

If these terms and conditions are attached to or otherwise incorporated into a quote, order confirmation or invoice for any sales by Duraplas Incorporated, Maxi-Lift Incorporated, or Southwest Agri-Plastics Incorporated, or any of their respective subsidiaries or affiliates (collectively, the "DuraPlas Entities" and each, a "DuraPlas Entity"), then the "TERMS AND CONDITIONS OF SALE" below shall apply to the transaction, with the applicable DuraPlas Entities as the "Seller" or "seller" and the counterparty as the "Buyer, "buyer" or "purchaser"; if these terms and conditions are attached to or otherwise incorporated into a quote, order or invoice for any purchases by any of the DuraPlas Entities, then the "TERMS AND CONDITIONS OF PURCHASE" below shall apply to the transaction, the applicable DuraPlas Entities as the "Buyer", "buyer" or "purchaser" and the counterparty as the "Seller" or "seller".

### **TERMS AND CONDITIONS OF SALE**

Shipment of the items purchased (the "Products") is made as set for in the Shipping Terms and Conditions attached hereto. U.S. freight quotes from carriers are not always accurate on their initial quote. Seller will attempt to ship product as so desired by buyer. However, when buyer places an order with seller, the buyer accepts the fact that the seller will not be responsible for any additional charges if the product is not shipped/billed in the exact capacity buyer desires. Risk of loss or damage during shipment shall be on Buyer, and no insurance will be provided for shipping unless requested by Buyer in writing prior to shipment, and satisfactory arrangements for payment are made between Buyer and Seller. This sale is subject to, and Seller shall not be responsible or liable for, delay directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrection, war, the adoption or enactment of any law, ordinance, regulation, ruling or orders, directly or indirectly interfering with or rendering more burdensome the production or delivery hereunder, lack of usual means of transportation, fires, flood, explosions, strikes or other accidents or contingencies beyond Seller's control, either of the foregoing nature or of any other kind, nature or description in Seller's or its suppliers' plants or elsewhere or otherwise affecting transportation or production of the Products or any components used in or in connection with their production. Any delivery quotations are estimates only and the failure to comply therewith shall in no manner subject Seller to any damages (incidental or consequential as defined in Section 2.715 of the Texas Business and Commerce Code or any other type of damages) resulting from failure to meet any such estimated or requested delivery date.

Notwithstanding any contrary terms in any purchase order or prior offer or order of Buyer, the terms and conditions on the face hereof and as set forth hereinabove shall constitute the entire agreement of the parties, superseding any and all prior or contemporaneous agreements, negotiations, representations and warranties, communications, and/or understandings, whether written or oral. Seller expressly rejects Buyer's terms and conditions of purchase, and fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions or serve to modify or amend these terms and conditions.

All prices are subject to change without notice prior to acceptance of order by Seller unless the same are stated in writing by Seller to be firm for a definite period of time. Seller may elect to charge a restocking fee for any product buyer wishes to return. Products must be unloaded from all carriers by purchasers only carrier allotted time limit or purchaser may face handling or delay surcharges. It is Buyer's obligation to request all installation instructions from company representative if none are provided.

All invoices are due and payable in U.S. Dollars within the time specified on the face hereof, unless modified in writing by Seller. Any amount past due after 30 days shall bear interest up to the highest rate allowed by law at Seller's discretion. In addition to purchase price, Buyer shall pay Seller the amount of all governmental taxes, excises and/or other charges that it may be required to pay with respect to the production, sale or transportation of any Products delivered hereunder, except as otherwise provided by law.

#### Limited Warranty

Seller warrants to Buyer that the Products will materially conform to Seller's published specifications (if any) and otherwise be free from defects in materials or workmanship as of the time of delivery under these terms and conditions, and Buyer will receive good and valid title to the Products. Seller's limited warranties under this section do not apply where the Products have been: (i) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by Seller, or improper testing, installation, storage, handling, repair, or maintenance; (ii) reconstructed, repaired, or altered by anyone other than Seller or its authorized representative; or (iii) used with any third-party product, hardware, or product that has not been previously approved in writing by Seller.

#### Buyer's Exclusive Remedy for Breach of Limited Warranty

Buyer must notify Seller, in writing, of any alleged limited warranty claim within ten (10) days after delivery of any shipment of Products made pursuant hereto, and Buyer expressly acknowledges and agrees that any alleged warranty claim not timely made in accordance with these terms is here by waived by Buyer.

Buyer shall ship the relevant Products promptly following its written notice to Seller, with prepaid freight at its sole expense and risk of loss, to Seller's plant in Dallas, Texas, for inspection and testing by Seller. If Seller's inspection and testing reveals, to Seller's satisfaction, that such Products do not conform with the limited warranty set forth herein, Seller shall in its sole discretion, either (i) replace such Products, or (ii) credit the price of such Products less any applicable discounts, rebates, or credits. If Seller exercises its option to replace the products, Seller shall send the replacement products freight collect to Buyer.

The extent and limitation of any warranty shall be governed by these terms and conditions unless Seller has, in writing, notified Buyer or included with the product any other warranty, in which case the other warranty shall control. Other warranties pertaining to specific products may supersede this limited warranty. Check all materials, packaging and products to see if there is a warranty pertaining to the specific product sold. Note all plastic products will degrade faster when exposed to sun (UV rays) and may not perform adequately under extreme cold temperatures. Buyer has no right to return for repair, replacement, credit, or refund any Goods except as set forth in these terms and conditions.

**THE PRECEDING PARAGRAPHS SET FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THESE TERMS AND CONDITIONS.**

**WARRANTY DISCLAIMER.** EXCEPT FOR THE LIMITED WARRANTIES SET FORTH ABOVE, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER INDIVIDUAL OR ENTITY ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED ABOVE.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THE PRODUCTS OR THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

This contract shall be governed by and construed in accordance with the laws of the state of Texas, and exclusive venue for any disputes, claims or proceedings related to this agreement shall be the state or federal courts located in Dallas County, Texas, as this contract is performable in Dallas County, Texas. Prior to the initiation of any litigation the parties agree that any dispute will be submitted for mediation in Dallas, Texas with a mediator agreed upon by both parties from the North Texas roster of the Association of Attorney-Mediators (AA-M). If, after thirty days written notice from either party to the other that mediation is requested on a dispute, the parties cannot agree on the selection of a mediator, then the President of the North Texas Chapter of AA-M shall select a mediator from the North Texas roster. Each party shall pay one-half of the mediator's fee, and the mediation shall take place on the date selected by the mediator and shall be conducted under the Rules of Mediation then in use in the District Courts of Dallas County, Texas.

#### **DESTINATION CONTROL STATEMENT**

If these commodities, technology, or software were exported from the United States, it was done in accordance with the Export Administration Regulations. Diversion contrary to U. S. law is prohibited.



### Shipping Terms and Conditions

All shipments are Ex Works Seller's plant (Incoterms® 2020), unless another point of origination is designated on the face hereof in which case shipment is Ex Works at such point of origination (Incoterms® 2020). All freight estimates are just that- "estimates" and can vary widely until they are billed. All extra costs beyond the freight estimate will be billed to the buyer, and payment will be expected within normal terms and conditions. The buyer is 100% responsible to cover any of these additional costs.

Shipping method is determined by the size and weight of each item and delivery speed you request. Items of differing size and weight may ship independently, by different methods, even if ordered together. Most smaller items will be sent UPS or FedEx Small Packaging. Items that are too large or too heavy will be sent by LTL common carriers.

Estimated Shipping/Freight charges are calculated based on the estimated weight, size of item/packages, and distance traveled and type of shipping service you specify (**ground, next day, second day, LTL, or Truckload**).

All Freight shipments (including prepaid, collect, and third party) are based on standard truck delivery to a dock facility designed to receive freight. All other fees are not added unless expressly requested by you and confirmed in writing by seller to you. Those additional fees include but are not limited to Twenty-four-hour notification, special delivery times, residential deliveries, lift gate requirements, and/or inside deliveries. If additional fees are incurred while in transit or while being delivered, the buyer will be 100% responsible for the additional costs associated with the shipment. In addition, seller is not responsible for additional charges due to detention for slow unloading (more than 60 minutes) of tractor trailers at buyers' site, or other special machinery or equipment to unload the freight once it arrives. In addition, there may be a variance in fuel surcharge costs from date of original quote to actual ship date, or world/annual events which cause truckload rates to fluctuate.

Buyer or buyer's agent must be present to accept truck deliveries and sign for the products received. A signature will be required for all shipments to make sure that all goods were delivered as specified on the bill of lading. It is buyer's responsibility to note any damages and/or shortages of freight on carrier's delivery paperwork. If seller shipped the products 'Prepaid', it is buyer's responsibility to notify seller within 24 hours so that seller may begin a freight claim and replacement order. For other than 'Prepaid' shipments, it is buyer's responsibility to file damage and/or shortage claims directly with the carrier.

Unless otherwise stated, freight and shipping fees will be charged for shipments to anywhere in the contiguous United States, using a carrier of our choice. Seller normally picks the most economical choice based on cost, service, and reliability; however, other circumstances may require us to ship with a different carrier or method. Any special request by the customer must be made when the freight quote request is made, and/or when the order is placed with seller. Other terms apply to Alaska, Hawaii, Puerto Rico, and export orders. Any extra charges incurred for additional services, such as customer's carrier or special handling by the carrier, must be paid by the buyer.