

# PLASTI-FAB LTD. STANDARD TERMS AND CONDITIONS OF SALE

Except to the extent that Plasti-Fab Ltd. otherwise expressly agrees in writing, all proposals, quotations and/or sales (the "Agreement") are made in accordance with the following Terms and Conditions of Sale.

## 1. DEFINITIONS:

In **Canada** "Plasti-Fab" is Plasti-Fab Ltd., a company incorporated in the province of Alberta, Canada. The Plasti-Fab name and logo is a registered trade mark of Plasti-Fab Ltd. in Canada.

In the **USA** "PFB Manufacturing LLC dba Plasti-Fab EPS Product Solutions a Delaware Limited Liability Company.

"**Goods**" means all goods and services specified in the proposal, quotation and/or sales invoice (collectively the "Agreement").

"**Buyer**" means the individual, corporation, partnership, or other entity purchasing the Goods.

## 2. ENTIRE AGREEMENT

Any order given pursuant to a proposal or quotation shall not constitute a contract until same has been received at the office of Plasti-Fab and accepted by it in writing. Plasti-Fab reserves the right to modify any proposal or quotation until such acceptance. These Standard Terms and Conditions of Sale are applicable to, are an integral part of, and incorporated by reference into every purchase order from a Buyer of Plasti-Fab Goods (the "Buyer") and every acceptance, confirmation or acknowledgement by Plasti-Fab of the Buyer's purchase order. All terms and conditions of the Buyer in a purchase order or otherwise (whether oral, typed, written or printed) which are inconsistent with, or in any way change, modify, amplify, differ from or add to these Standard Terms and Conditions of Sale are rejected and are null and void, even if Plasti-Fab does not expressly object to such terms and conditions, unless the Buyer's terms are specifically accepted by Plasti-Fab in writing. The rights and duties pursuant to this transaction are not assignable or transferable by either party without the other party's written consent.

## 3. CORRECTIONS

Plasti-Fab reserves the right to correct all typographical and clerical errors in any proposal, quotation, acknowledgment, or invoice issued by it. Plasti-Fab reserves the right to revise or otherwise modify these Terms and Conditions of Sale from time to time and will be immediately effective for purchase orders accepted thereafter.

## 4. PRICES

The currency of pricing is as stated in the Agreement. Unless otherwise noted, all prices stated in the Agreement are exclusive of any taxes currently in force and exclusive of any taxes that may be made effective in the future by any government legislation.

## 5. QUOTATIONS

Quotation terms shall remain in effect for 30 days or such other time as is stated on Plasti-Fab's quotation. Quotations require Plasti-Fab's interpretation of the materials required by the plans or specifications provided by the Buyer or the Buyer's representatives. Plasti-Fab makes no representations or warranties as to the accuracy or appropriateness of quotations. The Buyer shall be solely responsible for determining the materials and quantities required for a particular project or order. Quotations are based on various considerations and business factors and may not be used by any other person or entity without Plasti-Fab's written consent. All orders placed pursuant to a quotation are subject to approval by Plasti-Fab's credit department and all orders must be accepted in writing by an authorized representative of Plasti-Fab .

## 6. PAYMENT TERMS

The total amount of the Agreement, applicable taxes and agreed shipping charges, shall be paid by the Buyer to Plasti-Fab in accordance with the terms set out in the Agreement without any right of retention and without regard to any agreement the Buyer may have with other parties. Interest will be charged on all past due amounts, including applicable taxes and agreed shipping charges, at a rate equal to 18% per annum (1.5% per month). Interest shall be calculated on the basis of a 365 day year for the actual number of days elapsed. Such late charge shall be in addition to, and not in lieu of, Plasti-Fab's other rights and remedies for the Buyer's default or non-performance. If shipment is delayed by the Buyer, payment shall become due on the date Plasti-Fab was originally scheduled to ship the Goods. The Seller may defer shipments, alter payment terms, or terminate any contract resulting from this Agreement if the Buyer fails to pay any invoice under the Agreement, or any other Agreement with Plasti-Fab, when due or otherwise fails to pay any invoice in accordance with its terms which is owed to Plasti-Fab.

## 7. SHIPPING AND RISK OF LOSS

Plasti-Fab shall ship only those Goods expressly set forth in the Agreement. The place of delivery of all Goods stated in the Agreement shall be F.O.B. (Uniform Commercial Code term) Plasti-Fab's facility and delivery of the Goods shall be deemed complete and possession and risk of loss as to all Goods shall be deemed to pass to the Buyer upon delivery to the carrier for shipment. Risk of loss or damage to purchased Goods in transit shall be borne by the Buyer.

Shipping information is predicated upon prompt receipt of Plasti-Fab's acceptance of the Agreement and upon the Buyer's prompt approval of all drawings and specifications, if any, sent by Plasti-Fab for approval. Shipping dates are estimated as accurately as conditions will permit, but Plasti-Fab shall not assume any liability for any damages, consequential, incidental,

or otherwise resulting from any delays that may occur. The Buyer shall not make any request or instructions that have the effect of delaying the manufacture or shipment of the Goods.

**8. QUANTITIES SHIPPED**

Any claim by the Buyer that Plasti-Fab failed to deliver the agreed-upon quantity of Goods must be submitted to Plasti-Fab in writing within five days after the Buyer receives the Goods. If the Buyer fails to do so, then it shall be conclusively presumed that the agreed-upon quantities of Goods were delivered.

**9. SOLVENCY AND SECURITY INTEREST**

With each confirmed Agreement, the Buyer represents to Plasti-Fab that the Buyer is solvent. Title to all Goods sold pursuant to this agreement shall remain in the name of Plasti-Fab until full payment has been made, and to the extent applicable, Plasti-Fab reserves a security interest in, and the Buyer hereby grants Seller a security interest in Goods sold pursuant to this agreement and the proceeds thereof, with the right to take possession and dispose of the Goods and such proceeds if any such amount is not paid when due. The Buyer agrees to execute and deliver, upon Plasti-Fab's request and at the Buyer's expense, any and all instruments, including without limitation, financing statements under the Uniform Commercial Code ("UCC") and amendments thereto, which Plasti-Fab may deem necessary or desirable in order to evidence record or perfect such title and security interest, and the Buyer specifically authorizes Plasti-Fab to file such instruments with such information and in any jurisdiction deemed necessary by Plasti-Fab without the signature or any authorization of the Buyer, to the extent permitted by law. In the event of the Buyer's default, Plasti-Fab shall have the rights of a secured party, including, without limitation, those rights under the UCC. Goods paid for and held for the Buyer shall be held at the risk and expense of the Buyer.

**10. UNAVOIDABLE DELAY**

Plasti-Fab shall not in any manner be liable to the Buyer should performance by Plasti-Fab under the agreement become commercially impracticable due to any contingency beyond its reasonable control, including, without limitation: act of God; fires; floods; wars; sabotage; civil unrest; accidents; labor disputes or shortages; governmental laws; ordinances; rules and regulations; whether valid or invalid (including, without limitation: priorities; requisitions; allocation and price adjustment restrictions); inability to obtain material; equipment or transportation; incorrect, delayed or incomplete specifications; drawings or data supplied by the Buyer or others; and any similar or different contingency. In no event shall Plasti-Fab be obligated to purchase Goods from others to enable it to deliver to the Buyer pursuant to any contract resulting from this contract.

**11. DEFECTS AND REMEDIES**

The Buyer agrees promptly to inspect the Goods for damage and deficiencies immediately upon receipt of such goods from Plasti-Fab. Claims for errors, deficiencies, or imperfections must be specified by written notation of the Buyer on the Bill of Lading presented to the Buyer at the time of delivery of the Goods and shall also be made by the Buyer to Plasti-Fab in writing within twenty (20) calendar days after receipt of the Goods. Any claim for damage and/or deficiencies to the Goods shall be deemed waived if not made in writing by the Buyer within such twenty (20) calendar days. Goods may not be returned without Plasti-Fab's written permission. The Buyer must protect and retain all such Goods alleged to be defective, imperfect, or nonconforming for a reasonable period of time in order to enable Plasti-Fab to investigate the claim, inspect the Goods, and make necessary repairs, replacements, or corrections, if applicable.

If any item of Goods that is manufactured by Plasti-Fab and has not been subject to alteration, improper installation, abuse or misuse proves to be defective (as defined below) within twenty calendar days following the date of shipment and prior to installation, and if the Buyer gives written notice to Plasti-Fab of such defect within the specified period and does not alter the Goods, then Plasti-Fab shall, at Plasti-Fab's option, either repair or replace the defective item(s), at Plasti-Fab's expense. The liability of Plasti-Fab hereunder is limited to the original purchase price of the Goods. Plasti-Fab shall not be responsible, however, for the expense of locating or removing the defective Goods or re-installing any repaired or replacement goods.

In the event that Plasti-Fab extends a specific warranty under the terms of a specific contract or supply agreement, a Notice of any breach of Plasti-Fab's warranty must be made in writing addressed to Plasti-Fab, setting forth sufficient detail to permit identification by Plasti-Fab of the claimed defect. If the Buyer alters the Goods or fails to notify Plasti-Fab within the one year period following shipment of the goods, or if the Goods are installed improperly, then any claim for breach of warranty shall be conclusively deemed to have been waived by the Buyer with respect to the alleged defect. In the event of a defect in any Goods constituting a breach of the warranty provided herein, Plasti-Fab shall furnish instructions for the disposition of the defective Goods. Plasti-Fab shall have the option of requiring the return of the defective Goods, transportation prepaid, and proof that the Goods were not altered or subject to misuse or abuse to establish the claim. No Goods shall be returned to Plasti-Fab without its prior consent. The acceptance of any Goods returned to Plasti-Fab shall not be deemed an admission that the Goods are defective or in breach of any warranty, and if Plasti-Fab determines that the Goods are not defective, they may be returned to the Buyer at the Buyer's expense.

An item shall be considered "defective" if it is found by Plasti-Fab to have been defective in materials or workmanship and if the defect materially impairs the value of the Goods to Buyer, except that the Goods shall not be defective to the extent that (i) they conform with drawings of or specifications for or a sample of Goods that have been approved by the Buyer, (ii) they are inspected and not rejected by governmental authorities upon final installation, (iii) they conform with Goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by the Buyer or (iv) they are damaged due to the method or length of storage or in the course of installation. Plasti-Fab does not warrant the workmanship of others who have performed work on or installed the Goods. If the Buyer's representative agrees, either orally or in writing, to a change in or waiver of the specifications for any item of goods, then such Goods shall not be considered defective to the

extent they conform to the specifications as so changed or waived. This paragraph sets forth the Buyer's sole and exclusive remedies for any defect in the Goods. Neither the Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the goods. Any statements to the contrary are hereby rendered null and void unless made in a writing signed by an authorized officer of Plasti-Fab.

## **12. LIMITATIONS**

**EXCEPT AS STATED IN PARAGRAPH 11, PLASTI-FAB DOES NOT MAKE ANY WARRANTY AS TO THE GOODS OR SERVICES AND, IN PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND THE BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS.** Any specific Plasti-Fab warranty extended under the terms of a Contract or Supply Agreement applies only to Goods that it manufactures. All other Goods are sold **AS IS**, without warranty. Plasti-Fab shall not have any tort liability to the Buyer or any other person with respect to any of the Goods and shall not be liable for consequential, incidental, special, exemplary, indirect or punitive damages arising from any product defect, delay, non-delivery, recall or other breach.

## **13. RESALE**

On any resale of the Goods, the Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Plasti-Fab to the same extent that *Paragraphs 11 and 12* above limit the Buyer's rights and remedies.

## **14. CANCELLATION AND RETURNS**

- (a) The Buyer acknowledges that the Goods which are the subject of this Agreement shall be custom made specifically for the Buyer and the Buyer does not have any right to cancel the Agreement to buy the Goods from Plasti-Fab. If, however, Plasti-Fab agrees in writing to permit cancellation, then the Buyer shall immediately pay to Plasti-Fab a cancellation charge in an amount equal to the purchase price less allowances (in amounts that Seller determines) for (1) the realizable value to Plasti-Fab of any standard components that Seller purchased or ordered before cancellation, (2) the realizable scrap value to Plasti-Fab of the remaining material that Plasti-Fab purchased, fabricated or ordered before cancellation and (3) any direct labor costs that Plasti-Fab saved by reason of the cancellation.
- (b) The Buyer may not return any custom or labeled Goods. All other re-saleable and undamaged Goods are subject to return only for credit and only with Plasti-Fab's prior written consent. Plasti-Fab may request certain information from the Buyer prior to authorizing a return, and may impose a restocking fee.
- (c) If the Buyer fails to pay or perform any indebtedness or obligation that the Buyer at any time owes to Plasti-Fab, then Plasti-Fab may consider the Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Plasti-Fab to sell Goods to the Buyer, and Plasti-Fab may, without liability to the Buyer, cancel any or all of those outstanding contracts.

## **15. INDEMNITY**

The Buyer shall indemnify Plasti-Fab and its affiliates, directors, officers, agents, servants, employees, successors and assigns against, and hold them harmless from and against, any and all claims, demands, actions, causes of action, suits, liabilities, losses, damages, judgments, settlements and compromises for bodily injury, death, property damage, or economic loss, as well as any and all costs and expenses relating thereto, including reasonably attorneys fees, relating to, resulting from or arising acts or omissions of the Buyer relating to or arising out of the use, operation, ownership or condition of any of the products purchased by the Buyer (except for non-conformities expressly warranted in Section 11 above) or the breach or non-performance of Buyer's obligations under these Terms and Conditions.

If a suit is brought against the Buyer alleging that the manufacture or sale of any Goods sold hereunder infringes any Canadian, United States of America, or foreign letters patent, the Buyer shall give Plasti-Fab prompt written notice and permit Plasti-Fab to defend such allegations if Plasti-Fab, in its sole discretion, elects to do so. As respects all Goods hereunder manufactured specifically for the Buyer, the Buyer warrants there are no Canadian, United States of America, or foreign letter patents covering them or the Buyer has no right to have them made. Plasti-Fab shall not be liable to the Buyer if the Buyer is sued for any Canadian, United States of America, or foreign letter patent infringement by any Goods made specifically for the Buyer hereunder but, if Plasti-Fab is so sued, the Buyer shall indemnify Plasti-Fab for all costs incurred in connection with such suit, including reasonable legal fees. The Buyer assumes all responsibility for the use of any design, trademark, trade name, or part thereof, appearing on the Goods at the Buyers request.

## **16. APPLICABLE LAW**

In **Canada**, this agreement between Plasti-Fab Ltd. and the Buyer shall be considered to have been made in the Province of Alberta, and it shall be governed by and in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable herein.

In the **USA**, this agreement between PFB Manufacturing dba Plasti-Fab EPS Product Solutions and the Buyer shall be considered to have been made in the State of Idaho, and it shall be governed by and in accordance with the laws and the federal laws of the United States applicable herein.

## **17. RELATIONSHIP**

The relationship of the parties is that of a seller and a buyer and nothing herein shall be construed to create a partnership, joint venture, employee/employer relationship, agency or franchise. The Buyer has the sole responsibility to comply with all local, provincial or state, and federal rules and regulations, ordinances, building codes and laws regarding licensing, bonding, taxes, building code certifications, and permit requirements applicable to the conduct by the Buyer of its business or to the use, application or further disposition by the Buyer of the Goods.

**18. INSPECTION AND INSTALLATION**

Plasti-Fab may, from time to time, inspect the installation of the Goods, but Plasti-Fab is under no obligation to make such inspections. If Plasti-Fab does make such inspections, Plasti-Fab shall not thereby become an insurer of the installation, nor shall such inspection give rise to any additional warranty other than those contained herein.