

1. All sales of goods by Confer Plastics, Inc. ("Confer") to Buyer are made pursuant to the following terms. No other or additional terms or conditions are or will be accepted by Confer and are hereby expressly rejected.

2. Any quotation from Confer to Buyer is made on the basis that there shall be one continuous production run at mold capacity and that parts are to be shipped as produced. Orders for quantities less than specified in any quotation or releases against an order of lesser quantities than specified in any quotation are subject to an increase in the price per piece and/or a set-up charge. Buyer may not cancel, modify, change or reduce any order without the written consent of Confer.

3. Molded pieces will be shipped and billed and shall be paid for at the approximate rate of production. Confer does not carry special molded parts in stock.

4. Delivery of ten percent more or less than the quantity specified shall constitute fulfillment of the order and any excess, not exceeding ten percent, shall be taken and paid for by Buyer.

5. Contracts or orders are subject to approval of Confer's credit department and executive office. Confer shall have the right to modify, change or withdraw credit terms at any time, without notice, and to request guarantees, security or payment in advance of the amount of credit involved.

6. Delivery of the goods shall be FOB Confer's manufacturing facility. Title to all goods and all risk of loss or damage with respect thereto will be passed to Buyer upon delivery of the goods to the carrier. Confer warrants that all goods delivered or shipped shall be free and clear of all liens or encumbrances.

7. Buyer agrees to pay for modifications in molds and tools made necessary by changes in specification accepted by Confer. Changes of design, deliveries or instruction of any kind must be submitted in writing. Molds furnished by Buyer shall be maintained at Buyer's sole expense and Buyer shall be responsible for all costs related to any changes in the molds and tools deemed necessary by Confer for production.

8. In consideration of the engineering services necessary in the designing of molds and tools, Buyer hereby agrees to pay Confer an additional charge of thirty percent above the quoted price of said molds and tools when Buyer demands delivery thereof. The aforesaid thirty percent additional charge, and the payment of such charge, shall be a condition precedent to any obligation on the part of Confer to deliver such molds and tools. Title to the molds and tools, and all risk of loss or damage with respect thereto, will be passed to Buyer upon delivery of the molds and tools to the carrier. Buyer agrees to accept such molds and tools "AS IS." Special fixtures, models, patterns, etc. used in the course of making such molds and tools shall remain the property of Confer.

9. Confer agrees to maintain all molds and tools built by Confer in operating condition while such molds and tools are in Confer's possession. In connection therewith, Confer will make ordinary repairs to such molds. When molds or major parts thereof become worn due to use and replacement is necessary, all repairs will be at Buyer's sole expense.

10. Component parts supplied by Buyer shall be of sufficient quantity and quality and delivered FOB Confer's facility, all charges prepaid, at an appropriate time. Said components must be uniform, clean, accurate and free from defects. Buyer shall be responsible for all costs incurred by Confer as a result of defective or substandard components and/or insufficient quantities or late deliveries. Confer will perform a physical count of all component parts when received by Confer and Buyer agrees to be bound by that physical count.

11. Buyer agrees to defend, indemnify and hold Confer harmless against any and all costs, damages, liabilities, judgments, decrees, claims and expenses, including but not limited to reasonable attorney's fees and court costs, or any other loss that Confer might sustain by reason of the manufacture of goods according to the plans and specifications furnished to Confer by Buyer, or the sale, use or performance of such products, including claims of infringement of patents or trademarks.

12. Confer shall not be liable for damages arising from its failure to make or delay in making delivery of any goods because of fire, flood, strikes, riots, car shortage, embargoes on freight of any government, accidents, insurrections, lockouts, breakdown of machinery, loss or damage of goods in transit, delay of carriers, act of civil or military authorities, acts of God, or any circumstances or other unavoidable cause beyond Confer's control, except for its own gross negligence. Confer will be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, and during the continuance of any such happening or event this agreement will be deemed suspended so long as and to the extent that any such cause prevents or delays Confer's performance.

13. Buyer acknowledges that ten (10) days after receipt of the goods will provide Buyer with a reasonable amount of time to inspect the goods. Therefore, the goods shall be subject to final inspection and acceptance by Buyer within ten {6836301: }

(10) days after receipt by Buyer. Buyer's failure to inspect within said time shall constitute a waiver of Buyer's rights of inspection and rejection (including any claims for shortages), and such goods shall be deemed accepted by Buyer.

14. Confer warrants that, for a period of one (1) year from the date of its delivery of the goods to the carrier, the goods will: (a) conform to the plans and specifications supplied by Buyer to Confer; and (b) be free from defects in workmanship and materials. IN THE EVENT OF ANY BREACH OF SUCH WARRANTY, CONFER'S SOLE OBLIGATION SHALL BE EXCLUSIVELY LIMITED TO, AT THE OPTION OF CONFER, REPAIR OR REPLACEMENT, F.O.B. CONFER'S FACILITY, OR TO A REFUND OF THE PURCHASE PRICE UPON RETURN OF THE GOODS TO CONFER. NO CLAIM AGAINST CONFER FOR ANY BREACH OF SUCH WARRANTY SHALL BE VALID OR ENFORCEABLE UNLESS BUYER'S WRITTEN NOTICE THEREOF IS RECEIVED BY CONFER WITHIN ONE (1) YEAR FROM THE DATE OF CONFER'S DELIVERY TO THE CARRIER. EXCEPT FOR THE WARRANTY SET FORTH ABOVE, CONFER MAKES NO OTHER WARRANTIES WITH RESPECT TO THE GOODS, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

15. IN NO EVENT SHALL CONFER BE LIABLE TO BUYER OR ANY THIRD PARTY, WHETHER IN CONTRACT, NEGLIGENCE, TORT OR OTHER THEORY OF LAW, FOR LOSS OF PROFITS OR LOSS OF USE, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, DIRECT OR INDIRECT DAMAGES, HOWSOEVER CAUSED. CONFER'S MAXIMUM LIABILITY TO BUYER SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER FOR THE GOODS THAT ARE THE SUBJECT OF THE APPLICABLE CLAIM. Confer shall not be liable for any damage, injury or loss arising out of the use of the goods if, prior to such damage, injury or loss, such goods are: (a) altered, changed, modified damaged or misused following Confer's delivery to the carrier; or (b) not maintained, inspected, or used in compliance with applicable law.

16. ANY ORAL OR WRITTEN STATEMENT, INFORMATION OR REPRESENTATION GIVEN OR MADE BY CONFER OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR DISTRIBUTORS ABOUT THE PRODUCT, ITS PERFORMANCE OR ABOUT PRODUCTION AND DELIVERY OF THE PRODUCT: (A) SHALL NOT CONSTITUTE A CONFER REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE AGREEMENT; (B) SHALL NOT BE RELIED UPON BY BUYER OR ANY OTHER PERSON, AND BUYER HEREBY EXPRESSLY DISCLAIMS SUCH RELIANCE WHEN ENTERING INTO THIS AGREEMENT; AND (C) IS NOT A PART OF THE WARRANTY OR THE PARTIES' AGREEMENT.

17. Any action against Confer for breach of contract, negligence, tort or otherwise must be commenced by Buyer within one (1) year after: (a) the date any alleged claim accrues; or (b) the date of delivery of the goods to Buyer, whichever is earlier.

18. This instrument constitutes the entire agreement between Confer and Buyer, superseding all previous understandings and writings regarding this transaction. Any amendment or modification of this agreement shall be void unless in writing and signed by Confer. This agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws. Any disputes and all legal claims related to this agreement shall be subject to the exclusive jurisdiction of and shall be finally settled in an action commenced or maintained in any state or federal court sitting in Erie County, New York. Confer and Buyer hereby consent and submit to the exclusive personal jurisdiction of such courts and agree not to challenge or assert any defense to the jurisdiction of such courts, including, without limitation, *forum non conveniens*. In any action or proceeding brought to enforce any provision of this agreement, the prevailing party is entitled to be reimbursed by the nonprevailing party for all of its reasonable costs in such action or proceeding, including, without limitation, reasonable attorneys' fees. No delay or omission by Confer in exercising any right or remedy hereunder shall be a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Confer are cumulative.

19. Confer shall have a lien on any of Buyer's property in Confer's possession as security for any unpaid account of Buyer.