

Stuchell Products, LLC dba Sare Plastics - Invoice Terms and Conditions

This invoice is payable by the party identified on the face hereof or attached hereto (“Buyer”) to Stuchell Products, LLC dba Sare Plastics, an Ohio limited liability company (“Seller”), at the address set forth on the face hereof or attached hereto, upon the following terms and conditions:

1. **ACCEPTANCE.** Buyer's acceptance of the products, items and/or goods described on the face hereof (the “Products”) constitutes Buyer's acceptance of all terms and conditions contained in this invoice. Any inconsistent or additional terms contained in Buyer's order or otherwise are hereby rejected unless expressly accepted in writing by Seller within ten (10) days after its receipt of this invoice. The terms and conditions as stated herein shall not be modified other than in writing signed by Seller and Buyer.
 2. **TITLE AND RISK OF LOSS.** Unless otherwise stated herein, title in and risk of loss for all Products sold hereunder shall pass to Buyer upon delivery to carrier F.O.B. Seller's plant; *provided, however*, if Seller has acquired special order inventory to complete Buyer's current order or anticipated orders, the risk of loss to all such inventory shall pass to Buyer upon purchase of the inventory by Seller.
 3. **PRICES; PAYMENT; TAXES.** Unless otherwise stated herein, the prices quoted are F.O.B. Seller's plant. Unless otherwise agreed to in writing by the parties, all invoices are due and payable net 30 days. The amount of any local, state, federal, provincial or international tax or tariff levied on the Products referred to herein shall be added to the amount paid by Buyer and shall remain the sole responsibility of Buyer. Any portion of the price which is not paid in accordance with the terms of payment herein stated shall bear interest from the due date at the rate of 1 1/2% per month until paid. In the event Seller incurs any cost, expense and/or fee (including, but not limited to, reasonable attorney fees and court costs) in collecting amounts due hereunder or in the enforcement of its rights hereunder (“Enforcement Costs”), then Buyer shall reimburse Seller for all such Enforcement Costs upon demand.
 4. **DELAY IN PERFORMANCE.** Seller shall not be responsible or liable for any delays or failures in the manufacture or delivery of the Products due to any cause or condition beyond the control of Seller including, without limitation, delays caused by third party suppliers, strikes or labor difficulties, fires, floods and other actions of the elements, pandemics, inability to secure transportation, shortage of materials or equipment, riots or other civil commotions, acts of God and war.
 5. **CANCELLATION OR CHANGE ORDERS; DELIVERY.** No orders may be withdrawn or canceled by Buyer, nor may they be deferred when ready, unless Seller shall have approved such withdrawal, cancellation or deferral in writing and Seller shall have been paid a withdrawal, cancellation or deferral charge of a reasonable amount acceptable to Seller. In the event Buyer shall request changes in its order after receipt thereof by Seller, it shall be responsible for all charges and expenses reasonably incurred by Seller with respect to such changes. Any dates or schedules which may be specified for the delivery of the Products purchased hereunder have been stated only approximately and are estimated from the date of receipt of Buyer's order, with complete specifications, designs, samples and other information reasonably requested by Seller provided in order to proceed with the manufacture of the Products. Seller shall not incur any liability, either direct or indirect, nor shall any order be canceled, as a result of any delays in meeting such dates or schedules.
 6. **LIMITED WARRANTY.** Seller makes no warranty whatsoever, except as to title, with respect to Products manufactured and/or designed to Buyer's or any other party's specifications or with respect to any material selection by any party other than Seller, and Buyer shall, at its own expense, defend and save Seller harmless from and against any claim, suit, expense or otherwise which shall be asserted or brought against Seller by reason of Seller's manufacture or sale of such Products. All Products are sold with the understanding that Buyer has independently determined the suitability or compatibility of such Products for its purposes. Any statements, technical information or recommendations concerning Products sold by Seller are based upon data provided to Seller by its suppliers and believed to be accurate, but do not constitute a guarantee or warranty.
Seller will, in its sole discretion, either repair or replace any Products which is defective because of Seller's defective materials or workmanship; *provided, however*, if Seller determines that repair or replacement is not commercially practicable, Seller shall issue a credit in favor of Buyer in an amount not to exceed the purchase price of the Products. All claims for breach of this warranty must be made to Seller within _____ () days after the date of shipment of the Products to which the claim relates and must be returned at Buyer's expense to Seller's plant in accordance with Seller's written material return authorization and instructions. Seller's warranty shall extend only to the original Buyer from Seller. Seller's warranty does not cover the effects of normal wear, tear, deterioration or abuse of the Products or the effects of improper shipping, storage, use or handling of the Products.
- EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED ABOVE, THERE ARE NO OTHER WARRANTIES OR GUARANTEES, EITHER EXPRESS OR IMPLIED, WRITTEN, ORAL OR ARISING UNDER CUSTOM OF TRADE INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR ANY TERMS HEREOF.**
7. **LIMITATION OF LIABILITY.** In no event shall Seller be liable to Buyer or to any third party for consequential, incidental or special damages, or for lost profits, resulting from or in any manner related to the Products, its delivery, non-delivery, design, use, or any inability to use the same, whether such damages be claimed under contract, tort or any other legal theory. Buyer understands that the sole and exclusive remedy of Buyer shall be the repair or replacement of any defective Products pursuant to the warranty provision hereinabove contained. Should the Products prove so defective, however, as to preclude the remedying of warranty defects by repair or replacement, Buyer's sole and exclusive remedy and Seller's sole and exclusive liability shall be a credit in favor of Buyer in an amount not to exceed the purchase price of the Products upon Buyer's return of the Products to Seller. This limitation of liability shall survive the termination, expiration or cancellation hereof.
 8. **INDEMNIFICATION.** Buyer shall indemnify Seller against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorney fees) on account of any damaged property or injury or death of persons (including, without limitation, Buyer's employees) arising out of Buyer's loading, unloading, storage, handling, use, implementation or disposal of the Products or arising out of any infringement claim where Seller was not responsible for the design of the Products, except for any portion of damages attributable to Seller's gross negligence. This indemnity obligation of Buyer will survive the expiration, termination or cancellation hereof.
 9. **INTEGRATION.** There are no understandings between the parties hereto as to the subject matter hereof other than as set forth herein. All previous communications between the parties hereto concerning the subject matter hereof, whether verbal or written, except for Seller's quotation and order confirmation, if any, including, but not limited to, Buyer's purchase order, are hereby abrogated and withdrawn, and these terms and conditions, together with the quotation and order confirmation, constitute the whole of the agreement between the parties hereto. Any additional terms and conditions of a purchase order or change order shall not apply hereto unless agreed to by Seller in writing. Receipt of the Products delivered hereunder shall be deemed to be an acceptance by Buyer of the terms and conditions of this invoice and the terms and conditions included herein. Any different terms or conditions in Buyer's purchase order, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Seller and Seller specifically objects to the inclusion of any different or additional terms or conditions by Buyer. If Buyer does include different or additional terms and conditions in its purchase order, acceptance, confirmation or other written form sent in response to this invoice, neither Seller's delivery of all or part of the Products, nor any other action except a written notice from Seller, shall constitute acceptance of such additional or different terms, but instead the terms and conditions of this invoice and Seller's quotation and order confirmation, if any, shall govern.
 10. **MISCELLANEOUS.** The terms and conditions applicable to the transaction provided for herein shall be determined and construed in accordance with, and shall be governed by, the laws of the State of Ohio. The parties agree that the United Nations Convention of Contracts for the International Sale of Goods will not apply to this invoice. Further, Buyer and Seller agree to submit to the exclusive jurisdiction of the appropriate local, state or federal courts within Stark County, Ohio for purposes of resolving any dispute or claim arising in connection with said transaction. Nothing herein shall be construed as creating any act or beneficial right in or on behalf of any third party. The failure of either party to insist or enforce in any instance strict performance of any of the terms of this invoice or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.
 11. **PAYMENT OF LESS THAN FULL AMOUNT.** In the event Buyer seeks to make payment on an invoice from Seller in an amount less than the full amount of the invoice and Buyer intends such payment to be in full satisfaction of the invoice, Buyer must send such payment to Stuchell Products, LLC dba Sare Plastics, 114600 Commerce Street NE, Alliance, Ohio 44601, Attention: President.