correct such defect in a reasonable time after using SELLER's commercially reasonable efforts. UNDER NO CIRCUMSTANCES SHALL SELLER HAVE ANY LIABILITY FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
10. **Patents:** SELLER shall defend any suit or proceeding against BUYER claiming that Product made to SELLER's designs constitutes an infringement of any patent, provided that SELLER is notified of such suit in writing within fourteen (14) days and given full and complete authority, information and assistance by BUYER (at SELLER's expense) for the defense of same. BUYER shall not admit liability, make any voluntary settlement or incur any cost or expense in connection with such proceeding without SELLER's written consent or do anything to prejudice SELLER's rights. If Product is, in such a suit, held to constitute an infringement and its use is enjoined, SELLER shall, at its own expense, either procure for BUYER the right to continue using such Product, modify it to become non-infringing, or remove the Product and grant a credit therefor in an amount equal to its depreciated value, as determined by SELLER, acting reasonably. The foregoing states the entire liability and responsibility of SELLER to the BUYER for patent infringement of the Product. The SELLER shall not be responsible for any consequential damages resulting therefrom. SELLER shall have no liability to BUYER hereunder for a patent infringement claim based upon interconnection or use of the Product in combination with equipment or devices not made by SELLER, use in any manner for which the Product was not designed or recommended by SELLER or Product furnished pursuant to BUYER's design and specifications. BUYER shall defend, at its expense, any suit against SELLER for alleged patent infringement arising out of such use or supply of Product and indemnify and hold SELLER harmless from and against any and all damages, costs and attorney's fees resulting therefrom.
11. **Force Majeure:** If either party is delayed or hindered in or prevented from performing any of its obligation under this confirmation by reason of or attributable to any circumstance (other than financial liability) which is beyond the reasonable control of such party, is not caused by any default or act of commission or omission of such party and is not avoidable by the exercise of reasonable effort or foresight by such party (excluding financial inability but including, without limiting the foregoing, strikes or labour or industrial disturbances, acts, orders, legislation, regulations or directives of any governmental or public authorities, acts of public enemies, war, riots, sabotage, blockages, embargos, shortages of materials or suppliers, shortages of labour, lightning, earthquakes, fire, storms, hurricanes, floods, wash-outs, explosions, acts of God and delays caused by any other party), it shall be under no liability to the other in respect of resulting non-performance of such obligation and the time for performing same shall be extended until the operation of the causes preventing, hindering or delaying the performance thereof has ceased.
12. **Assignment:** This contract is not assignable by BUYER without prior written consent of SELLER. Any attempt to assign any of the rights, duties or obligation of BUYER hereunder shall result in the forfeiture of such rights but duties and obligations hereunder shall continue to bind the BUYER and the assignee.
13. **Amendments:** This agreement can only be modified by written agreement duly signed by persons authorized to sign agreement on behalf of the SELLER.
14. **Legal Action:** Any action for breach of this contract must be commenced within one (1) year after the cause of the action has been accrued.
15. **Governing Law:** This agreement and any disputes arising out of or in any way related to this agreement will be governed exclusively by the laws of the Province of Ontario. Each of the parties hereto hereby irrevocably attorns for this purpose to exclusively the jurisdiction of the courts of the Province of Ontario. The BUYER agrees that any and all process directed to it in any such litigation may be served upon it outside of Ontario with the same force and effect as if such service had been made within Ontario.
16. **Validity:** The invalidity or unenforceability in any jurisdiction of all or any part of these terms and conditions shall only result in their being unenforceable as to such jurisdiction without affecting the validity or enforceability of the remainder of such terms in such jurisdiction or the validity of any of these terms and conditions in any other jurisdiction.