

PLASTICUM NORWICH LTD

TERMS AND CONDITIONS OF SUPPLY

1. Definitions

The Goods shall include all items supplied to the Buyer under this Contract and the services provided by the Company in the supply of those items.

2. Applicability

These terms govern the Contract to the exclusion of all other terms (whether inconsistent with these terms or not) sought to be imposed on the Contract by the Buyer. A quotation of the Company does not constitute an offer by the Company to supply Goods. An order by the Buyer shall be deemed to be an offer by the Buyer to the Company to purchase the Goods on those terms.

3. General

- 3.1 No variation to these terms or waiver of the Company's rights hereunder shall be binding on the Company unless recorded in writing and signed by a Director of the Company
- 3.2 No delay in the exercise of its rights under their terms shall prejudice the Company's rights or remedies in anyway.

4. Representations

The Company's employees and agents are not authorised to make any representations concerning the Goods unless recorded in writing and signed by a Director of the Company. In entering into the Contract the Buyer acknowledges that it does not rely on any representations and waives claim for the inaccuracy of any representation which may have been made and not so recorded.

5. Quality of Goods

- 5.1 Where the Goods have been ordered by the Buyer by reference to a sample supplied to the Buyer or by reference to a specification design or drawing made available to the Company the Company warrants that the Goods will correspond at the time of delivery with the specification, design, drawing or sample, as the case may be.
- 5.2 The above Warranty is given subject to the following conditions:-
The Company shall be under no liability in respect of any defect of the Goods arising from any drawing, design or specification supplied by the Buyer:
No warranty is given to the effect that the Goods will be suitable for the Buyer's purposes and the Buyer should satisfy itself in this respect.
Any claim by the Buyer based on either damage in transit or a failure by the Company or its transporter to deliver or if appropriate make available for collection the correct quantity of Goods shall be notified to the Company within 3 working days of delivery of collection as appropriate.
The Company shall have no liability to the Buyer if in the reasonable opinion of the Company the defect complained of has arisen by reason of the conditions in which the Goods have been stored by the Buyer or Buyer's agent.
Where a claim is notified to the Company the Buyer shall allow the Company and any persons appointed by it free access to the Goods for inspection thereof and the Buyer shall not apply any process to any of the Goods whereby inspection of any Goods which are the subject of the claim may no longer be possible.
If such a process is applied to any of the Goods the Company shall have no liability for the claim in respect of those Goods to which a process has been applied.
- 5.3 Any claim by the Buyer which is based on the failure of the Goods to correspond with a specification, design, drawing or sample shall (whether or not delivery is refused by the Buyer) be notified to the Company within 28 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If such notification is not given, the Buyer shall be deemed to have accepted the Goods and acknowledged that they correspond with the specification or sample.
- 5.4 Where any valid claim is notified to the Company in accordance with these terms, the Company shall be entitled to replace the Goods (or any part of the Goods in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Buyer. The Company shall not be liable in any event for any consequential loss or damage, whether for loss of profits or otherwise, costs, expenses or other claims for consequential compensation whatsoever whether caused by the negligence of the Company, its employees or agents or otherwise.
- 5.5 Subject as expressly provided in these terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of Unfair Contract Terms Act 1977), all terms implied by status law and all other warranties and conditions as to quality, fitness for the Buyer's purpose and compliance with description are excluded to the fullest extent permitted by law.
- 5.6 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform, any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control.

6. Quantities

The Company shall be deemed to have complied with its obligations to deliver a specific quantity of items if the quantity it actually delivers is no less than 90% and no more than 110% of the quantity ordered.

7. Cancellation Rights of the Buyer

- 7.1 The Buyer may cancel this Contract at any time before the Company completes manufacture of the Goods by giving written notice of a cancellation to the Company and paying on demand:
i) The Company's cost incurred up to the date of receipt by the Company of the Cancellation Notice;
ii) An amount to compensate the Company for its loss of profits as a result of such cancellation to be calculated by the Company as being a 'proportion' of the difference between the Contract Price and the costs which would have been incurred by the Company in performing its obligation under the Contract without such a cancellation. The amount of costs and loss of profit will be certified by the Company which certificate shall, in the absence of manifest error or on the fact of the certificate, be binding upon the parties.
The 'proportion' referred to in 7.1 (ii) shall be:
- If the Company has not at the time of cancellation commenced manufacture of the Goods – 25%
- If the Company has at that time commenced but not completed the manufacture – 70%

8. Contract Price

- 8.1 The Company reserves the right to increase the Contract Price of the Goods to reflect any increase in the cost to the Company of supplying the Goods to the Buyer which is due to:
i) A factor beyond the control of the Company
ii) Increase in the costs of materials used by the Company in the production of the Goods.
- 8.2 The price is deemed exclusive of VAT
- 8.3 Pallets and containers will be provided on an exchange basis. The Company reserves the right to make a reasonable charge for any pallets and containers which have not been returned or exchanged within three months of their being supplied to the Buyer.

9. Payment Terms

- 9.1 The Company shall be entitled to Invoice the Buyer for the Contract Price on or at any time after the earlier of delivery of the Goods, collection of the Goods from the Company's premises, delivery or collection of a particular instalment or, in the case where the Contract

provides that the Goods are to be collected from the Company's premises, the Company having notified the Buyer that the Goods are ready for collection.

- 9.2 The Buyer shall pay the invoice price in full without deduction within 30 days of the invoice being delivered.
- 9.3 If the Buyer fails to pay any sum in full on the due date then without prejudice to any other rights the Company may have:
i) Interest shall run on the amount overdue on a day-to-day basis of 4% above the base rate of Lloyd's Bank plc from time to time applying.
ii) The Company shall have the rights provided in clause 12 hereof.

10. Collection from the Company's premises

- 10.1 Where the Contract provides for delivery to take place at the Company's premises risk in the Goods will pass to the Buyer on the earlier of either delivery or the expiration of 21 days from the Company giving the Buyer notice that the Goods are available for collection.
- 10.2 If the Buyer fails to collect the Goods from the Company's Premises within 21 days of notice from the Company to the effect that the Goods are available for collection then the Company may, without prejudice to any other rights it may have, invoke the rights provided by clause 12 of the terms.

11. Delivery

- 11.1 Any dates quoted for delivery are approximate only and the Company shall not be liable for any delay in delivery of the Goods whether caused by the negligence of the Company or otherwise.
- 11.2 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions before the time stated for delivery then without prejudice to any other rights the Company may have, it may invoke the rights provided by clause 12 of these terms.
- 11.3 Risk in the Goods will pass on delivery or:
i) In the case where the Buyer fails to accept delivery at the time of that failure or:
ii) In the case where adequate delivery instructions are not given to the Company on the expiration of seven days from the Company giving the Buyer notice that the Goods are available to be delivered.

12. Miscellaneous Rights on Breach

- 12.1 In either of the situations referred to above the Company may exercise any of the rights it has at law and may also do any of the following:
i) Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage at a commercial rate;
ii) Sell the Goods for the best price reasonable obtainable and then either,
- Appropriate the amount by which the sale price exceeded the Contract Price by way of set off to the amount due from the Buyer and then account for any excess to the Buyer or;
- Pursue the Buyer for the amount by which the sale price fell short of the Contract Price by way of an additional debt due from the Buyer to the Company;
iii) Cancel the Contract;
iv) Suspend any further deliveries until the overdue payments are made or delivery or collection takes place as the case may be.

13. Retention of Title

- 13.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these terms, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment the full Contract Price and all other sums then due from the Buyer to the Company.
- 13.2 Until such times as when property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Company's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 13.3 Until such time as the property and the Goods passes to the Buyer the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer where the Goods are stored and repossess the Goods.
- 13.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods, which remain the property of the seller.
- 13.5 The Buyer shall not factor or discount any debt owing to it as a result of the disposal of the Goods.

14. Indemnities

- 14.1 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification design or drawing submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specifications.
- 14.2 The Buyer shall indemnify the Company against any liability which the Company may incur whether by court proceedings or by bone fide out of court settlement as a result of a claim against the Company under Part 1 of the Consumer Protection Act 1987 or any Statutory modification thereof in respect of any alleged defect in the Goods which defect in attributable to a specification design drawing sample or moulding provided or amended by the Buyer.

15. Storage of The Buyer's Property

The Company shall have a lien over all items of the Buyer's property stored on the Company's premises for any sums due to the Company, whether under the Contract or otherwise.

16. Notices

Any notice required to be given hereunder may be served by prepaid first class post letter or telex addressed to the last known place of business of the party on whom it is served and any notice other than a Cancellation Notice for the purposes of clause 7 shall be deemed to have been received 48 hours after despatch. In proving service of any notice other than a notice to cancel under clause 7 hereof it will be sufficient to prove that the envelope in which the letter was posted was properly addressed and stamped. A cancellation notice will only be deemed to have effect if received by the Company.

17. Construction

The headings of these terms are for conveniences only and shall not effect their construction.

18. Governing Law

All Contracts shall be governed by English Law and the parties agree to submit to the jurisdiction of the English Courts of Law to determine any matter arising out of the Contract or in anyway connected therewith