

## Terms and Conditions of Sale

### ADDITIONAL TERMS AND CONDITIONS OF SALE

The below terms and conditions are incorporated into Macro Plastics, Inc.'s Order Form. If you are a purchaser of products under a Macro Plastics, Inc., Order Form, please review and print out a copy of this document for your records.

- 1 **Other Proposed Terms Not Binding:** Any different, additional or new terms proposed or stated by Buyer at any time in any manner are not binding on Seller unless Seller agrees to such terms in a written document signed and dated by an officer of Seller after the date of this Agreement.
- 2 **Delivery Dates are Estimates:** Stated delivery dates are approximate and estimates only and are not guaranteed. Seller is not liable for any damages that Buyer may claim are caused by late delivery.
- 3 **Non-Cancellable Order; Buyer's Election to Pick-up Products:** Buyer may not cancel the order for Product. If Buyer elects to pick-up Products from Seller's warehouse, Buyer shall collect the Products no later than 15 days after being notified by Seller of Product availability. Risk of loss shall pass to Buyer upon Buyer's pick-up of the Products. If Buyer fails to collect the Products within such 15-day period, then Seller may arrange for shipment to Buyer in accordance with the shipping terms set forth in this Agreement and furthermore, Seller may prepay the freight and insurance charges and add the charges to Seller's invoice to Buyer for payment for the Products.
- 4 **Buyer's Inspection:** Upon the carrier's delivery of Products to Buyer, Buyer shall immediately inspect the Products for damage and missing quantity while the carrier is still present. If Buyer discovers any damaged or missing Product, Buyer shall require the carrier to i) make a notation of Buyer's discovery on the bill of lading, and ii) sign the bill of lading, indicating the time & date. Buyer shall obtain from the carrier a copy of the signed bill of lading that denotes Buyer's discovery of damaged or missing Product. If Buyer has (or intends to make) a claim against the carrier, Buyer shall notify Seller of the claim immediately, and in any event no later than 10 days after the date of the carrier's delivery of the Product to Buyer. Buyer's notice to Seller shall include a copy of the signed bill of lading that denotes the damaged or missing Product. For purposes of Product acceptance/rejection, Buyer shall inspect all Product within 10 days after the date delivery of the Product to Buyer ("Inspection Period"). Buyer shall notify Seller in writing of any Product defects, shortages, over-shipments or non-conformance within the Inspection Period. Any Product for which Buyer does not provide written notice of rejection to Seller during the Inspection shall be deemed accepted by Buyer. Prior to returning any rejected Product, Buyer must obtain a return authorization number and return destination from Seller. Unless otherwise agreed by Seller in writing, Buyer's return shipment to Seller of rejected Product shall be at Buyer's expense and risk of loss.





- 5 **Buyer's Responsibility for Suitability and Use:** Buyer warrants that it has used its own independent skill, expertise and judgment in selecting the Products for Buyer's requirements and intended use, and that Buyer is solely responsible for such matters. Buyer further warrants that Buyer is familiar with the procedures for the proper and safe use, transport, storage, loading, unloading, inspection, maintenance, handling and stacking of the Products and agrees to follow such procedures.
- 6 **Taxes:** Liability for all foreign, state, federal, local or other governmental sales, use, property, excise, value added, withholding, duties, tariffs or other taxes applicable to the Products or their purchase and sale, use or possession, shall be the sole responsibility of Buyer. Except for any sales taxes collected by Seller, Buyer agrees to be responsible for disclosing, reporting, collecting and remitting any and all such taxes. If Seller makes payment of any such taxes, Seller may invoice Buyer for reimbursement of such amounts, plus any applicable interest and penalties paid by Seller. Buyer agrees to pay the invoiced amount to Seller within 10 days after date of invoice. If Buyer claims an exemption from taxes, Buyer shall furnish Seller satisfactory proof of exemption.
- 7 **Prices; Late Payment Fees:** Product prices stated in the Order Form are firm. Buyer shall make no deductions or offset (including those for alleged damages) from payments due hereunder. Amounts not paid by Buyer when due shall be subject to a late payment fee equal to 1.5% of the outstanding unpaid amount, per month, which fee may be invoiced by Seller and shall be due and payable within 10 days after date of invoice.
- 8 **Modification of Payment Terms; Partial Shipments:** If the financial condition of Buyer becomes impaired or unsatisfactory to Seller for any reason, or if Buyer is in default under any other agreement or payment obligation with Seller, then Seller may modify the payment terms hereunder upon notice to Buyer, which modifications may include, at Seller's discretion, requirement of full cash payment in advance of shipment, requirement of collateral security, right to recall or delay of Product delivery and right to suspend Seller's performance. None of Seller's remedies set forth hereunder shall be exclusive; rather they shall be cumulative with and in addition to all remedies available to Seller hereunder and at law or in equity. If Seller makes a partial shipment of Product, Seller may invoice Buyer for the amount of Product shipped and Buyer agrees to pay the invoice within 30 days after date of invoice.
- 9 **Products Stored at Request of Buyer:** Subject to Seller's written acceptance, Buyer may propose that Seller hold ordered Products, for a delivery date beyond the initially estimated delivery date. If Seller accepts Buyer's proposal for postponed delivery, the invoice for payment will nonetheless be dated as of the initially estimated delivery date and payment shall be due no later than 30 days after date of invoice. Buyer assumes all risk of loss and damage while Products are in the possession or control of Seller, pending postponed delivery. Buyer agrees to pay reasonable storage charges if Products are stored by Seller for a period exceeding two months after the initially estimated delivery date.





- 10 **Terms and Conditions of Limited Warranty:** Seller warrants that the Products shall be free from defects in material and workmanship for a period of three years from the date of delivery, except that, for Products consisting of the MacroLid series and optional foil embossed imprints, the warranty period shall be for a period one year from the date of delivery, and for Products consisting of the MacroTrac series, the warranty period shall be five years from the date of delivery. Seller's obligation and Buyer's sole remedy under this warranty is limited to the repair or replacement at Seller's factory of any of the Products that are defective in material or workmanship and that are returned to Seller within the applicable warranty period with transportation charges prepaid. Seller's warranty obligations are conditioned upon Buyer's paying for the Products in full and furnishing satisfactory evidence that the Products alleged to be defective have been properly used, maintained, handled, stored and operated under normal conditions with competent supervision and within the load limits for which the Products are offered and sold. Repair or replacement by Seller shall not extend the limited warranty period. The limited warranties shall not apply to Products that have been modified or altered in any way, including cutting or the drilling of holes, inserting staples, or which have been subjected to misuse, abuse, neglect or improper storage, handling or maintenance including, but not limited to, the inter-stacking of MacroBins with bins or pallets of other manufacturers, whether made of plastic, wood or metal. The limited warranties are void if damage to Product results from continued use after a suspected defect is or should have been discovered. The limited warranties are not transferrable.
- 11 **Force Majeure:** Seller shall not be responsible or liable for any loss, damage or delay caused or occasioned by acts of God, fire, strikes, civil or military authority, insurrection or riot, failure of a vendor to make timely delivery of materials, the requirements of any statute, order or directive of any governmental authority, or, without limiting the generality of the foregoing, by any other cause which is unavoidable or beyond Seller's reasonable control.
- 12 **Superseded Matters.** The terms of this Agreement supersede all prior or contemporaneous agreements, understandings, representations, warranties and understandings of Seller and Buyer concerning the subject matter hereof, written or oral. Specifically, but without limitation, any representation or warranty that might otherwise arise or be modified by usage of trade, course of dealing or course of performance are superseded and excluded. No statement, recommendation or assistance made or offered by Seller or through Seller's representatives in connection with any of the Products or any use thereof shall be or constitute a waiver or modification by Seller of any of the provisions of this Agreement.
- 13 **Limitations of Liability Survival:** Buyer acknowledges that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability and damages set forth herein, and that the same form an essential basis of the bargain between Seller and Buyer. The parties agree and intend that such limitations shall survive and apply even if any remedies herein are found to have failed of their essential purpose.
- 14 **Choice of Law:** This Agreement is deemed to be entered into at Seller's offices in Fairfield, California, and shall be governed by and interpreted according to California law, excluding its conflict of laws provisions. The United Nations Convention on Contracts for International Sale of Goods shall not apply.





- 15 **Severability; Interpretation:** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and the rest of the Agreement will remain in effect. Any rule of contract construction requiring the provisions of this Agreement to be construed against either Buyer or Seller shall not apply. The singular number includes the plural. The headings to the sections of this Agreement are not intended to aid interpretation. The words "hereof," "herein" "hereunder" and the like refer to this Agreement as a whole and not to any particular provision. Any typographical errors herein are subject to correction.
- 16 **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. If this Agreement is signed by a party and then faxed or scanned, the scanned or faxed copy shall be as good as an original, wet-ink signed copy for all intents and purposes.
- 17 **Assignment:** Buyer shall not assign any of its rights or delegate any of its duties hereunder, in whole or in part, unless Buyer first obtains Seller's written consent.
- 18 **Jurisdiction Limited to California Courts:** The parties hereby irrevocably submit to the exclusive jurisdiction of the superior or small claims courts of the State of California for resolution of any disputes arising from or relating to either this Agreement or the furnishing of any Products by Seller to Buyer.
- 19 **Third Party Beneficiaries:** This Agreement is made solely for the benefit of Seller and Buyer and their respective permitted successors and assigns. No third party shall have the right to make any claim or assert any right hereunder, and no third party shall be deemed a beneficiary of this Agreement.
- 20 **Indemnification:** Buyer shall indemnify and defend Seller against all liabilities, claims, demands, actions, proceedings, damages, costs and expenses, including attorneys' fees, that may arise out of any use, possession, handling, operation, transportation, sale or disposition of the Products after delivery to Buyer including, but not limited to, any loading, unloading, stacking or disposal of the Products.
- 21 **Shipping Weights:** Seller is not responsible for the accuracy of shipping weights. Such weights are approximate and solely for the purpose of estimating freight. For foreign shipments, 20% of weight should be added to approximate shipping weight.
- 22 **Government Contracts:** If any Product is being acquired by or for the use of the United States Government, then prior to executing this Agreement, Buyer shall notify Seller in writing of any and all contractual provisions that will be deemed or otherwise included as a part of this Agreement under the Federal Acquisition Regulations or otherwise.

**Shipping Terms for United States and Foreign Shipments.** Unless otherwise stated in a written agreement signed by Seller, shipping terms for shipments within the United States are FOB Seller's point of shipment and shipping terms for shipments outside of the United States are EXW Seller's point of shipment (Incoterms 2000). Seller's point of shipment shall be the location from which Seller ships the Product, as determined by Seller when the shipping date nears. Seller will advise Buyer of Seller's point of shipment upon Buyer's request.

