

## RMC Plastics, Inc. Standard Terms and Conditions of Sale

The conditions stated below shall take precedence over any conditions which may appear on your standard form, and no provisions or conditions of such form, except as expressly stated herein, shall be binding on RMC Plastics, Inc.

**Acceptance:** Quotations by RMC Plastics, Inc. (hereinafter called RMC), must be accepted within thirty days of the date thereof and may be changed or withdrawn upon notice prior to acceptance.

**Payment:** Invoiced amounts are net and are to be paid thirty days from date of invoice. Discounts available based upon buyer volume for earlier payment. These terms apply to domestic shipment only and are subject to approval by RMC Credit Department. Terms of payment on orders for export shipment are cash in full with order unless stated otherwise in RMC's quotation. If the financial condition of Purchaser at any time does not, in the judgment of RMC, justify continuance of the work to be performed hereunder or the terms of payment specified, RMC may suspend shipment at its option. Prorate payments shall become due as shipments are made. If shipments are delayed by Purchaser, payments shall become due from date when RMC is prepared to make shipment. If manufacture is delayed by Purchaser, payment shall be made based on contract price and percentage of completion. Payments withheld beyond thirty days from date of invoice shall be charged at 1/12 the prime rate per month or fraction thereof on any unpaid balance without prejudice to RMC's right to demand immediate payment. Apparatus held for Purchaser shall be at Purchaser's risk and expense.

**Delivery:** Delivery shall be made F.O.B. Factory. Freight collect, if by truck. Prepaid and charged by UPS. Shipping dates are approximate based upon factory conditions at the time of quotation, the prompt receipt of all necessary information and upon the receipt of complete and final specifications with the order. Shipping dates are also subject to modification depending upon conditions existing at the time Purchaser's order is received. Any changes or additions made to Purchaser's specifications after an order is received will require the shipment be rescheduled based upon date of receipt of final specifications, upon receipt of any customer provided raw materials and upon factory conditions existing at that time.

**Production:** Unless otherwise stated, part cosmetic requirements will be based upon The Society of Plastics Industry, Inc., Cosmetics Specifications of Injection Molded Parts, 1994 Ed, Grade 3 Level C. Plastic products are not considered to be rejects because of variations from print dimensions if they are made to and are unchanged from approved samples with respect to dimensions, finish and analysis; or failure with regard to function, or fitness for use, when the purchaser has specified or approved the design.

**Force Majeure:** RMC shall not be liable for delays in delivery or for failure to manufacture or deliver due to (1) acts of God, acts of Purchaser, acts of civil or military authority, priorities, fires, inplant test failures, explosion, strikes, floods, blizzards, epidemics, quarantine restrictions, war, riots, insurrection, civil disturbance, delay in transportation or car shortages; or (2) inability, due to causes beyond its reasonable control, to obtain necessary labor, materials, RMC or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay; or (3) other causes beyond its reasonable control. Receipt of the apparatus by Purchaser upon its delivery shall constitute a waiver of all claims for delay. Contracts, which include penalty clauses for failure to meet shipment, will not be acceptable.

**Risk of Loss:** Risk of loss of the apparatus, or any part thereof, shall pass to the Purchaser upon delivery of such apparatus, or part, F.O.B., point of shipment.

**Original Method of Shipment Routing:** RMC will determine the point of origin of shipment and routing. Purchaser requiring shipment by other methods of routing will be billed for any additional handling or transportation charges.

**Cancellation or Deferment of Delivery:** Cancellation of parts will be subject to cancellation charges irrespectively of whether they are normally stocked items or custom built to order. Customers who find it necessary to cancel during an active blanket agreement will be asked to pay the difference in list price of the quantity shipped as termination and the agreed price of the blanket times the quantity shipped.

**Standard Warranty:** RMC Plastics, Inc. warrants parts of its own manufacture and design against defects in material and workmanship under normal use and service, for one (1) year from date of installation, but not more than eighteen (18) months after date of shipment. Notice of the alleged defect must be given to RMC in writing with all identifying details and date of purchase within thirty (30) days of the discovery of same during the warranty period. RMC sole obligation on this warranty shall be, at its option, to repair, or replace, or refund the purchase price of any part which proves to be defective as alleged. No allowances will be made for repairs or alterations effected without specific written authorization from RMC. If requested by RMC, such part must be promptly returned to the manufacturer prior to any attempted repair. RMC accepts no responsibility for loss or damage in transit of goods, nor will any claim be considered unless the returned goods are received intact and undamaged as a result of shipment. Under the terms of this warranty, RMC shall not be responsible or liable for: a. Acts of God such as, lightning, tornadoes, floods or other natural occurrences. b. Consequential, collateral or special losses or damages. c. Equipment conditions caused by fair wear and tear, abnormal conditions of use, accident, neglect or misuse of said equipment. d. Labor charges, losses or damage resulting from supplying of defective parts or improper repairs by unauthorized persons. RMC reserves the right to substitute new equipment and/or improve the part judged defective without further liability. All repairs performed by RMC, not adjusted as covered by this warranty, will be charged to the Purchaser. This warranty is VOID unless the Purchaser installs and maintains the part in accordance with proper installation and normal use. Credit will NOT be allowed nor shipment accepted on any part returned unless prior approval in writing has been obtained. THIS WARRANTY IS THE SOLE WARRANTY OF RMC AND ANY OTHER WARRANTIES EXPRESSED, IMPLIED IN LAW OR IMPLIED IN FACT, INCLUDING ANY WARRANTIES OR MERCHANTABILITY AND FITNESS FOR USE, ARE HEREBY SPECIFICALLY EXCLUDED. No employee of RMC, and no agent or distributor has any authority to change or enlarge the terms of this warranty to obligate RMC to other than strictly the terms of this written warranty.

**Liability Limitations:** Under no circumstances shall RMC have any liability for liquidated damages or for collateral, consequential or special damages, or for loss of profits, or for actual losses or for loss of production or progress of construction, whether resulting from delays in delivery or performance, breach of warranty, negligent manufacture or otherwise. The aggregate total liability of RMC in connection with the performance of this order, whether for breach of contract or warranty, negligence or otherwise, shall in no event exceed the contract price. Purchaser agrees to indemnify and hold harmless RMC from all claims by third parties in excess of these limitations.

**Compliance:** Federal, State and Local: Since the compliance with the various Federal, State and Local laws and regulations concerning occupational health and safety, and pollution are affected by the use, installation and operation of the equipment and other matters over which RMC has no control, RMC assumes no responsibility for compliance with those laws and regulations, whether by way of indemnity, warranty or otherwise.

**Patents:** RMC shall, at its own expense, defend any suit or proceeding brought against the Purchaser, so far as based on a claim that any apparatus or any part thereof furnished hereunder constitutes an infringement of any patent of the United States, other than a claim covering a process performed by said apparatus, provided that such apparatus or part thereof is not supplied according to Purchaser's design, and is used as sold by RMC, and provided further, that the Purchaser shall have made all payments then due hereunder, and that RMC is notified promptly in writing and is given all necessary authority, information and assistance for the defense of said suit or proceeding. RMC shall pay all damages and costs awarded against the Purchaser in any such suit or proceeding so defended, provided that this indemnity shall not extend to any infringement based upon the combination of said apparatus or any parts thereof with any other apparatus or thing not furnished hereunder. RMC shall not be liable for any settlement of any such claim, suit or proceeding entered into without its written consent. If the apparatus or any part thereof furnished hereunder is, in any suit or proceeding so defended, held to constitute an infringement, and its use is enjoined, RMC shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said apparatus or part; or replace the same with non-infringing apparatus; or modify it so that it becomes a non-fringing; or remove said apparatus or part and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of RMC for patent infringement by said apparatus or part thereof. RMC assumes no liability whatsoever for patent infringement by any apparatus or part thereof manufactured to Purchaser's design. To the extent that any apparatus or any part thereof is supplied according to Purchaser's design or instructions, or is modified by Purchaser, or is combined by Purchaser with apparatus or things not furnished hereunder, or is used by Purchaser to perform a process, or produce a product, and by reason of said design, instruction, modification, combination, performance, or production, a suit or proceeding is brought against RMC, the Purchaser agrees to indemnify RMC against costs, liabilities and expenses caused thereby.

**Molds:** RMC will maintain Purchaser's molds in operating condition, except that our liability shall not extend for more than one year after the completion of the most recent production order. After such a period of inactivity we accept no responsibility for its/their continued existence or availability and we do reserve the right to charge a reasonable fee for storage for molds in our possession. This clause will not be invalidated by lack of written notification of the expiration date or our intention to exercise these rights. Any unpaid account for invoiced parts or mold work shall constitute a lien on any molds or tools in RMC's possession.

**Return of Apparatus:** In no event will RMC be responsible for any apparatus or part returned unless same is returned in accordance with the terms and instructions contained in a prior written authorization from RMC.

**Assignment:** Purchaser may not assign its rights or delegate its performance hereunder without the prior written consent of RMC and any attempted assignment or delegation without such consent shall be void.

**No Waiver By Accepting Purchaser's Order:** RMC failure to object to provisions contained in Purchaser's order or other communication shall not be deemed a waiver of the terms or conditions hereof, nor acceptance of such provisions. No waiver, alteration or modification of any of the terms of conditions hereof shall be binding unless in writing and signed by a duly authorized representative of RMC.

**Governing Law:** This contract is to be construed according to the laws of the STATE OF TEXAS.