

**BAY PLASTICS MACHINERY CORP.  
TERMS OF SALE**

All sales by Bay Plastics Machinery Co., LLC are subject to the following terms and conditions. The equipment, parts or other products being sold by Bay Plastics Machinery Co., LLC are referred to below as the "goods," Bay Plastics Machinery Co., LLC are referred to as "Seller," and the customer identified on the reverse side is referred to as "Buyer."

1. **Agreement.** If Buyer has not otherwise agreed to these terms of sale, Buyer's acceptance of delivery of, or payment for, the goods will constitute Buyer's agreement to these terms.
2. **Payment Terms.** Buyer agrees to pay the purchase price specified on the reverse side. Unless otherwise specified on the reverse side, payment of the purchase price in full is due 30 days after shipment, without discount. If at any time Seller determines that Buyer's financial condition or credit rating does not justify a sale on credit, Seller may require advance payment or may ship C.O.D. Any payment not made when due shall accrue a late charge of 1-1/2% per month. Payment must be made at Seller's office in Bay City, Michigan.
3. **Taxes and Duties.** Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes or custom duties. Buyer shall reimburse Seller for any such taxes or duties paid by Seller.
4. **Delivery and Risk of Loss.** Unless otherwise specified on the reverse side, delivery will be F.O.B. Seller's plant or other point of origin, but risk of loss of the goods shall pass to Buyer upon identification of the goods to this contract. Shipping dates are estimates only, and time is not of the essence. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right to determine the method of shipment and routing of the goods, unless otherwise specified on the reverse side.
5. **Delay.** If Seller is unable to finish and ship the goods to Buyer on time because of anything Seller cannot reasonably control (such as casualty, labor trouble, accidents or unavailability of supplies or transportation), the estimated delivery time will be extended accordingly, and Seller will not be liable to Buyer for any damages caused by the delay. If goods are not shipped or installed at the scheduled date at Buyer's request, or because Buyer has not provided a site suitable for installation, any payment due on a date determined with reference to the date on which Seller notifies Buyer that the goods are ready for shipment. Buyer shall pay any warehousing, insurance, shipping charges, or other costs, expenses and damages resulting from such a delay.
6. **Changes.** Seller shall have the right to make design or engineering changes in its equipment, parts, processes and methods of manufacture, but shall make no changes in operational or dimensional specifications submitted by Buyer without Buyer's prior approval.
7. **Warranty; Remedies.** Seller warrants that the goods will be free from defects in material and workmanship under the normal use and service for which the goods are recommended by Seller, and that the goods will perform at or above any ratings stated in written quotations covering the goods or detailed in written engineering specifications expressly incorporated in this contract, provided that the goods are applied, installed, operated and maintained in the manner recommended by Seller or as specified in Seller's quotation or specifications. These warranties are limited to the period specified on the reverse side, or if no period is specified for a period of one year, from the date of shipment. Seller does not warrant parts which are typically consumed or replaced after normal usage, such as rotors, feedrolls, bed knives, etc. Purchaser must notify Bay Plastics Machinery Co., LLC in writing of any warranty claim and provide a detailed statement of the basis for the claimed nonconformity. Buyer's **SOLE AND EXCLUSIVE REMEDY** for a breach of warranty shall be set forth in this paragraph 7.

If the goods do not conform to Seller's warranties, Seller will, at Seller's option:

- A. Inspect the goods and make alterations or adjustments to cause the goods to conform to Seller's warranties (Buyer shall pay Seller's customary charges for such inspections and corrections if failure to conform is due to Buyer's misapplication, improper installation, maintenance practices or improper operation.
- B. Replace the goods with goods which conform to Seller's warranties; or
- C. Refund the purchase price of the nonconforming goods to the Buyer.

If Seller elects to replace nonconforming goods or refund the purchase price, Buyer shall return all nonconforming goods at Seller's plant at Buyer's expense, well crated, in proper operating condition, and including all parts.

8. **Limitations. EXCEPT AS STATED IN PARTICULAR 7, SELLER MAKES NO WARRANTIES AS TO THE GOODS. IN PARTICULAR, SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY, PROPER APPLICATION AND USE OF THE GOODS.** Seller shall have no tort liability to Buyer with respect to any of the goods and shall not be liable for consequential or incidental damages arising from any product defect, delay, nondelivery, or other breach. Buyer shall have no right of rejection of acceptance of the goods.

9. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Seller retains a security interest in the goods to secure payment of the price and all other indebtedness now and in the future owing by Buyer to Seller. At Seller's request, Buyer will sign and deliver to Seller a financing statement evidencing this security interest.

10. **Permits and Compliance.** Buyer is solely responsible for obtaining any permits, inspections or licenses required for installation or operation of the goods. Seller does not warrant or represent that the goods will conform to any federal, state or local laws, ordinances, regulations, codes or standards. OSHA "standards" are subject to variable interpretation by local inspectors; Seller will modify its goods to conform to requirements of Buyer's OSHA inspectors, if the required modification is clearly defined, at Buyer's request and expense, at prices in effect at the time of the modification. Buyer agrees to comply with export administration and control laws and regulations of the U.S. government in any export, resale or other disposition of the goods. Seller certifies that its products were produced in compliance with all requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act as amended and of regulations issued under Section 14 thereof.

11. **Safety Features.** Buyer shall install, operate and maintain the goods properly and according to Seller's instructions and will not remove or alter any safety devices, warnings or operating instructions placed on the goods by Seller.

12. **Resale.** On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent as Buyer's rights and remedies are limited under these terms of sale.

13. **Other Responsibilities.** Buyer assumes responsibility for unloading of all goods shipped to the job site by commercial carrier. Installation of the goods is the Buyer's responsibility unless otherwise clearly stated in the quotation.

14. **Cancellation.** Buyer has no right to cancel its agreement to purchase the goods from Seller. If, however, Seller agrees in writing to permit cancellation, Buyer will immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts determined by Seller) for (a) the realizable value to Seller of any standard components purchased or ordered by Seller before cancellation, (b) the realizable scrap value to Seller of the remaining material and tooling purchased, fabricated or ordered by Seller before cancellation, and (c) and direct labor costs saved by Seller by reason of the cancellation.

15. **Indemnity.** Buyer will indemnify and hold harmless Seller from and against all damages, losses, claims and expenses, including attorney fees, incurred by Seller as a result of (a) any breach by Buyer of any of its obligations under these terms of sale, or (b) any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods to Buyer's specifications.

16. **Seller's Rights.** Seller has all rights and remedies given to sellers by applicable law, and Seller's rights and remedies are cumulative and may be exercised from time to time. No waiver by Seller of any right on one occasion will be a waiver of any future exercise of that right. Seller retains all the rights and remedies afforded to Seller by the Uniform Commercial Code, in addition to any other rights and remedies provided by this Agreement.

17. **No Right of Set-Off.** If Buyer or any company affiliated with Buyer has any present or future claim against Seller that did not arise out of this contract, Buyer may not set-off that claim against any amounts due to Seller under this contract.

18. **No Liability to Third Persons.** Seller will not be liable to Buyer for any claim whatsoever by any third person arising out of the performance of this contract, arising out of the shipment of the goods, or arising out of the use, by Buyer or third persons, of the goods. "Third persons" include, but are not limited to, Seller's employees, Buyer's employees, and all other third persons. Seller has no obligation to maintain any public liability, property damage, or employees liability and compensation insurance for any work under this Agreement that must be performed by Seller's employees on Buyer's premises or on the premises of one of Buyer's customers.

19. **Time for Bringing Action.** Any action by Buyer against Seller for breach of this Agreement or for any other claim arising out of or relating to the goods or their design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

20. **Applicable Law.** This agreement between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law. Any action arising out of or relating to this agreement may be brought only in federal or state court in Bay City, Michigan, having jurisdiction of the subject matter. Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenience forum.

21. **Complete Agreement; Amendment.** The terms on the reverse side and these terms of sale constitute the final, complete and entire agreement between Buyer and Seller and supersede all prior written or oral representations or agreements. Any offer by Seller to sell or any acceptance by Seller of Buyer's purchase order or other form is expressly conditioned on Buyer's acceptance of these terms and conditions. If Buyer's terms and conditions differ in any way from these terms and conditions, this statement will be effective as notice of objection and a rejection of those terms. No modification or waiver of any of these terms or conditions, in whole or in part, will be binding except in writing signed by Seller. It is expressly agreed that there are no promises, agreements or understanding other than as expressed in this agreement, and that no agent or sales representative has any authority to obligate Seller to terms or conditions not expressed in these terms.