

If the originator of this document is selling any item or product, then the "Terms and Conditions of Sale" shall apply to the transaction; if the originator of this document is purchasing any item or product, then the "Terms and Conditions of Purchase" shall apply to the transaction.

TERMS AND CONDITIONS OF SALE

The terms and conditions below cover all sales by Duraplas Incorporated, Maxi-Lift Incorporated, and Southwest Agri-Plastics Incorporated.

Shipment of the items purchased (the "Products") is made f.o.b. Seller's plant, unless another point of origination is designated on the face hereof in which case shipment is f.o.b. at such point of origination. Unless specified by Buyer in writing, shipment shall be selected by Seller. Seller may, without notification add surcharge to cover transaction costs associated with shipments that are requested as, "prepaid and add" freight costs by the buyer. Seller may add additional freight charges in a subsequent bill. 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.

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.

Any claim for defective materials, for imperfect manufacture, for shortage in count, or for any other cause, is hereby waived by Buyer unless made in writing within ten (10) days after delivery of any shipment of Products made pursuant hereto. Seller's sole liability for any claim or defect shall be to replace the Products or to credit Buyer with the cost of the Products at Seller's election to replace or credit and in no event shall either party be liable for any other damages including without limitation incidental and consequential damages as defined in Section 2.715 of the Texas Business and Commerce Code. Once Products have left Seller's premises, the sole responsibility for their use shall rest with the Buyer, and **SELLER DOES NOT IN ANY WAY WARRANT THE MERCHANTABILITY OF THE PRODUCTS, WILL FURNISH BUYER WITH SAMPLES FOR EXAMINATION ON REQUEST AND BUYER AGREES THAT THERE ARE NO WARRANTIES WITH RESPECT TO ANY MATTERS WHICH MAY BE DISCLOSED BY EXAMINATION OF THE SAMPLES AND SELLER DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE AND THERE SHALL BE NO IMPLIED WARRANTIES OF ANY**

KIND; provided, however, that Seller does agree to replace Products or credit Buyer with the cost of defective Products if and as provided in this paragraph. The extent and limitation of any warranty shall be governed by this paragraph unless Seller has, in writing, notified Buyer or included with the product any other warranty, in which case the other warranty shall control. In the event Seller elects to replace Products, Buyer must prepay freight and return the products to Seller's plant in Dallas, Texas. Seller shall send any Products replaced freight collect to Buyer. Other warranties pertaining to specific products may supersede this 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.

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 agreements, representations, communications, and/or understandings.

This contract shall be governed by and construed in accordance with the laws of the state of Texas, and exclusive venue shall be 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.

TERMS AND CONDITIONS OF PURCHASE

It is understood and agreed that (1) only authorized representatives and employees of Buyer may bind Buyer to any purchase and if such representative or employee is not so authorized Buyer may terminate or cancel any unauthorized purchase without liability of any kind to Buyer; and (2) the terms, conditions or warranties of purchase contained herein shall take precedence over any terms or conditions which may form a part or appear on Seller's forms, and supersedes any prior oral or written agreements, and Buyer shall not be bound by any terms and conditions other than as set forth on the face therefore and as contained herein, nor shall these terms and conditions be modified unless expressly agreed to in writing signed by an authorized representative of Buyer. Raw material delivered to Buyer's silos must have designated silo number on delivering truck paperwork. If delivered without this information, the total responsibility lies with the delivering carrier.

Stenographical and clerical errors are subject to correction.

Shipment shall be prepaid to Buyer's plant, unless otherwise expressly agreed to. Shipment shall be made by a carrier of Buyer's choice. Insurance for the full value of Seller's goods shall be provided at Seller's expense. Seller shall be responsible and liable for any delay, Buyer's incidental, liquidated and consequential damages resulting from the failure to timely deliver the goods. In the event Buyer suffers any damages as contemplated by this paragraph or otherwise, as a result of a breach of this agreement by Seller, Buyer shall also be entitled to recover its reasonable attorney's fees.

Seller warrants; that it has good title to the goods being sold, that the goods are free of any claims of third parties by way of infringement or the like; that the goods are fully merchantable; that the goods will fully conform to their description stated on the front of this order, and to all other descriptions made by Seller to Buyer; that the goods will fully conform to the sample or model, if any, exhibited by Seller to Buyer, or, any sample or model delivered by Buyer to Seller, and that the goods will be fit for the purposes for which the Buyer is purchasing them.

The risk of loss of the goods shall remain with Seller until delivery to Buyer has been completed.

This agreement shall be governed by and construed in accordance with the laws of the State of Texas, and exclusive venue shall be 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.

Shipping Terms and Conditions

All shipments are Ex Works. 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.

Seller’s Terms and Conditions apply to all shipments made by seller. See Terms and Conditions page for more details.