



Mitchell Plastics Pty Ltd

ACN 095 924 977 ABN 11 095 924 977

37-53 Crockford Street Port Melbourne VIC 3207
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PERSPEX™ Authorised Distributor

COMMERCIAL CREDIT APPLICATION

To: Mitchell Plastics Pty. Ltd. (ACN 095 924 977) of 32-38 Redwood Drive, Dingley Vic. 3172 and 37-53 Crockford Street, Port Melbourne Vic 3207 ("the supplier").

The Customer hereby applies for credit.

A THE CUSTOMER

Full Trading Name
Business & Delivery Address(owned/rented) Postcode.....
Telephone ()Fax ()After Hours No.()
Postal Address Postcode.....
Telephone ()Fax ()After Hours No.()

B BUSINESS OPERATED AS (Tick more than one if appropriate)

Sole Trader Partnership Company Trust
Other Details

C PERSON SIGNING THIS APPLICATION ("the Signatory")

Position
Name (please print)
Private Address Postcode
Private Telephone No.
SIGNATURE DATE
(Signed for and on behalf of the Customer)

Note:

- The Customer agrees that all purchases made will be subject to the terms and conditions endorsed hereon unless otherwise agreed to in writing by the Supplier.
- The Signatory represents and warrants that all information hereon is true and correct in order to induce the Supplier to grant credit to the Customer.

D CREDIT LIMIT

- AMOUNT APPLIED FOR \$
- ANTICIPATED MONTHLY PURCHASES \$

E COMPANIES

Where the Customer applying is a Company, the Guarantee and Indemnity contained within this Commercial Credit Application must be signed by all Directors and Secretaries and the Seal of the Company must also be affixed.

- Company Name
- ACN ABN
- Registered Office Postcode
- DEBENTURE/MORTGAGE
In favour of
- Dated
- Affiliates/Subsidiaries

F ANY TRUSTS? Yes No

If the Customer is a trust, is trustee of any trust, or is associated in any way with any trust, further information may be requested before this application can be considered.

G PARTNERSHIPS/SOLE TRADERS

Where the Customer is a Business conducted by individuals, the Guarantee and Indemnity contained within this Commercial Credit Application must be signed by all proprietors/partners.

H TRADE REFERENCES (Major suppliers, please)

- 1. Name (please print)
 Postal Address Postcode
 ContactTelephone () Fax ()
- 2. Name (please print)
 Postal Address Postcode
 ContactTelephone () Fax ()
- 3. Name (please print)
 Postal Address Postcode
 ContactTelephone () Fax ()

I FINANCIAL & TRADING DETAILS

- 1. Name of Bank Branch
 ContactTelephone () Fax ()
- 2. Type of Business
- 3. How long in business?
- 4. Industry Association Membership

J CREDIT INFORMATION

The Customer and the person completing this Application irrevocably authorises Mitchell Plastics Pty. Ltd., its servants and agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer and the person completing this Application from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Customer and the persons completing this Application any credit provider or Credit Reporting Agency and including personal credit and consumer credit information (hereinafter called "the information sources"). The customer and the person completing this Application, hereby authorises the information sources to disclose to Mitchell Plastics Pty. Ltd. such information concerning the Customer and the person completing this Application, which is within their possession.

The Customer and the person completing this Application agree that the information provided on this Application concerning the Customer and any relevant trading information arising from any dealings between the Customer or the person completing this Application and Mitchell Plastics Pty. Ltd. may be disclosed to a Credit Reporting Agency or any other interested person.

INTERNAL USE ONLY

K ACCOUNT APPROVED BYDate

..... Date \$ Code
 Manager Credit Limit Approved Customer Code

AGREEMENT TO GUARANTEE AND INDEMNIFY (5/05)

TO: The Supplier

- 1. We Guarantee payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with you and any GST applicable thereto.
2. We Indemnify You against all loss or damage arising from any past, present or future dealing you have or have had with the Customer or any of us or arising from any breach of any part of this Agreement to Guarantee and Indemnify ("this Agreement") by any of us.
3. We Agree (a) to pay to a stake-holder nominated by you the amount you certify is payable, before being entitled to dispute whether that amount is payable; (b) this Agreement shall be effective despite any conduct or event (including any later agreement to guarantee or indemnify and any other security taken or any Deed of Company Arrangement whether or not you agreed) which may have released or varied any obligation of the customer or any of us; (c) any payment which is subsequently avoided by any law (whether relating to insolvency or otherwise) shall be deemed not to have been paid; (d) that we sign both in our personal capacity and as Trustee of every trust of which we are trustee; (e) to notify you within 7 days, of any change in the Customer's structure, management or position including (i) any sale or disposition of any part of the business of the Customer (ii) any change in director, shareholder, management, partnership or trusteeship (iii) any new charge, mortgage or security given to any party by the Customer (iv) any involvement in any franchise, licensed business or network in any capacity.
4. Charge: We charge in your favour, all our estate and interest in any land or any other assets, tangible or intangible in which we now have any legal or beneficial interest personally or as Trustee or in which we later acquire any such interest, with payment of all monies owed to you by the Customer or any of us.
5. Consideration: You to grant credit at your discretion to the Customer and/or forbear from taking any legal action against the Customer for one month.
6. Proper Law: This Agreement and any claim or dispute between the Supplier, the Customer or any of us shall be governed by the law applicable in Victoria and heard in the appropriate courts in or nearest Melbourne.
7. Several Guarantors: If more than one Guarantor is intended to sign, we each agree to be liable for the full amount owed, even if we are the only one to sign. You may make any arrangement or compromise with any of us, obtain additional guarantees, indemnities or securities from any of us or any other party or release or compromise with any Guarantor or party and any amount may be extinguished or compromised without affecting our liability to you.
8. Credit Limit: Any credit limit you grant or apply to the Customer is at your discretion and will not limit our liability to you.
9. Privacy Act: You may make any enquiries you deem necessary to investigate us including enquiry with our bankers, any credit provider or credit reporter and any personal credit and consumer credit information, Land/Data property inquiries and name searches ("the sources"). We authorise the sources to disclose anything about us which is in their possession. We agree that you may disclose information you have about us to the sources.
10. Severability: Any part of anything herein shall be severable without affecting any other part hereof.
11. Acknowledgment of Current Debt: We acknowledge that the Customer owes you the sum noted below at item C (if any) but acknowledge and agree that our liability to the Supplier under this Agreement is unlimited.
12. Definitions: (a) "You" and "Your" means each of the parties listed below as "Supplier" jointly and severally (b) "We" and "us" means each of the Guarantors jointly and severally (c) "Customer" means each of the parties listed below as "Customer" jointly and severally and any party or parties who acquire and/or conduct any part of the business of the customer or have any beneficial interest therein until notice is given pursuant to clause 3(e) as well as trading with the Supplier which had the same or substantially similar beneficial interests, control and/or trading name or trading address.
13. Demand: We agree that our liability to you arises without any demand upon the customer or any of us.
14. Stamp Duty: We agree to pay any stamp duty applicable to this Agreement or any charge or security created pursuant to clause 4 or otherwise.
15. Attornment: To give effect to all obligations arising under this Agreement, we irrevocably appoint any solicitor of the Supplier as our attorney.
16. Other Guarantees: We agree to provide details of all guarantees and/or indemnities we have given or subsequently give to any party or any other fact or thing concerning the Customer or any of us, which the Supplier ought reasonably to have knowledge of, in dealing with the Customer in reliance (in part or in full) upon this Agreement.
17. Read and Understood: We have each read and understood this document before signing it. (*refer below).

THE PARTIES:

- A. THE SUPPLIER: MITCHELL PLASTICS PTY. LTD. ACN 095 924 977 (and each of its' subsidiaries, divisions, affiliates, associated companies and related entities and any successors and assigns)
B. THE CUSTOMER. (and each of its' subsidiaries, divisions, affiliates, associated companies, franchisor, franchisee, licensor, licensee and/or related entity and permitted assigns)
C. CURRENT DEBT ACKNOWLEDGED: Existing clients \$..... as at New Clients \$ nil
D. THE GUARANTORS:
1. (print name)..... of(address)
Signature.....
Witness (print name) Signature Witness.....
2. (print name)..... of(address)
Signature.....
Witness (print name) Signature Witness.....
3. (print name)..... of(address)
Signature.....
Witness (print name) Signature Witness.....

Dated:

IMPORTANT NOTICE: If you sign this Guarantee, you may be required to pay someone else's debts. You should ensure that you read and understand the terms of this Guarantee. If necessary, seek independent professional advice.

TERMS AND CONDITIONS OF TRADE 2/08/2001

To the fullest extent legally possible, all dealings, arrangements and contracts made between MITCHELL PLASTICS PTY. LTD. ACN 095 924 977 ("Mitchell Plastics") and any Customer relating to any products, services or transactions are subject to the following Terms and Conditions of Sale ("these Terms") unless otherwise expressly agreed in writing and these terms and conditions (which shall only be waived in writing signed by Mitchell Plastics) shall prevail over all conditions of the customers order to the extent of any inconsistency.

1. PAYMENT is to be made, by cash, cheque or Electronic Funds Transfer and without deduction, within 30 days from the end of the month in which invoice was issued.

2. INTEREST may be charged on overdue accounts at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus 2%.

3. PROPERTY: a) Risk of damage to or loss of products supplied hereunder shall pass to the Customer upon collection or delivery. b) Property in products shall not pass until payment in full of all monies owed for those products or on any other basis by the customer and Mitchell Plastics reserves the right to take possession and dispose of products as it sees fit at any time until full payment. c) The Customer grants permission to any authorised representative of Mitchell Plastics to enter any property where any product is in order to do so and with such force as is necessary. d) Immediately upon delivery the Customer accepts liability for the safe custody of the products and agrees to indemnify Mitchell Plastics for any losses relating thereto. e) Upon sale or disposition of any products prior to full payment, the Customer agrees to deposit all proceeds in a separate bank account, agrees not to mix proceeds with any other monies and will forthwith account to Mitchell Plastics therefore notwithstanding that Mitchell Plastics may have granted any credit facility and/or time to pay or any conduct of Mitchell Plastics. f) Until payment in full the Customer agrees- i) to keep all products unpaid for as fiduciary for Mitchell Plastics and store them in a manner which shows Mitchell Plastics as owner; ii) only to sell products in the usual course of its business on condition that the Customer holds all proceeds in trust for Mitchell Plastics; iii) sale on terms or for less than cost shall not be "in the usual course". g) This clause 3 is not intended to create a charge over any products and shall be read down to the extent necessary to avoid creating a charge. h) The Customer agrees that products will be deemed at all times to be dealt with by the Customer on a "first in first out" basis for the purpose of all transactions between the Customer and Mitchell Plastics. i) The Customer agrees that a certificate purporting to be signed by an officer of Mitchell Plastics identifying products as unpaid for shall be conclusive evidence that the goods have not been paid for and of Mitchell Plastics title thereto. j) If the Customer uses any product in any construction, the Customer agrees to hold such part of the proceeds of sale or disposition of the finished construction which incorporates products, upon trust for Mitchell Plastics until payment in full for those products and of all monies owed to Mitchell Plastics.

4. LIMITATION OF LIABILITY: Subject to clause 5 and to the extent permitted by the Trade Practices Act and the relevant State legislation: a) the customer agrees to limit any claim it makes to the cost of supply of equivalent products or the supply of services again; b) Mitchell Plastics shall not be liable for any claim, loss or expense arising which is made after 14 days from the date of delivery of product or services (or at all once products have been unpacked, on sold or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance; c) Mitchell Plastics will not be liable in any way for any contingent consequential direct or indirect special or punitive damage arising in any way and whether due to Mitchell Plastics negligence or negligence of Mitchell Plastics's employees, agents or sub-contractors or otherwise and the Customer acknowledges this express limit and agrees to limit any claim accordingly; d) no other term, condition, agreement, warranty, representation or understanding whatsoever whether express or implied in any way extended to, otherwise relating to or binding upon Mitchell Plastics, other than these Terms, is made or given; e) the Customer shall indemnify Mitchell Plastics against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with this contract brought or threatened to be brought against Mitchell Plastics by any third party (including, but not being restricted to, any loss suffered by customers of the Customer purchasing the goods or other products incorporating the goods) except to the extent Mitchell Plastics is liable to the Customer in accordance with these Terms.

5. LIABILITY UNDER TRADE PRACTICES ACT: If any products supplied pursuant to this agreement are supplied to the Customer as a "consumer" of goods or services within the meaning of that term in the Trade Practices Act 1974 as amended or similar State legislation, the consumer will have the benefit of certain non-excludable rights and remedies in respect of the products or services and nothing in these Terms excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Trade Practices Act or similar legislation is so conferred. However, if the product is a product not ordinarily acquired for personal, domestic or household use or consumption pursuant to s.68A of the Trade Practices Act or similar provisions of relevant state legislation, Mitchell Plastics limits its liability to payment of an amount equal to the lower of: i) the cost of replacing the goods; ii) the cost of repair of the goods; and iii) the cost of having the goods repaired or replaced.

6. EXCLUSIONS: a) Sample: No contract between Mitchell Plastics and the Customer shall be or be deemed a sale by sample. b) If Mitchell Plastics publishes material concerning its products, services and prices anything so published which is incompatible with these Terms is expressly excluded. c) The Customer will rely on its own knowledge and expertise in selecting any product or services for any purpose and any advice or assistance given for or on behalf of Mitchell Plastics shall be accepted at the Customer's risk and shall not be or be deemed given as expert or adviser nor relied upon by the Customer or anyone claiming through the Customer.

7. CUSTOMER MATERIAL ETC: The customer acknowledges and agrees that it is the Customer's sole responsibility to ensure that materials, designs, drawings, specifications, procedures etc. which are provided by or on behalf of the Customer, to be used by Mitchell Plastics in meeting any orders, are correct and appropriate in every particular and will be relied upon by Mitchell Plastics.

8. PLACEMENT OF ORDERS: The Customer agrees: a) in the event of any dispute arising concerning any order (and including any questions of identity or authority or any telephone, facsimile, e-mail, e-commerce or computer generated order) that the internal records of Mitchell Plastics will be conclusive evidence of what was ordered in all respects; b) each order it places shall be and be deemed to be a representation by it, made at the time that it is solvent and able to pay all of its debts as and when they fall due; c) failure to pay Mitchell Plastics in accordance with these Terms shall be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 8b) hereof and that the representations were unconscionable, misleading and deceptive; d) when any order is placed, the Customer shall inform Mitchell Plastics of any material facts which would or might reasonably affect the commercial decision by Mitchell Plastics to accept the order and/or grant credit in relation thereto and any failure to do so by or on behalf of the Customer shall create and be deemed to create an inequality of bargaining position, shall constitute and be deemed to constitute the taking of an unfair advantage of Mitchell Plastics and to be unconscionable, misleading and deceptive.

9. PURCHASE PRICE: a) All sales are made by Mitchell Plastics at its ruling price at the time of delivery. b) Government imposts (including any GST or equivalent) will be to the Customer's account and Mitchell Plastics price lists will exclude these unless expressly noted thereon. c) Any volume rebate or settlement discount will be calculated on base price exclusive of GST or any government imposts, charges or duty etc.

10. DELIVERY: The Customer acknowledges and agrees that: a) Mitchell Plastics accepts no responsibility or duty for delivery, but may elect to arrange delivery at its discretion and without any liability and at the Customer's costs and responsibility in all things; b) Mitchell Plastics reserves the right to charge for any delivery; c) The Customer shall be deemed to have accepted delivery and liability for the products immediately Mitchell Plastics notifies the Customer that any products are ready for collection or they are delivered to a carrier or to the Customer's business premises or site whether attended or not; d) A certificate purporting to be signed by an officer of Mitchell Plastics confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; e) Mitchell Plastics will not be liable for delay, failure or inability to deliver any products or perform any services; f) Once the Customer is notified products are ready for collection or delivery, the Customer agrees to pay all costs of Mitchell Plastics in holding those products for the Customer; g) Mitchell Plastics shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the products supplied hereunder (even if caused by Mitchell Plastics's negligence or negligence of Mitchell Plastics's employees, agents or sub-contractors or otherwise) nor will any delay entitle the Customer to terminate or rescind the contract for sale and purchase of the products; h) Mitchell Plastics shall not be liable for any non-delivery or shortage in delivery of the products sold hereunder (even if caused by Mitchell Plastics's negligence or negligence of Mitchell Plastics's employees, agents or sub-contractors or otherwise) and further any liability of Mitchell Plastics under this clause 10h) shall be limited to supplying the quantity of ordered products within a reasonable time or at Mitchell Plastics's discretion issuing a credit note for products not supplied.

11. PRODUCTS AND SERVICES: a) Mitchell Plastics disclaims any responsibility or liability whatsoever relating to any products or services i) made or performed to designs, drawings, specifications and/or procedures etc. or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer ii) utilised, stored, handled or maintained incorrectly or inappropriately. b) The Customer agrees to check all products and services for compliance with all relevant applicable standards and regulatory bodies before use, on-sale or application and to use or apply same in accordance with all applicable standards, regulations and guidelines, with all manufacturers and/or Mitchell Plastics recommendations and directions as well as with good practice.

12. PRODUCT CHARACTERISTICS: a) The Customer acknowledges that the products supplied hereunder have been obtained by Mitchell Plastics from third parties. Subject to clause 5, no warranty is given in respect of the products. b) The description of the products shall be as set out in specifications (if any) as provided by Mitchell Plastics's third party suppliers and all descriptive matter, specifications, and advertising issued by Mitchell Plastics or its third party suppliers and any descriptions or illustrations contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the products described in them. They will not form part of the contract for sale and purchase of the products. Mitchell Plastics or its third party suppliers of the products may make any changes to the specification, design, materials or finishes of the products from time to time. c) Products may contain poisons and/or chemicals (including formaldehyde) should be stored and worked upon in well ventilated areas not burned except in a safe manner. d) Product related dust and sawdust are inherently dangerous if inhaled. e) The Customer agrees to check all products for compliance with all relevant applicable standards and regulatory bodies before use, on-sale or applications and to use or apply products in accordance with all applicable standards, regulations and guidelines, with all manufacturers or Mitchell Plastics recommendations and directions as well as with good commercial practice.

13. NO TERMS AND CONDITIONS sought to be imposed by the Customer upon Mitchell Plastics shall apply.

14. RECOVERY COSTS: The Customer will pay to Mitchell Plastics any costs and expenses incurred by it or its solicitors, legal advisors, mercantile agents and other parties acting on Mitchell Plastics behalf in respect of anything instituted or being considered against the Customer whether for debt, possession of any products or otherwise.

15. ATTORNEY: For the purpose of giving effect to the Customer's obligation in these Terms, the Customer hereby irrevocably appoints the Credit Manager of Mitchell Plastics from time to time, as its attorney in all things.

16. VARIATION: Any variation or cancellation of these Terms or any order must be in writing.

17. DEFAULTS: a) Upon any default or breach hereof by the Customer, Mitchell Plastics may (inter alia) retain all monies paid and/or cease further deliveries, call-up any monies owing and recover from the Customer all loss of profits arising and/or at its discretion take immediate possession of any products not paid for, without prejudice to any other of its rights and without being liable in any way to any party. b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against Mitchell Plastics whilst the Customer is in default under any part of these Terms or in any of its dealings with Mitchell Plastics.

18. SEVERABILITY: Any part hereof being a whole or part of a clause, shall be capable of severance without effecting any other part of these Terms.

19. CUSTOMER RESTRUCTURE: The Customer will notify Mitchell Plastics in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship within 7 days of the date of any such change.

20. JURISDICTION: The Customer agrees that all contracts made with Mitchell Plastics shall be deemed to be made in the State nominated by Mitchell Plastics and agrees to submit to the jurisdiction of the appropriate Courts nominated by Mitchell Plastics.

21. CREDIT LIMIT: If Mitchell Plastics grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. Mitchell Plastics can vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party.

22. WAIVER: In the event that Mitchell Plastics elects not to exercise any of its rights arising as a result of any breach of these Terms it shall not constitute a waiver of any rights of Mitchell Plastics relating to any subsequent or other breach.

23. NOTICE: The Customer agrees that it will be deemed to have notice of any change to these Terms, immediately they are adopted by Mitchell Plastics and whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms and conditions of sale adopted by Mitchell Plastics immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions of Mitchell Plastics.

24. INDEMNITY: The Customer indemnifies Mitchell Plastics against any claim or loss arising from or related in any way to any contract, dealing or transaction between Mitchell Plastics and the Customer or anything arising therefrom, or arising as a result of or subsequent to any breach of these Terms.

25. SECURITY FOR PAYMENT: The Customer agrees on request to charge in favour of Mitchell Plastics: i) by way of a fixed charge all its books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property; and ii) by way of a floating charge, the whole of the Customers other undertaking, property and assets, with payment of all monies owed to Mitchell Plastics.

26. FORWARD ORDERS: If the Customer places a forward order the Customer agrees: a) to pay for so much of any order as is from time to time invoiced by Mitchell Plastics; b) no delay or failure to fulfill any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

27. FORCE MAJEUR: Mitchell Plastics will not be in default or in breach of any contract with the Customer by as a result of Force Majeur (which means beyond the reasonable control of Mitchell Plastics and includes any strike or lock-out, and any delay or non-supply for any reason whatsoever by Mitchell Plastics's third-party supplier of the products or a carrier of them).

28. INSOLVENCY: a) If the Customer commits or is involved in any act of insolvency, it agrees that this should be deemed in default under these terms. b) An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration or the like.

29. MITCHELL PLASTICS NOT MANUFACTURER: The Customer acknowledges that Mitchell Plastics does not manufacture any products and agrees to make formal claim upon the manufacturer in relation to any alleged faulty products or products which are said to be unmerchantable or unfit for purchase.

30. RETURNS/FAULTY PRODUCTS: Mitchell Plastics may accept faulty products for return only to the extent that Mitchell Plastics is reasonably able, without recourse to litigation or other dispute resolution procedures by Mitchell Plastics, to obtain a credit from its third party supplier in respect of such faulty products.

31. RETURNS/INCORRECT PRODUCTS: Mitchell Plastics will accept products for return which are incorrectly supplied if it acknowledges and agrees that the products have been incorrectly supplied on the following basis: a) the products are returned within 7 days of delivery; b) the products are in as new and re-saleable condition.

32. OTHER RETURNS: If Mitchell Plastics for any reason elects to take back any stock other than stock which is alleged to be faulty or incorrect, it will be on terms agreed and a restocking fee of not less than 15% of invoice value will apply.

33. VARIATIONS IN QUANTITY: The Customer agrees to accept a permissible variation of quantity provided the variation does not exceed + or - 10% of the quantity ordered and the Customer shall pay for the actual weight or volume delivered and the quantity delivered shall be deemed to be the quantity ordered.

34. ABNORMAL PAYMENTS: The Customer agrees to pay an administration fee of 2% (calculated on the amount paid) on any payment which is made other than as provided in clause 1 hereof, which fee is agreed as the liquidated cost of processing such abnormal payments.

35. PALLETS: The Customer agrees to return all pallets or re-usable packaging or storage material provided to it by Mitchell Plastics with any product or otherwise and to indemnify Mitchell Plastics for the full replacement cost of any pallet not returned to Mitchell Plastics within 30 days.

36. GENERAL: a) Time is of the essence for performance of all obligations of the Customer. b) Failure by Mitchell Plastics to enforce or partially enforce any provision of these Terms will not be construed as a waiver of its rights under these Terms.