

## **TERMS AND CONDITIONS**

1. **ACKNOWLEDGMENT & CONTRADICTORY TERMS-** THIS ACKNOWLEDGMENT IS NOT AN ACCEPTANCE OF THE PRIOR PURCHASE ORDER. All orders submitted by the buyer provided on the purchase order (hereinafter referred to as "Buyer") are subject to approval by an officer or other authorized official of Astro Plastic Containers Inc. (hereinafter referred to as "Seller") at its offices in Bedford Park, Illinois. Orders submitted on Buyer's own purchase order forms, which forms may contain statements, clauses, or conditions modifying, adding to, repugnant to, or inconsistent with the terms and provisions of the Seller herein contained are hereby rejected. Such orders will only be accepted by the Seller upon the condition and with the express understanding that notwithstanding any such statements, clauses, or conditions contained in any order forms of the Buyer are void and have no effect and that the obligations and liabilities of the Seller and Buyer shall be determined solely by the terms and conditions of sale contained in this Order Acknowledgment.

2. **TERMS OF PAYMENT-** Unless otherwise specifically agreed to by Seller in writing, the terms of sale shall be net thirty (30) days based on the date of invoice. Buyer agrees to make prompt payment in accordance with terms hereof. Seller reserves the right to modify, change or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved.

3. **TAXES-**Prices on the products ordered are exclusive of any tax, duty, custom or other fee of any nature imposed upon the products, their sale, transportation, delivery, use or consumption ("Taxes"), including without limitation, Federal, State or Municipal Taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Such Taxes are not included in the price quoted by Seller and will be added to the invoice as a separate charge and paid by Buyer. If Seller is required to prepay any Taxes, Buyer will reimburse Seller.

4. **PACKAGING-**Seller reserves the right to select the manner in which the product is packaged. Special requirements from the Buyer for packing will be subject to extra charges to be paid by Buyer unless otherwise agreed to by Seller in writing.

5. **TRANSPORTATION-**All shipments are FOB Seller's plant in Bedford Park, Illinois. If Buyer prefers alternate transportation, expedited delivery or specialized service for shipments complete instructions must be given. In the absence of specific directions before date of shipment, products will be shipped by the method and by the carrier or delivered to a forwarding agent selected by Seller. Seller assumes no liability beyond delivery to the carrier or forwarding agent of the product in good order, and is not liable for loss damage or delay occurring thereafter. All claims for breakage and damage should be made to the carrier. Seller will cooperate with Buyer in securing satisfactory adjustment of such claims.

6. **DELAYS-** Seller shall not be liable for delays in the performance of any purchase order or default in delivery arising out of causes beyond the control and without the fault or negligence of Seller, including, without limitation, shortages or delays of labor, fuel, power, materials or supplies, inability to secure permits, and Buyer's delays in approving or providing specifications. Seller will not be liable for any delay in the performance hereof or for any damages suffered by the Buyer by reason of such delay if caused or arising directly or indirectly from fires, floods, earthquakes, substantial damage to its plant, accidents, riots, acts of God, open hostilities, declarations of national emergencies, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, inability to secure permits, Buyer's delays in approving or providing specifications or other causes (whether or not similar in nature to any of those hereinabove specified) beyond its control.

7. **CANCELLATION AND ALTERATION-**Orders accepted by Seller may be withdrawn, and deliveries may not be deferred by Buyer, except with Seller's prior written consent and then only upon such terms as shall be

acceptable to Seller.

8. **PRODUCT SELECTION** – Buyer shall provide Seller with the selected bottle, desired color and image for imprinting. Seller shall provide Buyer with a prototype of the final product. Seller shall manufacture final products based on the approved of prototype.

9. **INSPECTION AND ACCEPTANCE**-The products covered hereby shall be deemed finally inspected and accepted within ten (10) days after receipt thereof unless notice of claim is given in writing to the Seller within that period.

10. **WARRANTY- EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED WITH RESPECT TO ANY PRODUCTS, PARTS OR SERVICES PROVIDED BY SELLER INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE.**

A. The warranties provided for in subparagraph B of this section are subject to the following:

(1) Before purchasing product, Buyer shall determine the suitability of the product for its intended use, and Buyer assumes all risk and liability therefore.

(2) In order to assert a warranty claim Buyer must (i) provide immediate written notice to Seller and (ii) return the product to Seller's factory or designated agent with transportation charges prepaid.

(3) Seller shall conduct an examination of the product to determine if the product is defective.

(4) No warranty shall apply if: (a) the product has not been properly stored; (b) the product has not been used for its customary purposes; (c) any alterations have been performed by Buyer or others on such product; or (d) the alleged defect is a result of abuse, misuse, improper maintenance, accident or the negligence of any party other than Seller. The warranty set forth herein is conditioned upon proper storage, use and maintenance. Any warranty furnished hereunder does not extend to damage to items purchased hereunder resulting in whole or in part from the use of components, accessories, parts or supplies not furnished by Seller.

(5) All recommendations and representations as to the functionality of the products are based upon tests and performance of the products at Seller's factory. Such recommendations and applications are not applicable to any loss of functionality of the products resulting from misuse or any variation in the environment from the standard conditions at Seller's factory existing prior to shipment.

(6) Buyer shall bear all risk of loss or damage to returned goods while in transit and pay all expenses related to shipping and handling. In the event no defect or breach of warranty is discovered by Seller upon receipt of any returned item, the item will be returned to Buyer at Buyer's expense and Buyer will reimburse Seller for the transportation charges, labor and associated charges incurred in testing the allegedly defective item.

(7) The remedies provided in subparagraph B herein shall be the sole and exclusive remedies of the Buyer.

B. **WARRANTY FOR PRODUCTS MANUFACTURED BY SELLER-** Seller warrants that all products manufactured will be free from substantial defects in material and workmanship. If the foregoing warranty is breached, Seller shall, in its sole discretion, repair, replace, issue credit or refund the purchase price without

charge to Buyer.

11. LIMITATION OF SELLER'S LIABILITY- Seller's liabilities shall in no event exceed the purchase price of the product. Notwithstanding anything to the contrary contained herein, Seller shall not be liable in any event to Buyer or any third parties for indirect, special, punitive, incidental or consequential damages (including any damage for lost profits), resulting from late delivery or non-delivery, from use, sale, handling or possession of the product, or from any other cause whatsoever.

12. INDEMNIFICATION - Buyer shall indemnify Seller for all claims related to the products other than claims related to defects in manufacturing.

13. COMPLIANCE WITH LAWS-Seller will comply with all Federal and State laws and regulations governing Seller's performance. Seller hereby certifies that all products covered by this contract were produced in compliance with (a) all applicable requirements of Sections 6, 7 and 12(a) of the Fair Labor Standards Act of 1938 as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof, and (b) all non-discrimination provisions because of race, color, creed or national origin as set forth in Title VII of Civil Rights Act of 1964 and Executive Order 11246 to insure equality of opportunity in all aspects of employment.

14. COPYRIGHT LICENSING-If the product ordered by the Buyer includes images protected by copyright registration that were not created or modified by Buyer (third-party intellectual property), Buyer will make the third-party intellectual property license information available to Seller. If the product incorporates intellectual property owned by Buyer, Buyer shall grant Seller the right to use the intellectual property in conjunction with the manufacturing of the product.

15. GOVERNING LAW-The products are sold subject to Illinois law. These terms and any dispute or claim relating to these terms or the sale of products ("Claim") shall be governed by and construed under Illinois law, notwithstanding its law of conflicts of law. Any Claim shall be heard, tried, and determined in the Circuit Court of [DuPage] County, Illinois or federal court located in [DuPage] County Illinois, USA.

16. AMENDMENTS ONLY IN WRITING-Except as expressly provided herein, no changes or modifications to, or waiver of, any of these terms and conditions shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. Seller's failure or delay to exercise or enforce any of its rights hereunder shall not constitute or be deemed to be a waiver of such rights or forfeiture of such rights, and Seller may, at its option, from time to time, exercise any of its rights or remedies.