

**FALCON PLASTICS AND PREMIER SOURCE
TERMS AND CONDITIONS OF PURCHASE ORDERS**

SOUTH DAKOTA SALES AND USE TAX LAW STATES THE FOLLOWING: EQUIPMENT/TOOLS MADE FOR, AND SOLD TO, A PARTICULAR CUSTOMER WHICH THE MANUFACTURER WILL USE TO PRODUCE A FINAL PRODUCT REQUIRES THAT THE SELLING PRICE OF EQUIPMENT BE SUBJECT TO SOUTH DAKOTA SALES TAX. SET-UP CHARGES AND TOOLING MODIFICATIONS ARE ALSO SUBJECT TO SOUTH DAKOTA SALES TAX, WHICH AT THE PRESENT TIME IS 6%.

- 1) **ACCEPTANCE** – Unless otherwise provided herein Seller’s acknowledgement of this order or commencement of any work or performance of any services hereunder, shall constitute acceptance by Seller of this order and all of its terms and conditions. No term or condition stated by Seller in acknowledging or otherwise accepting this order shall be binding upon Falcon Plastics/Premier Source, unless specifically accepted in writing by Falcon Plastics/Premier Source.
- 2) **PRICE AND DELIVERY** – Seller shall furnish the supplies and services called for by this order in accordance with the price(s) and delivery date or schedule stated herein. Price(s) include all applicable taxes. If price(s) and/or delivery date or schedule are not stated herein, Seller shall offer its lowest price(s), showing any applicable taxes separately, or best delivery date or schedule, which shall be subject to approval and written acceptance by Falcon Plastics/Premier Source.
- 3) **PAYMENT TERMS** – Falcon Plastics and Premier Source shall pay Seller in accordance with the terms of the PO. Seller shall submit invoices to Falcon Plastics and Premier Source in a form reasonably acceptable to Falcon Plastics/Premier Source. Receipt of an invoice shall be condition of Falcon Plastics/Premier Source obligation to pay. The invoices shall provide an itemized list of all Products and other charges. Unless otherwise stated on the PO, all prices shall be inclusive of any sales, use, and excise taxes, customs, duties, fees, freight, insurance or any other charge or tax, all of which shall be the sole responsibility of the Seller. In no event shall Falcon Plastics/Premier Source be liable for interest on late payments. Falcon Plastics/Premier Source requires a Net 30 Days for payment terms unless negotiated otherwise.
- 4) **DELIVERY** – Unless the parties otherwise agree in writing, Seller shall utilize a common carrier at Falcon Plastics/Premier Source discretion. Seller shall bear all risk of loss until the Products are delivered to Falcon Plastics/Premier Source or its designee. Time is of the essence. Seller shall meet all delivery deadlines. The parties acknowledge and agree that Falcon Plastics/Premier Source may suffer losses as a result of the failure of Seller to deliver the Products in accordance with the delivery deadline. Falcon Plastics/Premier Source reserves the right to adjust any delivery deadlines as needed and shall provide reasonable written notice to Seller in such event. Seller shall be liable for all direct, indirect, special, consequential and liquidated damages which may arise due to any delay in delivery.
- 5) **INSPECTION** - All equipment is carefully inspected and rigged before shipment, and is received by the carrier in good condition. Should such equipment be found unsatisfactory or not as ordered, on receipt, Falcon Plastics/Premier Source will, if written claim is made promptly or within not more than thirty (30) days from the date of shipment, take action to ensure supplied equipment operates within specification.
- 6) **TITLE** – Title shall pass to Falcon Plastics/Premier Source upon final Acceptance.
- 7) **CANCELLATION** – Falcon Plastics/Premier Source may, at any time and for any reason, cancel the Order, or any portion thereof. In the event an Order is cancelled, Falcon Plastics/Premier Source shall only be obligated to pay for the portion of the Order delivered and accepted by Falcon Plastics/Premier Source.
- 8) **CONFIDENTIALITY** – Seller acknowledges and agrees that the Order; all correspondence, memoranda, or documents provided in connection with the Order; any information relating to Falcon Plastics/Premier Source products, specifications, or processes; and any information which has been identified by Falcon Plastics/Premier Source as confidential or proprietary shall be maintained by the Seller as confidential and it shall not be disclosed to any third party except as may be required by law.
- 9) **PROPRIETARY** – Falcon Plastics/Premier Source agrees that all information disclosed or obtained by the Seller or its representatives from Falcon Plastics/Premier Source, including but not limited to drawings, prints, publications, specifications, processes, manufacturing techniques, verbal explanations, schedules and the like, as a result of this order, are received in confidence and are the proprietary property of Falcon Plastics/Premier Source and that such information shall not be reproduced or used by Seller or transmitted or disclosed to any person or organization by Seller, without prior written consent of Falcon Plastics/Premier Source.
- 10) **PATENTS** – Seller guarantees that the sale and use of each and all articles and things now or hereafter delivered hereunder will not infringe any patent or copyright; that Seller will at its own expense defend any action, suit or claim or assist in defense thereof, including any brought against U.S. Government, in which an infringement of any patent or copyright is alleged with respect to the sale or use of such articles or things, and that the Seller will indemnify and save harmless Falcon Plastics/Premier Source and its customers and users, including Government, from any and all losses, costs and damages for infringement or alleged infringement of any patent or copyright because of the sale or use of such articles or things.
- 11) **RISK OF LOSS** – Seller shall bear all risk of loss on supplies, called for by this order until final acceptance by Falcon Plastics/Premier Source, or its customer, at designation, unless otherwise specified in this order, except for loss occasioned by gross negligence of Falcon Plastics/Premier Source or its customer.

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- 12) INDEMNIFICATION – To the maximum extent permitted by law, the Seller shall indemnify , defend and hold harmless Falcon Plastics/Premier Source and its directors, officers, employees and agents (the “Indemnified Parties”) from and against any and all costs, expenses, damages, claims, suits, losses, obligations or liabilities including all attorney’s and expert witness fees (collectively, the “Losses”) which the Indemnified Parties suffer directly or indirectly resulting or arising out of, without limitation, (a) any Loss suffered as a result of the negligent acts or omissions of the Seller, (b) any failure by Seller to comply with any applicable law or regulation; (c) any tax or duty assessed by any governmental agency against Falcon Plastics/Premier Source related to the purchase of products or service from Seller; (d) any claim alleging that any of Seller’s products or any part thereof infringe upon any third-party’s patent.
- 13) INSURANCE – Seller shall purchase and maintain insurance sufficient to protect Seller, Falcon Plastics/Premier Source, and all Falcon Plastics subsidiaries from claims arising out of Seller’s products and performance under the Order, whether such products are provided by or performance is by Seller or Seller’s vendors or subcontractors. If requested, Seller shall promptly provide to Falcon Plastics/Premier Source a valid Certificate of Insurance, in a form acceptable to Falcon Plastics/Premier Source.
- 14) ASSIGNMENT – Neither party may assign the Order without the written consent of the other party.
- 15) COMPLIANCE WITH LAWS AND REGULATION – This agreement is to be governed by the laws of the State of South Dakota. Any litigation concerning the quote, the purchase order or any of these terms and conditions may be commenced either in the Circuit Court in and for Brookings County, Third Judicial Circuit, or in the United States District Court for the Southern District of South Dakota in Sioux Falls, South Dakota. Seller will comply with any and all applicable laws, rules or regulations in carrying out this Purchase Agreement.
- 16) PRODUCT REVISION - Any change by Supplier to a product or material purchased by Falcon Plastics/Premier Source must be communicated to Falcon Plastics/Premier Source prior to implementation of the change in order to assess the impact to the Falcon Plastics/Premier Source Product.

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