



# EAST JORDAN PLASTICS, INC.

The Responsible Choice For Horticultural Containers

## TERMS AND CONDITIONS

1. **DEFINITIONS.** For purposes hereof, the following terms shall have the following definitions:
  - a. **“Affiliates”** means, with respect to a party, any other party that directly or indirectly controls, is controlled by or is under common control with that party, including any level of parent, any level of affiliate or any level of subsidiary of such party. For purposes of the foregoing definition, “control” (including “controlled by” and “under common control”) means ownership of, or the right to acquire, directly or indirectly: (a) not less than fifty percent (50%) of the voting stock of a corporation; (b) the right to vote not less than fifty percent (50%) of the voting stock of a corporation; or (c) not less than fifty percent (50%) ownership interest in a corporation, partnership, limited liability company or other entity.
  - b. **“Agreement”** means these Terms and Conditions, along with any Purchase Order and Purchase Order acknowledgement issued by Seller under which Purchaser purchases and Seller provides Goods to Purchaser.
  - c. **“Goods”** means any deliverables, products, goods and other materials provided by Seller to Purchaser pursuant to a Purchase Order and subject to the terms of the Agreement.
  - d. **“Purchaser”** means the party purchasing Goods from Seller as set forth in a Purchase Order.
  - e. **“Purchase Order”** means any purchase order, invoices or other sales agreement under which Purchaser purchases Goods from Seller. Purchase Orders are for administrative purposes only and are strictly limited to detailing the Goods and quantities to be purchased, their price and terms of shipment. All Purchase Orders will be subject to and exclusively governed by these Terms and Conditions.
  - f. **“Seller”** means East Jordan Plastics, Inc.
2. **ACCEPTANCE:** All Purchase Orders are subject to acceptance or rejection by Seller and are not binding on Seller unless and until accepted by Seller in writing through a Purchase Order acknowledgment issued by Seller. Acceptance is always subject to availability for delivery of the Goods covered by each Purchase Order and to Seller’s prices for the Goods which are in effect at the time of shipment, unless otherwise agreed in the Purchase Order or a separate agreement signed by Purchaser and Seller.
3. **CHANGE OR CANCELLATION OF ORDERS:** Seller will may accept any request of Purchaser for modifications or cancellation to a Purchase Order, but the Purchase Order or release may not be modified or cancelled without the written consent of Seller.
4. **ORDERS FOR INDEFINITE DELIVERY:** Purchase Orders with indefinite dates may be accepted on the understanding that Seller shall have the right to fill the orders as it sees fit during its manufacturing schedules and to hold the Goods for the Purchaser’s account, at the Purchaser’s expense and risk, pending receipt of definite shipping instructions and where required, of government authorization.
5. **TITLE AND RISK OF LOSS:** Except in the event Purchaser opts to arrange for shipment of Goods in which case shipping terms will be FCA origin, shipping terms are F.O.B. destination, freight prepaid. For international shipments, relevant Incoterms 2020 and other arrangements may apply.
6. **TERMS OF PAYMENT:** Terms of payment shall be stated on the face of Seller’s invoice(s). If they are not, standard payment terms of Net 30 days from the applicable invoice date shall apply. Invoices are payable in United States currency only. Invoices paid late will be assessed a 1.5% per month finance charge, or the maximum amount allowable by law, each late month until paid.
7. **TAXES:** Any tax or other government charge now or in the future levied upon the production, sale, use of shipment of goods ordered or sold may, at Seller’s opinion, be added to the purchase price, unless it is satisfied in its sole discretion that by reason of documents delivered to it by Purchaser, that Purchaser is exempt from any such tax or governmental charge.
8. **OWNERSHIP.** Except as expressly set forth herein, Seller owns all intellectual property rights in the Goods and Specifications that it creates, develops or improves upon, including, without limitation, all patents, copyrights, trademarks, service marks, trade dress, utility model, design, know-how, and trade secrets and any renewals, improvements, or derivations of the foregoing.
9. **COMPLIANCE WITH LAWS.** Purchaser will comply with all applicable laws, rules, and regulations of the country where the Goods are manufactured, delivered or utilized.
10. **CONFIDENTIAL INFORMATION:**
  - a. Seller and Purchaser (as applicable, the **“Receiving Party”**) each acknowledge that they may be furnished with, receive, or otherwise have access to confidential or proprietary information of or concerning the other party or its Affiliates (**“Disclosing Party”**) which such party considers to be confidential, a trade secret, or otherwise restricted (**“Confidential Information”**).
  - b. Except as expressly set forth herein, the Receiving Party agrees that it will have no proprietary interest in the Confidential Information of the Disclosing Party and the Receiving Party acknowledges and agrees that it will not use the Disclosing Party’s Confidential Information for any purpose other than to perform its obligations hereunder and that it will not disclose any such Confidential Information to any third party, except to its and its Affiliates employees, agents, subcontractors, independent contractors and other representatives (**“Representatives”**) who have a need to know such Confidential Information to perform their duties under the Agreement, provided that such individuals are bound by confidentiality obligations no less restrictive than those set forth herein. The Receiving Party will be liable for any breach of these confidentiality obligations by its Representatives. In the event the Receiving Party becomes legally compelled to disclose any Confidential Information, to the extent legally permitted, it will provide the Disclosing Party with prompt notice thereof to give the Disclosing Party the opportunity to seek a protective order or other appropriate remedy to curtail the disclosure. If protective actions by the Disclosing Party are unsuccessful, or the Disclosing Party otherwise waives its right to seek those remedies,



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the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose.

c. All Confidential Information will remain the property of the Disclosing Party. The Receiving Party will return or permanently destroy all of Disclosing Party's Confidential Information promptly upon receipt of the Disclosing Party's request, provided that Receiving Party may retain Confidential Information of the Disclosing Party to ensure compliance and/or to comply with its document retention policies, provided that any retained Confidential Information shall remain subject to the confidentiality obligations herein. The means of media or data destruction must ensure that Confidential Information is permanently destroyed and cannot be subsequently accessed or read based on commercially reasonable standards. In the event Disclosing Party becomes aware of any disclosure, loss of, or unauthorized access to any Confidential Information of the Disclosing Party, the Receiving Party will promptly notify the Disclosing Party and take any actions reasonably requested by, and provide all reasonable cooperation with, the Disclosing Party to minimize the disclosure or loss and mitigate any associated damage.

11. **LIMITED PARTS WARRANTY:** Seller warrants the Goods being furnished to the Purchaser shall be free from defects in workmanship and materials under normal use and service and, if manufactured by Seller, shall conform to Seller's written specifications as to dimensions and materials in effect at the time of sale (the "Specifications"). Ordinary wear and tear shall not be considered a defect in workmanship or material. This warranty does not cover damage or defects caused by or resulting from (i) Purchaser's or any third party's unauthorized repairs, alterations, or modifications to the Good, (ii) Purchaser's or any third party's negligence, accident, abuse, misuse, improper, unsuitable, or abnormal usage or maintenance of the Good, or (iii) Purchaser's or any third party's failure to conform strictly to the applicable Specifications in connection with the operation, use, maintenance, or repair of the Good. Purchaser must notify Seller in writing (with sufficient detail) at the address set forth below of any failure of a Good to conform to the foregoing warranty within fifteen (15) days following delivery of the Good to Purchaser or such Good shall be deemed accepted by Purchaser. In the event Purchaser notifies Seller of a non-conformity within fifteen (15) days following delivery of the Good, then Seller, upon being satisfied of the existence of such non-conformity (in its sole discretion), will correct the same within a reasonable period of time by either repairing or causing the repair of the Good or by delivering a replacement Good to Purchaser, as Seller, at its sole option, shall elect. Seller shall have the right to dispose of any Goods, subcomponents or materials that are replaced. Seller reserves the right to require photographic evidence of any non-conformity or to inspect the non-conforming Good, on reasonable notice to Purchaser. If Seller is not timely provided with written notification that describes the defect in sufficient detail, Seller shall not be liable hereunder. In addition, Seller shall not be liable for damage that occurs as the direct or indirect result of continuing use of a Good by Purchaser after the Good is accepted and/or Purchaser is or becomes aware or should have been aware of the alleged defect. No Good shall be returned to Seller without Seller's prior written consent. Goods which Seller consents or requests to have returned shall be shipped by Purchaser under commercially reasonable terms acceptable to Seller, to Seller's designated location. An inspection and restocking charge may be charged to Purchaser for returned Goods. Seller may extend to Purchaser the same warranty (the "Supplier Warranty") that Seller received from the supplier or manufacturer of a Good sold to Purchaser by Seller and not manufactured by Seller, subject to Seller's rights against such supplier. In no event shall Purchaser's remedies against Seller with respect to such Goods manufactured by third parties exceed the relief which Seller is able to obtain from its supplier under the applicable Supplier Warranty (where available from the supplier, the Supplier Warranty documentation will be forwarded to Purchaser upon delivery of the Good).

12. **DISCLAIMER.** Seller shall not accept and shall not be liable for or pay invoices for repairs by third parties to Goods sold by Seller hereunder. SELLER'S LIABILITY UNDER THIS AGREEMENT SHALL INURE ONLY TO THE BENEFIT OF PURCHASER AND MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR LEGAL ENTITY, INCLUDING WITHOUT LIMITATION ANY CUSTOMER OF PURCHASER. EXCEPT AS OTHERWISE SET FORTH HEREIN, SELLER DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOOD(S) SOLD HEREUNDER, AND ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS EXPRESSLY DISCLAIMED. SELLER DISCLAIMS ANY AND ALL LIABILITY, WHETHER DIRECTLY OR BY WAY OF INDEMNITY, FOR SPECIAL INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, WHETHER BASED ON BREACH OF CONTRACT TORT, STRICT OR PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE REMEDIES DESCRIBED IN SECTION 11 ARE PURCHASER'S SOLE REMEDIES IN THE EVENT OF ANY ALLEGED BREACH OF THE WARRANTY PROVIDED ABOVE. SELLER EXPRESSLY DISCLAIMS ANY WRITTEN OR UNWRITTEN EXPRESS OR IMPLIED WARRANTY AGAINST INFRINGEMENT WITH RESPECT TO THE GOODS AND SPECIFICATIONS.

13. **SELLER WARRANTY.** Purchaser represents and warrants that in the event it provides artwork to Seller or its Affiliates, Purchaser shall have the right to provide such artwork to Seller for the intended purpose and such provision will not violate any other third-party rights, including without limitation any intellectual property rights.

14. **INDEMNIFICATION.** To the full extent permitted by applicable law and independent of any insurance, Purchaser agrees to indemnify, hold harmless and defend Seller and its Affiliates, and its and their directors, officers, employees, successors, assigns, agents, and customers from and against any and all damages, losses, claims, liabilities, expenses (including but not limited to court damages, economic loss and loss of profits, warranty sharing and fines and penalties) arising out of or resulting in any way from: (a) Purchaser's breach of its representations, warranty, or obligations under this Agreement; (b) Purchaser's unauthorized use of a Good in violation of the applicable Specifications; (c) that a Purchaser's use of a Good or any artwork provided by Purchaser to Seller misappropriates or infringes a third party's copyright, patent, trade secret, trademark or other intellectual property right, (d) any injury to any person (including death) or damage to property caused by the Purchaser, its employees, agents, or subcontractors; or (e) any other act or omission of Purchaser and its representatives pursuant to this Agreement. In no event will Seller be responsible for indemnifying, defending or paying any award of damages assessed against Purchaser in any suit of cause or action alleging that the use of the Goods supplied under this Agreement infringe or misappropriate any intellectual property right of a third party or for any other reason.

15. **LIMITATION OF LIABILITY.** Seller's liability for direct damages on any claim of any kind arising under this Agreement, including without limitation, any claims arising from Seller's negligence or with respect to Goods, shall in no case exceed the price of the applicable Goods which gives rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES IN THE NATURE OF PENALTIES. THE AGGREGATE LIABILITY OF SELLER WITH REGARD TO THIS AGREEMENT WILL IN NO EVENT EXCEED THE AGGREGATE COMPENSATION PAID BY PURCHASER TO SELLER UNDER THE PURCHASE ORDER UNDER WHICH SUCH CLAIM ARISES.

16. **COMMENCEMENT OF SUIT:** Any action brought by Seller against Purchaser under this Agreement must be commenced within 2 years after the cause of action has accrued.

17. **WAIVER:** Seller's waiver of a breach by Purchaser of any provision of this Agreement shall not constitute a waiver of any other breach by Purchaser or of a subsequent breach of the same provision by Purchaser for the same or any other cause.

18. **CONTINGENCIES; FORCE MAJEURE:** In the event of a war, fire, flood, strike, labor troubles breakage of equipment, accident, riot, act of governmental authority, Acts of God, or other contingencies beyond the reasonable control of Seller interfering with the production, supply, transportation, or consumption of the Goods



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covered by this Agreement, or in the event of inability to obtain, on terms judged by Seller to be practicable, any raw material (including energy source) used in connection with the Goods, the quantities affected shall be eliminated from this agreement without liability but the other terms of this Agreement shall remain unaffected. Seller may during any period of shortage due to any of the specified causes, allocate its supply of raw materials among their various uses in any manner which in the opinion of Seller is fair and reasonable.

19. **QUOTATIONS:** Unless otherwise specified, quotations are for information only and are not intended as an offer. Quotations are subject to change without notice in all respects, including prices, delivery dates, terms, quantities, or specifications.

20. **PURCHASER'S USE.** Purchaser should test and evaluate all Goods with its intended products and manufacturing processes. While Seller may assist Purchaser in identifying various alternatives, the responsibility for selecting the Goods and testing belongs to and is assumed by Purchaser.

21. **FAIR LABOR STANDARDS ACT:** Seller hereby certifies that the Goods manufactured by Seller under this Agreement shall be produced in compliance with the requirements of the Fair Labor Standards Act, as amended and of regulations and orders of the United States Department of Labor issued under that Act.

22. **APPLICABLE LAW; JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its conflict of laws provisions. Any legal or equitable actions arising out of or relating to the Agreement shall be brought only in federal or state court in Michigan and the parties hereby consent to the exclusive jurisdiction thereof.

23. **U.N. CONVENTION:** Seller and Purchaser expressly agree that the U.N. Convention on the International Sale of Goods shall not apply to, nor govern the construction of, the terms of this warranty.

24. **NOTICE:** Any notice or other communication required or permitted in the Agreement must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or in the next business day if the date of the actual receipt is not a business day. Notices shall be sent to Seller at PO Box 575, East Jordan, MI 49727.

25. **AMENDMENT TO TERMS.** No exception to, deviation from, or waiver of this Agreement, including any additional terms set forth in a Purchase Order issued by Purchaser, shall be valid or binding on Seller unless otherwise set forth signed writing by Seller's authorized representative. Any such exceptions, deviations or waivers shall apply only to the specific Purchase Order for which they are granted and shall not constitute a course of dealing. Seller may amend these terms at any time, at its discretion, upon written notice to Purchaser.

26. **RELATIONSHIP OF THE PARTIES.** The relationship of Seller to Purchaser will be that of an independent contractor. Neither party will have any authority to execute contracts or make commitments on behalf of the other party. Nothing contained in the Purchase Order will be deemed to create the relationship of employer and employee, principal and agent, joint venture or partner between Seller and Purchaser.

27. **SEVERABILITY.** A finding that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of any other provision of this Agreement.

28. **ASSIGNMENT AND SUBCONTRACTING.** Purchaser may not assign or subcontract its duties or responsibilities under this Agreement without the prior written consent of Seller. Unless otherwise stated in the consent, any assignment or subcontracting by Purchaser, with or without the required consent, will not relieve Purchaser of its duties or obligations under this Agreement or its responsibility for non-performance or default by its assignee.

29. **RETURNS AND REFUNDS.** Occasionally EJP may accept returns of product previously accepted by our customers. To initiate a return, please contact your Sales Representative and/or Customer Service and we can help you find a solution.

To return an item, please email your Sales Representative and CC Customer Service at [customerservice@ejplastics.com](mailto:customerservice@ejplastics.com) to obtain a Return Merchandise Authorization (RMA) number. Include the following information:

- Product part number
- Quantity of product to return
- Detailed problem/description/reason for RMA
- Customer return shipping address
- Whether or not you want replacement product or credit

If the RMA is approved by EJP, the process will move forward. The RMA will require a BOL for the shipment. If you are arranging the freight, it's up to you to provide a BOL for the driver.

Please do NOT return any items before receiving the RMA number. After receiving the RMA number, clearly NOTE the RMA number on all pallets and/or cartons being returned. EJP will NOT receive product without it. Failure to do so, could result in the goods being treated as HORT recycling (minimal credit).

All returns must be initiated within [365] days of the invoice date. All returned items must be in new and unused condition.

Please note: A restock fee up to 30% may apply, as well as freight being recouped/charged shipping to and from East Jordan Plastics.

**Refunds:** After receiving your return and inspecting the condition of your item(s), please allow at least [7] days to process your return. Refunds may take 1-2 billing cycles to appear on your account. We will notify you by email when your return has been processed.



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**Exceptions:** The following items cannot be returned:

- Customized products, including labelled and printed items.
- Custom colors
- Special production runs
- Special order items

**30. ENTIRE AGREEMENT:** This Agreement represents the entire agreement between Seller and Purchaser with respect to the Goods sold.