

CONDALE PLASTICS LIMITED

TERMS AND CONDITIONS

1.1 In these Terms:

“**Goods**” means any goods (including any instalment of the goods or any parts for them) which Condale is to supply in accordance with these Terms;

“**Condale**” means Condale Plastics Limited (Reg No: 00992692)

“**Contract**” means the contract for the sale and purchase of the Goods;

“**Terms**” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Buyer and Condale;

2. Basis of the sale

2.1 No contract in respect of the Goods between the Condale and the Buyer shall exist until the Buyer's order has been explicitly accepted by the Company. No conditions or terms, advice or recommendation set out in any other communication or document shall vary, add to or annul any of these conditions except insofar as the same are expressly consented to in writing by the Condale.

2.2 Any advice or recommendation given by Condale 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 Condale is followed or acted upon entirely at the Buyer's own risk and Condale will not be liable for any such advice or recommendation.

3. Orders and specifications

3.1 The Buyer shall be responsible to Condale for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Condale any necessary information relating to the Goods within a sufficient time to enable Condale to perform the Contract in accordance with its terms.

3.2 Before accepting an order for a new Buyer Condale will require a banker's reference or two satisfactory trade references. If the Buyer is unable to supply satisfactory references then Condale may require a personal or company guarantee of the Buyer's obligations before accepting the order.

3.3 Where the Buyer places an order which requires new tooling to be made then Condale's quotation will set out a minimum quantity of extrusion

which the Buyer must purchase. If the minimum quantity has not been purchased by the Buyer six calendar months following the delivery of samples to the Buyer by Condale then the Buyer agrees to pay to Condale an amount equal to the price of the minimum order (less any amounts already purchased and the costs of materials in respect of the remainder).

3.4 No order which has been accepted by Condale may be cancelled by the Buyer except with the agreement in writing of Condale and on terms that the Buyer shall indemnify Condale 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 Condale as a result of cancellation.

4. Price of the goods

4.1 All prices quoted are exclusive of VAT and are valid for 14 days only or until earlier acceptance by the Buyer, after which time they may be altered by Condale without giving notice to the Buyer.

4.2 Condale reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Condale which is due to any factor beyond the control of Condale.

4.3 Except as otherwise stated in Condale's written quotation or in any price list of Condale, and unless otherwise agreed in writing between the Buyer and Condale, all prices are given by Condale on an ex works basis, and where Condale agrees to deliver the Goods otherwise than at Condale's premises, the Buyer shall be liable to pay Condale's charges for transport, packaging and insurance.

5. Terms of payment

5.1 Condale may 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 Condale shall be entitled to invoice the Buyer for the price at any time after Condale has notified the Buyer that the Goods are ready for collection or (as the case may be) Condale has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of Condale's invoice, and Condale shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the

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Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to Condale, Condale may:

- cancel the contract or suspend any further deliveries to the Buyer; and
- appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Condale) as Condale may think fit (notwithstanding any purported appropriation by the Buyer); and
- charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Condale's premises at any time after Condale has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Condale, by Condale delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and Condale shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Condale in writing. The Goods may be delivered by Condale in advance of the quoted delivery date on giving reasonable notice to the Buyer.

6.3 If the Buyer fails to take delivery of the Goods or fails to give Condale 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 Condale's fault) then, without limiting any other right or remedy available to Condale, Condale may:

- store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 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.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Condale to deliver any one or more of the instalments in accordance with these Terms 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.

7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

- a) in the case of Goods to be delivered at Condale's premises, at the time when Condale notifies the Buyer that the Goods are available for collection; or
- b) in the case of Goods to be delivered otherwise than at Condale's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Condale has tendered delivery of the Goods.

7.2 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 Condale has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Condale to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Condale'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 Condale's property, but the Buyer may resell or use the Goods in the ordinary course of its business.

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), Condale may at any time require the Buyer to deliver up the Goods to Condale and, if the Buyer fails to do so forthwith, enter on 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 Condale, but if the Buyer does so all moneys owing by the Buyer to Condale shall (without limiting any other right or remedy of Condale) forthwith become due and payable.

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8. Warranties and liability

8.1 Subject to the following provisions Condale warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of three months from delivery.

8.2 The above warranty is given by Condale subject to the following conditions:

- Condale shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- Condale shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Condale's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Condale's approval;
- Condale shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- the above warranty does not extend to parts, materials or equipment not manufactured by Condale, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Condale.

8.3 **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 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.**

8.4 A claim by the Buyer 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 Buyer) be notified to Condale within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within seven days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Condale accordingly, the Buyer shall not be entitled to reject the Goods and Condale shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to Condale in accordance with these Terms, Condale may replace the Goods (or the part in question) free of charge or, at Condale's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case Condale shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by Condale's negligence, or liability for defective products under the Consumer Protection Act 1987, Condale shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Condale, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of Condale under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

8.7 Condale 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 Condale's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Condale's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Condale's reasonable control:

- i) Act of God, explosion, flood, tempest, fire or accident;
- ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- iii) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- iv) import or export regulations or embargoes;
- v) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Condale or of a third party);

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- vi) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- vii) power failure or breakdown in machinery.

11. General

9. Insolvency of buyer

- 9.1 This clause 9 applies if:
- a) the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or
 - b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - c) the Buyer ceases, or threatens to cease, to carry on business; or
 - d) Condale reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 11.1 A notice required or permitted to be given by either party to the other under these Terms 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.
- 11.2 No waiver by Condale 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.
- 11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 11.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.

- 9.2 If this clause applies then, without limiting any other right or remedy available to Condale, Condale may 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. Export terms

- 10.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and Condale) apply notwithstanding any other provision of these Terms.
- 10.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 10.3 Unless otherwise agreed in writing between the Buyer and Condale, the Goods shall be delivered fob to the air or sea port of shipment and Condale shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.