

# **Mercury Plastics, LLC**

## **Standard Terms and Conditions for Services**

November 2023

Mercury Plastics, LLC (“Seller”, “we”, “us”, “our”) has set out in this document our basic terms and conditions (“Terms”) that will exclusively govern our provision of electron beam irradiation, and related, services (“Services”) to the buyer (“Buyer”, “you”, “your”) identified in the attached quotation, proposal, invoice or order (collectively, “Order”). If you provide us with any pre-printed terms and conditions that appear on any purchase order or other document, they are rejected and will be of no force or effect. These Terms are deemed a part of and incorporated by reference into the applicable Order, and all other documents exchanged between us relating to the sale and purchase of our Services, whether electronic or in writing, including, without limitation, all quotations, acknowledgements, packing slips, invoices and purchase orders.

These Terms contain our entire agreement relating to each Order. By accepting such Order, you agree you have read and will be bound by these Terms. These Terms will be valid without signature if issued by us through our computer system or other electronic means and can be found at [www.mercury-plastics.com](http://www.mercury-plastics.com) (“Website”). These Terms may hereafter be revised, from time to time, by us by posting revisions on the Website, and such revisions shall be binding on both of us upon posting. You agree that you will check the Website for any revisions to these Terms. No change, waiver or consent with respect to these Terms will be binding on us unless contained in a separate writing signed by our President.

1. **APPLICATION OF TERMS.** Our acknowledgement and acceptance of your Order for our Services is expressly limited to and made conditional upon your acceptance of these Terms. We deem material, object to and reject any of your terms and conditions that are in addition to or different from these Terms unless we have expressly agreed to them in writing (other than additional provisions specifying quantity, description of the Services ordered and shipping instructions). In any event, you will be deemed to have agreed to these Terms if you accept any portion of the Services you order from us. You acknowledge that the prices we have quoted are predicated on the enforceability of these Terms, that the price would be substantially higher if these Terms did not apply, and that you accept these Terms in exchange for such lower prices.
2. **PRICES AND TERMS.** Unless we otherwise agree in writing, or as may otherwise be provided on the face of our invoice, you will pay the prices for the Services in effect at the time of shipment and all prices are Net 30 Days. No cash discount is allowed unless we otherwise specify to you in writing, and you may not setoff or assert a counterclaim unless we agree in writing. In addition to the prices specified, you agree to pay any federal, state or local excise, use, occupational or similar tax, as well as all tariffs applicable to the Services, now in force or to be enacted in the future, assessed against you or us due to a transaction.
3. **SERVICES, SHIPMENT, PROCESSING TIMES, AND DELIVERY SCHEDULES.** The Services will be performed on products you provide to us (“Products”). Scheduling for delivery of the Products shall be made with our office set forth on the applicable Order. You are responsible for shipping Products to us at the location set forth in the applicable Order (“Services Location”). You will at all times maintain insurance on your Products, including while the Services are being performed at the Services Location. At no time will we accept risk of loss of the Products, regardless of the location of the Products. We must receive delivery of your Products no sooner than seven (7) days, and no later than two (2) days prior, to the estimated Services date. Receipt of Products outside of this delivery window may result in additional charges for handling and storage of the applicable

Products. Our average processing time for Services is seven (7) business days, but this is an estimate and we shall not be bound to any specific time to perform the Services, unless expressly set forth in the Order or otherwise agreed to between the parties in writing. You are responsible for shipping the Products from the Services Location to the location of your choosing. We shall cooperate with you in scheduling delivery of the Products to the location of your choosing after Services are completed on such Products. You will pay all freight charges and assume the risks of transportation, including delay, damage and loss, unless we otherwise agree in writing. Prices for Services are based on a single receipt and shipment of Products and deviation from this or any unusual handling requirements will result in additional handling charges.

4. **LIMITED WARRANTY; DISCLAIMER.** We warrant that the Services will be performed in a professional and workmanlike manner, and in accordance with the specifications set forth on the applicable Order. If we fail to comply with this warranty, then your sole and exclusive remedy is for us to either, at our discretion, re-perform the Services at no charge to you, or to refund the amount paid for the nonconforming Services. Fulfillment of our warranty obligations to the purchasers of our Services is our sole warranty obligation for our Services. **WE ARE UNDER NO OBLIGATION TO INSPECT OR REVIEW ANY PRODUCTS DELIVERED TO US BY YOU, NOR SHALL WE HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY FAILURE OF THE SERVICES DUE TO DEFECTS OR OTHER ISSUES WITH PRODUCTS PROVIDED TO US BY YOU (INCLUDING PRODUCT INCOMPATIBILITY WITH THE SERVICES PERFORMED).** EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE DISCLAIM, AND YOU HEREBY WAIVE, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
5. **LIMITATION OF REMEDIES.** Your sole and exclusive remedy against us for any breach of our obligations under an Order or these Terms, or based on any other theory of liability, will be limited to, at our option, our re-performance of any nonconforming Services for which you make a claim or our issuance of a refund for such nonconforming Services in accordance with these Terms. This exclusive remedy will not be deemed to have failed of its essential purpose so long as we are willing and able to re-perform the nonconforming Services and, in any event, our liability for any damages due you will be limited to the amount paid for the nonconforming Services, regardless of whether other damages were foreseeable. **THIS PARAGRAPH STATES YOUR SOLE AND EXCLUSIVE REMEDIES.**
6. **LIMITATIONS ON ACTIONS AND LIABILITY.** You agree that all of your claims arising under these Terms or an Order will only be valid for one (1) year from the date of the Order. **WE WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM DELAY IN DELIVERY OF THE SERVICES OR FOR ANY FAILURE TO PERFORM WHICH IS DUE TO CIRCUMSTANCES BEYOND OUR CONTROL OR THE CONTROL OF OUR SUPPLIERS, INCLUDING WITHOUT LIMITATION ANY FAILURE OR DELAY IN TRANSPORTATION, ACTS OF ANY GOVERNMENT OR ANY AGENCY OR SUBDIVISION THEREOF, JUDICIAL ACTION, LABOR DISPUTES, FIRE, ACCIDENT, ACTS OF NATURE, PANDEMIC, SHORTAGE OF LABOR, FUEL OR RAW MATERIAL, OR MACHINERY OR TECHNICAL FAILURE.** OUR MAXIMUM LIABILITY, IF ANY, FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM OUR BREACH OF THESE TERMS, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT WITH RESPECT TO THE SERVICES, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE

AMOUNT PAID FOR THE SERVICES. IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IN THIS PARAGRAPH 6 IS YOUR EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT THE REMEDY IN PARAGRAPHS 4 AND/OR 5 FAILS OF ITS ESSENTIAL PURPOSE.

7. **CONFIDENTIALITY.** If your personnel visit our facility(ies) or you otherwise receive any proprietary or non-public information from us, you will retain and treat such information as confidential and will not use or disclose such information to any third party without our prior written consent. Upon termination of these Terms or an order, you shall return the proprietary and non-public information to us and shall not use such information for your own or a third party's benefit.
8. **CREDIT APPROVAL AND PAST DUE ACCOUNTS.** You will furnish to us all financial and related information reasonably requested by us from time to time for the purpose of establishing or continuing your credit limit. We will be entitled to collect from you interest on all past-due accounts at the rate of 1.5% per month, not to exceed the maximum rate of interest allowed by law.
9. **CANCELLATION.** You may cancel Orders upon written notice to us prior to your delivery of the Products to us on which the Services were to be performed. If you cancel an order, in whole or in part, after your delivery of Products to us, you will pay a \$250 cancellation fee. In this event, we are not obligated to make Products available to you for return until we receive complete payment of the cancellation fee, and any associated freight, handling and/or storage charges.
10. **TERMINATION.** If we default on a material obligation, you will provide written notice to us specifying our default and we shall have thirty (30) days to remedy such default. If such default is not excusable under any provision of these Terms, and we have not remedied such default within thirty (30) days after our receipt of such notice of default, you may terminate the uncompleted portion of the Order, in whole or in part, by providing fifteen (15) days' prior written notice of termination to us, during which we shall have the right to cure such default. If we perform nonconforming Services, you will have the rights set forth in Paragraph 4 of these Terms but such performance will not be deemed a default for which our performance may be terminated. In the event that you fail to perform any of your obligations under these Terms and/or any Order, and you fail to cure such breach within ten (10) days after receipt of written notice from the us specifying such breach, we may, at our option, immediately terminate these Terms and/or the applicable Order(s) upon written notice to you. Upon any such termination by us: (a) we shall be relieved of any further obligation to you under these Terms and any applicable Order(s); (b) you shall be liable to us for the immediate payment of amounts then billed to date by us to you; and (c) you shall immediately reimburse us for all of our other losses, costs or expenses as a result of the termination of these Terms or any Order(s).
11. **ASSIGNMENT.** You cannot assign any order or any claim against us arising directly or indirectly out of or in connection with an order without our prior written consent. We may assign, without consent, any Order and these Terms to any subsidiary or affiliate of ours or of Masco Corporation or to an entity or person that acquires all or substantially all of the business to which the Order and these Terms relate.
12. **PATENTS, INVENTIONS, TECHNICAL DATA AND INDEMNIFICATION.** We own and shall retain all rights, title and interests, including all intellectual property rights, in and to all Services and associated materials, including, without limitation, all related reports, specifications, drawings,

designs, computer programs and any other property, tangible and intangible, furnished by us in connection with or under these Terms or the applicable Order (collectively, "Proprietary Materials"). No Proprietary Materials created by us in connection with or pursuant to these Terms or any Order shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act. Nothing herein shall be deemed a license or transfer of any rights in Proprietary Materials to you. You do not and will not acquire ownership of or any other rights in our patents, inventions, technical data and/or other intellectual property (such as brands, trade names and copyrights) under any Order, regardless of when such patents, inventions, technical data and/or other intellectual property may be or have been issued, conceived, generated or produced. We reserve all of our rights in our patents, inventions, technical data and/or other intellectual property and you will not reproduce or use it for any purpose whatsoever without our prior written permission. We may provide technical assistance and information to you in connection with the sale of our Services but such technical assistance and information are furnished for your accommodation and you are solely responsible for your business, including the application of such information, using your own technical expertise and know-how. You shall indemnify, defend and hold harmless us and our affiliates, and our respective officers, directors, employees and agents, from and against all liabilities, losses, claims, costs and expenses (including reasonable attorneys' fees) related to any claim, investigation, litigation or proceeding (whether or not we are a party) that arises or is alleged to arise from your acts or omissions under these Terms or in any way with respect to our Services, including but not limited to any damages caused by the Products to third parties or to our facility or equipment.

13. **REMEDIES.** Our rights and remedies will be cumulative and additional to all other remedies provided by law or equity. We will be entitled to recover costs and attorneys' fees in the enforcement or defense of any rights under these Terms or with respect to any Order. Your rights and remedies set forth in these Terms are exclusive and in lieu of all other rights and remedies provided by law or in equity. Specific performance shall not be available to you as a remedy in connection with our providing of the Services.
14. **GOVERNING LAW AND FORUM.** These Terms and each Order will be construed and interpreted, and the rights of the parties determined, in accordance with the laws of the State of Ohio without regard to any conflict of laws provisions that might otherwise apply. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms or any Order. You agree to exercise any right or remedy in connection with these Terms or your Orders exclusively in, and you agree to submit to the jurisdiction of, the appropriate state or federal court of Geauga County, State of Ohio.
15. **FORCE MAJEURE.** We shall not be liable for any delay or failure to perform if such delay or failure to perform is caused by circumstances beyond our reasonable control, including without limitation acts of God or public authority, riots or other public disturbances, labor shortages or disputes of any kind, financial constraints, power shortages or failures, your failure to provide required information, your failure to provide adequate containers, or the change in cost or availability of raw materials, components or services based on market conditions, our actions or contract disputes. During any such delay or failure to perform by us, our obligations under these Terms shall be suspended and we shall not have any obligation to provide you with Services from other sources or to pay or reimburse you for any additional costs to you of obtaining substitute Services. We may, during any period of the above circumstances, allocate our available supply of Services among ourselves and our customers in any manner that we deem fair and reasonable in its sole discretion.