

Terms & Conditions of Sale



- 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.
- Entire Agreement:** Seller's offer is expressly conditioned upon Buyer's acceptance of these Terms and Conditions, and Seller expressly objects to any additional or different terms proposed by Buyer. Any subsequent purchase order issued by Buyer shall constitute Buyer's agreement to these Terms and Conditions. Any contrary terms and conditions contained in any purchase order, facility entry form, or other instrument issued by the Buyer are expressly rejected and shall not apply to this transaction. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming purchase order.
- 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 is unpaid or (b) Buyer has wrongfully failed to take delivery of Product under this order or any other contract with Seller. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of payment security, suspend its performance or terminate the order.
- Pricing and Terms:** All prices stated herein are in U.S. funds, FCA Seller's plant, Georgetown, Ontario, Canada. All shipping, destination charges, levies, duties or taxes based upon the 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 6 but in no event later than thirty (30) days after date of invoice. 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. If, after the date of acceptance of a purchase order, Seller incurs an unforeseeable increase in costs with regard to the product, then Seller shall be entitled to increase the agreed price to account for such increases in costs. In particular, increased labor costs, material costs, storage costs, energy and shipping costs and public charges may be considered in the price increase. Reasonable documentation to substantiate the price increase will be provided to Buyer, upon request.
- 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 a 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. If Seller notifies Buyer that the products are ready for shipment and Buyer delays delivery, then Seller may charge Buyer a storage fee equal to 1.5% of the contract price per month for each month of delay. Such storage fees are in addition to any other remedies Seller may have. Unless otherwise expressly agreed, shipment shall be FCA point of origin (Incoterms 2010) and delivery to common carrier shall constitute delivery to 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 notice of lien, which Buyer agrees to execute upon Seller's request. Buyer shall not trans-ship, re-export, divert or redirect Products outside of the original country of delivery without Seller's prior written consent.
- Acceptance of Product:** Products shall be deemed to be accepted upon the earlier of: (i) inspection at Seller's plant (provided that no reasonable objection is then raised by Buyer), or (ii) if no inspection is requested, then at shipment.
- 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.
- Warranty:** Seller warrants that Buyer, upon payment in full for Product, shall acquire good and clear title to Product. Seller 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 is available 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'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. Seller makes no warranty about the design, merchantability or fitness for any particular purpose or performance.
- Limitation of Liability:** Seller's total liability to Buyer arising out of or resulting from this Contract or related in any way to Seller's products or parts thereof shall not exceed the contract price for such products. Because the conditions of actual production in each end user's plant vary considerably, Buyer assumes all risk for the results obtained by use of Seller's products in the practice of any process, whether in terms of operating costs, general effectiveness, success or failure, and regardless of any oral or written statements made by Seller related to the use of its products. UNDER NO CIRCUMSTANCES SHALL SELLER HAVE ANY LIABILITY FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
- 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, pandemic, 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.
- 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.
- Changes and Amendments:** 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.
- Merger Clause:** This Contract entirely supersedes any prior oral or written representations, correspondence, proposals, or contracts between the parties regarding the products. This writing constitutes the final and total expression of such contract between the parties, and it is a complete and exclusive statement of the terms of that contract.
- 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, without regard for the Convention for the International Sale of Goods (CISG), which shall not apply. 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. Each party agrees to comply with all applicable laws in the performance of its obligations.