

**Terms and Conditions of Sale for Non-degradable Plastic Products**

**1 DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions the following words have the following meanings:

“**Buyer**” the person(s), firm or company who purchases the Goods from the Seller;

“**Contract**” any contract between the Seller and the Buyer for the sale and purchase of the Goods.

“**Goods**” any goods supplied or to be supplied to the Buyer by the Seller (including any part or parts of them) pursuant to the Contract;

“**Seller**” Symphony Plastics Ltd. whose registered office is situate at Elstree House, Elstree Way, Borehamwood, Hertfordshire, England WD6 1LE and any of its subsidiary or parent undertakings or associated companies.

**2 APPLICATION OF TERMS**

2.1 Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.2 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer or delivers the goods as directed by the Buyer.

2.3 The Buyer must ensure that the terms of its Order and any applicable specification are complete and accurate.

2.4 It is the Buyer’s responsibility to ensure that the goods are suitable for the Buyer’s intended purpose and that all laws in the place of delivery are complied with and that all applicable taxes are paid.

**3 PURCHASE PRICE & TERMS OF PAYMENT**

3.1 The purchase price is set at prices prevailing on the date that the Seller accepts the order. The Seller reserves the right to increase the price in the event of an increase in the cost of raw materials, labour, overheads or other expenses of the Seller, or any change in the exchange rate after the order but prior to the date of dispatch.

3.2 The price for the Goods shall be exclusive of any value added tax and any other taxes and all costs or charges in relation to loading, unloading, carriage and insurance all of which the Buyer will pay in addition, when it is due to pay for the Goods.

3.3 Unless otherwise agreed, the Buyer shall pay the price of the Goods by wire-transfer to the Seller’s bank in England before dispatch of the goods

3.4 If the Buyer fails to make full payment on the due date, the Seller shall be entitled to charge the Buyer interest on the amount unpaid at the rate of 2 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest), together with a sum equivalent to any bank charges legal costs or other costs charges or expenses incurred by the Seller arising from the late payment or from recovery of sums due from the Buyer.

**4 DELIVERY**

4.1 Goods are sold ex works unless otherwise agreed.

4.2 The Seller shall use all reasonable endeavours to dispatch the Goods to the Buyer so as to arrive on the delivery date specified in the Order, but any time or date agreed for dispatch or delivery shall be an estimate only, as actual dispatch and delivery may not be under the Seller’s control.

4.3 If the Buyer does not receive the Goods within three days of the date agreed for delivery the Buyer must notify the Seller forthwith in writing.

4.4 If the Buyer refuses to accept delivery, the Goods shall be at the Buyer’s risk and the Buyer shall indemnify the Seller against all costs and expenses occasioned thereby, including insurance, carriage and storage costs.

4.5 Any liability of the Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

4.6 Customary tolerances and variances shall allow the Seller to:

4.6.1 deliver quantities within a ten per cent margin of those specified, for which the Buyer shall pay *pro rata*

4.6.2 vary the thickness of the material quoted within a ten per cent margin where virgin materials are used.

4.6.3 vary the thickness of material quoted within a twenty per cent margin where Second Grade or recycled materials are used

4.6.4 vary the Buyer’s specification as to shade provided that the colour specified by the Buyer shall be delivered

4.6.5 vary the Buyer’s specification as to size within a five per cent margin, whether larger or smaller

4.6.6 vary the Buyer’s specification as to the contents of boxes or packs. There will be a 5% differential permitted in the case of boxes or packs specified to contain less than 200 items and a 7.5% differential permitted in the case of boxes or packs specified to contain 200 items or more

4.6.7 vary the packaging in which goods are delivered and the Buyer acknowledges that any goods supplied in accordance with the above are supplied in accordance with the Contract.

**5 ACCEPTANCE**

5.1 The Buyer shall check the quantity of boxes or packs containing the Goods against the invoice at the time of delivery and provide written confirmation to the carrier, with a note recording any damage to the packaging.

5.2 The Buyer shall examine the Goods after delivery and will notify the Seller in writing within three days of delivery of any shortages discrepancies apparent defects in, or any apparent loss or damage to, the Goods



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- together with the reasons therefor if known.
- 5.3 If the Goods are alleged to be defective the Buyer must retain a minimum of 60% of intact original boxes, packs, rolls, bales or bundles for Seller's examination.
- 5.4 Unless the Buyer gives notice in writing to the Seller that the Goods are not in accordance with the terms of the contract within three days of receipt by the Buyer, the Goods shall be deemed to be satisfactory in every respect and the Buyer shall be deemed to have unreservedly accepted the Goods and shall pay for them accordingly.
- 5.5 The Buyer acknowledges that the Buyer is aware that any failure to comply strictly with this clause may prevent the Seller from making a claim against its supplier or carrier, or under the Seller's insurance policy.
- 5.6 The Seller accepts no liability where the Goods have been cut, printed or otherwise fabricated or processed, or subjected to direct sunlight or direct heat.
- 5.7 The Goods comprised in each delivery shall be deemed to constitute a separate contract. Failure to take and/or pay for any delivery in accordance with the contract shall entitle the Seller to:
- 5.7.1 cancel an undelivered portion under the contract or
- 5.7.2 suspend further deliveries under all or any orders or subsisting contracts with the Buyer until all payments due from the Buyer have been received.

## 6 TITLE AND RISK

- 6.1 The ownership of the Goods shall remain with the Seller until the payment of the total price thereof and any other payments due to the Seller from the Buyer have been made.
- 6.2 If payment of the total price or other sums is not made on the due date the Seller shall have the right to retake possession of the whole of any part of the goods (and for that purpose to go upon any premises occupied by the Buyer thereof) without prejudice to any other remedy of the Seller. This clause shall be construed as an irrevocable license granted to the Seller by the Buyer to enter such premises and remove the Goods.
- 6.3 Until such time as the Buyer has paid for the Goods the Buyer holds the Goods as bailee for the Seller and as such agrees:
- 6.3.1 to store the same separately in a readily identifiable state and at the Buyer's risk
- 6.3.2 in the event that the Buyer re-sells the Goods or any part thereof upon receipt of the proceeds of that sale from the purchaser the Buyer shall hold the whole of the same separately as an identifiable sum for the account of the Seller as beneficial owner thereof; and
- 6.3.3 maintain the Goods in satisfactory condition by storing them in a dry, shaded environment so as to prevent any damage or deterioration and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller, and hold the proceeds paid out under the insurance policy on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 In the event that:
- 6.4.1 the Buyer shall commit any breach of this contract or
- 6.4.2 the Buyer shall commit an act of bankruptcy, make any arrangement or composition with the Buyer's creditors; or
- 6.4.3 any petition or receiving order in bankruptcy shall be presented or made against the Buyer; or
- 6.4.4 (where the Buyer is a limited company) any resolution or petition to wind up the company (other than for the purpose of amalgamation or reconstruction while solvent) shall be passed by the Directors or Members, or presented; or
- 6.4.5 the Buyer is unable to pay its debts or ceases to trade, or a Receiver of the whole or any part of the Buyer's undertaking shall be appointed
- 6.4.6 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performance any of his/its obligations under the Contract or any other contract between the Seller and the Buyer
- the Seller may at its option (i) terminate the Contract and seek damages from the Buyer and/or (ii) refuse to make deliveries to the Buyer and/or (iii) stop any Goods in transit to the Buyer. The risk of loss or damage to the Goods shall remain with the Seller until the Goods have been delivered to the Buyer or the Buyer's carrier. Thereafter the risk passes to the Buyer.

## 7 FORCE MAJEURE

If the Seller shall be unable to perform any of its obligations hereunder by reason of fire, explosion, war, riot, malicious damage, theft, strike, lock-out or trade dispute (whether or not involving the Seller's or the Buyer's employees) shortage or non-availability of materials or any other act, omission or state of affairs whether or not of a like nature which is beyond the Seller's reasonable control then the Seller shall be relieved of the obligations incurred under this contract to the extent that the fulfilment of such obligations is prevented frustrated impeded or delayed as a consequence of any such event.

## 8 WARRANTIES AND LIABILITIES

- 8.1 The Seller warrants that upon payment for the Goods the Buyer shall acquire a clear title thereto free from all encumbrances.
- 8.2 The Seller warrants that the Goods are free from defective workmanship and materials. Any Goods not complying with this warranty (and which are promptly returned to the Seller at the Seller's expense) will be replaced by the Seller without charge. Defects in any delivery shall not entitle the Buyer to cancel other deliveries.
- 8.3 The warranties contained in Clauses 8.1 and 8.2 are in substitution for any other rights to which the Buyer might otherwise be entitled and in particular but without limitation any implied undertakings, terms, conditions or warranties, whether statutory or otherwise, as to state or condition, quality, merchantability or fitness for any purpose, are excluded.
- 8.4 Without prejudice to the generality of the foregoing, the Seller shall not be liable to the Buyer for any loss of raw materials, energy or labour, nor for any storage or transport charges nor loss of profits nor any indirect or consequential loss or damage (whether for loss of business, depletion of goodwill or otherwise), nor any costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 8.5 The Seller will investigate any claim made by the Buyer in accordance with these conditions, but if and to the



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- extent that any such claim shall be unfounded, the Buyer shall indemnify the Seller in respect of the cost of such investigation, including the cost of employee time.
- 8.6 The Buyer acknowledges that in the absence of the foregoing limitations of liability the prices would be significantly higher, or the goods would not be sold to him at all.
- 8.7 The Seller accepts no liability for the accuracy or conformity of any artwork name or other mark instructed or requested by the Buyer unless the Seller has undertaken in writing to be responsible for proof-reading and the Buyer shall indemnify the Seller against any claim in respect of breach of copyright, passing-off, or any other claim in respect of the design of any goods or anything printed thereon.

## 9 ENTIRE AGREEMENT

- 9.1 These conditions of sale and the Contract of which they form part, embody the entire understanding between the Seller and the Buyer and there are no representations, promises, terms conditions or warranties or obligations, oral or written express or implied, statutory or otherwise other than those contained herein.
- 9.2 These conditions of sale shall prevail notwithstanding any apparent variation thereof (save in the manner specified in clause 11.1 below) by any proposal, quotation, invoice or other representation or statement made or given by the Seller or its employees, agents or representatives and notwithstanding any conflict between these conditions and the terms of any order or communication submitted by the Buyer in respect of the Goods.

## 10 DISPUTE SETTLEMENT

These conditions and the Contract of which they form part shall be governed in all respects by the laws of England, and any dispute shall be settled by arbitration in the English language in London. The Arbitrator shall in default of agreement between the parties within 21 days be appointed upon the application of either party to the President for the time being of the Law Society of England and the award of such Arbitrator shall be final and binding upon the parties. In the absence of any award by the Arbitrator as to costs, the costs of the award shall be born equally by the parties.

## 11 GENERAL

- 11.1 No waiver, cancellation or alteration of the provisions of the Contract shall be valid unless made in writing and signed by a Director of the Seller.
- 11.2 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 11.3 If any provision of these conditions and the Contract of which they form part is found to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 11.4 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 11.5 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be treated as a waiver of any subsequent breach or default and will in not affect the other terms of the Contract.
- 11.6 The parties do not intend that any term of the Contract will be enforceable by any person who is not a party to it.

## 12 NOTICES

- 12.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission or by email:
- 12.1.1 (in case of communications to the Seller) to its registered office or such address as shall be notified to the Buyer by the Seller; or
- 12.1.2 (in the case of the communications to the Buyer) to the registered office of the Buyer (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall have been notified to the Seller by the Buyer.
- 12.2 Communications shall be deemed to have been received:
- 12.2.1 if sent by pre-paid first class post, 5 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 12.2.2 if delivered by hand, on the day of delivery;
- 12.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of receipt at the location of the recipient, and otherwise on the next working day.
- 12.2.4 if sent by email when receipt has been explicitly acknowledged by the recipient.
- 12.3 Communications addressed to the Seller shall be marked for the attention of the Finance Director.



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