

## TERMS AND CONDITIONS

- 1. Terms and Conditions.** The terms and conditions set forth herein shall exclusively apply to the sale of all materials ("Goods") sold by Westlake Plastics ("Seller") to you ("Buyer"). Unless the Buyer and Seller have entered into a written agreement covering the purchase of Goods, Seller does not accept and hereby expressly rejects, all terms and conditions contained in any document issued by Buyer, including in any purchase orders, that purport to pertain to the Goods and/or the relationship between Seller and Buyer, which terms and conditions are in addition to, or inconsistent with, the terms and conditions set forth herein. Any such terms shall not become part of any order, quotation, or sale of Goods, and delivery of the Goods or other performance by Seller with respect to the Goods shall not constitute Seller's acceptance of any additional or different terms and conditions. Seller reserves the right to revoke or modify these terms and conditions, in whole or in part, prior to Buyer's submission of an approved purchase order for the Goods, provided that, any modification after the submission of an approved purchase order will apply to any future purchase orders.
- 2. Order and Order Acceptance.** The purchase of Goods shall be made by written purchase order sent to Seller. All purchase orders shall reference these terms and conditions. No purchase order shall be binding upon Seller until acknowledged and accepted by Seller in writing, and Seller shall have no liability to Buyer with respect to purchase orders that are not acknowledged and accepted. Fabrication and delivery of any order is dependent upon the ability of the Seller to secure the necessary raw materials, parts, and machine tools that may be required for production. Except for Propylux HS seller requires an order minimum of \$250.00. All order amounts between \$250.00 and \$500.00 are subject to a \$50.00 Small Order Fee. For Propylux HS, orders must total at least \$500.00 and for rods with a diameter  $\leq 2$  inches, each diameter/color combination must be ordered in 40 ft increments. Propylux HS is not eligible for small order fee. Buyer shall submit purchase orders to Seller in accordance with Seller's lead times then in effect. In addition to the purchase price, Buyer shall pay Seller the amount of all governmental taxes, excises and/or other charges (except taxes on or measured by net income) that Seller may be required to pay with respect to the production, sale, or transportation of any Goods delivered, except where the law otherwise provides. All stenographic or clerical errors of Seller are subject to correction. For any custom orders or orders for film accepted by Seller, the quantity of Goods may vary by up to ten percent (10%) from the ordered quantity. For all other products Seller reserves the right to over ship quantity ordered by 5% or to call order complete upon shipment of 95% of quantity specified unless otherwise stipulated at the time the order is placed. The actual amount of Goods shipped will be reflected on the Buyer's invoice.
- 3. Pricing.** Westlake Plastics prices in effect on the date of shipment shall govern
- 4. Cancellation and Modification.** Buyer acknowledges and agrees that any order accepted by Seller may not be modified or cancelled except with Seller's written consent and upon terms that will hold Seller harmless against all costs, expenses, losses and damages associated with such modification or cancellation, including restocking fees and/or other cancellation charges which shall take into account, among other things, anticipated profits, expenses incurred and commitments already made by Seller in connection with such order. In the event of changes in specifications or quantity, prices will be increased or decreased to correspond to the amount of material, labor, engineering, overhead, and other factors involved. Any cancelled custom orders are subject to a cancellation fee equal to fifty percent (50%) of the order amount. For any order of film, any requested change in quantity, color, or specification must be provided to Seller with at least thirty (30) days in advance of the date of shipment date and will be subject to Seller's acceptance.
- 5. Delivery.** See Westlake Plastics Shipping & Freight Guidelines for terms and conditions related to shipment of goods. Terms in effect on the date of shipment shall govern
- 6. Acceptance.** Upon delivery, Buyer agrees to promptly inspect the delivered Goods for any damage or non-conformities. Buyer shall have a period of 5 business days from the date of Seller's delivery of the Goods to reject the Goods or otherwise notify Seller of any nonconformity of the Goods to Buyer's order or any applicable packaging, shipping and handling or delivery specifications. If no such notice has been received by Seller within such 5 business day period, Buyer shall be deemed to have accepted the Goods and waived any claims associated with conformity of the Goods to the applicable order and any delivery specifications. In the event Buyer notifies Seller of any such failure within the 5 business day period, Seller shall use commercially reasonable efforts to promptly remedy any such failure by reshipping new Goods.
- 7. Returns.** A Return Material Authorization ("RMA") number must be obtained from Seller prior to returning any Goods. Goods returned without an RMA number will be refused and returned at the Buyer's expense. RMA numbers will not be issued on any custom run Goods. Returns will only be accepted for Goods invoiced within the last ninety (90) days and RMA numbers issued with the last thirty (30) days. All returned Goods must be returned to Seller at the location specified by Seller, transportation prepaid by Buyer, in either their original packaging or packaging that has been approved by Seller in advance. Custom Goods made to Buyer's specifications will not be accepted for return. Additionally, authorized returned Goods may be subject to restocking fees. Returned Goods valued at an amount equal or less than \$200.00 are subject to a \$50.00 restocking fee and freight charges. Returned Goods valued at an amount greater than \$200.00 are subject to a 25% of value Restocking Fee and freight charges.
- 8. Force Majeure.** Seller shall not be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, pandemics, epidemics, accidents, labor disputes, or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid (including, but not limited to, priorities, requisitions, allocations, and price adjustment restrictions), inability to obtain material, equipment or transportation, and any other similar or different contingency. Seller shall have the right to omit during the period of such contingency all or any portion of the quantity of Goods deliverable during such period, whereupon the total quantity of Goods deliverable hereunder shall be reduced by the quantity so omitted. If due to any such contingency, Seller is unable to supply the total demands for any material hereunder, Seller shall have the right to allocate its available supply among its customers and its departments and divisions in such manner as is deemed fair and equitable. In no event shall Seller be obligated to purchase material from others in order to supply Goods to Buyer hereunder.
- 9. Indemnity.** Buyer shall indemnify, defend and hold Seller, its affiliates, and their respective officers, directors, shareholders, employees, agents, representatives, successors and assigns harmless from and against any loss, damage, claim, liability, fine or other expense (including, without limitation, attorneys' fees and expenses of litigation) arising out of or in relation to: (i) Buyer's breach of these terms and conditions; (ii) Buyer's use or resale of the Goods; (iii) Buyer's gross negligence or willful misconduct; and (iv) infringement or alleged infringement of any patent of the United States or any trademark, directly or indirectly, arising out of or resulting from Seller's compliance with drawings, specifications, or instructions furnished by Buyer to Seller with respect to any Goods
- 10. Limitation of Liability.** IN NO EVENT SHALL SELLER'S LIABILITY ARISING OUT OF THE SALE OF ANY OF THE GOODS HEREUNDER, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED, EXCEED THE AMOUNT THAT SELLER HAS BEEN PAID FOR SUCH GOODS UNDER THESE TERMS AND CONDITIONS. UNDER NO CIRCUMSTANCES SHALL SELLER BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR CONTINGENT DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR GOODWILL.
- 11. Warranty; Disclaimer.** Seller warrants that Goods delivered hereunder meets Seller's general product standards for the materials or such other specifications as have been expressly agreed in writing by Seller. Seller warrants further that such Goods are adequately contained, packaged, and labeled and conforms to the promises and affirmations of the fact made on the container and label. No other warranty terms shall apply. As Buyer's sole and exclusive remedy for any breach of the limited warranty set forth in this Section 11, Seller shall, at its option and expense, either: (a) replace the nonconforming Goods with conforming Goods; or (b) refund to Buyer the purchase price actually paid for the nonconforming Goods. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 11, SELLER MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS ALL, WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE.
- 12. Governing Law.** This sale transaction shall be governed, construed and enforced solely by the laws of the Commonwealth of Pennsylvania. Buyer and Seller further agree that venue for any action to enforce or interpret these terms and conditions shall be adjudicated exclusively in a state court located in Philadelphia, Pennsylvania, or in the federal courts for the Eastern District of Pennsylvania and all parties hereby consent to the jurisdiction of such court in any such action or proceeding and waive any objection to venue based on inconvenient forum. Buyer and Seller hereby waive all rights under and agree that these terms and conditions shall not be governed by, Article 2 of the Uniform Commercial Code or any version of the U.N. Convention For the International Sale of Goods.
- 13. Miscellaneous.** All notices, requests, demands and other communications required or permitted hereunder shall be in writing and delivered by registered mail to the respective addresses of the parties listed on the applicable order. Notices shall be deemed to have been duly given, made and received upon actual receipt by the recipient. Buyer may not assign or delegate any of its rights or obligations under these terms and conditions or any order without the prior written consent of the Seller. Any attempted assignment or delegation in violation of this section will be null and void. Subject to the foregoing, these terms and conditions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. Except as otherwise expressly provided herein, no waiver, alteration or modification of any of the provisions hereof or any right granted hereunder shall be effective unless such waiver is in writing and signed by a duly authorized officer or employee of Seller. These terms and conditions are intended by the parties as a final expression of their agreement with respect to such terms and also as a complete and exclusive statement of such terms. In case any one or more of the provisions contained in these terms and conditions shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and these terms and conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.