

## TERMS & CONDITIONS OF SALE

**THESE TERMS AND CONDITIONS APPLY TO THE SALE OF ANY PRODUCTS SOLD BY THERMOPLAST NEXTRUSIONS, LTD. IN CANADA (COLLECTIVELY, “SUPPLIER”) TO THE PURCHASER (“CUSTOMER”).**

**ALL ORDERS ARE ACCEPTED AND ALL SALES ARE EXPRESSLY MADE CONDITIONAL ON CUSTOMER’S AGREEMENT TO THESE TERMS AND CONDITIONS NOTWITHSTANDING ANY PURCHASE ORDERS OR OFFERS CONTAINING DIFFERENT OR ADDITIONAL PROVISIONS. CUSTOMER’S ACCEPTANCE OF PRODUCTS CONSTITUTES ACCEPTANCE OF THESE TERMS AND CONDITIONS AND ALSO CUSTOMER’S AGREEMENT THAT THEY GOVERN OVER ANY TERMS, CORRESPONDENCE OR FORMS SUPPLIED BY CUSTOMER AT ANY TIME.**

**MODIFICATIONS MUST BE IN WRITING.** These Terms and Conditions will not be modified or rescinded by agreement or conduct or waived unless specifically agreed to in writing by Supplier. The amount of any present or future sales, use, excise, or similar taxes, applicable to the ordered products will be added to Supplier’s price and paid by Customer, unless Customer timely provides Supplier with a tax exemption certificate applicable to Supplier.

**ACCEPTANCE/CANCELLATION.** Orders cannot be cancelled by Customer without Supplier’s written consent and are subject to change or price adjustment based on fluctuations in material price and availability. These Terms and Conditions are a final, complete and exclusive statement of the parties’ agreement. No statements or changes of any kind or any conflicting terms or conditions in writing provided by Customer to Supplier are binding on Supplier unless specifically agreed to in writing by Supplier. Prior statements, representations, and agreements not incorporated are excluded and superseded hereby. No course of prior dealings between Supplier and Customer and no usage of trade will be used to supplement any term in this agreement. Acceptance or acquiescence in a course of performance will not be relevant to alter the meaning of this agreement.

**SHIPMENT/DELIVERY.** Supplier will not be liable for any penalty or damages, liquidated or otherwise, for any shipment delays. Unless otherwise stated in writing by Supplier, products are shipped at Customer’s cost; all loss, damage and delay in transit are at the risk of Customer. Unless otherwise stated by Supplier, when products have been delivered to a carrier, risk of loss passes to Customer and Supplier’s responsibility for delivery ends. Shipment should be examined carefully before being accepted from the carrier. Supplier assumes no responsibility for damage after having received “in good order” receipts from a carrier at shipping point. Claims for shortages or nonconforming shipments must be made in writing and sent to Supplier within 24 hours of Customer’s receipt of the shipment. Failure to give such notice will be deemed unqualified acceptance and a waiver by Customer of any claim with respect to the shipment.

**RETURNS.** Unless Customer has first obtained Supplier’s consent to accept products for return or credit, Supplier will not be required to accept returned products from Customer. Risk of loss for returned products will remain with Customer and Customer will reimburse Supplier for any cost Supplier incurs in connection with the shipment and return of the products. Good fabricated to order, i.e. custom products, are not returnable under any circumstance except as part of a remedy pre-approved by Supplier for a legitimate warranty claim.

**TITLE TO PRODUCTS.** Customer acknowledges and agrees that until payment in full of the amount shown on Supplier’s invoice is received by Supplier, title to the products covered by that invoice will remain with Supplier, whether or not the products are in Supplier’s possession and whether or not they have been fabricated or used by Customer. Until Customer has remit payment in full, Supplier will have the right to at any time without notice enter the premises where the products are situated and take possession of the products for which Customer’s payment obligation has become past due. Customer agrees to defend, indemnify and save Supplier harmless from any and all costs, expenses and damages (including legal fees) arising out of any claim asserted against Supplier as a consequence to Supplier’s exercise of such right.

**INSURANCE.** Customer agrees to keep the products fully insured against loss, theft, destruction, and damage (including where the same occurs while the products are in the possession of the carrier that is transporting the products or in the possession of a third-party warehouse). Insurance will be placed with insurance companies for the benefit of Supplier and the proceeds of any such insurance will, at the option of Supplier, be applied to the payment due or becoming due at the time of such payment or applied toward the replacement of the products and if the products will be replaced, then, and in such event the terms, provisions and conditions of this agreement will apply to such replaced products with the same force and effect as if such replacement products had originally been the subject of this agreement.

**NON-PAYMENT/ ENFORCEMENT.** Interest at the maximum legal rate not exceeding 18% per year will be charged on overdue accounts at a rate of 1.5% per month. If an invoice is not paid when due, or it becomes necessary for Supplier to enforce these terms and conditions, Customer agrees to pay all costs of collection, or enforcement or both, including attorney's fees, whether incurred in or out of court, or appeal, in arbitration, in a bankruptcy proceeding, or in any insolvency proceedings.

**DEFAULT.** If Customer defaults in paying by the specified date any of the payments provided for in any invoice issued by Supplier, or if a proceeding in bankruptcy, receivership or insolvency will be instituted or filed by or against Customer as a debtor, bankrupt, defendant or insolvent or if Customer will enter into any arrangement or agreement with its creditors, the full amount of the purchase price then remaining unpaid will, at the option of Supplier be immediately due and payable and Supplier will have the absolute right to immediately terminate any agreement or supply relationship with Customer, anything to the contrary in any other document or agreement notwithstanding, it being expressly agreed that the title in the products will vest in Customer only on the payment of the full purchase price and on the compliance by Customer with the terms and conditions of this agreement.

**LIMITED WARRANTY/SOLE REMEDY. EXCEPT AS OTHERWISE PROVIDED IN A WRITTEN WARRANTY ISSUED BY SUPPLIER, SUPPLIER WARRANTS TITLE TO THE PRODUCTS SOLD BY IT AND THAT THESE PRODUCTS CONFORM TO THE DESCRIPTION CONTAINED HEREIN AND ARE OF MERCHANTABLE QUALITY. SUPPLIER'S ENTIRE LIABILITY IS LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH A CLAIM IS MADE AND COSTS OF TRANSPORT. CUSTOMER ASSUMES ALL RISK OF LOSS AND LIABILITY RESULTING FROM THE USE OR SALE OF ANY PRODUCTS DELIVERED HEREUNDER. IF PRODUCTS SOLD TO CUSTOMER FAIL TO CONFORM TO THIS LIMITED WARRANTY, CUSTOMER MUST GIVE SUPPLIER WRITTEN NOTICE OF SUCH NON CONFORMANCE WITHIN 30 DAYS OF THE TIME WHEN DEFECT WAS OR SHOULD HAVE BEEN DISCOVERED OR CUSTOMER WAIVES ANY RIGHTS WITH RESPECT TO THE PRODUCTS.**

**AFTER WRITTEN NOTICE, AND CUSTOMER'S RETURN OF PRODUCTS ARE PROVEN DEFECTIVE TO SUPPLIER, SUPPLIER WILL REPLACE THE DEFECTIVE PRODUCTS OR, IN SUPPLIER'S SOLE DISCRETION, REFUND THE PURCHASE PRICE OF SUCH PORTION OF THE PRODUCTS AS ARE RENDERED UNUSABLE AS A RESULT OF SUCH DEFECT. SUPPLIER MAY MODIFY, AT ANY TIME, THE DESIGN OF PRODUCTS OR MATERIALS USED THEREIN OR DISCONTINUE THEIR MANUFACTURE WITHOUT ANY LIABILITY. IF PRODUCTS HAVE BEEN DISCONTINUED OR ARE NOT AVAILABLE, SUPPLIER RESERVES THE RIGHT TO SUBSTITUTE PRODUCTS OF EQUAL QUALITY. IN THE EVENT NO COMPATIBLE PRODUCT IS AT THAT TIME MANUFACTURED BY SUPPLIER, IT WILL NOT BE REQUIRED TO CREATE NEW DIES FOR THE PURPOSE HEREOF. SUPPLIER WILL IN NO EVENT BE LIABLE FOR LABOR CHARGES OR OTHER COSTS WHATSOEVER IN CONNECTION WITH REPAIR, REMOVAL OR INSTALLATION OF EITHER ORIGINAL OR REPLACEMENT PRODUCTS. CUSTOMER AGREES THAT THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO THE PRODUCTS. SUPPLIER'S ENTIRE LIABILITY ON ANY CLAIM ARISING OUT OF THE SALE OF THE PRODUCTS OR ITS REPLACEMENT OF DEFECTIVE PRODUCTS, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WILL BE LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS THAT ARE PROVEN DEFECTIVE AND COSTS OF TRANSPORT. THIS WARRANTY DOES NOT EXTEND TO, AND IS VOIDED BY, PRODUCTS DAMAGED OR FAILED BECAUSE OF, OR BY USE WITH, MATERIALS OR SUPPLIES OR METHODS NOT APPROVED BY**

SUPPLIER OR OTHER APPLICABLE INSTALLATION STANDARD OR CODE; OR BECAUSE OF MISUSE; ABUSE; ACCIDENT DAMAGE IN TRANSIT; IMPROPER HANDLING OR INSTALLATION NOT IN ACCORDANCE WITH RECOMMENDED PRACTICES OR CODES; OR RESULTING CONSEQUENCES. MOLD, WELD OR FUSION LINES ARE NOT DEFECTS OR NON-CONFORMITIES.

EXCLUSIONS OF WARRANTY AND LIMITATION OF LIABILITY AND REMEDIES. SUPPLIER MAKES NO WARRANTY OTHER THAN THE ABOVE LIMITED SOLE AND EXCLUSIVE WARRANTY. THIS LIMITED WARRANTY AND REMEDY IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE LIMITED WARRANTY CONSTITUTES THE ONLY WARRANTY MADE WITH RESPECT TO THE PRODUCTS. ALL OTHER WARRANTIES ARE EXCLUDED. BY ITS PURCHASE OF PRODUCTS CUSTOMER HAS DETERMINED THAT THE STANDARD OF THE PRODUCTS IS FIT FOR CUSTOMER'S PURPOSE.

CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY FOR USE OR APPLICATION OF ANY PRODUCTS, INCLUDING COMPONENTS THEREOF, OR WHETHER SUCH PRODUCTS MEET REQUIREMENTS OF APPLICABLE BUILDING CODES OR SAFETY CODES FOR SPECIFIC APPLICATIONS.

CUSTOMER AGREES THAT NEITHER SUPPLIER NOR ITS SUPPLIERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, DISTRIBUTORS OR REPRESENTATIVES WILL UNDER ANY CIRCUMSTANCES BE LIABLE (A) FOR ANY OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM SUPPLIER'S NEGLIGENCE OR OTHERWISE, RESULTING FROM OR IN CONNECTION WITH THE PRODUCTS SOLD TO CUSTOMER, NOR (B) FOR ANY CLAIMS, ACTIONS, SUITS AND PROCEEDINGS WHICH MAY BE INSTITUTED IN RESPECT TO THE FOREGOING, INCLUDING CLAIMS, ACTIONS, SUITS AND PROCEEDINGS MADE BY SUBSEQUENT OWNERS AND USERS OF THE PRODUCTS, NOR FOR STRICT LIABILITY OR OTHER TORT, NOR (C) FOR LOST REVENUES OR EARNINGS, LOST PROFITS, LOST OPPORTUNITIES, COSTS OR DELAYS, LOST GOODWILL OR REPUTATION, OR PUNITIVE OR EXEMPLARY DAMAGES. IF IT IS FOUND THAT THIS REMEDY FAILS OF ITS ESSENTIAL PURPOSE, SUPPLIER'S LIABILITY WILL NONETHELESS BE LIMITED TO A REFUND OF THE PURCHASE PRICE PAID, AND TRANSPORTATION COSTS. THE EXCLUSION OF CONSEQUENTIAL DAMAGES WILL BE DEEMED INDEPENDENT OF, AND WILL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE WARRANTIES OF SUPPLIER ARE NOT TRANSFERABLE TO ANY SUBSEQUENT OWNER OF THE PRODUCTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THAT THE ABOVE MAY NOT APPLY TO YOU.

**PENALTY CLAUSES.** Supplier assumes no liability arising from penalty or liquidated damage clauses of any kind, written or implied.

**FORCE MAJEURE.** Supplier will not be responsible for any loss or damage of any kind or nature whatsoever, direct or indirect, suffered by Customer, subsequent Customers, ultimate users of products, or any other person, as a result of any factors beyond its control, including (without limitation) Customer's acts or omissions, labor shortages, strikes, lock-outs, work slowdowns, accidents, fire, floods, earthquakes, severe weather, serious accidents, epidemics, quarantines, wars, breakdowns, delays in manufacture, transportation or delivery of products or materials purchased by Supplier, unavailability, inadequacy or shortages of material or services, acts of God, embargoes, wars, insurrections or riots, terrorism, acts of civil or military authorities, civil commotion, or governmental or regulatory or licensing action or changes, or any other circumstances beyond Supplier's reasonable control.

**INDEMNIFICATION.** Customer will protect, defend, hold harmless and indemnify Supplier and any of its officers, directors, employees, agents or subsidiaries, against any liability, fine, fee, penalty, direct and/or indirect damages, loss of profit, including but not limited to, interest, reasonable expenses for attorney's fees and expert fees, legal costs and disbursements (referred to collectively hereinafter as a "Loss") incurred by Supplier to challenge or defend against any

claim, action, application, request or other legal or administrative proceeding (referred to collectively hereinafter as a "Claim"), even if such Claim is ill-founded, fraudulent or false, brought by a third party related to or arising out of:

- i. any false, misleading or inaccurate representation made to Customer's client or to the end user relating to the quality or durability of the products or their fitness for a specific purpose;
- ii. any conventional warranty extended by Customer to its clients, including but not limited to any warranty of quality or durability of the products or their fitness for a specific purpose;
- iii. any design or manufacturing defect resulting from alterations to the products made by the Customer or at the Customer's request;  
any defect resulting from the interaction of the products with any other product or component – except where such other product or component was also supplied by the Supplier – which forms part of the same finished products.
- iv. any defect or Loss resulting from the improper installation of the products or finished products supplied by Supplier

**NOTICE.** Supplier will send Customer a written notice of any Claim within seven (7) days following the receipt thereof, unless Supplier is also listed as a party in the context of such Claim.

**CONDITIONS OF RESALE/SUBSEQUENT CUSTOMERS.** These Terms and Conditions will be binding upon all subsequent owners and users of the products. Products are sold subject to the condition that they will not be resold or otherwise conveyed without similar conditions, including that these conditions be imposed on the subsequent customer/user or transferee.

**ASSIGNMENT.** This agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors. Supplier may assign this agreement at any time and without the consent of the Customer. Customer may not assign this agreement without the prior written consent of the Supplier and any purported assignment without the Supplier's consent shall be deemed null and void.

**NON-DISCLOSURE.** It is understood that at times during the relationship defined by this agreement it may be necessary for Customer and Supplier to share with each other confidential/non-public proprietary information regarding the parties' products, research and development, Supplier will be the sole and exclusive owner of the intellectual property related to the products that Supplier designs, produces and sells to Customer during the term of this agreement. Supplier will be the sole and exclusive owner of any tooling that Supplier designs and manufactures for Customer's benefit for use in supplying products to Customer unless otherwise agreed upon by the parties in writing. As such, Customer will not have the right to disclose to any third party, including without limitation to any competitor of Supplier, any of those Supplier-owned Product or tooling designs, including without limitation, engineering drawings or sketches. Such sketches will be considered Confidential Information proprietary to Supplier regardless of whether they are marked as confidential.

Customer represents and warrants to Supplier that Customer will design, fabricate and manufacture the products sold by Customer (of which Supplier's Product is a component) in a manner that does not infringe any patent, trademark, trade name, or other intellectual property right of any third party, or incorporate or use any trade secret of any such third party misappropriated by Customer.

**CREDIT INQUIRIES.** Customer authorizes Supplier to make inquiries and to receive information about Customer's credit experience from others, to enter this information in Customer's file, and to disclose such information concerning Customer to third parties. Customer acknowledges that Supplier may, on a regular basis, provide credit experience information regarding Customer's account to others seeking this information.

**POWER OF ATTORNEY.** Customer hereby irrevocably authorizes and empowers any attorney of any court of record to

appear for and confess judgement and therein against Customer, or any of them, for the amount for which Customer may be or become liable to Supplier under these Terms and Conditions as evidenced by an affidavit signed by a representative of Supplier setting forth the amount then due, plus 15% thereof, but no less than \$500.00, as an attorney's commission, with costs of suit, release of errors, and without right of appeal. If a copy hereof, verified by an affidavit, will have been filed in said proceeding, it will not be necessary to file the original as a warrant of attorney. Customer waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgement will be deemed to exhaust the power, whether or not any such exercise will be held by any court to be invalid, voidable, or void, but the power will continue undiminished and may be exercised from time to time as often as Supplier will elect, until all sums payable or that may become payable by Customer have been paid in full.

**NON-PAYMENT / ENFORCEMENT.** Any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation, or otherwise and whether pre-existing, present or future) arising out of or relating to: these terms and conditions; a good or service; oral or written statements, or advertisements or promotions relating to these terms and conditions or to a good or service; or the relationships which result from these terms and conditions (including relationships with third parties who are not signatories to this agreement) (each, a "Claim"), will be referred to and determined by binding arbitration (to the exclusion of the courts). By so agreeing, you waive any right you may have to commence or participate in any class action against us related to any Claim and, where applicable, you hereby agree to opt out of any class proceeding against us otherwise commenced. By so agreeing, you further expressly waive any right to a jury trial regarding disputes related to this agreement or to any Claim. Arbitration will occur in the city in which Supplier's head office is located by one arbitrator under the rules of the American Arbitration Association or Canadian Arbitration Association, as applicable; and judgment may be rendered upon the award made by a court of the city in which Supplier's head office is located, or a court of competent jurisdiction.

**CHOICE OF LAW AND BINDING ARBITRATION.** This agreement and all Terms and Conditions will be construed and governed by the laws of the State (if Supplier is located in the United States of America) or Province (if Supplier is located in Canada) in which Supplier's head office is located. The United Nations Convention on Contracts for the International Sale of Products does not apply.

**SEVERABILITY.** Invalidity of part of any of these Terms and Conditions will not invalidate the remainder and Customer and Supplier agree to amend these Terms and Conditions to substitute for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue and to otherwise give effect to the provision at issue as much as possible.

**HEADINGS.** The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference will be derived therefrom.

**LANGUAGE.** The following statement is translated in English to "At the express request of the parties, this agreement has been prepared in the English language" and is applicable only if either or both of Customer or Supplier is located in Canada. "A la demande des parties aux présentes, cette convention a été préparée dans la langue anglaise".