

## TERMS AND CONDITIONS OF SALE



These Terms and Conditions of Sale (these "Terms") apply to all goods (collectively, "Goods") sold by ENSINGER, INC. or one or more of its U.S. affiliates (collectively, "Ensinger") to the purchaser of such Goods ("Customer"). These Terms, together with any sales contract, written quote, order confirmation, invoice or other document originating from Ensinger for specific Goods (collectively, the "Sales Contract"), shall form the sole and exclusive contract for each purchase of such Goods. Notwithstanding anything herein to the contrary, to the extent any provision of these Terms conflicts with terms in a Sales Contract, the terms of such Sales Contract shall apply, shall be deemed to be part of these Terms and shall prevail in the event of any conflict with the provisions of these Terms.

**TERMS OF PAYMENT:** Customer shall purchase Goods at the price(s) set forth in the Sales Contract, time being of the essence and without setoff, withholding, counter-claim, abatement or other deduction. Terms are Net Cash, 30 days after date of invoice, unless otherwise expressly provided in the Sales Contract.

**CREDIT:** Trade Accounts will be opened only with firms or individuals with approved credit. New Customers, minimum order sales and Customers with insufficient credit history may receive cash in advance, cash on delivery or other alternative terms. Ensinger reserves the right to decline to accept orders or to make deliveries in its sole discretion.

**INTEREST:** Ensinger reserves the right to charge interest at the rate of 1 1/2% per month (18% annually) or the maximum rate of interest permitted by applicable law beginning on the first day following the date on which payment is due if such payment is not timely made.

**TAXES:** Quoted prices do not include applicable taxes. Any tax imposed by any present or future law of Federal, State, or other taxing authority, on the manufacture or sale of the Goods shall be added to the amount to be paid by the Customer.

**DELIVERY TERMS AND CHARGES:** Unless otherwise set forth in the applicable Sales Contract, all shipments are EXW (Ex Works) Ensinger's facility. Without limiting the foregoing, all freight, customs duties, insurance, shipping, handling and similar charges are the responsibility of Customer unless otherwise set forth in the Sales Contract.

**DAMAGE IN TRANSIT:** Except as otherwise set forth in the applicable Sales Contract, if a third party carrier is utilized by Customer to receive any shipments of Goods, Customer agrees to look solely to such carrier with respect to claims for damage to Goods in transit and that Customer shall do the same, if at all, no later than ten (10) days after delivery of the Goods. Notwithstanding the foregoing, Customer must give Ensinger written notice of any such claim at the time it tenders the claim to the applicable carrier.

**DELIVERY DATE:** Every effort will be made to fill orders within the estimated time. Ensinger shall not be responsible for delays or late delivery when caused by acts of God, acts of government, strikes, accidents, carriers, fire, wind, and water, war or civil commotion, deliveries of others furnishing material and other delays as occur without fault of Ensinger or for causes beyond its control. Ensinger shall not be liable for special, indirect or consequential damages caused by such delay or late delivery. Failure to make deliveries at the time designated by the Customer shall not give the Customer the right of cancellation nor relieve the Customer of responsibility for payment. Estimated completion of delivery date will not apply when changes in specification or design are requested by the Customer.

**CUSTOM/MADE TO ORDER GOODS:** Custom/Made to order Goods are defined as Goods that require specific production operations and are Goods not normally stocked by Ensinger as designated by its literature and/or price sheets. For Custom Goods, unless expressly stated otherwise in the applicable Sales Contract, Ensinger reserves the right to ship and subsequently invoice a quantity deviation of plus or minus 10% of the quantity of the Goods stated in the Sales Contract. Upon receipt of Customer Goods within this quantity deviation, Customer acknowledges and agrees that the order for Custom Goods is considered accurate.

**CHANGE OR CANCELLATION:** All orders are accepted on the condition that they are not subject to change or cancellation without acceptance by Ensinger and Ensinger will be reimbursed for all work in process, material, engineering and any other change or cancellation charge incurred by Ensinger including handling, overhead and/or restocking charges.

**LIMITED WARRANTY AND DISCLAIMERS:** Goods manufactured by Ensinger are warranted to conform to applicable Ensinger specifications upon delivery to Customer. Notwithstanding the foregoing, Ensinger assumes no liability for any errors or omissions in any specifications provided or required by Customer ("Customer Specifications"), including any errors or omissions made by Ensinger in interpreting Customer Specifications. In

the event that Goods manufactured by Ensinger fail to meet applicable Ensinger specifications upon delivery, Customer's sole and exclusive remedy shall be for Ensinger to repair or replace any Goods proven to Ensinger's satisfaction to fail to conform to the limited warranty set forth herein, as Ensinger may elect in its sole discretion; provided, however, that Ensinger's obligation to repair or replace defective Goods is conditioned upon Customer notifying Ensinger in writing within the ninety (90) day period following delivery (the "Warranty Period") and that any such Goods are returned, upon request, to such location as Ensinger shall direct. This limited warranty does not apply beyond the original sale of the Goods to Customer, to Goods that are manufactured by third parties, or to defects, damage or loss of Goods caused by (i) abnormal wear and tear, (ii) misuse, accident, neglect, improper application, testing, storage or installation, overloading, abnormal physical stress, abnormal environmental conditions, or use or installation contrary to any instructions issued by Ensinger, (iii) any cause beyond the control of Ensinger, (iv) unauthorized use in combination with third party-manufactured Goods; or (v) claims asserted by Customer after the expiration of the Warranty Period.

Any unauthorized repair, modification or adjustment of the Goods voids the limited warranty set forth herein. Items repaired or replaced under warranty are warranted only for the remainder of the original Warranty Period. Ensinger's advice relating to the technical usage of the Goods or the intellectual property rights of others, whether provided orally or in writing or through the provision of test results, is given in accordance with Ensinger's knowledge at that time, but shall at all times be deemed to be non-binding. Such advice does not relieve Customer from the obligation, and Customer accepts full responsibility, to confirm for itself the suitability of the Goods for Customer's intended purpose(s). THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. In the event that there is a direct conflict between the terms of this Section and the terms of any separate limited warranty published by Ensinger with respect to specific Goods, then the terms of the separate limited warranty published by Ensinger shall prevail.

**PRODUCT ACCEPTANCE:** It is the responsibility of Customer to inspect Goods upon receipt and to assure that Goods conform to the order terms. Customer shall notify Ensinger within thirty (30) days of receipt of any Goods that do not conform to the order terms or are otherwise damaged; Customer will be deemed to have accepted such Goods, and Ensinger shall have no liability for any defect with respect thereto, unless Customer timely does so.

**TOOLING:** Tooling specifically charged to Customer will be held by Ensinger for the exclusive use of the Customer. Customer cannot remove this tooling from Ensinger's premises and Customer will not seek, or permit anyone on its behalf to seek, any lien or other encumbrance on Ensinger's premises. This tooling will be kept in good condition for production, reasonable wear and tear excepted. Charges will be made for repairs to tooling necessitated by production beyond its normal, useful life. Tooling charged to the Customer is the property of the Customer and is not insured by Ensinger against risk or loss due to fire or other such damage unless otherwise agreed to in writing by Ensinger. Ensinger reserves the right to require a tooling or similar agreement to be executed by any Customer for whom Ensinger holds tooling hereunder.

**INSULBAR® ENGINEERING FEE:** Where an engineering fee is charged for tooling associated with insulbar® Goods, such tooling is the property of Ensinger and will be held for the exclusive use of the Customer, notwithstanding anything in these Terms to the contrary.

**GUARANTEED PAYMENT FOR UNCERTAIN TOOLING:** If Ensinger deems the manufacture of the Goods is such that, despite Ensinger's best efforts, the tooling used may not be capable of attaining or sustaining production of a functional good, Ensinger will accept an order using the tooling in question only on the customer's guarantee that the order will be paid in full for Goods produced, regardless of the results. Customer shall be responsible for repairs to tooling necessitated by production beyond the tooling's normal useful life.

**RETURNABLE RACKS:** When Goods are packaged and shipped on Ensinger-owned returnable steel racks, Customer is required to commit to a time cycle of fewer than 3 months to use and return such racks. Failure to meet this requirement may result in rack related charges or restrictions to supply of future Goods.

**CUSTOMER SUPPLIED PROPERTY:** Customer property in the care and custody of Ensinger for the purpose of manufacturing Goods (i.e. molds, fixtures and drawings) will remain in the possession of Ensinger until all financial obligations of the Customer have been met.

## TERMS AND CONDITIONS OF SALE



**INDEMNIFICATION:** Customer agrees, at its own expense, to defend, indemnify and hold harmless Ensinger, its officers, agents, employees and principals, in each case whether current or former, against any and all losses, costs, including investigation costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorneys' fees, to the extent arising out of or resulting from, directly or indirectly, any claims by Customer, its officers, agents, employees and principals, whether current or former, or subsequent users or purchasers of Goods (collectively, a "Claimant"), in each case with respect to: (i) Customer's violation of these Terms and/or applicable laws, regulations and other governing authorities; (ii) acts or omissions of a Claimant (including without limitation any modification to Goods by a Claimant or the modification or removal of existing warnings about risks resulting from improper use of Goods); or (iii) injury or death to persons or damage to property caused by any Claimant or otherwise resulting from ownership, use or handling of the Goods by a Claimant.

**LIMITATIONS OF LIABILITY:** NEITHER ENSINGER NOR ITS REPRESENTATIVES, OFFICERS, AGENTS, EMPLOYEES, PRINCIPALS OR ASSIGNS, IN EACH CASE WHETHER CURRENT OR FORMER, IS OR SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS OR SALE OF GOODS HEREUNDER, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. ENSINGER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO SALES OF GOODS HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO ENSINGER BY CUSTOMER FOR THE APPLICABLE GOODS.

**WAIVER:** Any failure by Ensinger to insist upon strict performance of any of these Terms shall not be deemed a waiver of any rights or remedies Ensinger may have and shall not be deemed a waiver of any subsequent breach or default. No provision of these Terms shall be deemed to have been waived by Ensinger unless such a waiver is in writing and signed by an authorized officer of Ensinger.

**GOVERNING LAW, EXCLUSIVE VENUE AND JURISDICTION, AND WAIVER OF JURY TRIAL:** These Terms and the sale of Goods hereunder shall be deemed an agreement and transaction made in and under the laws of the Commonwealth of Pennsylvania, and for all purposes shall be constructed and enforced in accordance with and governed by the laws of the Commonwealth of Pennsylvania, excluding (i) its conflict of laws provisions and (ii) the United Nations Convention for the International Sale of Goods. All actions arising hereunder shall be instituted in the state and federal courts located in Allegheny County, Pennsylvania. Customer hereby consents to the sole jurisdiction of the state and federal courts sitting in Allegheny County, Pennsylvania, and Customer agrees not to raise, and hereby waives, any defenses based upon venue, inconvenience of forum, lack of personal jurisdiction, improper service of process or the like in any such action or suit. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR COUNTERCLAIM ARISING UNDER OR IN ANY WAY RELATED TO THESE TERMS OR THE SALE OF GOODS HEREUNDER UNDER ANY THEORY OF LAW OR EQUITY, WHETHER NOW EXISTING OR HEREAFTER ARISING.

**SURVIVAL; SEVERABILITY:** All rights, duties and obligations which by their nature should apply beyond the term of these Terms, or which should apply in order to give proper effect to their intent, will remain in force (including without limitation the terms of the Sections entitled "Indemnification" and "Limitations of Liability" herein). Any provision hereof which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; RELATIONSHIP OF PARTIES:** These Terms are binding on and inure to the sole benefit of Ensinger and Customer and their respective permitted successors and permitted assigns. Nothing herein, express or implied, confers on any third party (including without limitation any subsequent purchaser of Goods from Customer) any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**QUOTATIONS; UNAVAILABILITY OF GOODS AND CHANGES TO GOODS:** Any quotations provided by Ensinger are not binding and are subject to change unless specifically set forth in a Sales Contract, shall be valid

for a maximum of thirty (30) days from the offer date and may be withdrawn by Ensinger at any time upon notice to Customer. Notwithstanding anything herein to the contrary, if all or any portion of Goods or component parts thereof ordered by Customer cease to be available to Ensinger from the manufacturer or supplier of such Goods for any reason or no reason, such transaction or portion thereof may be terminated by Ensinger upon notice to Customer and Ensinger shall repay to Customer any sums paid to Ensinger by Customer with respect to Goods that have not and cannot be supplied as Customer's sole and exclusive remedy with respect thereto. Ensinger may, without liability, discontinue or change specifications, prices, designs, features, models, equipment or other characteristics of Goods it sells at any time and from time to time without notice.

**PRODUCT SPECIFICATIONS:** Customer acknowledges that Ensinger is not the manufacturer of certain Goods or components thereof, from time to time the manufacturer of Goods may make changes to the specifications of such Goods or components thereof (each, a "Manufacturer Change") and that in some circumstances a Manufacturer Change may be carried out by the manufacturer unilaterally and without notice to Ensinger. If a particular transaction concerns Goods that are subject to a Manufacturer Change, Ensinger reserves the right to deliver Goods and carry out the delivery in accordance with the Manufacturer Change or the manufacturer's most recent directives. Information about Goods sold by Ensinger, including without limitation information contained in technical assistance, brochures, type lists, catalogues, advertising material, specifications and descriptions, manufacturer's data, definitions of the requirements to be met by Goods and other technical supply conditions, certificates and other documents, do not constitute a warranty by Ensinger as to the quality and state or durability of Goods and Customer shall not be entitled to rely on such information. Customer agrees to evaluate such information, to make an independent decision regarding the suitability of such information, products and services for Customer's application, and only use such products, services and information pursuant to then current good product stewardship principles and all regulatory requirements applicable to Customer's business.

**FORCE MAJEURE:** Ensinger shall not be liable or responsible to Customer, nor be deemed to have defaulted under these Terms, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by or results from acts beyond Ensinger's reasonable control, including, without limitation: (i) acts of God; (ii) flood, fire, earthquake or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) applicable laws, regulations and other governing authorities; (v) actions, embargoes or blockades; (vi) action by any governmental authority; (vii) national or regional emergency, including pandemic-related closures or stay-at-home orders; (viii) strikes, labor stoppages or slowdowns or other industrial disturbances; and (ix) shortage of adequate power or transportation facilities.

**DELETE ASSIGNMENT AND SUBCONTRACTING:** Ensinger shall be entitled to assign, subcontract, delegate or otherwise transfer these Terms or its rights or obligations hereunder in whole or part without the consent of Customer.

**MODIFICATIONS TO TERMS:** Ensinger reserves the right to modify these Terms at any time and from time to time and Customer is advised to check Ensinger's website at <https://www.ensingerplastics.com/en-us> periodically for updates. Any terms existing on such website that vary from or supplement these Terms are hereby incorporated by reference and shall control in the event of a conflict with these Terms.

**INTELLECTUAL PROPERTY RIGHTS:** Ensinger, its affiliates or its or their licensors retains all exclusive right, power and authority as to all of its (or their) patents, patent applications, other patent rights and any other governmental authority-issued indicia of invention ownership, U.S. and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names and domain names, and other intellectual property and industrial property rights, together with the goodwill symbolized by any of the foregoing in any part of the world (collectively, "Seller IP"). Customer acknowledges and agrees that: (i) Customer shall not acquire any ownership interest in, or independent right to use, any Seller IP under these Terms; (ii) any goodwill derived from the use by Customer of Seller IP inures to the benefit of Ensinger, its affiliates or its or their licensors, as the case may be; (iii) notwithstanding the foregoing, if Customer acquires any rights in or relating to any Seller IP by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Ensinger, its affiliates or its or their licensors, as the case may be, without further action by either of the parties; and (iv) Customer shall use Seller IP solely for purposes of using Goods and only in accordance with these Terms and the instructions of Ensinger.