

TERMS AND CONDITIONS

1. Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form

Specification: any specification for the Goods, including any related plans and drawings, that is agreed [in writing] by the Customer and the Supplier.

Supplier: Primex Plastics Limited (registered in England and Wales with company number 03387047).

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to writing or written includes faxes and emails.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written Order Acknowledgement, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any [descriptions or] illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. Goods

- 3.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other [reasonable] professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause shall survive termination of the Contract.
- 3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows details of the Order, and
 - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any losses suffered due to any delays in delivery of the Goods that is caused by a Force Majeure Event, lockouts, war, fire, breakdown of plant or machinery, inability of the Supplier to receive or delay in receiving raw materials, request order or action of any government authority or agency, the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and any other circumstances which are beyond the control of the Supplier.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused a Force Majeure Event, lockouts, war, fire, breakdown of plant or machinery, inability of the Supplier to receive or delay in receiving raw materials, request order or action of any government authority or agency, the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and any other circumstances which are beyond the control of the Supplier.
- 4.6 If the Customer fails to take or accept delivery of the Goods at the agreed delivery date as per the order or later correspondence or within 17 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 5.00pm on the Seventh Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

- 4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier has the right to invoice the Customer for the goods.
- 4.8 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 If for any reason, the availability of material ordered is partially or wholly curtailed of the Supplier is unable to make delivery, then delivery may be either proportionately or wholly suspended and resumed on removal of the impending cause; or the Supplier may cancel the Customer's order or such part as remains undelivered without further obligation to the customer.

5. Quality

- 5.1 The sole warrant provided by the Supplier is as follows:

(a) at the discretion of the Supplier, either to supply replace items for any material which is shown to have been improperly manufactured by the supplier or to allow credit for such item at the price charged by the Supplier.

- 5.2 In accordance with Clause 5.1, any liability will not exceed the price charged for the material.

- 5.3 The Customer is required to provide notice in writing to the Supplier within 30 days of the Goods being delivered, any claims regarding damaged or defective goods.

- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any re-worked or replacement Goods supplied by the Supplier.
- 5.8 No other warrants being either express or implied, including any implied warrant of merchantability or fitness for any particular purpose are of have been made by the Supplier. The Supplier will not be bound or liable for any representation or warranty made by any person except as specifically set forth herein.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery (subject to clause 6:2).
- 6.2 Title to the Goods shall not pass to the Customer until:
- (a) the Supplier receives payment in full in cash or cleared funds for the Goods, in which case title to the Goods shall pass at the time of payment being received in cleared funds
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent; and
 - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. All prices are delivered prices, unless otherwise agreed in writing by the supplier.
- 7.2 The Supplier may, by giving notice to the Customer at any time from the date of the order to the date of delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - (b) excludes the costs and charges of delivering the goods beyond the stipulated FOB point. Any arrangements or services undertaken by the supplier for such shipment and delivery beyond the FOB point will be invoiced by the supplier to the Customer; and
 - (c) Excludes any sales, use, excise or any other tax imposed by any governmental authority arising out of, or relating to the sale, material sold and delivered. Any such charges are to be paid by the Customer given these charges are excluded from the quoted price. Any such charges incurred by the Supplier shall be invoiced to the Customer. If the Customer is exempt from taxes otherwise applicable, a satisfactory certificate of exemption must be presented to the Supplier by the Customer prior to being invoiced.
- 7.4 The Supplier will accordingly invoice the Customer once the date of despatch has been ascertained. Invoices will be dated based on the date of despatch from the Supplier not the date of arrival at the designated delivery address.
- 7.5 The Customer shall pay the invoice in full and in cleared funds together with any amounts regarding taxes and/or freight, shipping and insurance costs included in the invoice. The Customer is to make payment as per the terms specified on the order acknowledgment and/or invoice.
- 7.6 Sales on credit are subject to the final approval of the Supplier at or before the time of the shipment of the order. If the Supplier determines that credit should not be extended, the Supplier reserves the right to request the Customer prior to dispatch of the goods for the full purchase price of the goods to be paid by the Customer. If the Customer fails to make payment as requested to do so by the Supplier or if the Customer fails to make payment when due, the Supplier may at any time refuse to deliver any part of the goods.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract within 30 days, then the Customer shall pay interest on the overdue amount at the rate of 6% per annum above Wells Fargo, London's base rate from time

to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 7.8 If the Customer fails to make payment within 15 days of any written request made by the Supplier, the Supplier may cancel the order or sell all or any part of the undelivered material ordered via a public or private sale. The Customer will be responsible for any deficiency.
- 7.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.10 The Supplier reserves the right to recover any goods from the Customer should they default on payments with the Customer being liable for all costs which include haulage, legal etc.
- 7.11 The Customer Shall pay all legal fees incurred by the Supplier in enforcing any breaches of the Contract.

8. Termination

- 8.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Limitation of liability.

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987 or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

10. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Contract by giving 2 weeks written notice to the affected party.

11. General

11.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- (c) The Customer shall promptly notify the Supplier of any changes in company ownership.

11.2 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

11.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.6 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.6(a); if sent by pre-paid first class post or other next working day delivery service, at [9.00 am] on the [second] Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.7 **Third party rights.** No one other than a party to this Contract [and their permitted assignees] shall have any right to enforce any of its terms.

11.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.