

**POLYPLAS EXTRUSIONS LIMITED**  
**CONDITIONS OF SALE**

**1. INTERPRETATION**

1.1 In these Conditions:

**'BUYER'** means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

**'GOODS'** means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

**'SELLER'** means POLYPLAS EXTRUSIONS LIMITED (registered in England under number 2362849)

**'CONDITIONS'** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

**'CONTRACT'** means the contract for the purchase and sale of the Goods.

**'WRITING'** includes email, letter, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2 BASIS OF THE SALE**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3 ORDERS AND SPECIFICATIONS**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 Subject to clause 3.4 the quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 All descriptions, drawings, illustrations, particulars of weights or measures, ratings, standards, statements or details as to performance specifications or other descriptive matter contained on the face of the Seller's quotation or acceptance of order are given without any responsibility whatsoever and shall not form part of the description of the Goods or in any other way be binding on the Seller.
- 3.5 All plans, drawings, designs, specifications and other written technical information or materials supplied by the Seller to the Buyer in connection with the contract shall at all times remain the property of the Seller and shall not be copied or disclosed to any third party without the prior written consent of the Seller. The Buyer shall return the same to the Seller forthwith upon request.
- 3.6 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, design right, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.7 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.8 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## **4 PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order.
- 4.2 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, all prices given by the Seller include charges for transport, and packaging.
- 4.3 Where the Seller provides special tools or equipment for the production of the Goods for the Buyer then the Buyer shall pay the Seller such further sum (in addition to the price of the Goods) as may be specified by the Seller as its costs of producing such tools or equipment.
- 4.4 Except as otherwise stated and agreed between the Seller and the Buyer, tooling and ancillary equipment will be quoted and charged on a part-cost basis. The Seller undertakes not to use the tooling for the benefit of any other party than the Buyer unless the Buyer expressly so permits. If the Buyer wishes to acquire the whole of the tooling at a later stage, the Seller will charge the Buyer an appropriate consideration for the Seller's share. Unless otherwise agreed in writing between the Seller and the Buyer such tools and equipment shall at all times remain the property of the Seller.

## 5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The buyer shall pay the price of the goods, within 30 days of the seller's invoice, after the delivery of the goods to the buyer. The time of payment of the full price shall be of the essence of the contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.4.1. cancel the contract or suspend any further deliveries to the Buyer;  
and
  - 5.4.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer).

## 6 DELIVERY

- 6.1 Unless otherwise agreed delivery of the Goods shall be made, by the Seller delivering the Goods to such place as is agreed.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 The Seller reserves the right to deliver up to 5% above and 10% less than the quantity ordered by the Buyer. The quantity so delivered shall be deemed to be the quantity ordered so that the Seller's invoice will be based on the actual quantity delivered.

If the Seller delivers less than 90% of the quantity of the Goods ordered the Buyer shall notify the Seller in writing within 10 days of the date of delivery of the Goods and subject to the Seller being satisfied that such shortage arose before despatch of the Goods the Seller shall at its discretion either

6.3.1 at the Seller's cost deliver such further Goods as required to bring the delivery to 90% of the quantity ordered by the Buyer as soon as reasonably practicable having regard to the Seller's commitments; or

6.3.2 invoice the Buyer only in respect of the actual quantity delivered.

The Seller shall in no other circumstances be liable for shortages in delivery nor shall the Buyer be entitled to any other relief in respect of shortages.

- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7 RISK AND PROPERTY**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods all other goods agreed to be sold by the Seller to the Buyer for which payment is then due and all debts owed to the Seller by the Buyer.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller'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 moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 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, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8 WARRANTIES AND LIABILITY**

- 8.1 Any warranty given by the Seller to the Buyer in Writing in relation to the Goods and any liability of the Seller under the Contract shall be subject to the following conditions:
- 8.1.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - 8.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, improper storage, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - 8.1.3 the Seller shall be under no liability under any warranty, condition or guarantee if the total price for the Goods has not been paid by the due date for payment;
  - 8.1.4 any warranty given does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given to the Seller.
- 8.2 Subject as expressly provided in these Conditions, and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.3 Any claim by the Buyer which is based on any shortage in the quantity of the Goods supplied shall be notified to the Seller within 7 days from the date of delivery. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 Where any valid claim which is accepted by the Seller 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 Seller, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

- 8.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other 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 Seller, 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 Buyer, except as expressly provided in these Conditions.
- 8.6 The Seller 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.

## **9      INSOLVENCY OF BUYER**

9.1    This clause applies if:

9.1.1   the Buyer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2   an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3   the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4   the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2    If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, 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.

## **10 GENERAL**

- 10.1 The Seller may perform all and any of its obligations or exercise any of its right hereunder by itself or by one or more subcontractors of its choice provided that these Conditions shall apply notwithstanding performance hereunder by subcontractors.
- 10.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.4 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.
- 10.5 The Contract shall be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England.