



## **Innova Engineered Plastics**

### **ENCLOSURES, TOOLING AND SERVICE TERMS AND CONDITIONS**

#### **1. Limited Warranty**

1.1 Enclosures and Consumables Limited Warranty: ThermoFab Operating Company, LLC and/or its wholly owned subsidiary ThermoFab Mexico LLC, collectively d/b/a Innova Engineered Plastics, warrants that any enclosures or consumables (collectively, “Enclosures”) delivered by Innova Engineered Plastics will be free from defects in material and workmanship (the “Enclosures Limited Warranty”) as hereinafter provided. Note: Enclosure is defined as a full enclosure or any part of a complete enclosure or Consumable. This Enclosures Limited Warranty shall be effective for a period, the earlier of: one (1) year from the date of delivery of any Enclosure and any rebuilt or replacement Enclosure covered by this Proposal; and (ii) for any single-use consumable item (“Consumables”), the date said Consumable is used by Customer. At the conclusion of the Enclosures Limited Warranty period, Innova Engineered Plastics shall be under no further obligation to the Customer in connection with this Enclosures Limited Warranty. Innova Engineered Plastics’ sole obligation and Customer’s exclusive remedy hereunder is limited to the repair or replacement of any Enclosure or Consumable which Innova Engineered Plastics determines, in its sole discretion, is defective. In its sole discretion, Innova Engineered Plastics may replace a defective Enclosure or Consumable with a new or rebuilt replacement Enclosure or Consumable. The ordinary and intended consumption, depletion or wear of any Enclosure or Consumable shall not be deemed a defect for purposes of this Enclosures and Consumables Limited Warranty. This Enclosures and Consumables Limited Warranty shall apply to any replacement Enclosure or Consumable for the lesser of one (1) year or the remainder of the original Enclosures or Consumables Limited Warranty period applicable to replacement Enclosure at issue. For purposes of this Enclosures and Consumables Limited Warranty, a “rebuilt” replacement Enclosure or Consumable is one that has been returned to its original specifications. This Enclosures and Consumables Limited Warranty shall be VOID and Innova Engineered Plastics shall be under no further obligation to Customer hereunder in cases of operator error, accident, neglect, misuse, failure to maintain and/or service an Enclosure or a machine to which the Enclosure or Consumable is affixed. This Enclosures and Consumables Limited Warranty shall be VOID and Innova Engineered Plastics shall be under no further obligation to Customer hereunder if the machine or machines to which the Enclosure or Consumable is now affixed is not operated in accordance with the manufacturer’s instructions or specifications, and/or Customer causes a defect as a result of Customer’s installation and/ or acts outside of Innova Engineered Plastics’ control such as casualty, riots, rebellions, pandemics, government action, accidental explosions, fire, floods, storms, natural disasters, acts of God, terrorism, and similar occurrences, or any other use of an Enclosure or Consumable other than the normal use of such Enclosure or Consumable for its intended purpose.

1.2 Tooling Limited Warranty: Innova Engineered Plastics warrants that any tooling (collectively, “Tooling” procured from Innova Engineered Plastics will be free from defects in

material and workmanship (the “Tooling Limited Warranty”) as hereinafter provided. This Tooling Limited Warranty shall be effective for the period of seven (7) years from the date the Tooling is put in use, or the number of total cycles stated in the body of the Quotation, whichever comes first, regardless of whether it has been modified, repaired, improved, or replaced. At the conclusion of the Tooling Limited Warranty period, Innova Engineered Plastics shall be under no further obligation to the Customer in connection with this Tooling Limited Warranty. Innova Engineered Plastics’ sole obligation and Customer’s exclusive remedy hereunder is limited to the repair or replacement of any Tooling which Innova Engineered Plastics determines, in its sole discretion, is defective. This Tooling Limited Warranty shall be VOID and Innova Engineered Plastics shall be under no further obligation to Customer hereunder if acts outside of Innova Engineered Plastics’ control such as casualty, riots, rebellions, pandemics, government action, accidental explosions, fire, floods, storms, natural disasters, acts of God, terrorism, and similar occurrences prevent future use or access to the Tooling. This Tooling Limited Warranty shall also be VOID and Innova Engineered Plastics shall be under no further obligation to Customer with respect to the Tooling if Customer instructs Innova Engineered Plastics to relocate any Tooling to a new location designated by the Customer from where the Tooling is held at the time of such a request. Note: Any modifications or requested changes to the Tooling, shall be borne at the customer’s sole expense and shall not restart the warranty timeline as governed by this paragraph 1.2.

1.3 Enclosures and Consumables Services Limited Warranty: Innova Engineered Plastics warrants that any design, engineering, repairs, and services (collectively, “Services”) will be performed in a good and workmanlike manner consistent with applicable industry standards for similar services. This Services Limited Warranty will be in effect for a period the lesser of: (i) one (1) year from the completion of any Services; or (ii) for any Consumable, the date said Consumable is used by Customer. As Customer’s sole and exclusive remedy and Innova Engineered Plastics’ entire liability for any breach of the Services Limited Warranty, Innova Engineered Plastics will, at its sole option and expense, promptly re-perform any Services that fail to meet this Services Limited Warranty, or in Innova Engineered Plastics’ discretion, refund to Customer the fees paid for the non-conforming Services.

1.4 Termination of Limited Warranties. The Limited Warranties provided in this Section will be deemed to have been voided and terminated if: (i) any deliverable is modified by Customer or its employees or agents (other than a modification authorized or approved by Innova Engineered Plastics), (ii) any deliverable is damaged after acceptance by Customer for any reason other than a failure that results from a breach of warranty by Innova Engineered Plastics, (iii) any deliverable is damaged after acceptance by Customer by abuse, misuse, operation other than in accordance with applicable documentation or through Customer’s failure to perform routine or required maintenance, or (iv) any failure of a deliverable to be compatible with any other systems or operating environment unless such compatibility was set forth as a requirement in the applicable statement of work.

1.5 Disclaimer: EXCEPT FOR THE LIMITED WARRANTIES PROVIDED HEREIN, INNOVA ENGINEERED PLASTICS MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO, AND HEREBY SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. INNOVA ENGINEERED PLASTICS FURTHER SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO, (I) ANY WARRANTY ARISING FROM USAGE OF TRADE OR BY COURSE OF DEALINGS; (II) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; (III) ANY WARRANTY FOR ANY CUSTOM DESIGN AND/OR ENGINEERING SERVICES PROVIDED BY INNOVA ENGINEERED PLASTICS AND/OR ENCLOSURES OR TOOLING THAT MAY BE DEVELOPED BY INNOVA ENGINEERED PLASTICS BASED UPON THE CUSTOMER'S SPECIFICATIONS, DESIGNS, DRAWINGS, CONCEPTS, MEASUREMENTS, MODELS, PROTOTYPES AND/OR INTENDED USE; AND (IV) ANY WARRANTY FOR ANY CUSTOM DESIGN AND/OR ENGINEERING SERVICES PROVIDED BY INNOVA ENGINEERED PLASTICS AND/OR ENCLOSURES OR TOOLING THAT MAY BE DEVELOPED BY INNOVA ENGINEERED PLASTICS BASED UPON SPECIFICATIONS, DESIGNS, DRAWINGS, CONCEPTS, MEASUREMENTS, MODELS, PROTOTYPES DEVELOPED BY INNOVA ENGINEERED PLASTICS.

## **2. Limitations on Liability; Indemnity**

2.1 Damages Limitation. IN NO EVENT SHALL INNOVA ENGINEERED PLASTICS OR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATED COMPANIES, SUCCESSORS AND/OR ASSIGNS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN ANY MANNER CONNECTED WITH THE MANUFACTURE, DELIVERY OR USE OF THE ENCLOSURES, TOOLING OR SERVICES, INCLUDING ANY DESIGN AND/OR ENGINEERING SERVICES PROVIDED BY INNOVA ENGINEERED PLASTICS, COVERED BY THIS PROPOSAL REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. FURTHERMORE, ANY AND ALL LIABILITY FOR ALL CLAIMS OR CAUSES OF ACTION, WHETHER FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, WARRANTY OR OTHERWISE, SHALL IN THE AGGREGATE NOT EXCEED THE COST OF THE ACTUAL TOOL, ENCLOSURE OR SERVICES COVERED BY THIS PROPOSAL THAT ARE SPECIFICALLY APPLICABLE.

2.2 No Liability for Customer's Design. WITH REGARD TO ANY ENCLOSURES AND/OR TOOLING DEVELOPED OR ENGINEERED BY INNOVA ENGINEERED PLASTICS BASED UPON CUSTOMER'S OWN DESIGN, IN NO EVENT SHALL INNOVA

ENGINEERED PLASTICS OR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATED COMPANIES, OFFICERS, EMPLOYEES, SUCCESSORS AND/OR ASSIGNS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY CUSTOMER DESIGN DEFECTS WHEN SUCH DESIGN IS BASED UPON THE CUSTOMER'S OWN SPECIFICATIONS, DESIGNS, DRAWINGS, CONCEPTS, MEASUREMENTS, MODELS, PROTOTYPES AND/OR INTENDED USE. PURSUANT TO SECTION 2.3 BELOW, CUSTOMER SHALL FULLY INDEMNIFY INNOVA ENGINEERED PLASTICS FROM AND AGAINST ANY CLAIMS IN ANY WAY RELATED TO A DEFECT IN CUSTOMER'S DESIGN WHICH CAUSES INJURY OR DAMAGE.

2.3 Indemnity. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR, HOLD HARMLESS, AND DEFEND INNOVA ENGINEERED PLASTICS, ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATED COMPANIES, EMPLOYEES, OFFICERS, REPRESENTATIVES, END CUSTOMERS, SUCCESSORS AND/OR ASSIGNS, FROM AND AGAINST THIRD PARTY DEMANDS, SUITS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, DAMAGES, LOSSES, COSTS OR EXPENSES OF WHATEVER NATURE OR CHARACTER, INCLUDING LEGAL COSTS AND CONSULTANTS' AND ATTORNEYS' FEES, FOR ALL INJURIES OR DAMAGE OF ANY TYPE TO ANY PERSON OR PROPERTY, INCLUDING INJURIES OR DAMAGE TO THIRD PARTIES OR EMPLOYEES OF ANY PARTY OR SUBCONTRACTOR THEREOF ("CLAIMS") ARISING OUT OF OR RELATED TO CUSTOMER'S ACTS OR OMISSIONS TO THE EXTENT THAT THEY PROXIMATELY CAUSE DEATH, PERSONAL INJURY OR PROPERTY DAMAGE; OR (II) NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT.

3. **Delivery; FCA Shipping Point; Ex Works**

Delivery of any Enclosures shall be made within a reasonable time unless otherwise specified and such reasonable time shall be computed from date of receipt at the factory of all written details pertaining to the order, including any required deposit. Delivery of Enclosures shall be as follows: (i) for domestic shipments, all goods will be shipped FCA (Free Carrier) 76 Walker Road, Shirley, MA, 01464, USA or 1784 Pan American Street, Suite 105, Calexico CA, 92231 USA, as applicable, with Customer being responsible for the loading of goods onto the means of transport provided by Customer; and (ii) for international shipments, EXW (Ex Works), 76 Walker Road, Shirley, MA, 01464, USA or 1784 Pan American Street, Suite 105, Calexico CA, 92231 USA, as applicable. For both domestic and international shipments, all risk of loss or damage in transit shall be borne exclusively by Customer which shall be responsible for filing any claims against the carrier. For all international shipments, Customer shall be listed as the exporter of record and be responsible for export clearance together with all costs associated therewith. Innova Engineered Plastics shall not incur liability of any kind due to any delay or failure to deliver for any reason.

4. **Specifications, Acceptance by Customer**

4.1 Specifications. The specifications attached hereto form part of this Proposal between Innova Engineered Plastics and the Customer. Customer will be deemed to have accepted these Terms and Conditions when Customer issues its Purchase Order, including, but not necessarily limited to any and all drawings supplied by Customer which shall be specifically referenced by drawing number(s) in the Purchase Order. Customer shall be required to maintain up-to-date drawings, and it is the Customer's obligation to ensure that Innova Engineered Plastics is in possession of the most current and up-to-date drawings at all times; PROVIDED, HOWEVER, no further changes to the drawings or Purchase Order will be accepted within sixty (60) calendar days of the scheduled shipping date. In the event of any changes requested by Customer to the Purchase Order and/or revisions to the drawings subsequent to Innova Engineered Plastics' acceptance of the Purchase Order, Innova Engineered Plastics expressly reserves the right to adjust the Purchase Price accordingly for any additional work, services, materials, supplies and/or alterations that may be necessary.

4.2 Acceptance by Customer. Customer's acceptance is limited to acceptance of Innova Engineered Plastics' Terms and Conditions, and Innova Engineered Plastics hereby objects to and rejects any proposal by Customer for additional or different terms, whether contained in Customer's Purchase Order or otherwise. If Customer proposes additional or different terms which relate to the description, quantity, price or delivery schedule of the goods (whether contained in Customer's Purchase Order or otherwise), Innova Engineered Plastics' Terms and Conditions shall supersede and be controlling, and Innova Engineered Plastics' Terms and Conditions will be deemed accepted by Customer without Customer's changes or additions to such Terms and Conditions. Innova Engineered Plastics' acceptance of the Customer's Purchase Order is expressly conditional on Customer's assent to Innova Engineered Plastics' Terms and Conditions which shall be superseding.

Customer and Innova Engineered Plastics agree that, notwithstanding the prior or subsequent use by Customer of any order form, invoice or other document containing printed terms or conditions, such other additional or different terms and conditions shall be of no force and effect. The Parties expressly acknowledge that they are contracting solely on the basis of Innova Engineered Plastics' Terms and Conditions, which contain the entire understanding of the Parties and is intended as a final expression of their agreement and a complete statement of the terms thereof, and may not be amended, modified or otherwise supplemented unless such amendments, modifications or supplements are in writing and signed by Innova Engineered Plastics' CEO. A provision contained in any order form, invoice or other document used by Customer (whether prior or subsequent to the date of this order) which is inconsistent with any provision contained herein or as contained in Innova Engineered Plastics' Terms and Conditions will have no force or effect and will not be binding on Innova Engineered Plastics unless such provision is specifically signed by Innova Engineered Plastics' CEO.

4.3 Innova Engineered Plastics' Proprietary Property. Concepts, designs, drawings, systems, techniques and/or processes which are created as a result of design engineering services and/or tooling design/fixtures are the sole and exclusive property of Innova Engineered Plastics.



All patented and patentable materials, any and all written materials whether or not subject to copyright protection, as well as all specifications, designs, blueprints, technical documents, instructions, molds, models, casts, formulas, sketches, drawings, manufacturing processes, know-how, software and software protocols, and other business information to which Customer may have access to under this Agreement shall be proprietary to Innova Engineered Plastics (“Innova Engineered Plastics’ Proprietary Property”) and shall remain the sole and exclusive property of Innova Engineered Plastics. Innova Engineered Plastics’ Proprietary Property shall be kept confidential, shall not be used by Customer, its agents, affiliates, representatives or employees for any purpose except in connection with the work to be done by Innova Engineered Plastics for Customer under this Agreement, and shall not be used disclosed or made available to any other third party by Customer or its agents, representative or employees without prior written authorization from Innova Engineered Plastics. By its acceptance of Innova Engineered Plastics’ Terms and Conditions, Customer agrees to take all necessary precautions against theft, loss, unauthorized duplication or wrongful distribution, or unauthorized use of Innova Engineered Plastics’ Proprietary Property. Customer is strictly prohibited from utilizing any of Innova Engineered Plastics’ Proprietary Property in any manner other than as expressly intended hereunder, and nothing contained herein may be construed a license or authorization by Innova Engineered Plastics for Customer to utilize any of Innova Engineered Plastics’ Proprietary Property in such manner.

4.4 No Cancellation. Customer shall not be permitted to cancel any order once it has been received by Innova Engineered Plastics.

5. **Assignment & Subcontracting.**

Customer shall not assign any of its rights or delegate any of its obligations under these Terms and Conditions without the prior written consent of Innova Engineered Plastics. Any purported assignment or delegation by Customer in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations. Innova Engineered Plastics may assign its rights and/or delegate its obligations to an affiliate of Innova Engineered Plastics, at its sole discretion. Innova Engineered Plastics may utilize subcontractors to perform its obligations under this agreement without written consent of the Customer without relieving Innova Engineered Plastics’ duty to deliver products in accordance with Customer.

6. **Price Adjustments.**

Notwithstanding any term or condition contained herein or any purchase order, invoice or other document or agreement which may be construed to the contrary, in the event Innova Engineered Plastics experiences a price increase for materials, equipment, parts, supplies and/or energy occurring through no fault of Innova Engineered Plastics, Innova Engineered Plastics is expressly authorized to re-price Customer’s order by an amount reasonably necessary to cover any such increase. In addition, if there are any delays incurred with regard to the delivery of materials, equipment, parts and/or supplies which occurs through no fault of Innova Engineered Plastics, the

time for performance and/or other contractual requirements shall be equitably adjusted by the parties if necessary and Innova Engineered Plastics shall not be liable for any additional costs or damages associated with any such delays.

7. **Innova Engineered Plastics' Development Rights.**

Notwithstanding anything contained within this Agreement which may be construed to the contrary, the Recipient's confidentiality obligations under this Agreement shall not be construed to limit Recipient's right to develop independently or acquire products without use of the Disclosing Party's Proprietary Information. Customer acknowledges that Innova Engineered Plastics may currently or in the future be independently designing, developing, engineering and/or manufacturing Enclosures, Consumables and/or tooling internally that is similar to Customer's, or performing such services for other parties, including potential competitors of Customer. Accordingly, nothing shall prohibit Innova Engineered Plastics from designing, developing, engineering and/or manufacturing Enclosures, Consumables, tooling, products, concepts, systems or techniques that are similar to or compete directly or indirectly with Customer's, provided that Innova Engineered Plastics does not knowingly misappropriate Customer's proprietary information in connection with such development.

**Supplementary Tooling Terms**

1. 2D and 3D drawings should be provided when placing an order. If 3D files or drawings require editing, then there may be additional NRE charges.
2. Quoted lead time is calculated from receipt of final drawings, approval of mold design and production of acceptable trial samples.
3. Prices are subject to change according to your final drawings. Innova Engineered Plastics will follow tolerances specified in ISO 2768-2:1993 Class K, when not noted on drawing(s).
4. Customers will be charged a mold storage and maintenance fee, if their mold has not been active for over six months and will be disposed of after three years of non-use without recourse by the Customer.
5. Non-Recurring Engineering cost includes 5 first shot acceptable parts from the mold.