

Schaumaplast Precision Foam Molders, LP
101 South 30th Street, Phoenix, AZ 85034-2710
Terms and Conditions
Version 09/08

1. PRICE

The final part and/or mold price is determined by a Written Order Confirmation for each order placed. All prices are net and do not include any applicable duties, taxes or other fees as may be required by law. If no Written Order Confirmation has been executed, the offer determines prices. If no outstanding offer exists, the then-existing list-price determines the price. Prices not confirmed in a Written Order Confirmation are subject to change without notice, unless specifically designated as a firm offer. The mold price listed in the Written Order Confirmation includes one (1) sample part made with the production mold. This sample part has to be approved by the customer prior to the start of regular production; additional charges may apply for additional samples. If the part price is based on the weight of the production part the weight of the approved sample will determine the price per part.

2. FORMATION OF CONTRACT.

Buyer's order is deemed an offer, and does not lead to the formation of a contract until Schaumaplast accepts by either (1) sending a written order confirmation to Buyer or (2) Schaumaplast begins performance. All terms of Buyer's order, including but not limited to price and quantity, shall become fixed with Schaumaplast's Written Order Confirmation. Any subsequent changes require written confirmation by an authorized representative of Schaumaplast. Schaumaplast shall not be liable for any delays caused by Buyer's subsequent changes of any terms. Any drawings or other specification provided to Schaumaplast that do not lead to a contract will be returned to Buyer upon request. Otherwise, Schaumaplast may destroy the plans after a period of three (3) months. Any representation, affirmation of fact and course of dealing, promise or condition in connection therewith or usage of trade not incorporated herein, shall not be binding on either party.

3. TERMS OF DELIVERY

3.1. All sales are FOB Schaumaplast's manufacturing facility located in Phoenix, Arizona (may also be referred to as EXW and shall mean the same as EXW as defined by the International Chamber of Commerce Incoterms 2000) unless otherwise specified in writing. Risk of loss shall pass to Buyer at the FOB point. Unless explicitly requested, method of transport, packaging and route will be at the sole discretion of Schaumaplast. Schaumaplast's placement of the goods at the point of shipment and Schaumaplast's notification of this fact constitutes delivery to Buyer for purposes of timely delivery. Thereafter, the Buyer will bear all expenses, including but not limited to cost of packaging, and the risk of loss. If delivery is delayed due to the Buyer's actions or inactions, the Buyer bears the risk of loss upon Schaumaplast's placement of the goods at the point of shipment and written notice to the Buyer of such placement. The Buyer may not return any packaging to Schaumaplast without prior agreement by Schaumaplast.

3.2. The time period for delivery will commence with the execution of a Written Order Confirmation by Schaumaplast, or once all required documents, including but not limited to the required drawings and specifications, have been provided by the Buyer, whichever occurs later. An approximate time for delivery will be set by the Written Order Confirmation. If Buyer fails to timely provide any required or requested documentation, the deadlines for delivery will be extended accordingly. If the Buyer fails to meet his payment obligations under the terms of this agreement, delivery time will be extended until payment has been made, but in no event longer than one (1) month from the date payment is finally due. After the expiration of the one (1) month period, Schaumaplast may cancel the contract.

3.3. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without

limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

3.4. Tolerances. Goods manufactured by Schaumaplast to meet Buyer's instructions, specifications, or requirements will be substantially similar to the molded sample approved by Buyer prior to manufacture regarding. Any variations regarding density or part tolerances will be subject to a separate written agreement.

3.4.1. All deliveries are subject to a plus or minus deviation of ten percent (10%) in actual quantity delivered.

3.5. Schaumaplast may make partial deliveries.

3.6. If Schaumaplast causes a delay, and Buyer can show it was actually damaged by this delay, Buyer is entitled to one-half percent (.5%) of the value of the entire contract for each completed seven (7) day period of delay, but in no event more than five percent (5%) of the portion of the contract that caused damages to the Buyer due to its delay.

3.7. Upon written demand by the Buyer, and at the Buyer's expense, Schaumaplast will insure the goods from the time of shipment against risks designated by Buyer.

3.8. Requirement Contracts. Buyer must order a fixed total quantity of goods and provide a listing of estimated times and quantities. Buyer will be bound by the total volume of goods ordered. The Written Order Confirmation will provide a detailed listing of requested dates and quantities, as well as instructions on how to request delivery of an installment. Due to frequent fluctuations in costs for raw materials, prices on all requirement contracts are subject to change every three (3) months. Upon expiration of the time period agreed upon in any Requirement Contract, any additional orders from Buyer will require the formation of a new contract pursuant to the terms and conditions, including price, then in effect.

4. TERMS OF PAYMENT

4.1. In the case of partial deliveries, each delivery will be invoiced separately.

4.2. Payment for Molds. If no alternative arrangements are made in writing, the price for a mold is payable in two (2) equal installments. The first installment is due upon formation of contract or within five (5) days of formation. Schaumaplast will not begin performance until Buyer has paid the first installment. The second installment is due immediately upon receipt of the mold.

4.3. Payment for Parts. If no alternative arrangements are made in writing, payment is due within thirty (30) days of the date of the invoice. If payment is made within ten (10) days of the date of the invoice, a two percent (2%) discount, based on the contract price (before taxes and other fees) will be applied. No Buyer shall be eligible for the discount if Buyer has other outstanding and overdue payments, or other obligations. All payments are to be made in U.S. Dollars.

4.4. Any sending bank fees associated with wire transfer or ACH transactions are the responsibility of the Buyer and are NOT to be deducted from Buyer's payment to Schaumaplast.

5. CANCELLATION OR MODIFICATION OF ORDERS

Buyer may not cancel or modify orders except with Schaumaplast's prior written consent and then only if Buyer makes payment to Schaumaplast to indemnify it against loss, including but not limited to expenses incurred and commitments made by Schaumaplast. Buyer may not change the delivery dates or quantities of goods delivered for orders placed with Schaumaplast, except with Schaumaplast's prior written

consent, which shall generally not be given within thirty (30) calendar days prior to a scheduled full or partial shipment.

6. NOTIFICATION OF DEFECT OR CLAIM

6.1. All goods delivered will be substantially similar to the molded sample previously approved by Buyer. Buyer must notify Schaumaplast in writing within seven (7) days of the receipt of the goods of any damage or defect, or in the case of a latent defect, immediately upon discovery of the defect. It is Buyer's obligation to timely inspect the goods and notify Schaumaplast. The burden of proof with respect to any alleged damage or defect remains with Buyer. Upon written notification of damage or defect, Buyer must make the affected goods reasonably available to inspection by Schaumaplast. If the Buyer returns the goods to Schaumaplast without obtaining prior written approval by Schaumaplast, the goods are returned at the Buyer's expense and risk.

6.2. If a defect is found to exist, Schaumaplast will replace, repair or redeliver the affected goods. In case no replacement, repair or redelivery occurs, Buyer may request, in writing, cancellation of the contract, or a lower contract price. If the Buyer chooses to cancel the contract, no further damages apply. Any goods already delivered will remain with the Buyer. Any monetary damages shall not exceed the difference between the price according to the contract and the fair market value of the goods actually delivered.

7. WARRANTY AND DISCLAIMER OF WARRANTY

7.1. Schaumaplast warrants to its Buyer that the goods manufactured by Schaumaplast, including goods manufactured according to Buyer's drawings or specifications, will be free from defects in materials and workmanship for six (6) months. Industry norms shall be descriptive only and variations therefrom shall not give rise to a claim for breach of warranty.

7.2. Schaumaplast's sole obligation to the Buyer under this warranty is to repair or replace, at Schaumaplast's sole discretion, any goods which are defective in materials or workmanship. Such repair or replacement shall be done according to methods and at a location of Schaumaplast's choosing. No such repair or replacement will extend the applicable warranty period. No claims under this warranty shall be valid unless the Buyer notifies Schaumaplast in writing of the defect within seven (7) days of delivery, or, in case of a latent defect immediately upon discovery of the defect, but in no event later than six (6) months. When a warranty claim arises, Buyer must contact Schaumaplast to arrange for repair or replacement. If Schaumaplast chooses to perform the repair or replacement at Schaumaplast's plant, then return shipment to Schaumaplast shall be arranged by Buyer, with freight prepaid by Buyer. The risk of loss or damage to any products returned to Schaumaplast will be with Buyer.

7.3. This warranty does not cover ordinary wear and tear, vandalism, abuse, misuse, overloading, altered equipment, equipment or parts which have not been properly installed, operated or maintained or which have been improperly adjusted, or damages caused by failure to follow the maintenance or installation procedures provided by Schaumaplast.

7.4. Any goods replaced under this warranty are the property of Schaumaplast and have to be returned to Schaumaplast's plant within a reasonable time of replacement at Buyer's cost.

7.5. THE ABOVE LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATIONS OF REMEDIES

The remedies set forth in these Terms and Conditions shall be the sole and exclusive remedies available to Buyer. Schaumaplast shall not be liable for any consequential or incidental damages of any kind, nor under any circumstances shall Schaumaplast be liable for damages beyond the

price of the goods purchased by Buyer, whether in contract, in tort or under any warranty or other use. If, upon inspection, Schaumaplast discovers that the goods alleged to be defective are not covered by the foregoing warranty, Schaumaplast reserves the right to charge Buyer for all transportation costs and expenses incurred by Schaumaplast in examining, processing, or handling such goods. Any controversy or claim arising out of or relating to this contract or the breach hereof, must be commenced within two years after the cause of action has accrued.

9. CHANGES IN BUYERS FINANCIAL CONDITION

9.1. Schaumaplast reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to Schaumaplast in the event of (i) Buyer's insolvency, (ii) the filing of a voluntary petition in bankruptcy by Buyer, (iii) the appointment of a receiver or trustee for Buyer, or (iv) the execution by Buyer of an assignment for the benefit of creditors. Schaumaplast reserves the right to suspend its performance and take ownership of the mold until payment or adequate assurance of performance has been received. Schaumaplast also reserves the right to extend credit or to cancel Buyer's credit at any time for any reason. Buyer agrees to provide Schaumaplast with an updated credit application on request as a condition for the continued extension of credit. If there is any change in Buyer's business or if substantially all of Buyer's assets are being sold and/or Buyer will resume business somewhere else for the same parts, Buyer will notify Schaumaplast and Schaumaplast will assume ownership of the mold to secure payment of all outstanding sums owing to Schaumaplast including the "Know-How" for the mold.

9.2. Buyer grants Schaumaplast a security interest in and to any and all goods and materials and molds and proceeds thereof, relating to goods sold to Buyer. Schaumaplast shall have all the rights of a secured party as provided by the Universal Commercial Code. Buyer agrees to execute any documents or furnish information necessary to perfect this security interest. Buyer willingly grants Schaumaplast the right of ownership to the molds and the "Know-How", specifically related to material that has not been paid for on delinquent invoices. Buyer will cooperate fully in order to receive offsetting credit on account.

10. ASSIGNMENT OR TRANSFER.

Buyer may not assign or transfer any order, in whole or in part, or any molds without the prior written consent of Schaumaplast.

11. MOLDS (TOOLS)

11.1. The price for new/converted molds includes a one time molded sample provided to Buyer for his approval prior to the start of regular production with the mold. If Buyer requests changes to the mold, additional charges apply. Any changes to the mold require a written confirmation signed by an authorized representative of Schaumaplast and the Buyer and may extend time for delivery. Before producing a new mold, Schaumaplast may specify the mold's output quantity. If the output quantity was specified in writing, and the quantity is not met due to no fault of the Buyer, Schaumaplast will replace the mold free of charge in order to meet this initial output quantity. Once the initial output quantity has been met, Buyer is financially responsible for the replacement of any required molds.

11.2. Absent written agreement, title to the molds remains with Schaumaplast until paid in full. A mold specifically manufactured according to Buyer's specifications will only be used for orders placed by that Buyer, as long as Buyer fulfills the obligation to pay according to the terms of the agreement.

11.3. Upon completed payment according to the terms of the contract, title to the molds will vest in Buyer; possession to remain with Schaumaplast. Schaumaplast is entitled to exclusive possession and use of the mold pending completion of the contract and/or delivery of a designated number of deliveries. The duty to insure the molds once vested in Buyer will be the same as for molds and tools provided by the Buyer.

11.4. If molds or other tools are provided by Buyer, Schaumaplast's liability is limited to the safe storage and use as is reasonable for Schaumaplast's own molds or other tools. It is the Buyer's duty to insure molds and any other tools provided by Buyer against, at the minimum, theft and fire. Additional insurance is at the Buyer's discretion. If any molds or tools provided by Buyer are damaged, destroyed, or stolen, Schaumaplast shall not be liable for any damages to Buyer, even if not covered by Buyer's insurance unless Buyer can prove Schaumaplast destroyed, damaged or lost the mold or tools recklessly or with the intent to do destroy, damage, or lose them. Regular wear and tear shall not be deemed reckless or intentional destruction of Buyer's property. Schaumaplast's duties with respect to Buyer-provided molds cease within a reasonable time upon completion of the order after Schaumaplast provides Buyer with written notice to that effect. An additional written notice will be given to Buyer thirty (30) days prior to return or destruction of the molds at the Buyer's expense.

11.5. Absent written agreement executed contemporaneously to the contract by all parties, if molds or other tools provided by Buyer remain inactive for a continuous term of more than three (3) years, title in the molds and tools will vest in Schaumaplast, effectively making Schaumaplast the sole owners of the molds and tools at issue. Any subsequent change to this policy requires a writing executed by an authorized representative of Schaumaplast.

12. PROTECTION AGAINST INFRINGEMENT

12.1. If Schaumaplast is required to manufacture goods according to specifications provided by the Buyer, it is the Buyer's responsibility to ensure the rights of third parties are not infringed upon. Schaumaplast will notify the Buyer of any known third party rights.

12.2. Buyer, at Buyer's expense, will defend and hold Schaumaplast harmless from and against all damages, costs, and expenses arising from any claim of infringement of any patent, trademark registered design or other intellectual property rights caused by the goods manufactured pursuant to Buyer's specifications.

12.3. If a third party obtains an injunction or in any alternative way forces a stop in the production upon the claim that its rights are being infringed upon, Schaumaplast is entitled to halt production without verifying any legal or factual claims made by Buyer or the third party. It will be solely Buyer's responsibility to verify any claims made. If the delay is so that Schaumaplast cannot reasonably be expected to continue, Schaumaplast may rescind the contract. Buyer remains liable to pay for the goods manufactured prior to the injunction or stop of production, regardless of the validity of the claim(s) made.

12.4. Any molds, forms, tools or other instrumentalities designed and produced by Schaumaplast and the know-how to create the same, remain the intellectual property of Schaumaplast. Buyer may not use Schaumaplast's Know-how for Buyer's own purposes. All ideas, concepts, drawings and any other manifestations of Schaumaplast's Know-how remain property of Schaumaplast. Know-how shall mean technical data, formulae, standards, design, expertise technical information, specifications, processes, methods, code books, raw materials, as well as all information, knowledge, assistance, trade practices and secrets, and improvements thereto, divulged, disclosed, or in any way communicated to the Buyer under this Agreement, unless such information was, at the time of disclosure, or thereafter becomes part of the general knowledge or literature which is generally available for public use from other lawful sources. The burden of proving that any information disclosed hereunder is not confidential information shall rest on the Buyer.

13. ENTIRE AGREEMENT.

This document in conjunction with the Written Order Confirmation created upon formation of a contract, contains all of the terms of and conditions of the agreement between Schaumaplast and the Buyer to the exclusion of any other statements and agreements, and to the exclusion of any terms and conditions incorporated in Buyer's order or other

documents provided by Buyer. Schaumaplast's acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of the terms and conditions contained herein, and Buyer, upon placing an order is presumed to have accepted all the terms and conditions without modification. No alteration, waiver, modification of or addition to the terms and conditions herein shall be binding on Schaumaplast unless set forth in writing and specifically agreed to in writing by an authorized representative of Schaumaplast.

14. SEVERABILITY

If any provision, or part of a provision hereof shall be unenforceable, invalid or void for any reason, such provision, or part of a provision shall be automatically voided and shall not be part of this agreement and the enforceability or validity of the remaining provisions shall not be affected thereby.

15. MEDIATION & ARBITRATION

15.1. The Parties agree to participate in mandatory non-binding mediation to resolve any and all disputes arising from this Agreement and to share equally in costs associated with mediation, except each party shall bear their own attorneys' fees associated with the mediation process. The Parties agree to make a good faith effort to resolve any dispute with mediation. The parties further acknowledge and agree that non-binding mediation must occur before commencing any arbitration or litigation.

15.2. The parties hereto knowingly and intentionally waive the right to a jury trial on any issue or dispute that may arise between them, and agree to arbitrate by a single arbitrator in the city of Phoenix, AZ. Judgment upon the arbitration award shall be final, binding, and conclusive upon the parties and may be entered in any court having jurisdiction. The parties also agree that the prevailing party in any Claim shall be entitled to recover court costs, disbursements, expenses, and reasonable attorney's fees from the other party.

16. GOVERNING LAW

This Agreement shall be interpreted and construed according to, and governed by, the laws of Arizona, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in Arizona shall have jurisdiction to hear any dispute under this Agreement.