

TERMS AND CONDITIONS

1. General Conditions

- 1.1 Orders are accepted on the terms and conditions printed hereafter unless otherwise specified in the written acceptance. No contract will be concluded between the Seller and the Buyer until accepted by the Seller either by written notice or deliver of the goods ordered.
- 1.2 These terms and conditions of sale apply to all contracts with the Seller, unless expressly varied in writing and signed on behalf of the Seller.
- 1.3 These terms and conditions shall prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer and purporting to have contractual effect. The Buyer's acceptance of the goods shall constitute acceptance of these terms and conditions.
- 1.4 These conditions of sale do not and shall not be taken as applying to exclude, restrict, or modify in any manner whatsoever:
- a) the rights conferred upon customers and others by those laws, and in particular, by the Consumer Guarantees Act 1993, that cannot be lawfully excluded, restricted, or modified;
 - b) the remedies conferred on a consumer by any such law;
 - c) the exercise of any such rights or remedies by a consumer; or
 - d) any mandatory condition or warranty implied by any such law in favour of a consumer which cannot be excluded by a contract between the parties to a sale of goods.

Wherever any part of these terms and conditions will otherwise be inconsistent with the mandatory requirements of any such law, these conditions of sale shall, as far as possible, be construed so as to be consistent with such law and, to that purpose, to the extent necessary shall be of no force or effect (but without prejudice to and reserving the full force and effect of the remaining provisions hereof).

2. Definitions

In these conditions:

- 2.1 "Buyer" means the party placing the order with the Seller for the purchase of the goods.
- 2.2 "Seller" means Plastic Rotational Moulding Company Ltd.
- 2.3 "Consumer Guarantees Act" means Consumer Guarantees Act 1993
- 2.4 "A consumer" means a consumer as defined in Section 2 of the Consumers Guarantees Act but does not include a buyer, who by Clause 12 – of these terms and conditions has contracted out of that Act.

3. Price

- 3.1 The Seller's prices are based on current material, labour, and transport costs. Any offer for supply or price lists are subject to variation without notice. Deliveries of goods will be made at prices current at the time of delivery. All prices are exclusive of Goods and Services Tax unless otherwise stated. The amount of such tax shall be added to the price and payable by the Buyer.

4. Terms of Payment

- 4.1 Unless otherwise agreed in writing, all goods shall be paid for by the 20th day of the month following the date of invoice.
- 4.2 If payment is not made by such date then, without prejudice to its other remedies, the Seller may charge the Buyer interest on the outstanding amount at a rate of **two (2) percent** per month or part

thereof compounding from the date such account becomes overdue, and the Seller shall be entitled to suspend or cancel deliveries due pursuant to any unfilled order.

- 4.3 If the Buyer fails to pay the purchase price within the period specified in Clause 4.1 or otherwise fails to carry out the terms of the contract or repudiates the contract with the Seller or if the Buyer dies or stops payment or calls a meeting of its creditors or becomes insolvent or being a company calls a meeting of creditors or members for the purpose of or goes into liquidation or has a statutory demand served on it or has a receiver appointed, then notwithstanding the provisions of Clause 4.1 hereof all accounts payable to the Seller shall become immediately due and owing, and the Seller may at its option notwithstanding its previous waiver of such default or failure and without prejudice to its other rights under the contract suspend or cancel the contract or require payment in cash on delivery or tender of goods notwithstanding the terms of payment previously specified. The Seller may exercise any such right as to the whole or part of such goods. The Seller may, for the purposes of recovery of its goods as aforesaid, enter upon the Buyer's premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 4.4 The Buyer shall pay all costs incurred by the Seller including costs on a solicitor-client basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding monies and the enforcement of the Terms and Conditions.

5. Delivery

- 5.1 The Seller shall not be responsible or liable in any way to the Buyer for any default or delays in the delivery of the order or any part of it nor for any direct or consequential loss of damage arising from such delays or default and no such delay shall relieve the Buyer from any obligation to pay for any goods already delivered or to accept delivery of any goods ordered. No order may be withdrawn or altered without the written consent of the Seller.
- 5.2 Where, in the Seller's opinion, any dispute arises between the Seller and the Buyer as to the performance by either the Seller or Buy of any term, warranty, or condition of any contract, the Seller shall have the right to suspend supply until, in the opinion of the Seller, the dispute shall have been settled.
- 5.3 The Buyer shall ensure safe and adequate access to any site for delivery of the goods. The Seller may refuse to deliver to any site if it is of the opinion that delivery would be unsuitable or unsafe. The Buyer shall indemnify the Seller for all costs, liabilities, or damages which may arise out of delivery or attempted delivery to any site to which adequate access cannot be obtained.

6. Risk

- 6.1 The risk in the goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to any carrier with instructions to deliver the same to the Buyer or as directed by the Buyer.

7. Retention of Ownership

- 7.1 The provisions of the following sub-clauses in Clause 7 shall only apply where:
- a) the Buyer is not a consumer, or
 - b) the Buyer is a consumer and the Seller has complied with the provisions of Section 5(c)(ii) of the Consumer Guarantees Act.
- 7.2 Notwithstanding delivery of the goods or any part thereof, the goods shall remain the sole and absolute property of the Seller as legal and equitable owner until payment is made for the goods and all other goods supplied by the Seller to the Buyer. Receipt by the Seller of any bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such a time shall not prejudice or affect the Seller's rights, powers, or

remedies against the Buyer and/or the goods. Pending payment as aforesaid, all goods held by the Buyer shall be held by it as bailee for the Seller.

7.3 The Buyer shall have the right and authority to effect a further sale of the goods hereby supplied. The Seller hereby acknowledges that the Buyer shall have authority to pass property and ownership of such goods to a third party for value, providing however that this authority shall immediately cease and determine immediately any period of credit for payment shall expire or payment become due and owing in terms of Clause 7(c) hereof. The Buyer hereby acknowledges and agrees that the goods supplied are held by it as bailee, to be sold by it as the Seller's agent and on its behalf and that the Buyer shall, if directed by the Seller, store the goods supplied in such a way that it is clear that they are the property of the Seller.

7.4 All monies received by the Buyer following sale of the goods to a third party shall be held by it on trust for the Seller.

8. Warranties

8.1 Supplier warrants that all goods supplied under this agreement shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery. If any defect arises during the warranty period, Supplier shall, at its option, either repair or replace the defective goods at no additional cost to the Customer.

This warranty shall not apply to any goods which have been subject to misuse, neglect, accident, environmental abuse or improper installation, maintenance, or repair, or which have been altered or modified in any way without Supplier's prior written consent.

Except as expressly stated herein, Supplier makes no representations or warranties, whether express or implied, regarding the goods, including but not limited to any warranties of merchantability or fitness for a particular purpose.

Supplier's liability under this warranty shall be limited to the repair or replacement of defective goods as provided herein. In no event shall Supplier be liable for any indirect, consequential, incidental, special, or punitive damages, including but not limited to loss of profits, loss of revenue, loss of use, or loss of goodwill, arising out of or in connection with the use or inability to use the goods, even if Supplier has been advised of the possibility of such damages.

This warranty is the sole and exclusive warranty provided by Supplier with respect to the goods and is in lieu of all other warranties, whether oral, written, express, or implied.

9. Remedies

9.1 The Seller's liability in any case of defect or fault shall be limited to the purchase price of the goods in respect of which such liability arises and the Seller shall have no further liability or responsibility for any direct, indirect, or consequential injury, loss, or damage whatsoever and howsoever arising, provided that the provisions of this clause shall not prevent a buyer who is a consumer from exercising any remedies that buyer may have under the Consumer Guarantees Act.

9.2 This clause shall apply where the Buyer is a Consumer:

Subject to the rights and remedies contained in the Consumer Guarantees Act, if, as the result of some fault on the Seller's part, the goods supplied are defective in that:

- a) they are not of acceptable quality, or
- b) they are not reasonably fit for any particular communicated purpose where the Consumer has reasonably relied on the seller's skill or judgement; or

c) they do not comply with the description given to the Consumer before purchase, then the Consumer must notify the Seller within seven (7) days of the date on which such defect was discovered or ought to have been discovered and, where possible, return the goods to the seller.

Where appropriate, the Seller will remedy the defect by way of repair, replacement or refund.

Where the defect cannot be remedied or is of a substantial character, the Seller will refund the Consumer's money or replace the goods, or compensate the Consumer for the amount of any reduction in value of the goods below the price paid or payable.

With the exception of the relevant statutory warranties contained in the Consumer Guarantees Act, no warranty or condition shall be implied against the Seller by any other statute, at common law or otherwise, and no representation, express condition, warranty, or variation of these Terms and Conditions shall be binding on the Seller unless it is in writing and signed for or on behalf of the Seller.

Where the goods or any of them are subject to any express warranty given by the Seller to remedy any defect by repairing or replacing goods with goods of identical type, the then consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act without first giving the Seller a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty. Goods returned under express warranty for the purposes of remedying any defect must, where practical, be returned to the Seller's place of business. All transportation charges, insurance, taxes, duties, and charges being borne by the consumer.

10. Returns

- 10.1 Goods cannot be returned to the Seller unless agreed in writing by the Seller. The Buyer shall pay all costs of the Seller associated with such return.
- 10.2 The Seller accepts no responsibility for claims arising from under or over estimation of quantities of goods required. Estimates are provided by the Seller for guidance only.

11. Claims

- 11.1 The type and quantity of goods delivered are detailed on the delivery docket and must be checked by the Buyer at the time of delivery for compliance with the Buyer's order. If delivery is to an unattended site, the Seller will not be liable for any loss or damage to the goods and the Buyer shall be deemed to have accepted the goods as per the delivery docket. Variations between actual quantities delivered and those shown on the delivery docket must be noted on all copies of the delivery docket or carrier's run sheet signed by the Buyer at time of delivery. Invoice charges will be based upon quantities of goods shown to be supplied as per the delivery docket.
- 11.2 Any claim in respect of the goods must be made in writing within seven (7) days of delivery otherwise it will not be considered by the seller and in the absence of any such claim being accepted by the Seller, the Buyer shall be liable to pay for the full quantity of goods stated in the Seller's delivery docket.

12. Supply for Business Purposes

- 12.1 Where this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act and where such supply is a supply for business purposes, the Buyer agrees that the goods are supplied to the Buyer for business purposes in terms of Section 2 and 43 of the Consumer Guarantees Act and that the provisions of the Consumer Guarantees Act do not apply to the supply to the Buyer.

13. Resupply to a Third Party

- 13.1 A Buyer who re-supplied to a third party any goods purchased under these Terms and Conditions of sale shall ensure that such a third party enjoys no better rights against the Seller in respect of such goods than would be enjoyed by a purchaser from the Seller subject to these conditions of sale (including exclusion from the terms of the Consumer Guarantees Act of persons who are consumers under the Consumer Guarantees Act but are acquiring goods for business purposes). The Buyer agrees to keep the Seller indemnified accordingly.

14. Advice

14.1 The Buyer shall ensure that the goods are not used for any purpose for which they are not suitable and shall be responsible for using all necessary care and skill in handling and using or installing the goods. Subject to the provisions of Clause 1.2, the Buyer expressly acknowledges and agrees that any advice furnished by the Seller with respect to the use of the goods is given in good faith but on the basis that the Seller assumes no obligation or liability for advice given or results obtained. All such advice being given by the Seller and accepted by the Buyer is at the Buyer's risk.

15. Severability

15.1 If any of these terms and conditions is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such condition or part of it shall be severed from all other conditions without affecting the validity or severability of all other conditions or part of them.

16. Waiver

16.1 16.1 Failure by the Seller to insist on a strict performance or any terms of condition herein should not be deemed to be a waiver thereof or of any rights the Seller may have and shall not be deemed a waiver of any subsequent breach of any term or condition.