

## **MOBILEMOD TERMS AND CONDITIONS**

**Terms of Purchase: The following terms shall be applicable to the Purchase Order (“PO”)**

### **I. Acceptance**

Payment is due by the individual or business placing his/her/its order (such individual or business, the “Customer”) for certain goods identified in the PO (each such good a “Product”) with Call-ONeill Containers LLC D/B/A MobileMod (the “Company”) to the Company immediately upon receipt of this invoice. By Customer checking the box noting Customer’s acceptance of this PO, Customer agrees to be bound by these Terms and Conditions and accepts that such Terms and Conditions are incorporated into the PO.

### **II. Time and Terms of Delivery**

Given the need for the Company and Customer to work to schedule delivery and the uncertainty of delivery dates, Customer shall have no right to cancel this purchase order or demand a refund if delivery is not made by Company on the expected delivery date. If the container is unable to deliver due to Customer negligence, the Customer shall pay to the Company, upon demand, a \$50 restocking fee per unit and pay Company for any other actual costs incurred by the Company. If Customer negligence leads to unloading times greater than thirty (30) minutes, Customer shall, upon demand, provide Company with additional payment of \$50 for each additional half hour or any part of a half hour it takes to unload the Product(s). The specific quantity ordered shall be delivered and may not be changed by the Customer without the Company’s prior written consent.

### **III. Colors, Appearance, Acceptance of Delivery, and Additional Services**

The Company cannot and does not guarantee Product(s) colors or appearances. Customer, or a representative of Customer, is responsible for inspecting the purchased Product(s) interior and exterior to confirm it is in good working condition before accepting delivery. Failure by Customer to refuse any purchased Product(s) prior to pick-up by Customer or final delivery off-loading shall be deemed as acknowledgment and acceptance by Customer that the Product(s) are acceptable and conform with the terms of this PO. Should Company, in its sole discretion, determine Customer unreasonably rejected the Product(s), Customer shall pay to Company, upon demand by Company, a \$50 restocking fee per unit and pay Company for any other actual costs incurred by the Company. Should Company, in its sole discretion, determine Customer reasonably rejected the Product(s), the parties shall agree on *a new* delivery date for the replacement Product(s) and the Company shall cause such replacement Product(s) to be promptly delivered to the Customer. Company is not and shall not be obligated to render any other services to Customer unless agreed upon by a writing signed by the Company.

### **IV. Price**

The price for each Product(s) shall be the price shown on the face of this Purchase Order.

### **V. Payment**

Unless otherwise agreed, payment shall be due upon receipt of the PO. Any amounts not paid within two (2) business days of the receipt of the PO or owed by Customer and not paid upon demand of Company shall be subject to a late payment fee equal to ten percent (10%) for each week or each part of a week such payments remain owed by Customer but not paid.

#### **VI. Taxes**

Except for applicable state sales and use taxes, the price for Product(s) includes all taxes, fees, and charges that may be imposed with respect to the purchase of the Product(s).

#### **VII. Independent Parties and Use of Contractors**

Nothing contained in this PO shall constitute or be construed to constitute a partnership between or joint venture by the parties hereto or constitute any party the agent of the others. No party shall hold itself out contrary to the terms of this PO and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. Company, from time to time, as it sees fit may utilize the services of certain independent contractors and service providers to facilitate the transactions contemplated herein. By accepting this PO, Customer consents to Company's use of such third-parties and contractors as Company sees fit.

#### **VII. DISCLAIMER OF WARRANTY**

COMPANY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION, COVENANT OR WARRANTY, EXPRESS OR IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE, RELATING TO THE CONDITION OF THE PRODUCTS CONTEMPLATED BY THIS PO INCLUDING (i) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY; (ii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES; (iii) ANY RIGHTS OF CUSTOMER UNDER APPLICABLE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE PURCHASE PRICE; (iv) ANY CLAIM BY CUSTOMER FOR DAMAGES BECAUSE OF DEFECTS OR OTHER VICES, WHETHER KNOWN OR UNKNOWN; (v) ANY IMPLIED OR EXPRESS WARRANTY REGARDING ENVIRONMENTAL LAWS; OR (vi) ANY IMPLIED OR EXPRESS WARRANTY REGARDING TITLE TO ANY OF THE PRODUCTS. IT IS THE EXPRESS INTENTION OF COMPANY AND CUSTOMER THAT, EXCEPT AS OTHERWISE SET FORTH IN THIS PO, THE PRODUCT(S) CONTEMPLATED HEREIN ARE BEING CONVEYED TO CUSTOMER "AS IS" WITH ALL FAULTS, AND IN THEIR PRESENT CONDITION AND STATE OF REPAIR. CUSTOMER REPRESENTS TO COMPANY THAT AS OF DELIVERY CUSTOMER WILL BE GIVEN CERTAIN ACCESS TO THE PRODUCT(S) TO MAKE INSPECTIONS.

#### **IX. Indemnification**

Customer shall indemnify, hold harmless, defend and reimburse Company and its directors, officers, shareholders, employees, agents, affiliates and assigns (collectively, the "Company Related Parties") from and against all losses, damages, death, claims, injuries, costs and attorney's fees, whether or not

caused by the concurrent negligence of the Company Related Parties, arising from (a) the loss of, damage to or destruction of Product(s) or its contents (the "Contents") due to collision, forces of nature, rain, fire, or other casualty, (b) damage to Customer's goods or property caused during storage in or transport of the Product(s) or the Contents, (c) any levy, attachment or repossession of the Product(s), (d) any fine, liens, tax, penalty, towing, impound or other charges arising from Customers use of the Product(s), (e) Customer's breach of this Agreement, (f) the use, maintenance, operation, ownership, transport or rental of the Product(s) by Customer or Customer's agents, (g) any pollution, contamination, environmental impairment and/or similar condition directly or indirectly caused by or resulting in whole or in part from the Product(s) or (h) any environmental statutory or regulatory compliance requirements applicable to any Product(s) (or any use thereof) and required under any and all foreign or domestic federal, state or local laws, treaties, ordinances, regulations, codes, rules, orders, guidelines, policies or requirements of any governmental authorities which regulate or impose standards of liability or conduct concerning air, water, soils, wetlands and watercourses, solid waste, hazardous waste and/or materials, worker and community right-to-know, noise, resource protection, health protection and similar environmental, health, safety, and land use concerns as may now or at any time hereafter be in effect. The indemnification obligations of Customer hereunder shall survive the termination of this Agreement.

#### **X. Cancellation**

Customer may cancel this PO, without recourse, within the first 24 hours of its acceptance. Any cancellation made by Customer more than 24 hours after accepting the terms of this PO will require the consent of the Company and Customer, upon demand by Company, shall pay to Company a \$50 restocking fee per unit in addition to any other actual costs incurred by Company related to this PO.

#### **XI. Waiver**

Company's rights hereunder may not be waived except by written instrument signed by an authorized agent of Company. Company's waiver of a breach of this Purchase Order in one instance shall not be deemed a waiver with respect to any other breach.

#### **XII. Assignment**

The Customer may not assign any of Customer's obligations contained herein without the express written consent of the Company. Should Company consent to such assignment, this Purchase Order shall be binding upon the representatives, successors and assigns of the Customer. The Company may validly assign this Purchase Order in whole or in part without the prior written consent of Customer.

#### **XII. Severability**

If any covenant, condition, term or provision of this PO is illegal or if the application thereof to any person is judicially determined to be invalid or unenforceable to any extent, then the remainder of this PO, or the application of such covenant, condition, term or provision to persons or in circumstances other than those held invalid or enforceable, will not be affected thereby, and each covenant, term, condition and provision of this PO will be valid and enforceable to the fullest extent permitted by law.

#### **XIV. Complete Agreement**

This PO constitutes the complete agreement among the parties concerning the subject matter hereof.

**XV. Governing Law**

This PO shall be governed by the laws of the State of Colorado as such laws are applied to agreements that are made in Colorado and without regard to conflicts of laws principals.

**XVI. Headings**

As used in this PO, section headings are for the convenience of reference only and will not be used to modify, interpret, limit, expand or construe the terms of this PO.

**XVII. Arbitration; Exclusive Remedy**

Any controversy between or among the parties and involving this PO, the Product(s) contemplated herein or otherwise whatsoever related to this PO or the Product(s) will be submitted to arbitration on the request of any party to any such controversy in Boulder County, Colorado. The arbitration will comply with and be governed by the provisions of the commercial arbitration rules of the American Arbitration Association and no party to any such controversy shall be entitled to any punitive damages. The parties to any such arbitration shall split the costs of such arbitration. However, the arbitrator shall award legal fees and arbitration costs as part of the arbitration. Judgment may be entered upon any award granted in any such arbitration in any court of competent jurisdiction in Boulder County, Colorado or in another county and state chosen by the Company. By accepting this PO, Customer waives Customer's right to seek remedies in court, including any right to a jury trial; provided, however, that nothing in this paragraph will constitute a waiver of any right any party to this PO may have to choose a judicial forum to the extent such a waiver would violate applicable law.

The Customer's exclusive remedy in any cause of action or arbitration related to the Company's breach of this Agreement or for any cause of action or arbitration related whatsoever to this Agreement or the Product(s) shall be the return of the purchase price of the Product(s) to the Customer. In no case shall Company be obligated to pay more to the Customer than the aggregate purchase prices of the Product(s) referenced herein.