

# Policy

RONCELLI PLASTICS, INC PROPRIETARY DOCUMENT

REVISION RECORD

THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION OF RONCELLI PLASTICS, INC AND SHALL NOT BE REPRODUCED. THE INFORMATION CONTAINED HEREIN SHALL NOT BE DISCLOSED TO PERSONS EXCEPT THOSE NECESSARY TO PRODUCE THE PART OR PRODUCT OR USE THE PROCESS HEREIN SPECIFIED FOR RONCELLI PLASTICS, INC. NOR SHALL THE VENDOR BY THIS DOCUMENT BE LICENSED TO MANUFACTURE SUCH PART OR PRODUCT OR USE SUCH PROCESS EXCEPT IN THE QUANTITIES ORDERED ON RONCELLI PLASTICS, INC PURCHASE ORDERS. ANY EXCEPTION TO THE FOREGOING MUST BE APPROVED BY ADVANCE WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF RONCELLI PLASTICS, INC.

Rev	DESCRIPTION	BY	CHK	APVD	DATE
A	Initial Release	CC	Jl	CC	4/5/2019

# Terms & Conditions for Services




MONROVIA, CA

## Terms & Conditions for Services

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1. **APPLICABILITY:** The accompanying request for proposal ("RFP") is an offer by Roncelli Plastics Inc., a California corporation ("Roncelli") for the purchase of the services provided by the Service Provider named on the RFP in accordance with and subject to these terms and conditions (these "Terms" together with the RFP, this "Agreement"). This Agreement, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the RFP, these Terms shall govern, unless the RFP expressly states that the terms and conditions of the RFP shall control. This Agreement expressly limits Service Provider's acceptance to the terms of this Agreement. These Terms prevail over any terms and conditions contained in any other documentation and expressly exclude any of Service Provider's general terms and conditions or any other document issued by Service Provider in connection with this Agreement.
2. **SERVICES:** Service Provider shall provide the services to Customer as described in the RFP (the "Services") in accordance with these Terms.
3. **TIME OF THE ESSENCE:** Service Provider acknowledges that time is of the essence with respect to Service Provider's obligations hereunder and that prompt and timely performance of all such obligations, including all performance dates, timetables, project milestones and other requirements in this Agreement is strictly required.
4. **SERVICE PROVIDER'S OBLIGATIONS:** Service Provider shall:
  - (a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;
  - (b) comply with all rules, regulations and policies of Customer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Customer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;
  - (c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Service Provider in providing the Services in such form as Customer shall approve. During the term of this Agreement and for a period of two (2) years thereafter, upon Customer's written request, Service Provider shall allow Customer to inspect and make copies of such records and interview Service Provider personnel in connection with the provision of the Services;
  - (d) obtain Customer's written consent, which may be given or withheld in Customer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Service Provider, other than Service Provider's employees, to provide any Services to Customer (each such approved subcontractor or other third party, a "Permitted Subcontractor"). Customer's approval shall not relieve Service Provider of its obligations under the Agreement, and Service Provider shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Service Provider's own employees. Nothing contained in this Agreement shall create any contractual relationship between Customer and any Service Provider subcontractor or supplier;
  - (e) require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Agreement, and, upon Customer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Customer];
  - (f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Service Provider, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;
  - (g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Customer; and
  - (h) keep and maintain any Customer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Customer's written instructions or authorization.
5. **CHANGE ORDERS:** Customer may at any time, by written instructions and/or drawings issued to Service Provider (each a "Change Order"), order changes to the Services. Service Provider shall within five (5) days of receipt of a Change Order submit to Customer a firm cost proposal for the Change Order. If Customer accepts such cost proposal, Service Provider shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Service Provider acknowledges that a Change Order may or may not entitle Service Provider to an adjustment in the Service Provider's compensation or the performance deadlines under this Agreement.
6. **PAYMENT TERMS; FEES & EXPENSES:** In consideration for the satisfactory provision of the Services by Service Provider, Customer agrees to pay the fees set forth in the RFP. Service Provider shall issue invoices to Customer and Customer shall pay all properly invoiced amounts due to Service Provider within 45 days after Customer's receipt of such invoice, except for any amounts disputed by Customer in good faith. Customer agrees to reimburse Service Provider for all actual, documented and reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services that have been pre-approved in writing by Customer; provided that such expenses conform to Customer's standard travel and expense policy.
7. **SET-OFF:** Without prejudice to any other right or remedy it may have, Customer may set off at any time any amount owing to it by Service Provider against any amount payable by Customer to Service Provider under this Agreement.
8. **INTELLECTUAL PROPERTY:** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Service

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Provider in the course of performing the Services, including any items identified as such in the RFP (collectively, the "Deliverables") except for any Confidential Information of Customer or customer materials shall be owned exclusively by Customer. Service Provider agrees, and shall cause its employees and Permitted Subcontractors (collectively, "Service Provider Personnel") to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for Customer. To the extent that any of the Deliverables do not constitute a "work made for hire," Service Provider hereby irrevocably assigns, and shall cause the Service Provider Personnel to irrevocably assign to Customer, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. The Service Provider shall cause Service Provider Personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such Service Provider Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables. Upon Customer's request, Service Provider shall, and shall cause Service Provider Personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Customer to prosecute, register, perfect or record its rights in or to any Deliverables. Service Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by Service Provider in connection with performing the Services, in each case developed or acquired by the Service Provider prior to the commencement or independently of this Agreement (collectively, the "Pre-Existing Materials"), including all Intellectual Property Rights therein. Service Provider hereby grants Customer a license to any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables for any and all purposes.

**9. CONFIDENTIAL INFORMATION:** All non-public, confidential or proprietary information of Customer, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by Customer to Service Provider, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by Service Provider without the prior written consent of Customer. Confidential Information does not include information that is: (a) in the public domain; (b) known to Service Provider at the time of disclosure; or (c) rightfully obtained by Service Provider on a non-confidential basis from a third party. Service Provider shall use the Confidential Information only for the purpose of providing Services under this Agreement. Customer shall be entitled to injunctive relief for any violation of this Section.

**10. REPRESENTATION AND WARRANTIES:** Service Provider represents and warrants to Customer that:

- (a) It shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- (b) It is in compliance with, and shall perform the Services in compliance with, all applicable laws.
- (c) Customer will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind.
- (d) None of the Services, Deliverables and Customer's use thereof infringe or will infringe any Intellectual Property Right of any third party arising under the laws of the United States, and, (ii) as of the date hereof, there are no pending or, to Service Provider's knowledge, threatened claims, litigation or other proceedings pending against Service Provider by any third party based on an alleged violation of such Intellectual Property Rights, in each case, excluding any infringement or claim, litigation or other proceedings to the extent arising out of (i) any customer materials or any instruction, information, designs, specifications or other materials provided by Customer to Service Provider, (ii) use of the Deliverables in combination with any materials or equipment not supplied or specified by Service Provider, if the infringement would have been avoided by the use of the Deliverables not so combined, and (iii) any modifications or changes made to the Deliverables by or on behalf of any Person other than Service Provider.
- (e) the Services and Deliverables will be in conformity in all respects with all requirements or specifications stated in this Agreement.


**11. WARRANTIES CUMULATIVE:** The warranties set forth in Section 10 are cumulative and in addition to any other warranty provided by law or equity. These warranties survive any acceptance of or payment for the Services by Customer. Any applicable statute of limitations runs from the date of Customer's discovery of the noncompliance of the Services with the foregoing warranties.

**12. GENERAL INDEMNIFICATION:** Service Provider shall defend, indemnify and hold harmless Customer, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Customer's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or related to the Services or Service Provider's negligence, willful misconduct or breach of this Agreement. Service Provider shall not enter into any settlement without Customer's or Indemnitee's prior written consent.

**13. INTELLECTUAL PROPERTY INDEMNIFICATION:** Service Provider shall, at its expense, defend, indemnify and hold harmless Customer and any Indemnitee against any and all Losses arising out of or related to any claim that any of the Services or Deliverables or Customer's or any Indemnitee's receipt or use thereof infringes or misappropriates any Intellectual Property Right of a third party. In no event shall Service Provider enter into any settlement without Customer's or Indemnitee's prior written consent.

**14. LIMITATION OF LIABILITY:** Nothing in this Agreement shall exclude or limit (a) Service Provider's liability under Section 9, Section 10, Section 12, and Section 13 hereof, or (b) Service Provider's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

**15. TERMINATION:** In addition to any remedies that may be provided under this Agreement, Customer may terminate this Agreement with immediate effect upon written notice to Service Provider, if Service Provider (a) has not performed or complied with any of the terms of this Agreement, in whole or

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in part; or (b) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**16. INSURANCE:** During the term of this Agreement, Service Provider shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000.00 with financially sound and reputable insurers. Upon Customer's request, Service Provider shall provide Customer with a certificate of insurance from Service Provider's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Customer as an additional insured. Service Provider shall provide Customer with thirty (30) days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy. Except where prohibited by law, Service Provider shall require its insurer to waive all rights of subrogation against Customer's insurers and Customer.

**17. WAIVER:** No waiver by Customer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Customer. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**18. FORCE MAJEURE:** Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of the impacted party, including, without limitation, acts of God, flood, fire, earthquake, war, embargo, invasion or hostilities, terrorist acts, riot, national emergency, revolution, insurrection, epidemic, or strike (each a "**Force Majeure Event**"). Service Provider's economic hardship or changes in market conditions are not considered Force Majeure Events. Service Provider shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Service Provider from carrying out its obligations under this Agreement for a continuous period of more than thirty (30) business days, Customer may terminate this Agreement immediately by giving written notice to Service Provider.

**19. ASSIGNMENT:** Service Provider shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Customer. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Service Provider of any of its obligations under this Agreement.

**20. RELATIONSHIP OF THE PARTIES:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**21. NO THIRD-PARTY BENEFICIARIES:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**22. GOVERNING LAW:** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

**23. SUBMISSION TO JURISDICTION:** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the City of Monrovia and County of Los Angeles, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**24. CUMULATIVE REMEDIES:** The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

**25. NOTICES:** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth in the RFP or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**26. SEVERABILITY:** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.



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**27. SURVIVAL:** Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidentiality, Governing Law, Insurance, Submission to Jurisdiction and Survival.

**28. AMENDMENT AND MODIFICATION:** This Agreement may only be amended or modified in a writing that specifically states that it amends this Agreement and is signed by an authorized representative of each party.



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Christopher R. Cole  
President/COO, Roncelli Plastics, Inc.



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Joel Isaguirre  
Quality Assurance Manager, Roncelli Plastics, Inc.



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