

Terms and Conditions of Sale

These Terms and Conditions of Sale apply to all sales of goods made by **ACORN-GENCON PLASTICS LLC** (the "Company") to the purchaser thereof (the "Customer"). Customer's order shall be accepted only on the express understanding and condition that in the event of any conflict or apparent conflict between the terms and conditions contained herein and the terms and conditions of Customer's order, the terms and conditions herein shall govern, unless the Company and Customer agree upon other terms and conditions in a writing signed by the parties. These Terms and Conditions of Sale contain the entire agreement between the parties with regard to its subject matter and may be altered only in writing signed by the parties. No course of performance or dealing or usage of trade shall supplement or modify these Terms and Conditions of Sale.

1. **DELIVERY SCHEDULES.** Delivery schedules will be computed from the date Customer's order is accepted by the Company. In the case of special items, delivery schedules will be computed from the date the Company receives complete information necessary to proceed with the manufacturing process.

2. **SPECIFICATIONS AND DRAWINGS.** Specifications, statements, drawings and descriptions regarding weights, dimensions, cycle time and other product details supplied by Company are approximate and descriptive only, and are not warranties.

3. **DESIGN CHANGES.** The Company will not be bound to accept design changes during tooling production unless the Company has given the Customer express written consent to such changes prior the first article of any part. The Company reserves the right to re-quote tooling costs in the event of any changes in the Customer's designs and/or specifications prior to production. The Customer agrees to pay Company for tooling modification required by such changes at Company's then prevailing shop rate. Company shall have no responsibility as to fit or function of goods manufactured in accordance with the modified design.

4. **PATENTS/COPYRIGHTS.** Customer warrants that there are no patents, trade secrets, confidential or proprietary information of a third party that would be infringed by the manufacture by Company of the goods herein specified. Customer shall indemnify, defend, and hold Company harmless from and against

any liability, expense, claim, damages or judgments arising out of any claimed infringement relating to such goods.

5. MOLDS, TOOLS AND INSURANCE.

a. Company will, use and store molds and tools owned by Customer for exclusively in connection with the manufacture of goods for the Customer. Except for normal production maintenance, Customer shall be exclusively responsible for repair and replacement of molds and tools.

b. Customer hereby waives all claims against the Company arising out of the Company's possession of Customer's molds and tools. It shall be the sole and exclusive duty of Customer to procure and maintain such casualty or other insurance coverage as it deems necessary to protect its molds and tools while in the Company's possession.

6. REWORKING AND SPECIAL TOOLS. The Company shall not be responsible for any reworking of dies, tools, engravings, molds, or similar items performed by Customer. Company shall not accept any back charges for work done by Customer unless authorized in writing in advance by Company. Unless otherwise agreed in writing, any special jigs, gages or fixtures required for manufacture of Customer's order are to be supplied by Customer at its own expense.

7. COMPANY'S RESPONSIBILITY. Company will supply Customer, with one First Article Inspection Report with goods included. If Customer requests further services, charges therefor will be quoted separately. The goods will be considered as approved by Customer unless written notice to the contrary is made by Customer within ten (10) days of receipt of first article sample goods. Company's engineering unit, when requested, will serve customer in submitting suggestions concerning polymer materials used. However, Company will not assume responsibility or liability for the practicability of such suggestions or recommendations if adopted by Customer. **Further, Company assumes no responsibility for the practicability of Customer's drawings, designs and specifications. Company's liability resulting from defective goods manufactured pursuant to Customer's order is expressly limited to the contract price of said product.**

8. **FIRST ARTICLE ACCEPTANCE.** Written acceptance of first article goods produced from new tooling or modified tooling will be required from a responsible employee of Customer before production will begin by Company.

9. **REPAIRS AND REPLACEMENT.** Goods will be considered accepted by Customer unless Company receives written rejection, containing a complete explanation of the nature of the defect, within thirty (30) days of shipment of the goods. Company shall have no responsibility for cost of repair or replacement or inspection of any goods by Customer, unless Company's prior written consent has been obtained.

10. **LIMITATION OF LIABILITY.** COMPANY ASSUMES NO RESPONSIBILITY FOR ANY DAMAGE, LIABILITY, OR LOSS, WHETHER TO PERSONS OR PROPERTY, WHICH ARISES FROM OR RELATES TO, DIRECTLY OR INDIRECTLY, CUSTOMER'S SPECIFICATIONS FOR THE DESIGN OF THE TOOLING OR GOODS OR CUSTOMER'S RECOMMENDATIONS FOR THE USE OF CERTAIN RAW MATERIALS FOR THEIR PRODUCTION. THE CUSTOMER AGREES THAT THE TOOLING AND GOODS SHALL BE DEEMED TO HAVE BEEN PRODUCED PURSUANT TO THE CUSTOMER'S SPECIFICATIONS IF THE CUSTOMER ADOPTS ANY OF THE COMPANY'S RECOMMENDATIONS WITH RESPECT THERTO.

11. **LIMITED WARRANTY.** Company warrants the goods to be free from defects in material and workmanship under normal use and service for a period of _____ (_____) days from the date of shipment thereof. Company warrants the tooling to be free from defects in material and workmanship under normal use and service upon Customer's acceptance thereof. WITH RESPECT TO TOOLING OR GOODS PRODUCED PURSUANT TO CUSTOMER'S SPECIFICATIONS, THE COMPANY WARRANTS ONLY THAT THE TOOLING OR GOODS HAVE BEEN PRODUCED IN ACCORDANCE WITH SUCH SPECIFICATIONS. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF COMPANY, AND COMPANY NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE GOODS.

12. Customer's sole and exclusive remedy for breach of Company's warranty with respect to goods set forth above shall be the repair or replacement, at Company's election, at Company's expense, upon delivery of the goods, transportation prepaid, to Company at _____, within the _____ (_____) day warranty period. Customer's sole and exclusive remedy for breach of Company's warranty with respect to tooling set forth above shall be the repair or replacement, at Company's election, at Company's expense, of any defective tooling following acceptance of first article goods produced from such tooling. IN THE EVENT THAT COMPANY'S WARRANTY OR ANY OTHER OBLIGATION OF COMPANY APPLICABLE TO THE TOOLING OR GOODS FAILS OF ITS ESSENTIAL PURPOSE, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, OR NEGLIGENCE OR OTHER TORT, OR OTHERWISE, SHALL BE RETURN OF OR CREDIT FOR SO MUCH OF THE PURCHASE PRICE AS IS APPLICABLE TO THE TOOLING OR GOODS WHICH ARE NONCONFORMING OR DEFECTIVE. COMPANY SHALL HAVE NO LIABILITY WHATSOEVER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE, OR OTHERWISE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

13. **SPECIALLY MANUFACTURED GOODS.** The Company's quotation, acceptance and production of any order for goods specially manufactured to Customer's specifications assume timely receipt of all required information. Any such orders may not be canceled. If Customer attempts to cancel or repudiate any such order after the Company accepts it the Company shall be entitled to recover all damages available to it at law.

14. **POSSESSORY LIEN.** Company shall have a possessory lien against Customer's tooling and/or goods and/or materials as security for the failure of the Customer to pay any balance due the Company for any invoiced tooling, goods or specially purchased materials.

15. **SHIPMENT.** All goods are shipped F.O.B Company's plant. If Customer declines for any reason to receive the products when tendered by Company, the balance of the purchase price shall at once become due and payable. The shipment date is the best estimate possible of when the products will be shipped, based upon current and anticipated production loads. Company assumes no liability for any damages incurred by Customer due to delays.

16. **FORCE MAJEURE.** Morris Group International companies will not be liable for any failure or delay in performing an obligation that is due to any of the following causes: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, transportation issues or generalized lack of availability of raw materials or energy.

17. PAYMENT TERMS.

a. Goods: Shall be invoiced upon shipment, and unless otherwise agreed to by the parties, terms are net thirty (30) days from date of invoice.

b. Tooling: Payment for tooling shall be 50% deposit to begin tool production and Customer will be invoiced the final 50% balance due upon acceptance of first article goods. Tooling charges are subject to applicable sales taxes (not reflected in quote price). Such taxes shall be included in the initial 50% deposit to begin tool production and will be included in the final invoice. Sales taxes are due unless customer provides a completed Manufacturer's Sales and Use Tax Exemption Certificate.

c. Company may withhold further shipments of goods if payment is not made pursuant to the terms hereof for prior shipments or tooling. All amounts not paid when due shall be subject to a 1.1/2 % per month late charge, compounded monthly.

d. All prices and quoted are in U.S. dollars.

16. **CANCELLATION.** Orders are not subject to cancellation, modification or deferment of shipment unless Customer pays Company for any losses or additional costs resulting therefrom. Any cancellation, modification or deferment of shipment must be submitted in writing to Company and will not be deemed accepted until Customer has agreed to pay for all resultant losses and costs of the Company.

17. **ATTORNEY'S FEES AND VENUE.** In the event that it should become necessary or desirable for either party to commence litigation in order to enforce its rights hereunder, the party substantially prevailing in such proceeding shall be awarded its reasonable attorney's fees, costs and other expenses incurred in connection with such proceeding. The laws of the State of California shall govern

these Terms and Conditions of Sale. Venue for any legal proceeding hereunder shall be exclusively in San Bernardino, California, at the option of Company.

18. **WAIVER.** Waiver by Company of any term or condition of these Terms and Conditions of Sale in any one or more instances, or the acceptance of partial, single or delayed payments or performance of any term or condition required herein shall not operate as a continuing waiver or a waiver of any subsequent breach thereof.

19. **FUFILLMENT.** Per industry standard, Company has the right to under or over ship ordered product by +/-10%.

20. **MINIMUM ORDER REQUIREMENT.** Company requires a minimum order of \$1,000. If \$1,000 cannot be met, a setup fee of \$250-\$400 will be charged, depending on press tonnage. Quotations for price and delivery are valid for a period of 30 days.

21. **OWNERSHIP AND STORAGE.** All tooling remains the property of the Customer. Company will maintain and store Customer's tooling at no cost for a period of up to 18 months of inactivity. After 18 months of inactivity, the tooling will be discarded without notice to the Customer at the Company's discretion.

22. **ORIGIN & FAR COMPLIANCE.** SUPPLIER reserves the right to furnish either foreign or domestic material unless otherwise specified by the customer at the time of quotation and noted on the subsequent purchase order. Requirements for product compliance and certification with the Buy American Act, Buy America Act, and any other Federal Acquisition Regulation shall be noted on the purchase order. Failure to document domestic and federal procurement requirements on the purchase order shall result in PURCHASER assuming all liability and replacement costs for products determined to be non-compliant.

PRICES: Prices of the Company's Products are subject to change without notice. Quotations are conditioned upon acceptance within 30 days unless otherwise stated and are subject to correction for typographic or clerical errors. Sales order confirmation will be considered accepted by Buyer if objection is not submitted in writing to Acorn Customer Service within (1) one week of receipt. The sales order confirmation is the governing document. All prices exclude sales, use, occupation, license, excise and other taxes in respect to manufacture or delivery. Unless a proper exemption certificate is furnished to the Company, all such taxes shall be paid by the Buyer to Company at the time of payment.