

# Tank Holding Corp

## Terms and Conditions

1. **Terms and Conditions.** These Tank Holding Corp and related brands ("Tank Holding") Terms and Conditions ("Terms"), including the accompanying price quotation, purchase order, invoice, or other confirmation of sale, as the case may be (any being a "Sales Confirmation"); and the Sales Confirmation and the Terms are collectively, the ("Agreement"), set forth the agreement between Tank Holding and its Customer/Customers ("Customer's"), for Tank's (a) manufacture or use of a Customer's molds (the "Mold/Molds"); and (b) the manufacture of Products built by Tank utilizing a Customer's Mold ("Products"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
2. **Price/Taxes:** Tank shall furnish the Mold or Products, as applicable, associated with these Terms, at the purchase price reflected on the Sales Confirmation. Customer agrees to pay any and all applicable federal, state and local taxes to which the Mold or Products may be subject, including, without limitation, excise taxes, sales taxes, property taxes, value-added taxes and use taxes, duties and license fees.
3. **Terms of Payment and Acceptance:** Customer shall pay, by cash, check or wire-transfer as follows:
  - a. **Mold:**
    - i. 50% of the quoted purchase price upon finalization of the Sales Confirmation; and
    - ii. 50% of the quoted purchase price upon Customer approval of the Mold, prior to a subsequent production order. For the avoidance of doubt, the Mold will be held by Tank Holding until the quoted purchase price is paid in full.
    - iii. 100% of mold maintenance related expenses to be paid prior to completion or work.
  - b. **Products:** Tank Holding shall either invoice Customer for Product(s) or enter into a separate payment mechanism in accordance with the Sales Confirmation. In any event, Customer shall promptly pay Tank Holding with in terms.

Notwithstanding anything to the contrary, pricing for a Product is subject change, in Tank Holding's sole discretion, depending on material or other business-related costs. To the extent Tank Holding determines that the agreed-upon pricing reflected in the Sales Confirmation must change, Tank Holding will notify the Customer in writing.

Tank Holding will consider net 30 terms based on Customer's payment history and credit references. Customer is responsible for the costs associated with creating and shipping any samples, to the extent Customer has supplied Tank Holding with a Mold to create Products. If Tank Holding has not received payment as agreed, Tank Holding will notify Customer and Customer will promptly pay any outstanding invoice. Payment of any invoice or any purchase price reflected in a Sales Confirmation shall not be deemed acceptance of the Mold or Products, but rather such Mold or Products will be subject to inspection, test, acceptance or rejection in accordance with Section 7 and Section 8 herein.

4. **Lead Times:** To the extent there is an agreed-upon Lead Time for a Mold or Product (a "Lead Time"), it will be reflected on the applicable Sales Confirmation. Customer acknowledges that Lead Times are estimates and, therefore, subject to change. Lead Times are subject to the timely receipt of materials supplied by a Customer or Supplier. Tank Holding will strive to meet Lead Times but will not be liable for any late-shipment fees, charges, consequential damages, or penalties of any kind in the event Tank Holding cannot supply a Mold or Product by such Lead Time. If a Customer desires a Mold or Product in advance of a previously agreed-upon Lead Time, fees associated with expediting the order may be applied in Tank Holding's sole discretion. Notwithstanding anything to the contrary, if any Molds or Products are discontinued, Customer shall purchase back any related raw materials and/or be responsible for any and all resulting storage fees. Customer agrees to accept delivery of any additional Molds and/or Products commissioned by the agreed-upon Lead Time and Customer will be responsible for any and all fees in connection with the storage of such Molds or Products. In the case of a commissioned Mold or Product, if Customer cancels an order prior to the designated and agreed-upon Lead Time, and Tank Holding has already scheduled that order for production, Customer shall pay Tank Holding a cancellation fee equal to the total amount of raw materials, work in process, Products, processing fees, and any other applicable fees or expenses.

5. **Customer Supplied Inventory:** At times, Customer may supply Tank Holding with supplied inventory ("Customer Supplied Inventory") delivered in connection with a Mold or Product. Customer Supplied Inventory must arrive sufficiently in advance of production, in order for Tank Holding to manufacture Customer's Molds or Products within the requested Lead Times, in the ordinary course. The quantity of Customer Supplied Inventory delivered to Tank Holding must be in proportion with the Sales Confirmation including scrap i.e., Tank Holding should have all the Customer Supplied Inventory, sufficiently in advance of the Lead Time, to meet the entire order reflected in a Sales Confirmation. All Customer Supplied Inventory must arrive during standard Tank Holding receiving hours with a sufficiently detailed packing list containing, at least, the Tank Holding purchase order number and part number. Shipments of Customer Supplied Inventory to Tank Holding containing inventory or quantity differing from the order for Customer Supplied Inventory shall not be accepted by Tank Holding. All Customer Supplied Inventory is subject to a 5% scrap rate calculated in connection with purchase order quantities. Excess Customer Supplied Inventory supplied to Tank Holding is subject to a storage fee to be paid by Customer. If Customer provides a Mold (whether directly or through a third party) that is defective or unusable, Customer shall be responsible all costs associated with repairing such Mold.

6. **Possessory Lien:** Until such time as Tank Holding has received payment in full of the purchase price of the Mold or Products, Tank Holding shall retain possession of and have a lien ("Lien") over the Mold or Product. If payment in full of the purchase price is not received within thirty (30) days (or sixty (60) days in cases where this Agreement is governed by New York law pursuant to Section 17 below) of Customer's receipt of an invoice, Tank Holding may enforce the Lien and sell the Mold or Product at a public auction at such price and upon such terms as Tank Holding determines in its sole discretion.

7. **Delivery/Risk of Loss and Delay/Inspection:** Depending on the transaction, the Molds or Products may be shipped from Tank Holding's facility. If so, Customer agrees to bear the exclusive risk of loss or damage to the Mold or Products after Tank Holding has turned the Mold or Products over to the carrier for shipment. Tank Holding will have no liability for delays after the Mold or Products have been delivered to a carrier. Customer shall inspect the Mold or Products upon receipt and notify Tank Holding of any defective Mold or Product in accordance with Section 8 herein. If a Product has suffered freight damage, Owner is responsible for filing any claims with the carrier. Tank Holding will not carry any insurance on customer molds and such insurance responsibility is solely the responsibility of the Customer.

8. **Limited Warranty:** Tank Holding Corp and its custom molding divisions warrants to the original purchaser of rotomolded plastic custom products a guarantee of performance for a period of ninety (90) days from the date of shipment from the manufacturing site produced from customer provided tooling and will repair or furnish a replacement of the rotomolded plastic custom product, at its discretion, in the event of a failure that is found by Tank Holding Corp to have been a result of a defect in manufacturing material or workmanship. Replacement parts will be provided F.O.B. the original manufacturing site. All other parts and components associated with the rotomolded plastic custom product that are not manufactured by Tank Holding Corp and are only warranted by their respective manufacturer through the terms and conditions of their stated warranty. With respect to products designed by Tank Holding Corp engineers where tooling is purchased from and put into production by a Tank Holding division, the warranty period will be one year from the date of manufacture. Tank Holding explicitly assumes no responsibility, liability, or obligation for any costs associated with removal or re-installation of a defective product or consequential damages as a result of the product failure. This warranty will not apply to defects or malfunctions resulting from, but not limited to, failure to properly install, secure, use, or failures from abuse, accident, or negligence.

Tank Holding shall not be held responsible for any loss or damage to personal property in, or next to, the failed unit, or any other consequential damage to the extent such damages are excluded under state law. No responsibility is assumed for loss of use of the product, or the inconvenience caused thereof.

**ANY IMPLIED WARRANTIES OF MERCHANTABILITY SHALL BE LIMITED TO THE WARRANTY PERIOD OUTLINED ABOVE. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. TANK HOLDING SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE.**

A notice of failure must be made to the custom molding division that produced the product in a timely manner before any warranty coverage will be authorized.

9. **Limitation of Liability:** IN NO EVENT SHALL TANK HOLDING BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OF REPUDIATION OF ANY TERM OR CONDITION, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR OTHERWISE.

10. **Indemnification:** Customer agrees to indemnify, defend and hold harmless Tank Holding, its affiliates and respective officers, directors, employees and agents, from and against any and all claims, actions, damages, liabilities, cost and expenses (including attorneys' fees, court costs and litigation expenses) arising out of or in any way connection with this Agreement, including, but not limited to, any act or omission by Customer, infringement of any intellectual property rights of third parties due to Tank Holding's satisfaction of Customer's requirements, or injury to Customer's employees.

11. **Termination:** Customer will give Tank Holding 60 days' written notice of termination. Customer agrees to purchase or repurchase all unused raw materials, Customer Supplied Inventory, work in progress, Molds, and Products promptly after giving Tank Holding such written notice. Customer will be charged storage fees for any Customer-related items remaining 60 days after Customer's written notice of termination.

12. **Force Majeure:** Tank Holding will not be liable for any delay in the performance or nonperformance of this Agreement which is due to war, fire, flood, acts of God, acts of third parties, acts of governmental authority or any agency or commission thereof, accident, breakdown of equipment, differences with its employees or similar or dissimilar causes beyond Tank Holding's control, including, but not limited to, those interfering with production, supply or transportation of products, raw materials or components of Tank Holding.

13. **Assignment:** Neither party may assign this Agreement without the written consent of the other party, except that Tank Holding may assign this Agreement to a third party that acquires substantially all of its assets.

14. **Proprietary Rights:** Tank Holding, its successors, assigns and legal representatives, shall, with respect to designs or elements provided by it, forever protect, indemnify and save harmless the Customer from and against all claims, suits, judgments, court costs, attorney's fees and other liabilities, demands or losses in any manner arising out of alleged

infringement of any third-party's copyright, trademark or other intellectual property rights. All designs provided by Customer shall remain the exclusive property of Customer and shall not be used by Tank Holding for any purpose other than supplying Molds or Products to Customer.

15. **Confidential Information:** All written information obtained by Tank Holding from Customer in connection with this Agreement and which is identified as proprietary is received in confidence and shall remain property of Customer and shall be used and disclosed by Tank Holding only to the extent necessary for Tank Holding's performance.

16. **Entire Agreement:** The (a) accompanying Sales Confirmation and (b) this Agreement set forth herein constitute the entire agreement between the parties regarding the subject matter hereof, and no modification or termination hereof shall be binding unless agreed to in writing between the parties. These Terms prevails over any of Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

17. **Governing Law:** This Agreement shall be governed by the laws of the State of Wisconsin, without regard to the conflict of laws provisions thereof.