

## RESINOID ENGINEERING CORPORATION TERMS AND CONDITIONS OF SALE

**1. Acceptance of Contract.** This Sales Order (this "Agreement") relates to the sale of certain goods ("Goods") by Resinoid Engineering Corporation ("Seller"). This Agreement shall not constitute a binding contract between the parties until (a) Seller shall have received written acknowledgment from the purchaser ("Buyer") of its acceptance of this Agreement or (b) Seller shall have made shipment as provided herein and thereafter promptly given Buyer written notice of such shipment, whichever is earlier.

**2. Complete Agreement.** This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement between Buyer and Seller with respect to the subject matter hereof, superseding completely any oral or written communications, unless the terms thereof are expressly incorporated herein. No course of performance, course of dealing, or usage of trade shall be applicable unless expressly incorporated in this Agreement. The terms and conditions contained in this Agreement may not be added to, modified, superseded, or otherwise altered except by a written instrument signed by an authorized representative of Seller's Purchasing Department and/or management and delivered by Buyer. Where Seller's quotation, order acknowledgment, or other correspondence contains terms or conditions contrary to or in addition to Buyer's terms and conditions, such contrary or additional terms are hereby accepted (and without any requirement of further notice of such acceptance); and either acceptance by Buyer of the Goods and services or payment therefor shall be deemed to constitute a waiver by Buyer of any of the terms and conditions contained herein or an assent to any other conditions.

**3. Shipment.** All prices are F.O.B. Seller's factory, Hebron, Ohio. The method and route of shipment are at Buyer's discretion. All shipments are insured at Buyer's expense and made at Buyer's risk.

**4. Risk of Loss.** Unless otherwise expressly agreed, Buyer shall bear the risk of loss and damage to all Goods to be supplied hereunder upon identification of the Goods to this Agreement. Identification of the Goods to the contract shall occur as each shipment is placed in the hands of the carrier for shipment.

**5. Inspection; Acceptance and Rejection.** Buyer may inspect the Goods, or provide for inspection, at Seller's factory in Hebron, Ohio. Such inspection shall be so conducted as not to interfere unreasonably with Seller's operations; and consequent approval or rejection shall be made before shipment of the Goods. The foregoing notwithstanding, if, upon Buyer's receipt of the Goods, the same shall appear not to conform to the requirements of this Agreement, Buyer shall immediately notify Seller and afford Seller a reasonable opportunity to inspect the Goods. In no case are Goods to be returned without first obtaining Seller's permission. Only unused Goods that have been invoiced to Buyer within ninety (90) days will be considered for return. Returned Goods accepted for credit are subject to a minimum service charge of ten percent (10%) plus all transportation charges. Goods built to Buyer's specifications are not subject to return for credit under any circumstances. Goods must be securely packed to reach Seller without damage.

### **6. Limited Warranty.**

(a) *What is Covered by this Warranty.* Seller warrants, to the original Buyer only, that the Goods that are the subject of this Agreement (1) conform to the specifications, drawings, plans, instructions, samples, or other description furnished or adopted by Buyer, if any, in connection herewith, and (2) are free from defects in material or workmanship. The duration of this warranty is one (1)

year from the date of shipment. If, within this one (1)-year period, Buyer discovers a failure of the Goods to conform to specifications or a defect in material or workmanship, it must promptly (i) notify Seller in writing, setting forth in detail the nature of the nonconformity or defect ("*Buyer's Notice*"), and (ii) return any nonconforming or defective Goods to Seller at Seller's factory in Hebron, Ohio, at Buyer's expense. Seller shall in no event have any liability under or with respect to this warranty unless Buyer's Notice is received by Seller within thirteen (13) months from the date of delivery of the Goods. Within a reasonable time after its receipt of Buyer's Notice and any nonconforming or defective Goods, Seller will provide, at its option and in exchange for the return of the nonconforming or defective Goods, one of the following: (x) replacement goods or (y) a full refund of the purchase price. These remedies are Buyer's *exclusive* remedies for breach of warranty.

(b) *What Is Not Covered by this Warranty.* Seller does not warrant (1) any product, components, or parts not manufactured by Seller (but, to the extent that Seller may lawfully do so, Seller hereby transfers and assigns to Buyer any warranty given to Seller by the manufacturer of such parts), (2) defects caused by improper assembly, processing, installation, or storage of the Goods, (3) defects or damages caused by Buyer's design of the Goods, by misuse of misapplication of the Goods, or by use of the Goods for purposes other than those for which they were designed, (4) damage caused by disasters, such as fire, flood, wind, and lightning, (5) damages caused by unauthorized attachments or modifications, (6) damage during shipment, or (7) any other abuse or misuse by Buyer. Nothing in this paragraph 6(b) shall be deemed in any way to modify or to broaden the limited warranty set forth in paragraph 6(a).

(c) *Warranty of Title and Against Infringement.* In addition to the warranties set forth above, Seller warrants (1) that it has good title to the Goods, free of encumbrances, and (2) that the Goods will be delivered free from the rightful claim of any third person for infringement of any United States or foreign patent. Seller agrees to indemnify, to save harmless, and to defend Buyer from and against any damages or costs (including reasonable attorneys' fees) that may be rendered against Buyer on account of the alleged infringement of any United States or foreign patent by the Goods furnished hereunder, unless made in accordance with materials, designs, or specifications furnished or designated by Buyer, in which case the warranty set forth in paragraph 6(c)(2), above, shall be null and void and Buyer shall indemnify Seller from and against any judgment for damages and costs (including reasonable attorneys' fees) that may be rendered against Seller on account of any of the alleged infringement of any United States or foreign patent by the Goods furnished hereunder or by such materials, designs, or specifications; *provided, however*, that (i) prompt written notice be given to the party from whom indemnification is sought of the bringing of the suit and (ii) such party be given sole control of the defense and all related settlement negotiations and be rendered by the other party every reasonable assistance in settling or defending the suit. If a claim with respect to which Seller has an indemnity obligation arises, Buyer will allow Seller, at Seller's option and expense, to procure the right for Buyer to continue using the Goods, to replace or to modify the Goods, or to grant Buyer a full refund of the purchase price in exchange for the return of the Goods.

(d) *Limitation of Remedies.* The remedies described above are Buyer's sole and exclusive remedies. Under no circumstances shall Seller be liable for any cost, loss, expense, damages, special damages, incidental damages, or consequential damages arising, directly or indirectly, from Buyer's purchase, ownership, or use of the Goods, whether based upon breach of

warranty, breach of contract, negligence, strict tort liability, or any other legal theory. Such damages include, but are not limited to, loss of profits, loss of savings or revenue, loss of use of the Goods or any associated property, costs of capital, costs of any substitute equipment, facilities, or services, downtime, the claims of third persons (including lessees, customers, and invitees), and injury to property. This limitation does not apply to damages caused by breach of the warranties of title and against infringement, as set forth in paragraph 6(c), above, or to claims for personal injury. Some states do not allow the exclusion or limitation of incidental or consequential damages. In such states, the limits in this paragraph may not apply.

(e) *Disclaimer of Warranty.* THE WARRANTIES AND LIMITS OF LIABILITY DESCRIBED ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SHOULD THE DISCLAIMER AND EXCLUSION OF SUCH IMPLIED WARRANTIES BE PROHIBITED BY APPLICABLE LAW, SUCH IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE PERIOD OF NINETY (90) DAYS FROM THE DATE OF PURCHASE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS. IN SUCH STATES, THE ABOVE LIMITATION MAY NOT APPLY.

#### **7. Terms of Payment.**

(a) Seller shall issue a separate invoice for each shipment. Invoices shall state the Agreement number, item number, commodity code, shipping point, place of delivery, route, destination, whether the freight is prepaid or collect, and the terms of payment. Unless otherwise expressly agreed, Buyer shall make payment to Seller within thirty (30) days from the date of the invoice. Credit periods shall be computed from the date of the invoice. Except as otherwise expressly agreed, all sums payable by Buyer under this Agreement shall be paid without notice, demand, counterclaim, set-off, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction.

(b) Payment shall be made in lawful money of the United States of America by wire transfer to an account designated by Seller or in such other manner as Seller shall have notified Buyer. Should Buyer fail to pay Seller the full amount due Seller when the same is due, as herein provided, interest shall accrue thereon from the date such payment is due until the same is paid at the "Prime Rate" per annum, plus three percent (3%) (the "Default Rate"). "Prime Rate" means, for any calendar month, the per annum rate of interest identified as the "Prime Rate" in the first issue of the month of *The Wall Street Journal*, or, if no such rate is identified, an index or report selected by Seller in good faith as representative of the prime or base rate quoted by large United States money center commercial banks. The applicable Default Rate under this Agreement shall change simultaneously with each change in the Prime Rate; *provided, however*, that the Default Rate shall never exceed the maximum lawful rate permitted by applicable law. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of three hundred sixty-five (365) days.

**8. Taxes.** Buyer shall reimburse Seller for all federal, state, and local sales taxes, transportation taxes, and other taxes required to be imposed upon the Goods ordered hereunder or by reason of their sale or delivery.

**9. Security Interest.** To secure the balance of the purchase price (including any accrued interest, unreimbursed taxes, and other amounts due from Buyer to Seller hereunder) remaining unpaid after the delivery to Buyer of the Goods that are the subject of this Agreement, Buyer hereby grants to Seller a purchase-money

security interest in such Goods. This Agreement is intended by Buyer and Seller to constitute a security agreement with respect to such Goods for purposes of the Uniform Commercial Code. Buyer further authorizes Seller to file one or more financing statements describing such collateral and agrees, if requested by Seller, to pay the cost of filing such financing statements in all public offices wherever filing is deemed necessary by Seller.

**10. Financial Responsibility.** If, at any time, Seller, in its sole discretion, determines that the financial responsibility of Buyer has become impaired or unsatisfactory, Seller shall have, in addition to any other remedies to which Seller may be entitled under the Uniform Commercial Code or other applicable law, the right to demand that Buyer (a) make advance cash payment for its obligations under this Agreement, (b) post a letter of credit, or (c) provide other security satisfactory to Seller. If such payment or assurance is not received within five (5) days of Seller's written demand to Buyer, Seller may terminate this Agreement, effective upon written notice to Buyer.

#### **11. Tools and Dies; Seller's Intellectual Property Rights.**

(a) All drawings, designs, specifications, and other information and materials, including tooling, special dies, molds, and patterns, furnished or paid for by Buyer shall remain the property of Buyer and, as such, (1) shall be identified as the property of Buyer and shall be segregated from any similar items belonging to Seller or any third person, (2) shall be used by Seller only in filling orders from Buyer, (3) shall be available for inspection by Buyer or its representatives, following reasonable notice to Seller, during normal business hours, and (4) may, at Buyer's cost and expense (but with additional charges from Seller, where applicable), be removed by Buyer, during normal business hours, following reasonable notice to Seller and payment in full of all amounts then due and owing from Buyer to Seller. Seller shall be solely liable for loss of or damage to such items, reasonable wear and tear excepted, while the same are in Seller's custody.

(b) All tools, dies, fixtures, or other materials designed, furnished, or made by Seller for use in the manufacture of the Goods shall remain the property of Seller but shall be retained by Seller without charge to Buyer for use in connection with further orders of the same Goods by Buyer. Notwithstanding the foregoing, Seller reserves the right, without notice to Buyer, to scrap or otherwise to dispose of any such items in the event that Buyer fails to submit any further orders for the same Goods within two (2) years after shipment by Seller of the last such order from Buyer.

(c) All intellectual property of Seller, including, but not limited to, all drawings, patterns, tools, procedures, inventions, trade secrets, mask works, patents, patent applications, know-how, trademarks, copyrights, software applications, source codes, developments, and other confidential and proprietary information ("Intellectual Property") furnished by Seller to Buyer shall remain the property of Seller; and all Intellectual Property made, conceived, developed, or acquired by Seller incident to procuring and/or carrying out this Agreement will vest in and inure to Seller's sole benefit. In no event shall such Intellectual Property be deemed to be "work made for hire."

**12. Confidentiality.** Buyer shall keep the terms and provisions of this Agreement and all confidential and proprietary information of Seller, in whatever form, including, but not limited to, all Intellectual Property of Seller ("*Seller's Confidential Information*"), in strictest confidence and shall not, without the prior consent of Seller, disclose, permit the disclosure of, or use for other than the purpose of this Agreement, any of Seller's Confidential Information. Seller's Confidential Information may be used by Buyer only the purpose of installing, assembling, and using the

Goods. Buyer shall protect Seller's confidential and proprietary information using the same degree of care with which it protects its own confidential information, but in no event less than reasonable care. Buyer's obligation under this paragraph 12 shall survive the expiration or termination of this Agreement.

**13. Force Majeure.** Seller shall not be liable for delays in the manufacture or delivery of Goods and services, and Buyer shall not be liable to accept any part of such Goods and services, to the extent that such delays are due to causes beyond the reasonable control of the party (Buyer or Seller) affected thereby, such as acts of God, acts of civil or military authorities, governmental priorities, fires, strikes, lockouts, floods, epidemics, war, riot, or a contingency the nonoccurrence of which was a basic assumption on which this Agreement was made, provided that the party affected thereby promptly notifies the other party of such event and uses its best efforts to remedy the situation. Nothing herein shall excuse delays that are in whole or in part caused by negligent acts or omissions of Seller or its subcontractors. When any delays in delivery will occur, Seller shall immediately give notice thereof to Buyer. If Seller is a party to any labor agreement, the expiration of which might reasonably be anticipated to cause a delay in performance hereunder, Seller shall give Buyer as much advance written notice as is practicable of the date of expiration of such agreement and Seller's expectations with respect thereto. Seller shall also advise Buyer as promptly as practicable of any strike or other difference with employees that might reasonably be anticipated to cause a delay in performance hereunder and shall keep Buyer reasonably advised of all developments relating thereto.

**14. Default.** The following occurrences shall constitute "Events of Default" under this Agreement:

- (a) Buyer shall fail to make any payments to Seller when due under this Agreement; or
- (b) any representation of warranty of Buyer contained herein or in any document furnished to Seller in connection herewith shall be incorrect or misleading in any material respect when made; or
- (c) Buyer shall fail to observe or to perform any other covenant, agreement, or warranty made by Buyer hereunder and such failure shall continue for ten (10) days after notice thereof to Buyer;
- (d) Buyer shall default under any other agreement between Seller and Buyer; or
- (e) Buyer shall make an assignment for the benefit of creditors or shall file any petition or action under any bankruptcy, reorganization, or insolvency law, or any other law or laws for the relief of, or relating to, debtors; or
- (f) any involuntary petition shall be filed under any bankruptcy statute against Buyer or any receiver, trustee, custodian, or similar official shall be appointed to take possession of the properties of Buyer; or
- (g) Seller, in good faith, believes that Buyer's financial condition has become such as to endanger completion of performance by Buyer, or Seller, in good faith, otherwise believes itself insecure.

If any Event of Default shall occur, Seller, at its option, may terminate this Agreement by written notice to Buyer. In such event Seller shall, nevertheless, have the right to recover from Buyer any and all amounts that, under the terms of this Agreement, may be then due or that may have accrued to the date of such termination, plus interest on that amount, as a late charge, at the Default Rate. If, after notice of

termination of this Agreement as provided in this paragraph, it is determined that Buyer was not in default under the provisions of this paragraph 14, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 15 of this Agreement.

**15. Termination for Convenience.** Even though an Event of Default shall not have occurred, Seller may terminate this Agreement, in whole or in part, and at any time or for any reason, at Seller's convenience, upon written notice to Buyer. Upon giving such notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning disposition of completed and partially completed Goods, work in progress, and materials acquired pursuant to this Agreement. In event of such termination, Seller shall be paid an amount, to be mutually agreed upon by the parties, that shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the Goods for which this Agreement is terminated plus a reasonable profit based upon such costs. In no event shall the said payment exceed the price specified herein for such Goods. Seller shall advise Buyer in writing, within ten (10) days after Seller's receipt of the notice of termination, of Seller's claim, if any, for termination costs. No such termination shall relieve Buyer of any of its obligations for any Goods accepted or services rendered hereunder prior to such termination. Nothing contained in this paragraph 16 shall in any way limit or affect Seller's right to terminate this Agreement for Buyer's breach pursuant to paragraph 14.

**16. Assignment.** Buyer may not assign this Agreement or any interest herein or any right to performance due or to become due hereunder, whether by assignment, subcontract, merger, reorganization, operation of law (all of which shall be deemed to be an "assignment"), or otherwise, without the prior written consent of Seller. Any such actual or attempted assignment without Seller's written consent shall constitute a breach by Buyer and shall entitle Seller to terminate this Agreement without further liability hereunder. Seller may assert any counterclaims or set-off that Seller may have against Buyer against any assignee, whether or not such counterclaim or set-off arose under or with respect to this Agreement.

**17. Notices.** Any notice shall be sufficiently given when duly mailed by certified U.S. mail, postage prepaid, return receipt requested, addressed to Seller or to Buyer at their respective addresses appearing hereon or to such other address for either party as that party may by such manner of notice designate.

**18. Governing Law.** Notwithstanding where this Agreement may be executed by either Buyer or Seller, the parties agree that this Agreement shall be construed and enforced according to and governed by the laws of the State of Ohio, without regard to conflicts-of-laws principles and specifically excluding the provisions of the United Nations Convention on the International Sale of Goods. Any action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement may be brought against either party only in the Court of Common Pleas of Licking County, Ohio, or in the United States District Court for the Southern District of Ohio, sitting in Columbus, Ohio; and each party consents to the jurisdiction of such courts (and of the appropriate appellate courts), waives any objection to venue laid therein, and agrees that process may be served on it anywhere in the world. Buyer agrees that, if it is held to be in violation, breach, or nonperformance of any of the terms of this Agreement, it will pay all costs of such action or suit, including reasonable attorneys' fees actually incurred by Seller.

**19. Time Limit for Bringing Suit.** Any action for breach of contract or breach of warranty must be commenced within fifteen (15) months following delivery of the Goods.

**20. Remedies.** No right or remedy herein conferred upon or reserved to Seller is exclusive of any other right or remedy herein or by law or in equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity and may be enforced concurrently therewith from time to time. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach, or of such provision.

**21. Severability.** If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**22. Captions.** The captions at the beginnings of each paragraph of this Agreement are merely guides or labels for the convenience of the parties to assist in identifying those articles and sections, are not intended to be a part of the context of this Agreement, and shall not be deemed to modify, to explain, to enlarge, or to restrict any of the provisions of this Agreement.

**23. Counterparts; Facsimile Signatures.** To the extent that execution is required, this Agreement may be executed in multiple counterparts, all of which are identical; and all such instruments together shall constitute one and the same Agreement. Facsimile signatures by the parties (including those transmitted via "PDF" format) shall be binding to the same extent as original signatures.