

Terms and Conditions

The terms and conditions contained below govern the sale of goods by Extreme Molding, LLC to a Customer.

1. AGREEMENT, ACCEPTANCE AND CONFLICTING TERMS

These terms and conditions of sale (these "Terms") and any terms and conditions set forth on the accompanying quotation, purchase order, Order Acknowledgment or invoice provided by Extreme Molding to Customer. (collectively, this "Agreement") together with any documents specifically referred to herein comprise the entire agreement between the Customer and Extreme Molding set forth on the accompanying quotation, purchase order, Order Acknowledgment or invoice, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement will become a binding contract upon Customer's acknowledgement or Extreme Molding's delivery of some or all of the goods purchased. Any supplemental documents, specifications, notes, instructions, engineer's notices, technical data, and any terms and conditions different from, or in addition to, those set forth herein, are hereby objected to by Extreme Molding and waived by Customer and not deemed part of this Agreement. Any additions or changes to, or modifications or revisions of the terms and conditions of this agreement proposed by Customer are rejected unless expressly agreed to in writing by Extreme Molding.

2. ORDER ACKNOWLEDGMENT

Customer will transmit copies of purchase orders either by e-mail (phone and text in limited cases). Extreme Molding will confirm receipt of the order and/or change orders within three (3) business days after receipt. If confirmation is not received, Customer shall construe the lack of confirmation as a requirement to resubmit the purchase order to Extreme Molding. After review and acceptance of the purchase order a formal Order Acknowledgement will be sent to the customer.

3. PRODUCT DELIVERY

Unless otherwise agreed to in writing by Extreme Molding, all goods shall be delivered EXW (Incoterms 2020) Menands, NY. "Approx. Ship Date" shown on the Order Acknowledgement means the approximate date when the products are expected to be shipped from Extreme Molding. Customer is responsible to arrange and execute shipments of goods within fifteen (15) days of this date unless other arrangements have been agreed to.

Due to the nature of manufacturing, the quantities shipped and billed may be + / - 10% the quantity listed on the customer purchase order / order acknowledgement.

4. TITLE TO GOODS

Unless otherwise provided herein, title to the goods shall pass to Customer and Extreme Molding's liability as to delivery shall cease upon making delivery of goods to the carrier at the shipping point, the carrier acting as Customer's agent.

5. PROPRIETARY RIGHTS

All techniques, developments, inventions, information, object or source code, drawings, prototypes, estimates, specifications, calculations, field notes, manuals, reports, renderings, documentation, any other deliverables and all intellectual property attributable to any of the foregoing conceived, developed, authored, produced or acquired by Extreme Molding, shall be the exclusive property of Extreme Molding.

6. CONFIDENTIAL INFORMATION

All non-public, confidential or proprietary information of either party, including but not limited to specifications, designs, plans, drawings, documents, data, reports, analysis, forecasts or pricing, whether disclosed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by the disclosing party in writing. Upon the disclosing party's request, the receiving party shall promptly return all documents and other materials received from the disclosing party. The disclosing party shall be entitled to injunctive relief for any violation of this provision. This provision does not apply to information that is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; or (c) rightfully obtained by the receiving party on a non-confidential basis from a third party. The restrictions set forth above shall not apply (i) to any disclosure of confidential information required to be made under applicable law or regulation or by order of a court or governmental authority acting within its jurisdiction, provided that prior to such disclosure, the receiving party shall have promptly provided the disclosing party with written notice of the disclosure requirement and the disclosing party shall have had a reasonable opportunity to contest such requirement or seek a protective order.

7. WARRANTIES AND DISCLAIMER

Extreme Molding warrants that the goods purchased herein will be made in a workmanlike manner and in accordance with the specifications heretofore agreed to by Customer. EXTREME MOLDING MAKES NO OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, AND EXTREME MOLDING EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY AND EXTREME MOLDING HEREBY EXCLUDES ANY OTHER WARRANTIES OR REPRESENTATIONS THAT MAY HAVE APPEARED IN ANY OTHER DOCUMENT PROVIDED BY CUSTOMER.

Subject to the exceptions and upon the conditions specified herein, Extreme Molding shall correct either by repair or, at its election, by replacement, any defects of material or workmanship which is discovered within 30 days from date of shipment of the goods to the original purchaser, provided that investigation and factory inspection by Extreme Molding discloses that such defect arose under normal and proper use. Customer's failure to give notice of claim of defect or shortage in shipment within thirty (30) days from date of shipment shall constitute a waiver by Customer of all claims in respect to such goods. THE FOREGOING REMEDIES SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND EXTREME MOLDING'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.

All items claimed defective must be returned to Extreme Molding, transportation charges prepaid; replacement goods will be returned to Customer, transportation charges prepaid. Goods may not be returned to Extreme Molding without prior written authorization and an Extreme Molding Returned Goods Authorization Number.

Representations and warranties made by any person, including distributors and representatives of Extreme Molding, which are inconsistent or in conflict with these terms and conditions (including, but not limited to, the disclaimer of warranties or limitations of liability of Extreme Molding), shall not be binding upon Extreme Molding.

8. PATENT INFRINGEMENT

Extreme Molding represents that, to the extent the goods sold hereunder have been designed solely by Extreme Molding and are not custom goods manufactured for Customer, the use or sale of the goods delivered hereunder will not infringe the claims of any United States patent covering the goods itself but does not warrant against infringement by reason of the use thereof in combination with other products or in the operation of any process not provided by Extreme Molding or to the extent that the specifications were provided by Customer.

9. INDEMNIFICATION

Extreme Molding shall indemnify and hold Customer harmless from any and all losses, claims, suits, proceedings, expenses, recoveries and damages, including reasonable legal expenses and costs ("Losses"), arising out of (i) Extreme Molding's negligence or willful misconduct or (ii) any and all claims of any nature alleging infringement of any letters patent, trade secrets or other intellectual property rights used to manufacture the Product, other than as a result of Customer's breach of its warranties and representations or its obligations under this Agreement.

Customer shall at all times during and after the term of this Agreement be responsible for, and shall defend, indemnify and hold Extreme Molding harmless from and against any and all Losses arising out of any claim by a third party relating to the Products or any aspect of the performance of this Agreement, to the extent such liability results from a patent or trademark infringement claim, from a product liability claim or from the negligence or willful misconduct of Customer, or any breach of a representation or warranty given herein by Customer.

10. LIMITATION OF LIABILITY

EXTREME MOLDING EXPRESSLY DISCLAIMS ANY LIABILITY TO ITS CUSTOMERS, DEALERS AND REPRESENTATIVES AND TO USERS OF ITS PRODUCTS, AND TO ANY OTHER PERSON OR PERSONS FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSSES OR EXPENSES, OF ANY KIND AND FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SALE OR USE OF SAID PRODUCTS REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EXTREME MOLDING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXTREME MOLDING SHALL HAVE NO LIABILITY FOR ANY ADDITIONAL COSTS NOT SPECIFICALLY IDENTIFIED IN THIS AGREEMENT. EXTREME MOLDING'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT IN ANY CASE EXCEED THE CONTRACT PRICE FOR THE GOODS CLAIMED TO BE DEFECTIVE OR UNSUITABLE.

11. PAYMENT TERMS; SECURITY INTEREST

Payment for all goods supplied hereunder is required within thirty (30) days of invoice date (unless other terms have been agreed to in writing). In the event Customer fails to timely pay for any goods or in case Extreme Molding shall have any doubt at any time as to Customer's financial responsibility, Extreme Molding may decline to make further deliveries.

If applicable, payment for tooling shall be as follows: fifty percent (50%) at the time of execution of a purchase order, forty percent (40%) at the time of delivery, 10% within thirty (30) days of submission of parts for approval.

All invoices not timely paid will be subject to a late payment service charge equal to the lesser of 1½ percent per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

Customer shall reimburse Extreme Molding for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Extreme Molding does not waive by the exercise of any rights hereunder), Extreme Molding shall be entitled to suspend the delivery of any goods if Customer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

As collateral security for its obligations hereunder, Customer hereby grants to Extreme Molding a first priority lien on and security interest in and to all of the right, title and interest of Customer in, to and under any and all Customer equipment and tooling in Extreme Molding's possession whether now or hereafter acquired (collectively, the "Collateral") and agrees that Extreme Molding shall have all the rights and remedies of a secured party under the UCC with respect to such Collateral, including, without limitation, the right to retain the Collateral until all of Customer's obligations to Extreme Molding have been paid in full. Customer appoints the applicable Extreme Molding entity as its attorney-in-fact to perform all acts which Extreme Molding deems appropriate to perfect and to continue perfection of the lien granted hereunder including, without limitation, the filing of UCC financing statements with the appropriate governmental agency or authority. In the event the foregoing grant is expressly limited or prohibited with respect to any specific item of the Collateral by any contract, license, law or regulation, then the security interest created hereby nonetheless remains effective to the fullest extent allowed by the UCC or other applicable law.

12. TAXES

The payment of all taxes, excise or other charges to any governmental agency is the sole responsibility of Customer.

13. FORCE MAJEURE

Neither party shall be liable for failure to perform or delay in performing obligations set forth in this agreement, and neither party shall be deemed in breach or default of its obligations, if, to the extent and for so long as, such failure, delay, breach or default is due to an act of God, epidemic, pandemic, war, riot, fire, explosion, accident, flood, sabotage, strike, lockout, injunctions, national defense requirements, compliance with governmental laws, rules, regulations, raw material shortages, natural disasters, or any other causes reasonably beyond the control of such party, except that Customer's payment obligations shall not be excused by any force majeure event. Any party desiring to invoke the protection of force majeure shall promptly notify the other party of such desire in writing and shall use reasonable efforts to resume performance of its obligations.

14. ASSIGNMENT

Neither party may assign any right or obligation hereunder without the written consent of the other party, unless such assignment arises under a transaction in which the assigning party is selling its entire business or a line of business to which this agreement relates or such party is being acquired or merging with a third party. Notwithstanding the foregoing, Extreme Molding may, without Customer's consent, assign all or a portion of its rights or obligations hereunder to one or more of its Affiliates. As used herein, the term "Affiliate" shall mean any entity, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Extreme Molding, LLC. Any attempted assignment in violation of this provision shall be void and of no effect. This Agreement, and any future agreement for the manufacture of products developed pursuant to this Agreement, shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

15. RELATIONSHIP OF THE PARTIES

The relationship between the parties is that of vendor and vendee. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16. GOVERNING LAW; JURISDICTION

This Agreement is deemed to have been entered into in the State of New York, and its interpretation, construction, and the remedies for its enforcement or breach are to be applied pursuant to and in accordance with the laws of the State of New York, without regard to its conflict of law principles. Any litigation over any provision of this agreement or the performance of this agreement shall be brought in either the United States District Court for the Northern District of New York, or the Supreme Court of New York, 3rd District, which venues shall serve as the exclusive jurisdiction of any legal action between the parties. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or the goods purchased hereunder.

17. SUPPLY ALLOCATION

In the event of inability for any reason to supply the total demands for the material specified herein, Extreme Molding may allocate its available supply among any or all customers, as well as departments and divisions of Extreme Molding, on such basis as Extreme Molding may deem fair and practical, without liability for any failure of performance that may result therefrom.

18. ANNUAL PURCHASE CONTRACT

In the event that an annual purchase contract covering the goods to be purchased hereunder is in effect between Extreme Molding and Customer, the terms and conditions contained therein will control this transaction with respect to those goods so covered. Further, if Customer shall reorder the goods or order other goods from Extreme Molding, these terms and conditions shall govern such transaction.

19. BLANKET ORDERS

Blanket Orders with release dates within a 12 month period are deemed firm orders for production and delivery of parts. In the event that Customer is to take delivery of the goods over a set period of time and Customer has received discount pricing based upon the total number of goods ordered, if at the end of the specified time period Customer has not taken delivery of all of the goods ordered, Extreme Molding reserves the right to charge Customer the amount of the discount given for the actual quantity of goods purchased and Customer agrees to pay the adjusted price or the purchase price for the parts not accepted under the order. Extreme Molding also reserves the right to adjust the price based upon increases or decreases in material costs, and Customer agrees to pay such price adjustments.

20. TANGIBLE PROPERTY OF CUSTOMER

When tangible property, including but not limited to a tool, belonging to Customer is in the possession of Extreme Molding and has been used by Extreme Molding in connection with the manufacture, packaging or sale of goods that are sold by Extreme Molding to Customer under this Agreement and such tangible property has not been used by Extreme Molding in connection with the manufacture, packaging or sale of any such goods for a period of eighteen (18) months, and Customer has not taken possession of such tangible property within thirty (30) days after written notice from Extreme Molding, then Extreme Molding shall be deemed to be the owner of such tangible property and shall have the right to use such tangible property for any purpose and to dispose of such tangible property in any manner without any liability to Customer.

21. WAIVER

No waiver by Extreme Molding of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Extreme Molding. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

22. SURVIVAL

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information, Governing Law; Jurisdiction, Payment Terms, and Survival.

23. EXCESS INVENTORY AND MATERIALS

By agreeing to these purchase order terms and conditions, the customer acknowledges and accepts that in the event of order cancellation, removal of the mold from our shop, change in packaging and associated materials (by the customer), they are responsible for purchasing any excess product, packaging, or materials incurred as a result of this or anticipated orders. This includes but is not limited to any materials specifically acquired or produced for their order, and any costs associated with excess inventory. The customer understands that this provision is essential for the fulfillment of their order and agrees to bear the associated expenses should such circumstances arise.