

MERCURY PLASTICS LLC
TERMS AND CONDITIONS OF SALE
Updated June 2024

1. APPLICABILITY OF THESE TERMS. These Terms and Conditions of Sale (“**Terms**”) are entered into between the purchaser identified on the face of Seller’s written acknowledgement (“**Purchaser**”) confirming acceptance of an order and Mercury Plastics LLC (“**Seller**”) and exclusively governs the offer to sell and/or subsequent sale of Seller’s good and services (collectively, “**Products**”). Seller’s written order acknowledgement confirming acceptance of an order and these Terms shall constitute the sole agreement (“**Agreement**”) between the parties regarding the Products. Any pre-printed terms and conditions that appear on any purchase order or other form document or communications from Purchaser, whether they attempt to supplement, broaden, conflict, or are otherwise inconsistent with these Terms shall be deemed a material alteration and are hereby rejected and of no force or effect. Seller’s acceptance of any order is made expressly conditional on acceptance of these Terms. Purchaser acknowledges that the prices quoted are predicated on the enforceability of these Terms and that the price would be substantially higher if these Terms did not apply.

2. LIMITED WARRANTY; DISCLAIMER OF WARRANTY. For a period of sixty (60) days from the date of delivery, Seller warrants that the Products delivered to Purchaser will be of the kind and quality quoted and will be free of material defects in material and workmanship. Should any failure to conform to this warranty appear within sixty (60) days after delivery of such Products and upon Purchaser’s notification in writing of that fact to Seller within such sixty (60) day period, Seller shall have an opportunity to inspect and thereafter will correct such nonconformity, including nonconformance with specifications, at Seller’s option by issuing a credit to Purchaser for the price paid for the non-conforming Product or repairing or replacing such nonconforming Product. Seller shall have no duty to repair, replace, or issue a credit for any nonconforming product to the extent caused by Purchaser’s misuse, abuse, modification or repair that was not pre-approved in writing by Seller, or operation at abnormal conditions or in excess of published limits. None of Seller’s representatives are authorized to make any warranty, guarantee, or representation not strictly in accordance with these Terms.

THE FOREGOING REMEDIES OF REPAIR, REPLACEMENT, OR ISSUANCE OF A CREDIT ARE PURCHASER’S EXCLUSIVE REMEDIES AND SELLER’S SOLE LIABILITY FOR A BREACH OF THE WARRANTY WITH RESPECT TO PRODUCTS IN THIS SECTION 2 AND THE DELIVERY OF ANY NON-CONFORMING PRODUCTS AND ARE MADE IN LIEU OF ALL OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 2, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES IMPLIED BY VIRTUE OF COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, TRADE PRACTICE, OR OTHERWISE.

3. LIMITATIONS ON ACTIONS AND LIMITATIONS ON LIABILITY. Purchaser agrees that all of Purchaser’s claims arising under these Terms or a Transaction will only be valid for one (1) year from the date of purchase. SELLER WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM DELAY IN DELIVERY OF THE PRODUCTS OR FOR ANY FAILURE TO PERFORM WHICH IS DUE TO CIRCUMSTANCES BEYOND SELLER’S CONTROL OR THE CONTROL OF SELLER’S SUPPLIERS, INCLUDING WITHOUT LIMITATION FAILURE OR DELAY IN TRANSPORTATION, ACTS OF ANY GOVERNMENT OR ANY AGENCY OR SUBDIVISION THEREOF, JUDICIAL ACTION, LABOR DISPUTES, FIRE, ACCIDENT, ACTS OF NATURE, EPIDEMIC OR PANDEMIC, SHORTAGE OF LABOR, FUEL OR RAW MATERIAL, OR MACHINERY OR TECHNICAL FAILURE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER’S MAXIMUM LIABILITY, IF ANY, FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER’S BREACH OF THESE TERMS, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT WITH RESPECT TO THE PRODUCTS, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE AMOUNT PAID TO SELLER BY PURCHASER FOR THE PRODUCTS. IN NO EVENT WILL SELLER BE LIABLE TO PURCHASER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES, LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, LOSS OF PROFITS OR ANY OTHER SIMILAR TYPE OF NON-DIRECT DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE. PURCHASER’S RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IN THIS PARAGRAPH 3 IS PURCHASER’S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT THE REMEDY IN PARAGRAPH 2 FAILS OF ITS ESSENTIAL PURPOSE.

4. PRICE QUOTES. Prices quoted are for prompt acceptance by Purchaser and if there has been no acceptance by Purchaser within 30 days after the date of any quotation, then the prices quoted are subject to change without notice. Prices quoted and/or accepted by Purchaser are subject to increase sufficiently to compensate Seller for any tax, excise, duty, tariff, or levy hereafter enacted and/or imposed by any governmental authority or agent or for any material increases in Seller’s expenses, costs or charges.

5. TOLERANCES. Unless otherwise specified by Seller and accepted in writing by Purchaser’s officer, Seller will maintain the following tolerances with respect to cross sectional dimensions 1/64” to 1/8” = +/-0.008”; 1/8” to 1/4” = +/-1/64”; 1/4” to 1/2” = +/-0.025; 1/2” to 1” = +/-1/32”; 1” to 1½” = +/-3/64”. With respect to Products having a cross sectional dimension of 1½” or more, Seller will maintain a tolerance of +/-3%. Tolerances maintained by Seller with respect to length dimensions shall be as following: 2” or less +/-0.4”; 2” to 6” = +/-0.06; 6” to 12” = +/-0.09”; and 12” and over = +/-1.5”.

6. SAMPLES. Upon completion of the development of dies or molds, samples will be submitted to Purchaser for approval. Products made in compliance with approved samples are and shall be considered to be in compliance with specifications and acceptable to Purchaser.

7. TOOLING. Seller shall own all tooling related to the Products. Payment of tooling development charges by Purchaser does not give Purchaser ownership of tooling. Seller will keep tooling in working condition for a period of one year beyond the date of the last shipment of Products produced by such tooling. Purchaser may be able to obtain ownership of tooling if Seller is willing to sell Seller’s interest. If Seller is interested, a quoted price will be provided upon request. Changes or maintenance on tooling is at Purchaser’s expense if it is beyond normal maintenance costs.

8. CHANGES AND SPECIFICATION. Purchaser shall reimburse Seller for any additional costs incurred by Seller as a result of any change in drawings or specifications furnished by Purchaser. Purchaser shall be charged for the cost of reworking tooling where changes have been made in the original specifications after tooling has been placed in production. Seller shall be obligated to comply with changes in drawings and specifications only after Purchaser has obtained Seller’s consent thereto.

9. PRICES, TERMS, SHIPMENT AND DELIVERY SCHEDULES. Unless Seller otherwise agrees in writing, or as may otherwise be provided on the face of Seller’s invoice, Purchaser will pay the prices for the Products in effect at the time of shipment and all prices are due to be paid by Purchaser to Seller net thirty (30) days from the date of delivery or completion of services by Seller. No cash discount is allowed unless Seller otherwise specifies to Purchaser in writing, and Purchaser may not setoff or assert a counterclaim unless Seller agrees in writing. Seller reserves the right to require progress payments from Purchaser in the case of any Products not shipped from Seller’s stock or in the case of services to be performed over a period of more than five (5) days, in which case the last payment thereon shall be net thirty (30) days from the date of delivery or completion of services. Seller reserves the right to quote special payment terms for extended deliveries.

Unless Seller otherwise agrees in writing, shipments of Products will be by a carrier and by the route selected by Seller; the carrier will act as Purchaser’s agent; delivery by Seller of the Products to such carrier will constitute delivery to Purchaser; and all shipments under Purchaser’s order will be made Ex-Works Seller’s shipping point in Middlefield, Ohio (Incoterms® 2020), at which time title and all risk of loss will pass to Purchaser, provided that Seller will retain, and Purchaser hereby grants to Seller, a security interest in any products Seller ships to Purchaser until the full purchase price is paid by Purchaser. Purchaser will pay all freight charges and assume the risks of transportation, including delay, damage and loss, unless Seller otherwise agrees in writing. All delivery dates are Seller’s best estimate of when Seller will ship the Products.

10. VARIATIONS IN QUANTITIES, SHORTAGES AND ALLOCATION. Seller may make deliveries from Purchaser’s order in quantities not to exceed ten percent (10%), plus or minus, of each Product involved and Seller will adjust the billing accordingly. Purchaser must make all claims for shortages within fifteen (15) days of Purchaser’s receipt of shipment. Seller will not be responsible for any claim for shortage not reported within that period. In the event of a shortage or other contingency due to circumstances beyond Seller’s control or the control of Seller’s suppliers, Seller may allocate production and deliveries among Seller’s customers in such manner as Seller determines in Seller’s sole discretion.

11. PATENT OR TRADEMARK INFRINGEMENT. If the Products sold to Purchaser are manufactured according to Purchaser’s specifications, Purchaser shall defend, hold harmless and indemnify Seller, including its parent and affiliated companies, and their respective officers, directors, employees, agents, successors, assigns, and representatives (collectively, the “**Seller Indemnified Parties**”), against any claims, lawsuits, causes of action, demands and other proceedings and shall pay all losses, liabilities, damages, orders, amounts in settlement, expenses, costs and attorneys’ fees incurred in relation to any claim arising out of Purchaser’s specifications or design,

including any claims for patent, trademark or other intellectual property infringement. Should Purchaser choose to sell the Products to persons or entities outside of the United States and those Products infringe or allegedly infringe the rights of a third party located outside of the United States, Purchaser will defend, hold harmless and indemnify the Seller Indemnified Parties against any claims, liability, costs or attorneys' fees incurred in relation to any claim of patent, trademark or other intellectual property infringement arising out of such foreign sale.

12. **CONFIDENTIALITY.** Purchaser agrees neither to use Seller's Confidential Information in any manner, which would result in a disclosure, nor to disclose any of Seller's Confidential Information to any other person (except to its employees with a demonstrable need to know) and who agree to maintain confidentiality over all such Confidential Information. The duty of confidentiality shall continue for the duration of this Agreement and for so long as it meets the definition of Confidential Information hereunder. All Seller confidential information shall be immediately returned to Seller upon request or upon expiration or termination of this Agreement. "**Seller's Confidential Information**" means confidential or proprietary information of any kind relating to a Seller's business, facilities, financial condition, products, technology, know-how, customer or supplier names or lists, including without limitation, specifications, drawings, sketches, models, samples, tools, product developments, equipment, machines, manufacturers, inventions (whether or not patentable), discoveries, ideas, designs, design trends, patent applications, compositions, chemical formulations, computations, processes, methods, research, sales information, business practices, business and manufacturing operations, current and future business and marketing plans, regardless of the form of storage or retrieval of such confidential or proprietary information. No exclusive license for use of any proprietary technologies is either granted or implied in this Agreement.

13. **CREDIT APPROVAL AND PAST DUE ACCOUNTS.** Purchaser will furnish to Seller all financial and related information reasonably requested by Seller from time to time for the purpose of establishing or continuing Purchaser's credit limit. Shipment and delivery of Products will at all times be subject to the approval of Seller's credit department and Seller may at any time decline to make any shipment or delivery except upon receipt of payment, Purchaser providing security acceptable to Seller or upon other terms and conditions satisfactory to Seller. Purchaser agrees that Seller may file a uniform commercial code financing statement with respect to the Products Seller sells to Purchaser in order to protect Seller's interest in such Products until Purchaser makes payment in full. If Purchaser fails to make payment when due, Seller will be entitled to take any one or more for the following actions, without liability to Purchaser: (i) assess and collect from Purchaser interest on all past-due accounts at the rate of 1.5% per month, not to exceed the maximum rate of interest allowed by law; and (ii) suspend its performance hereunder, including the delivery of any Products; until such time as all overdue amounts are paid in full.

14. **CANCELLATION AND RETURNED GOODS.** Purchaser may cancel orders only with Seller's written approval. Purchaser will need Seller's approval, and Seller's issuance of a return authorization, before returning any Products to Seller. If Purchaser cancels an order, in whole or in part, that incorporates special material, parts, components, or other items that Seller does not typically buy, sell, or use in connection with Seller's standard product offerings (i.e., a nonstandard special order), Purchaser will pay Seller: (a) the previously agreed upon price of all completed items; (b) that portion of the agreed upon price that is equal to the greater of Seller's actual cost or the percentage of completion of Products in process, effective on the date Seller receives Purchaser's notice of cancellation; (c) the cost of any materials and supplies that Seller has purchased in order to perform and which Seller cannot use for other or similar purposes or readily resell at Seller's full cost; and (d) charges for cancellation of tool orders or tool removal charges.

15. **DEFAULT.** If Seller defaults on a material obligation, Purchaser will provide written notice to Seller specifying Seller's default and Seller shall have thirty (30) days to remedy such default. If such default is not excusable under any provision of these Terms, and Seller has not remedied such default within thirty (30) days after Seller's receipt of such notice of default, Purchaser may terminate the uncompleted portion of the order, in whole or in part, by providing fifteen (15) days' prior written notice of termination to Seller, during which Seller shall have the right to cure such default. If Seller delivers nonconforming products to Purchaser, Purchaser will have the rights set forth in Paragraph 2 of these Terms but such delivery will not be deemed a default for which Seller's performance may be terminated.

16. **ASSIGNMENT.** Purchaser cannot assign any order or any claim against Seller arising directly or indirectly out of or in connection with an order without Seller's prior written consent. Seller may assign, without consent, any Transaction and these Terms to any subsidiary or affiliate of Seller or of Masco Corporation or to an entity or person that acquires all or substantially all of the business to which the order and these Terms relate.

17. **PATENTS, INVENTIONS, TECHNICAL DATA AND INDEMNIFICATION.** Purchaser does not and will not acquire ownership of or any other rights in Seller's patents, inventions, technical data and/or other intellectual property (such as brands, trade names, and copyrights) under any quotation or order, regardless of when such patents, inventions, technical data and/or other intellectual property may be or have been issued, conceived, generated, or produced. Seller reserves all of Seller's ownership rights in Seller's patents, inventions, improvements, technical data, and/or other intellectual property (collectively, "**Intellectual Property**") and Purchaser shall not reproduce or use Seller's Intellectual Property for any purpose whatsoever without Seller's prior written permission. Seller may provide technical assistance and information to Purchaser in connection with the sale of Seller's Products but such technical assistance and information are furnished for Purchaser's accommodation and Purchaser is solely responsible for Purchaser's business, including the application of such information, using Purchaser's own technical expertise and know-how. Purchaser shall indemnify, defend, and hold harmless the Seller Indemnified Parties from and against all liabilities, losses, claims, costs, and expenses (including reasonable attorneys' fees) related to any claim, investigation, litigation, or proceeding (whether or not Seller is a party) that arises or is alleged to arise from: (a) Purchaser's acts or omissions under these Terms or in any way with respect to Seller's Products; (b) any breach of these Terms by Purchaser; (c) damages caused by Purchaser's products which incorporate the Products as a component part, or (d) Purchaser's violation of applicable law in connection with the use of the Products.

18. **NONCONFORMING FURNISHED PARTS AND/OR MATERIALS.** Seller will not be responsible, and all risk of loss, damage or destruction or deterioration will pass to Purchaser, for any parts and/or materials that Purchaser furnishes to Seller that do not conform to specifications, that have been damaged or for any other reason are unsuitable for further processing. Purchaser will indemnify, defend and hold the Seller Indemnified Parties harmless from any claim, such as damage to Seller's facilities or equipment, arising from such parts or materials. Seller will be entitled to charge Purchaser for storage of such parts and/or materials if Purchaser has not removed them from Seller's premises within ten (10) days after Seller gives such notice to Purchaser.

19. **REMEDIES.** Seller's rights and remedies will be cumulative and additional to all other remedies provided by law or equity. Seller will be entitled to recover costs and attorneys' fees in the enforcement or defense of any rights under these Terms or with respect to any order or sale of Products hereunder.

20. **PROGRAMS.** All allowances, rebates, incentives and/or other amounts that Seller offers to Purchaser from time to time (collectively "**Programs**") are earned and payable only if Purchaser's accounts (including those of Purchaser's subsidiaries and affiliates) are current with Seller, Masco Corporation and Masco Corporation's and Seller's respective subsidiaries and affiliates. In addition, Programs are not earned or payable if the ratings issued by any agency, such as S&P, Moody's or Fitch, relating to Purchaser's company or Purchaser's parent, subsidiaries, or affiliates are lower than investment grade quality. Any earned payment may be withheld or be used to satisfy any of the accounts or other obligations to Seller, Masco Corporation and/or Seller's and Masco Corporation's respective subsidiaries and affiliates.

21. **DISPUTES, GOVERNING LAW AND FORUM.** Any dispute or claim arising out of this Agreement, or the Products provided hereunder, shall be decided by binding arbitration. Purchaser and Seller hereby agree, to the fullest extent permitted by law, to waive any right to adjudication by jury of any claim or cause asserted against the other and arising hereunder. If the parties cannot agree on an arbitrator, the Superior Court in Geauga County, Ohio shall appoint the arbitrator. Filing a judicial action for recording a notice of pending action, order of attachment, receivership, injunction or other provisional remedies, shall not waive these arbitration rights nor is recourse to such provisional relief precluded by the availability of arbitration hereunder. The parties shall split the arbitrator's fees. The prevailing party is entitled to recover all reasonable costs incurred pertaining to such proceeding, including without limitation reasonable costs and fees of attorneys or other professionals ("**Expenses**"), except that and such Expenses awarded must bear a reasonable relationship to the prevailing party's actual recovery.

These Terms and each order of sale of Products hereunder will be construed and interpreted, and the rights of the parties determined, in accordance with the laws of the State of Ohio without regard to any conflict of laws provisions that might result in the application of any laws except those of the State of Ohio. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms or any order or sale of Products hereunder. Purchaser irrevocably submits to the jurisdiction of, the appropriate state or federal court of Geauga County, Ohio for any claim, dispute, controversy, matter of interpretation or other proceeding arising out of or in connection with the Products, an order, or these Terms and irrevocably waives any claim that such courts lack jurisdiction or that venue in such courts is improper or inconvenient.

22. **ENTIRE AGREEMENT.** These Terms contain Seller's and Purchaser's entire agreement relating to each order and sale of Products. These Terms may not be waived, changed, modified, extended, or discharged except by an agreement in writing that is signed by an authorized representative of the party against whom enforcement of any such waiver, change, modification, extension, or discharge is sought.