

Terms and Conditions

All purchase orders submitted by the Customer pursuant to this quotation, and accepted by Elkhart Plastics LLC. ("Elkhart Plastics") are subject to the following terms and conditions which are an integral part of this quotation and shall be proven whether and whatever they modify, conflict with, or contradict the printed form provisions of the Customer's purchase orders.

ACCEPTANCE OF CONTRACT TERMS:

1. This quotation is offered for acceptance within 30 days from the date hereof and is subject to change without notice.
2. The Customer's acceptance of the quotation, by Customer's purchase order or otherwise, constitutes a contract subject to the terms and conditions set forth herein, and said contract shall not be changed, canceled, altered or suspended, by Customer's purchase order or otherwise, unless made in writing and signed by or on behalf of ELKHART PLASTICS by a duly authorized officer.
3. This quotation is subject to correction for clerical and typographical errors.
4. This quotation is based upon our being permitted to deliver the designated quality of products or parts molded in one continuous run. We will not carry products or parts in stock, unless they are paid for in advance.
5. If this quotation does not expressly provide otherwise, any and all necessary inserts or other components must be furnished by the Customer, F.O.B. our plant, in sufficient quantities to warrant continuous operation of the molds. The amount of inserts or other components necessary for assembly to be supplied by the Customer shall exceed by 10% the number required to fill the order for molding pieces.
6. We reserve the right to over ship or under-ship 10% of the specified amount of the order, the difference to be paid for or allowed at the prevailing price.

FORCE MAJEURE

7. ELKHART PLASTICS shall not be liable hereunder for delay in performance or nonperformance caused by circumstances beyond the control of ELKHART PLASTICS, including, but not limited to acts of God, fire, war, government regulations, accidents, strikes, labor trouble, shortage of or inability to obtain materials, equipment, or transportation. ELKHART PLASTICS has the option to cancel without any liability to Customer or to make delivery within a reasonable time after the termination of the cause or causes of the delay.

PRICE ADJUSTMENT

8. Any and all prices in this quotation are subject to increase to the extent of any sales, excise, duty or other similar tax, that is now or hereafter imposed by any National, State, municipal government, regulations of industry, and increase in transportation charges or fuel charges, for materials sold hereunder .

PAYMENT AND CREDIT

9. Payment terms (unless otherwise stated in writing) are NET 30 days. A service charge of 1.5% per month, or the maximum amount permitted by law will be charged on the unpaid balance of all delinquent accounts which are not paid within 30 days of the date of invoice. In the event employment of an attorney is necessary for the enforcement of any rights of ELKHART PLASTICS under the quotation, Customer shall pay all costs of collection damages and expenses, including attorney and paralegal fees, whether or not litigation is instituted and including reimbursement to ELKHART PLASTICS for legal costs and fees incurred in the defense of any counter-suit filed by Customer and/or appellate fees and costs. Customer hereby agrees that proper venue for any action to enforce the terms hereof shall be in the circuit court of Elkhart County, Indiana and hereby irrevocably consents to the jurisdiction of the courts of the State of Indiana for any such action. All contracts and orders are subject to credit approval and to our written acceptance. We may, at any time, alter or suspend credit, refuse shipment or cancel unfilled orders when in our opinion the financial condition of the purchaser or the status of Customer's account warrants it, or when the delivery is delayed because the purchaser is delinquent in any payment.

ORDER CHANGES

10. Alterations in molds, approval of samples, changes in delivery specifications, and instructions of every kind must be submitted to ELKHART PLASTICS by the Customer in writing and accepted by ELKHART PLASTICS in writing.

SAMPLES

11. Samples submitted by ELKHART PLASTICS for Customer's approval shall be deemed approved if notice of rejection is not received within 10 days after date of delivery thereof by ELKHART PLASTICS to the carrier.

LIMITED WARRANTY

12. Our liability for defective products or parts shall be limited to the value thereof and credit in full shall be rendered on all such products or parts provided that we have had an opportunity to inspect them and authorize their return within 15 days after date of shipment to our Customer. No credit will be issued on any products or parts which have been altered or defaced in any way, or upon which any additional operations have been performed. We do not assume liability, nor responsibility for products or parts lost or damaged in transit. This express warranty is exclusive of all other warranties, expressed or implied, including without limitation of any implied warranty of merchantability or of fitness for a particular purpose. Repair or replacement under this warranty shall be the exclusive remedy of Customer. ELKHART PLASTICS shall not be liable for any incidental, or consequential damages resulting from any defect in its products. Some states do not allow the limitation of incidental or consequential damage or limitations on how long an implied warranty lasts, so the limitations herein may not apply to you.

TOOLS AND MOLDS

13. Any and all required gauges must be furnished by the Customer. Unless otherwise specified, commercial tolerances established by the materials manufacturer will prevail.
14. Within the exception of normal wear and tear, we agree to maintain all Customer's molds and tools in our possession in conditions to furnish molded pieces to original specifications; however, our liability in this regard shall not extend for more than two years after completion of most recent production order, and in no event shall we be liable for loss or damage to molds and tools caused by fire, act of God, or other cause of damage beyond our control, and we shall be considered gratuitous bailee of such molds and tools. Customer shall bear the risk of loss with respect to all molds and tools in ELKHART PLASTICS possession and shall carry sufficient insurance on said molds at Customer's expense. ELKHART PLASTICS does not and shall have no obligation to insure tools in its possession. Molds exhibiting excessive wear and requiring excessive maintenance will be replaced by the Customer, at the Customer expense. ELKHART PLASTICS will notify the Customer in writing when such a condition exists. If the molds are not replaced by the Customer, ELKHART PLASTICS reserves the right to refuse to produce parts on the tools unless print deviations are granted by the Customer in writing to cover the mold discrepancies. Should alterations or changes be necessary after construction of mold or tools has begun, Customer agrees to pay for and accept responsibility for such changes in tools made necessary by changes in prints or specifications originally accepted by ELKHART PLASTICS.

ENGINEERING SERVICES

15. In consideration of the engineering service for which no charges are made but are necessary in the creation of molds and tools, all molds and tools shall remain in our possession for at least one year and/or until the cost of the parts produced therefrom equals ten times the price of said molds and equipment as billed to the Customer. In the event the Customer, after the expiration of such period, desires delivery thereof, the Customer will accept them as is and pay prior to shipment an additional charge of 20% of the price at which they were originally billed.

OBSELETE INVENTORY

16. In the event a customer approved engineering change results in obsolete BOM components, ELKHART PLASTICS reserves the right to invoice customer for those components on a cost plus 15% basis. Additionally, in the event ELKHART PLASTICS purchased component inventory to fulfill a customer purchase order or support a forecasted blanket delivery schedule which was subsequently cancelled or put on hold, ELKHART PLASTICS reserves the right to invoice customer for the resulting surplus inventory on a cost plus 15% basis. Customer agrees to pay for and accept responsibility for these obsolete inventory charges as specified.

WARRANTIES (a) Seller warrants to Buyer that all equipment or parts thereof manufactured by it will be free from defects in material and workmanship only, under normal use and service, for a period of one year from the date of original shipment. This warranty will not apply to any equipment (or parts thereof) which has been subjected to accident, alteration, abuse, or misuse. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH HEREBY DISCLAIMED) and of all other obligations or liabilities on the part of the Seller, and the Seller will neither assume nor authorize any other person to assume for it any other obligation or liability in connection with this equipment. Our liability shall be limited to the purchase price of this equipment. (b) This Warranty does not extend to products or components not manufactured by the Seller, but furnished as part of its equipment (for example: motors, starters, thermometers, controls, etc.), as to such products and components Seller conveys to Buyer the warranty, if any, of Seller's suppliers, to the extent transferable without any additional cost to Seller. (c) Permission to return any parts or equipment must be obtained, in writing, and must be returned with transportation costs prepaid. In the event that equipment (or parts thereof) manufactured by the Seller is returned to the plant, the Seller's obligation will be limited to repairing or replacing parts which upon examination are found (to the satisfaction of the Seller) to be defective in either material or workmanship, or at its option, to refund the purchase price of the defected portion. No transportation charges will be paid by the Seller unless written approval for transportation charges is given by the Seller. Should an in-warranty failure occur, and it is, in the judgment of the Seller, impractical to return the equipment for repairs, the Seller, if it elects to repair or replace the same, will arrange for the repairs to be made by its personnel, sublet to a qualified Seller, grant an allowance for the repairs or replacements as provided below, or refund the purchase price of the defective portion. The Buyer will be expected to cooperate by making the equipment available and accessible when the work is scheduled and is expected to provide the necessary utilities. If Seller elects to grant an allowance, the Seller's obligation shall be limited to labor costs in an amount equal to the amount which would be payable for a reasonable number of hours required to make the repairs at the rates Seller would have paid to its employees, replacement costs, not exceeding the purchase price paid by Buyer for the defective portion, and in such event, all labor and replacement costs shall be paid by the Buyer and the Seller will reimburse such costs to the extent set forth above.