

**FALCON PLASTICS AND POLY-CAST
TERMS AND CONDITIONS OF QUOTATIONS**

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. Buyer’s acknowledgement of this order or commencement of any work or performance of any services hereunder, shall constitute acceptance by Buyer of this order and all of its terms and conditions. No term or condition stated by Buyer in acknowledging or otherwise accepting this order shall be binding upon Falcon Plastics/Poly-Cast, unless specifically accepted in writing by Falcon Plastics/Poly-Cast.
- 2) PRICE AND DELIVERY – Falcon Plastics/Poly-Cast 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) may not include all applicable taxes.
- 3) PAYMENT TERMS – Buyer shall pay Falcon Plastics/Poly-Cast in accordance with the terms of the quotation. Receipt of an invoice shall be condition of the Buyer’s obligation to pay. The invoices shall provide an itemized list of all Products and other charges. In the event of a late payment Falcon Plastics/Poly-Cast may charge applicable interest on late payments. Falcon Plastics/Poly-Cast requires a Net 30 Days for payment terms unless otherwise specifically accepted in writing.
- 4) DELIVERY – F.O.B Origin, Freight collect: As the buyer you are assuming title of the goods the moment the freight carrier picks up and signs the bill of lading at the origin location. You are also assuming risk of transportation and are responsible for the arrangement and cost of freight charges. If you’d like Falcon to manage this for you, we are able to provide a quote. Falcon Plastics/Poly-Cast reserves the right to adjust any delivery deadlines as needed and shall provide reasonable written notice to Buyer in such event.
- 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/Poly-Cast 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; however, no claims will be allowed for expenses incurred by Buyer installing, or using the same, and no other guarantees are given or implied unless so stated herein.
- 6) WARRANTY - No representations or warranties, express or implied, have been made by or on behalf of Falcon Plastics and Poly-Cast, except those that are specifically set forth in this agreement. There are no express or implied warranties or merchantability, fitness for a particular purpose or otherwise which extend beyond the description of the equipment on the face of this quotation, as to equipment produced. Falcon Plastics and Poly-Cast shall not be liable (whether in contract, tort, including negligence or otherwise) for any indirect, incidental, special, punitive or consequential damages including lost revenues or profits or other forms of economic loss, of any nature whatsoever, for any breach of this quotation or resultant purchase order. The limitations in this paragraph survive any termination of the quotation or resultant purchase order.
- 7) CANCELLATION – Falcon Plastics/Poly-Cast may, at any time and for any reason, cancel the Quote, or any portion thereof.
- 8) CONFIDENTIALITY - Without exception, all proprietary design information shall remain in Falcon Plastics/Poly-Cast's possession at all times.
- 9) PROPRIETARY – Buyer agrees that all information disclosed or obtained by the Buyer or its representatives from Falcon Plastics/Poly-Cast, 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/Poly-Cast and that such information shall not be reproduced or used by Buyer or transmitted or disclosed to any person or organization by Buyer, without prior written consent of Falcon Plastics/Poly-Cast, unless this information is proprietary to Buyer or public knowledge.
- 10) PATENTS – Buyer 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 Buyer 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 Buyer will indemnify and save harmless Falcon Plastics/Poly-Cast 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 – Buyer shall bear all risk of loss on supplies, called for by this order until shipment from Falcon Plastics/Poly-Cast at origination, unless otherwise specified in this order, except for loss occasioned by gross negligence of Falcon Plastics/Poly-Cast.
- 12) INDEMNIFICATION – To the maximum extent permitted by law, the Buyer shall indemnify , defend and hold harmless Falcon Plastics/Poly-Cast 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 Buyer, (b) any failure by Buyer to comply with any applicable law or regulation; (c) any tax or duty assessed by any governmental agency against Falcon Plastics/Poly-Cast related to the purchase of products or service from Falcon Plastics/Poly-Cast; (d) any claim alleging that any of Falcon Plastics/Poly-Cast products or any part thereof infringe upon any third-party’s patent.

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- 13) INSURANCE – Buyer shall purchase and maintain insurance sufficient to protect Buyer, Falcon Plastics/Poly-Cast, and all Falcon Plastics subsidiaries from claims arising out of Buyer’s products and performance under the Order. If requested, Buyer shall promptly provide to Falcon Plastics/Poly-Cast a valid Certificate of Insurance, in a form acceptable to Falcon Plastics/Poly-Cast.
- 14) ASSIGNMENT – Neither party may assign the Order without the written consent of the other party.
- 15) COMPLIANCE WITH LAWS AND REGULATION – Buyer agrees to indemnify Falcon Plastics/Poly-Cast against any loss, cost, liability, or damage by reason of Buyer’s violation of any applicable law, executive orders, or regulations.
- 16) GOVERNING LAW – 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.

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