

**1. GENERAL**

The following terms and conditions are binding upon the Customer and Boddingtons Plastics Ltd of Wheelbarrow Park Estate, Pattenden Lane, Marden, Tonbridge, Kent TN12 9QJ (hereinafter referred to as "the Company"), except to the extent (if any) required by law no conditions, warranty, guarantee, undertaking, representation, or statement (oral or written) not contained in these conditions shall be binding upon the Company. These conditions of sale shall prevail notwithstanding any terms or conditions of any order submitted by the Customer. In these conditions the following terms shall have the following meanings: "Customer" means the person whose order for the Goods is accepted by the Company. "Contract" means the Contract for the sale and purchase of the Goods. "Goods" means the Goods (including any instalment of the Goods or any parts for them) which the Company is to supply in accordance with these conditions.

**2. ORDERS AND SPECIFICATION**

- No binding Contract is created until the Customer's order has been accepted by the Company in writing and until the same is issued the Company reserves the right to decline any order. For clarification purposes the Customer's acceptance of any tender submitted by the Company shall not constitute a Contract until the Company accepts the Customer's order in writing.
- The Company shall sell and the Customer shall purchase the Goods in accordance with any order of the Customer which is accepted by the Company subject in either case to these Conditions.
- Any advice or recommendation given by the Company or its employees or agents to the Customer as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any tender (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the contract in accordance with its terms.
- All descriptions, statements, drawings and other particulars howsoever issued by or on behalf of the Company, are intended to provide a general description of the Goods described therein and the Company will not be bound by any such descriptions, statements or drawings or other particulars contained in any document issued by the Company unless expressly incorporated into the order.
- Except where the Customer has specifically made known to the Company the intended purpose to which the Goods supplied by the Company are to be put and has so required the Company, in writing, to supply Goods for that purpose, the Company shall bear no responsibility in respect of the failure of the Goods to be suitable for any particular purpose.

**3. CANCELLATION**

No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against the loss (including the full unit price of the work commenced by the Company loss of profit), including the costs of all labour and materials used, damages, charges and expenses incurred by the Company as a result of cancellation.

**4. PRICES**

- The prices quoted are based on current costs existing at the date of the quoted price and are subject to written confirmation on receipt of the Customer's order. The written quotation is valid (save where the Company states otherwise) for 30 days only at which time it will automatically lapse.
- The prices shown are, unless stated otherwise, in sterling and the Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instruction.
- The price charged by the Company is for the quantity ordered by the Customer and does not apply to any other quantity unless the Customer and the Company so agree to any order for any other quantity.
- Unless otherwise stated in the quotation or agreed subsequently in writing by the Company and the Customer all prices quoted are for delivery to a mainland site in Great Britain only.
- The price is exclusive of any applicable value added tax, which the Customer shall be liable to pay to the Company.

**5. PAYMENT**

Tools and moulds will be invoiced separately. Payment terms for tooling are subject to the terms and conditions the Company agrees with its supplier (- 1/3 payable with order, 1/3 payable upon Customer's receipt of samples, 1/3 payable on Customer's approval (which is not to be unreasonably withheld or delayed) of samples.) The Customer shall be deemed to accept the samples unless within fourteen days of submission of the samples by the Company the Customer informs the Company in writing that the samples do not conform with the specification of the order. Mouldings – all accounts are net and due for payment at the end of the month after the month during which the Goods are received by the Customer, unless the Company and the Customer agree otherwise in writing.

Interest – interest is payable by the Customer to the Company on any overdue account at the then current Royal Bank of Scotland plc base rate plus two per cent.

**6. DEFAULT OF PAYMENT**

Time for payment of the price shall be the essence of the Contract. If the Customer shall default in any payment the Company shall have the right to:

- Cancel or suspend any outstanding delivery or part thereof until default of payment has been made good.
- Charge the Customer interest as provided above.

**7. DELIVERY**

- Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- Any stipulated time for delivery shall date from the receipt of the Customer's written order to proceed or the necessary information drawings and specifications to enable the Company to put the work in hand, whichever is the later.
- Whilst the Company will take all reasonable steps to keep to any stated despatch and delivery dates, the time quoted for delivery shall not be of the essence of the contract and the Company shall not be liable for any loss, injury, damage or expense, consequent upon the delay in delivering the Goods however the same shall have been caused.
- Delivery of the Goods shall be made to the address given by the Customer provided that the Company has agreed the same, by the Company delivering the Goods to that place.
- If the Customer fails to take delivery of the Goods, or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of a cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company, the Company may store the Goods until actual delivery and charge the Customer for the reasonable cost of storage, or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the Contract.

**8. FORCE MAJEURE**

The Company shall not be liable to the Customer 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 Customer's obligation in relation to the Goods if the delay or failure is due to any cause beyond the Company's reasonable control.

**9. REPRESENTATION, WARRANTIES AND LIABILITY**

- Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall, whether or not delivery is refused by the Customer, be notified to the Company within 7 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 delivery is not refused and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods, the Company shall have no liability for such defects and failure and the Customer shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract.
- Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these conditions, the Company shall be entitled to replace the Goods or the part in question free of charge or, at the Company's sole discretion, to refund to the Customer the price of the Goods or proportionate part of such price, but the Company shall have no further liability to the Customer.
- Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation or any implied warranty, condition or term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the Company, its employees or agents or otherwise which arise out of or in connection with the supply of the Goods or their use or resale by the Customer except as expressly provided in these conditions.

**10. THIRD PARTY CLAIMS**

- The Customer shall indemnify the Company against all damages, penalties, costs and expenses arising out of the infringement of any patent registered design or trade mark (or any claims for such infringement) arising from the manufacture of Goods to the Customer's own drawings, designs or instructions.
- The Customer shall keep the Company fully indemnified in respect of any claims which may be made against the Company by any third party (which expression shall include servants and agents for the Customer) arising out of the supply of any Goods however such claim may arise.

**11. TRADE DESCRIPTIONS**

Where any trade descriptions or other indication or representation is applied to any Goods at the Customer's request the Customer warrants that the same will be true and accurate in all respects and that the supply or offer of supply of any such Goods by any person will not give rise to an offence by the Company under the Trades Description Act 1968.

**12. PROPERTY AND RISK**

- Risk of damage to or loss of the Goods shall pass to the Customer:
  - In the case of Goods to be delivered at the Company's premises, at the time the Company notifies the Customer that the Goods are available for collection
  - In the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods the time when the Company tenders delivery of the Goods
- Notwithstanding delivery and the passing of risk in the Goods or in any other provision of these conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds full payment of the price of the Goods and all other Goods agreed to be sold by the Company to the Customer for which payment is then due.
- Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including any insurance proceeds, and shall keep all such proceeds of sale separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- Until such time as the property in the Goods passes to the Customer provided that the Goods are still in existence and have not been resold, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails so to do forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and to repossess the Goods.
- When any tool is provided entirely or in part at the expense of the Company it shall be and remain the property of the Company.
- When any tool is provided entirely at the expense of the Customer it will not be insured by the Company against loss or damage by any cause. Such insurance is the responsibility of the Customer.
- In respect of any tool provided entirely at the expense of the Customer, where equitable and beneficial ownership in the tool is not held by or retained by the Company, the Company shall be entitled to a lien over such tool in respect of any amounts owed by the Customer to the Company from time to time.
- Notwithstanding the Company's continuing equitable and beneficial ownership in the Goods and the Company's enforcement of such ownership rights, the amount which shall be credited to the Customer on such enforcement shall be equal only to the value to the Company of the raw materials contained in such Goods less the costs incurred by the Company in recovering the Goods and reconstituting the raw materials.
- Any enforcement by the Company of its rights to equitable and beneficial ownership in the Goods shall be without prejudice to its rights generally and shall not, except to the extent provided above, replace its rights to amounts owing from time to time by the Customer to the Company.

**13. DESTRUCTION OF TOOLS**

The Company has the right to destroy tools which have not been used for a period of one year or more but shall give to the Customer one month's notice in writing of the Company's intention to destroy such tools.

**14. TERMINATION**

- This Clause applies if:-
  - The Customer (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation;
  - The Customer ceases, or threatens to cease, to carry on business; or
  - The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; or
  - The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; or
  - The Customer commits any breach of these conditions.
- If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**15. MISCELLANEOUS**

- These conditions shall be determined in all respects in accordance with and governed by the laws of England.
- No waiver by the Company of any breach of the Contract by the Customer shall be considered a waiver of any subsequent breach of the same or any other provision.
- If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.