



To: [Name of Customer]

Dear [Name of Customer Representative]:

We thank you for the order listed below, which we are pleased to accept subject to only those terms and conditions of sale that are set forth attached to this Sales Order.

Your signature below constitutes your acceptance to our Terms and Conditions and the terms of this Sales Order.

Bill To	Ship To	P.O. No.	Date	Rep	Terms	Buyer	Shipping	Service
Item	Description	Quantity	Price	Amount				

0.00				Total	USD			
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The Terms and Conditions are attached hereto and are on our website: www.marsplastics.com. The Terms and Conditions are incorporated herein by reference and are a part of the agreement between Mars and the Customer. Please address correspondence relating to this order to our sales office at [Address of Sales Office].

Very truly yours,
[INSERT COMPANY NAME]

By: _____
[Name of Company Representative]
[Title of Representative]

ACCEPTED AND AGREED TO BY:

[Name of Customer]:

By: _____
Name: _____
Title: _____
Date: _____

Mars 2000, Inc./Mars Plastics Terms & Conditions

Mars and Customer agree that the following Terms & Conditions ("Terms") apply to their transactions.

1. Definitions.

- (a) "Mars" shall mean Mars 2000, Inc./ Mars Plastics, its subsidiaries, affiliates, agents, and/or representatives;
- (b) "Customer" shall mean the person or entity for which Mars is providing products and tooling, and its agents and/or representatives. Customer is responsible to provide notice and a copy of the Terms to its agents and/or representatives.

2. Applicability.

(a) These Terms are the only terms and conditions which govern the sale of the products and/or tooling by Mars to Customer. These Terms shall be deemed incorporated by reference into any written contract between Mars and Customer. Notwithstanding anything herein to the contrary, if a written contract exists covering the sale of the products and/or tooling covered hereby, the terms and conditions of the written contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying invoice (the "Sales Confirmation") and these Terms (collectively, the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous representations and warranties, understandings, agreements, negotiations, and communications, both written and oral. These Terms prevail over any of Customer's general terms and conditions of purchase regardless of whether or when Customer submitted its purchase order or such terms and conditions. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not modify or amend these Terms.

3. Tooling/Molds.

(a) New Tooling/Molds. New tooling or molds provided to Mars by Customer or procured by Mars for Customer are owned by Customer. For tooling or molds procured by Mars for Customer, Customer shall pay Mars 50% of the invoice upon invoicing and the balance upon arrival of first shot samples from Mars' third party toolmaker or moldmaker. Failure of Customer to reject shot samples within 10 days of arrival will be deemed approval.

(b) Receipt of Tooling/Molds. Mars' receipt of tooling and/or molds is subject to various issues beyond Mars control, including tooling delays, shipper availability, loss in transit, and customs clearances. Mars is not responsible for any such or similar issues. In addition, Mars' production planning is dependent upon the toolmaker's or moldmaker's stated cycle times and Mars is not responsible for material, machine, molds, or tooling issues, or any other unforeseen issues. Any product changes by Customer nullify all tooling or mold completion dates.

(c) Improvements/Modifications to Tooling/Molds. If tooling or molds provided to Mars by Customer or procured by Mars for Customer become obsolete or no longer useful and Mars either makes new tooling or molds or makes substantial improvements or modifications to Customer's tooling or molds, Customer agrees that tooling or molds made, or substantially improved or modified, by Mars shall be owned by Mars. For purposes of this section, improvements or modifications shall be deemed substantial if the part or mold does not perform or meet the relevant customer's quality control requirements without such improvements or modifications.

(d) Tooling/Molds Invoices. Tooling and/or mold invoices must be paid in full before production will commence.

4. Products/Samples. Product and samples other than shot samples (see Sec. 3(a)) provided to Customer will be deemed approved unless Mars is notified of rejection within twenty-four (24) hours of Customer's receipt of samples or production.

5. Product Deliveries.

(a) Limitation of Responsibility. While Mars will always endeavor to produce and deliver quantities ordered and meet Customer's specified delivery dates (or if no dates are specified, as and when produced and ready to ship), Customer agrees that delivery dates are estimates only and may be changed. Mars will use commercially reasonable efforts to deliver goods in accordance with the delivery dates. However, Mars shall not be liable for failure to deliver as estimated. Customer acknowledges that Mars may encounter production issues which were not reasonably foreseeable and/or over which Mars has no control. Mars will not be responsible for any such issues or their impact on production, shipping, and/or receipt by Customer. Production issues may include, among others, machine downtime, tool downtime, hours of normal operation, unforeseen manufacturing processes, and "force-majeure" including, without limitation, acts of God; flood; fire; earthquake; explosion; governmental actions; war, invasion, or hostilities (whether war is declared or not); terrorist threats or acts; riot or other civil unrest; national, state, or local emergency; revolution; insurrection; epidemic or pandemic; lockouts, strikes, or labor disputes (whether or not relating to either party's workforce); restraints or delays affecting carriers; inability or delay obtaining supplies of adequate or suitable materials; materials or telecommunication breakdowns; or power outages. Mars will not be responsible for monetary damages, credits, or discounts, because of late deliveries. UNDER NO CIRCUMSTANCES SHALL MARS, ITS DIRECTORS, OFFICERS, OR SHAREHOLDERS BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR SPECIAL, INCIDENTAL, DIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES EVEN IF MARS HAS BEEN ADVISED OF OR SHOULD REASONABLY ANTICIPATE THE POSSIBILITY OF SUCH DAMAGES.

(b) Customer-provided Tools and/or Material Specification. Mars bears no responsibility for acceptability of products produced using Customer-provided tools or raw materials specified by Customer.

(c) Forecast Orders. **(i) Customers who place orders to be delivered pursuant to a delivery schedule over one or more months grant Mars a security interest under the Rhode Island Uniform Commercial Code in the finished goods until such goods are paid for, and such Customers agree to execute and deliver to Mars any such documents as are necessary to create and perfect such security interest, and that Mars is authorized to file such agreements and documents including, without limitation, UCC financing statements, regarding such goods as and where Mars deems appropriate.**

(ii) Customers who place forecast orders but fail to order or take delivery of the order within thirty (30) days of the forecast date shall be invoiced for the order and shall pay such invoice pursuant to its terms. Customers who fail to order or take delivery of their forecast orders shall pay to Mars storage charges of \$20.00 per pallet beginning 30 days after the order is invoiced. Forecast goods ordered by Customers who have not taken delivery of their forecast orders within 180 days of the forecast date shall be deemed abandoned, and Mars may destroy such goods in its discretion without any liability to Customer.

(iii) Customers who place forecast orders but fail to order or take delivery of such forecast orders within sixty (60) days of the forecast date agree to reimburse Mars for any specially ordered supplies or materials purchased to fulfill such forecast orders, and Mars reserves the right to stop performance of any work for such Customer until such time as Customer pays for such specially ordered supplies or materials.

(c) Partial Shipments. Customer acknowledges that partial shipments may be made against any order and invoicing shall follow each shipment.

6. **Invoice Payments.** Mars may terminate or suspend all current and future production if Customer fails to pay invoices within stated terms. All invoice amounts not paid when due will be subject to a late charge at the monthly rate of one and a half percent (1.5%). Customer shall be responsible for Mars' costs and expenses of collection, including reasonable attorneys' fees. All invoices, including but not limited to invoices for services rendered, tool and mold repairs or improvements, finance charges, etc., must be paid in full before Mars will release any tooling, molds, fixtures, or product.

7. **Title and Risk of Loss.** Title and risk of loss passes to Customer upon delivery of the goods, tooling, or molds at the delivery point. Mars shall not be responsible for goods, tooling, or molds upon delivery at the delivery point and, in all events, its liability for loss shall be limited to \$10,000. Customer is responsible to obtain insurance or otherwise protect itself from loss. As collateral security for the payment of the purchase price of the products, Customer hereby grants to Mars a lien on and security interest in and to all of the right, title, and interest of Customer in, to, and under its tooling, molds, products, and other personal property wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions or improvements thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Rhode Island Uniform Commercial Code. Mars is authorized to perfect its security interest under the Rhode Island Uniform Commercial Code by filing a Uniform Commercial Code Financing Statement where appropriate. Upon any breach by Customer of any of its obligations to Mars, Mars shall have the rights and remedies under the Uniform Commercial Code.

(a) General Lien. Mars shall have a general and continuing lien and a security interest under Rhode Island law in all property (and documents relating thereto) of Customer in its possession, custody, control, or in transit, or coming into Mars' actual or constructive possession or control, for monies owed to Mars with regard to the shipment on which the lien is claimed, prior shipments and/or both, including for all charges, expenses, or advances incurred by Mars in connection with any work performed for the Customer. Mars is authorized to file Uniform Commercial Code financing statements with respect to all of such property.

(b) Notice. Mars shall provide written notice to Customer of its intent to exercise its rights, the amount of monies due and owing, as well as any on-going storage or other charges. Customer shall notify all parties having an interest in its property of Mars' rights and/or the exercise of such lien and rights.

(c) Right to Sell. Unless within thirty days of receiving notice of lien, Customer pays the outstanding balance due in full, or posts cash or letter of credit at sight, or an acceptable bond equal to 110% of the value of the total amount due, in favor of Mars, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Mars shall have the right to sell such property, including goods, wares, or merchandise, as may be necessary to satisfy such lien, at public auction or private sale under the Uniform Commercial Code or other applicable law. Any net proceeds remaining after payment of all amounts due Mars shall be refunded to Customer. Customer shall remain liable for any deficiency remaining after the sale.

8. **Tooling/Mold Storage.** Unless otherwise requested, Mars will provide no cost storage for Customer's tooling and/or molds. Mars' liability with respect to such tooling and molds is limited to its gross negligence or willful misconduct.

9. **Warranty.** Mars warrants that the goods to be sold under this Agreement will conform to the description of the goods as provided to or by Customer, and will be of Mars' standard quality. Customer represents that it has used its own independent skill and expertise in connection with the selection and use of the goods purchased pursuant to this Agreement, and that it will independently determine the suitability for each use for which it is purchased. THIS WARRANTY IS EXCLUSIVE, AND EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, MARS MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE. NO WAIVER, ALTERATION, ADDITION, OR MODIFICATION OF THIS WARRANTY SHALL BE VALID UNLESS MADE IN WRITING AND SIGNED BY AN OFFICER OF MARS. IN THE EVENT THE GOODS ARE NOT IN COMPLIANCE WITH THIS WARRANTY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE A CREDIT FOR THE COST OF THE GOODS OR, AT MARS' OPTION, REPLACEMENT OF THE GOODS. MARS, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, AND EMPLOYEES SHALL UNDER NO CIRCUMSTANCES, WHETHER FOR A FAILURE OF ITS LIMITED REMEDY OR OTHERWISE, BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR SPECIAL, INCIDENTAL, DIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES EVEN IF MARS HAS BEEN ADVISED OF OR SHOULD REASONABLY ANTICIPATE THE POSSIBILITY OF SUCH DAMAGES. This warranty shall not be effective if Mars has determined, in its sole discretion, that Customer has misused the goods in any manner, has failed to use the goods in accordance with industry standards and practices, or has failed to use the goods in accordance with instructions, if any, furnished by Mars. All warranty claims must be brought within one year of shipment, regardless of their nature.

10. **Intellectual Property.** By submitting to Mars any art concept or design ("Submitted Design"), Customer represents and warrants that it currently owns, or has rights sufficient to authorize Mars' use and/or reproduction of, any and all intellectual property incorporated in the Submitted Design, that the Submitted Design does not infringe any trademark, copyright, design patent, or other intellectual property right of anyone else, and that there are no known claims adverse to its ownership of the Submitted Design. Mars assumes no liability for infringement of any trademark, copyright, design patent, or other intellectual property in relation to its use or reproduction of the Submitted Design. Mars will not disclose to Customer at any time any of Mars' proprietary and other information in connection with Mars' manufacture of goods or in connection with the return of Customer tooling and/or molds including, without limitation, the identity of any of its suppliers including, without limitation, the supplier of any components to complete the manufacture of any goods.

11. **Indemnification.** Customer shall, at its expense, defend, indemnify, and hold harmless Mars, its parents, subsidiaries, and assigns, and their respective officers, directors, shareholders, employees, and agents from and against any and all claims, demands, actions, proceedings, judgments, orders, liabilities, damages, losses, costs, and expenses, including reasonable and actual attorneys' fees, which are incurred by Mars as a result of Customer's alleged breach of a representation, warranty, covenant, or other obligation contained in these Terms, and/or which may arise in connection with Customer's use, distribution, marketing, or sale of any product produced by Mars.

12. **Inspection and Rejection of Nonconforming Goods.** Notice of any discrepancies, quality issues, or other problems must be made in writing to Mars within 3 business days from date of delivery. Customer will be deemed to have accepted the goods unless it notifies Mars in writing of any nonconforming goods within 3 days from the date of delivery. If timely notice is given and the parties agree, an RA will be issued for a credit. No credits may be taken without an RA.

13. **Waiver and Modification.** No waiver by Mars of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Mars. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Mars reserves the right to modify or add to these Terms at any time and from time to time. Modifications and additions shall be effective as to all pending and future transaction occurring after the same are received by Customer.

14. **Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Mars. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

15. **Compliance with Law.** Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Customer shall comply with all export and import laws of all countries involved in the sale of the products under this Agreement or any resale of the products by Customer. Customer assumes all responsibility for shipments of products requiring any government import clearance. Mars may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the products.

16. **Relationship of the Parties.** The relationship of the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

17. **No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

18. **Governing Law.** This is the sole and complete agreement between the parties regarding the subject matter of this agreement, and may not be modified or amended except by a writing signed by an officer of Mars. All matters relating to this agreement shall be governed by the laws of the State of Rhode Island, without regard to its conflict of laws rules, and exclusive jurisdiction, sole venue, and forum for all such matters shall be in courts located in the State of Rhode Island.

19. **Severability**. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

20. **Survival**. Provisions of these terms and conditions which by their nature should apply beyond the term of this Agreement will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions, Governing Law and Survival.