

# The Perfect Package

## conditions of sale

### 1. Definitions

- 1.1 "Buyer" means the person who buys or agrees to buy the Goods from the Seller
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller pursuant to condition 2.4
- 1.3 "Delivery Date" means the date specified by the Seller when the Goods are to be delivered
- 1.4 "Goods" means the articles which the Buyer agrees to buy from the Seller
- 1.5 "Price" means the price for the Goods excluding carriage, packing, insurance and VAT
- 1.6 "Seller" means Siva Plastics Limited (Company Registration Number 2409513) whose registered office is situated at Spitfire House Hazel Road Woolston Southampton Hampshire SO19 7GB
- 1.7 "month" means a calendar month
- 1.8 "working day" means any day from Monday to Friday inclusive other than any public or statutory holiday
- 1.9 "in writing" includes completed facsimile transmission

### 2. Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any addition qualification amendment or variation to or deletion from these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a Director of the Seller.

### 3. The Price and payment

- 3.1 The Price of the Goods shall be the Seller's quoted price applicable at the date of the delivery of the Goods to the Buyer.
- 3.2 The Seller may with or without notice to the Buyer at any time prior to the date of the delivery of the Goods to the Buyer increase the price of the Goods so as to reflect any increase in the costs of the Seller which is due to factors occurring after the making of any contract for sale with the Buyer and which are beyond the reasonable control of the Seller including in particular (but without limitation) foreign exchange fluctuations, taxes and other duties, labour costs, or materials and other manufacturing costs, or the costs of any other services used by or employed by the Company. In the event of any such increase occurring during the currency of a contract for the sale of Goods to be delivered by instalments the price of all Goods which are the subject of such contract and which are undelivered at the date of such increase shall be increased accordingly.
- 3.3 The Price is exclusive of VAT which shall be due at the rate applicable on the date of the delivery of the Goods to the Buyer.
- 3.4 Payment of the Price and VAT shall be due on the last working day of the month following the end of the month in which the Goods are delivered to the Buyer. Time for payment shall be of the essence.
- 3.5 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2.5% per month [duly apportioned in respect of part of a month] and shall accrue at such a rate after as well as before any judgment.
- 3.6 In the event that the Buyer shall fail to make payment in full on the due date then without prejudice to any of the Seller's other rights the Seller may in relation to deliveries of any Goods or other articles otherwise due to be delivered at any time to the Buyer [at the sole option of the Seller]:
  - 3.6.1 suspend without notice to the Buyer the same pending such payment in full by the Buyer and/or cancel the same or any thereof and treat this contract as repudiated by the Buyer; and/or
  - 3.6.2 appropriate any payment made by the Buyer to such of the Goods (or any Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit
- 3.7 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counter-claim which the Buyer may have or allege to have or for any other reason whatsoever.
- 3.8 The Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (including goods of the Buyer which have been paid for) for the unpaid Price of all Goods sold by the Seller to the Buyer under this or any other contract.

### 4. The Goods

- 4.1 All weights quoted by the Seller in respect of Goods are gross unless otherwise expressly agreed in writing by a Director of the Seller.
- 4.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 4.3 The Buyer shall inspect the Goods on delivery and shall before 5.00 p.m. on the second working day after the date of delivery ["the notification deadline"] notify the Seller in writing of any alleged defect, shortage in or other error of quantity, damage [including alleged damage in transit] or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity either before the notification deadline or within such period thereafter as the Seller shall reasonably require and in any event before any use is made by the Buyer of the Goods in question to inspect such Goods and if the Seller shall so require to weigh or otherwise quantify or calculate the Goods using in each case the Seller's own equipment if the Seller shall so desire, and shall in the meantime place and keep the Goods in question entirely separate and distinct and separately and distinctly identifiable from all other goods and articles supplied [whether by the Seller or any third party] to the Buyer and/or in the Buyer's possession from time to time whether of a similar nature to the Goods in question or otherwise. If the Buyer shall fail to comply with the foregoing provisions contained in this condition 4.3:
  - 4.3.1 the Goods shall be conclusively presumed to be in accordance with the contract and free from any such defect shortage or other error damage or failure to comply and
  - 4.3.2 the Buyer shall be deemed to have accepted the Goods and shall not thereafter be entitled to reject the same or any thereof and the Seller shall be under no liability to the Buyer whatsoever in respect thereof.
- 4.4 In respect of any Goods delivered by the Seller which are not in accordance with the contract the Buyer shall (except as provided in condition 4.6 and subject to conditions 4.3, and 4.5) be entitled to reject the same by giving prior to the notification deadline notice in writing to the Seller to such effect.
  - 4.5 Notwithstanding any notice given by the Buyer pursuant to condition 4.4
  - 4.5.1 the Buyer shall nonetheless pay the full Price for the Goods in question unless the Buyer at the Buyer's own cost returns such Goods to the Seller in the original packaging prior to the date on which payment of the Price in respect thereof is due
  - 4.5.2 a signature on a carrier's delivery advice sheet shall be conclusively deemed to signify receipt by the Buyer of the quantity of Goods indicated on the said delivery advice sheet
  - 4.6 Subject to condition 4.3 the Buyer shall take delivery of the Goods tendered notwithstanding that
  - 4.6.1 the quantity so delivered shall be either greater or less than the quantity purchased provided that such discrepancy shall not exceed 20% and
  - 4.6.2 the width of the Goods so delivered shall be either greater or less than the width ordered by the Buyer provided that such discrepancy shall not exceed 4% [subject to a minimum of 4mm]
  - 4.6.3 the length of the Goods so delivered shall be either greater or less than the length ordered by the Buyer provided that such discrepancy shall not exceed 6% [subject to a minimum of 6mm]
  - 4.6.4 the average film thickness of the Goods so delivered shall be either greater or less than the average film thickness ordered by the Buyer provided that such discrepancy shall not exceed 10%
  - 4.6.5 the spot thickness of the Goods so delivered shall be either greater or less than the spot thickness ordered by the buyer provided that such discrepancy shall not exceed 15% provided further however that in each such case the Price shall be adjusted pro rata accordingly.
- 4.7 No Goods delivered to the Buyer which are in accordance with the contract will be accepted for return
  - 4.7.1 without the prior written approval of the Seller and
  - 4.7.2 otherwise than on terms to be determined at the absolute discretion of the Seller. If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay a minimum handling charge of [10%] of the invoice price. Such Goods must be returned by the Buyer carriage-paid to the Seller in their original packaging.
- 4.8 Goods which the Buyer is not entitled to reject under these conditions but which are returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any other rights or remedies the Seller may have.
- 4.9 If the Goods are not in accordance with the contract for any reason and the Buyer is entitled to reject the same under these conditions the Buyer's sole remedy [apart from such rejection] shall [subject to condition 4.10] be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price in which case the Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed the Price. The Seller shall be under no liability whatsoever [whether or not the Goods are in accordance with the contract] for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer [including in particular but without limitation loss of profit] or any liability to third parties incurred by the Buyer.
  - 4.10.1 In the event that the Goods supplied by the Seller to the Buyer constitute or include terms or articles acquired by the Seller in the same or substantially the same form from any third party and the amount or extent of the liability of such third party to the Seller in respect thereof ["initial liability"] is less than that of the Seller to the Buyer under condition 4.9 in respect thereof then such liability under condition 4.9 shall not exceed the amount or extent of the initial liability.
  - 4.10.2 In the event that the Goods supplied by the Seller to the Buyer shall have been damaged whilst in transit by reason of the act default or omission of the Seller's carrier or such carrier's employees or agents and the amount or extent of the liability of the said carrier to the Seller in respect thereof ["the carrier's liability"] is less than that of the Seller to the Buyer under condition 4.9 in respect thereof then such liability under condition 4.9 shall not exceed the amount or extent of the carrier's liability.

- 4.11 Except as otherwise provided in these conditions all warranties terms conditions and guarantees whether express or implied either by statute or otherwise and whether on the part of the Seller or its servants or agents or otherwise relating to the quality description and/or fitness for the purpose of the Goods or any of them are excluded from the contract [provided however that nothing in these conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a buyer dealing as consumer]. In particular [but entirely without limitation] the Seller shall be under no liability to the Buyer whatsoever in respect of the colour [including in particular but without limitation] [the colour intensity opacity or translucency] of the Goods supplied by the Seller to the Buyer.

### 5. The Delivery

- 5.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery on a working day.
- 5.2 The Seller shall be entitled at the Seller's election to deliver the Goods by separate instalments each of which shall be invoiced and paid for in accordance with these conditions. In the event that the Buyer shall fail to pay for any such instalment upon the due date for payment in respect thereof then the Seller shall be entitled to all the rights set out in conditions 3.6.1 and/or 3.6.2.
- 5.3 The Seller shall not be liable in any way whatsoever for any loss or damage whatever due to a failure by the Seller to deliver the Goods or any thereof or any instalment thereof either by the Delivery Date or at all and the Buyer shall be bound to accept delivery thereof and to pay therefor in full provided that delivery thereof shall be tendered at any time within three months after the Delivery Date.

### 6. Title and Risk

- 6.1 The Goods shall be at the Buyer's risk as from delivery.
- 6.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
  - 6.2.1 the Buyer shall have paid the Price plus VAT in full and
  - 6.2.2 no other sums whatever shall be due from the Buyer to the Seller.
- 6.3 Until property in the Goods passes to the Buyer in accordance with clause 6.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 6.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdraft bank account and shall be at all material times identified as the Seller's money.
- 6.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 6.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 6.4 shall cease.
- 6.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller; if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 6.8 The Buyer shall keep the Seller fully indemnified in respect of all loss or damage of any kind whatsoever to or in respect of the Goods and shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 6.9 The Buyer shall promptly deliver the prescribed particulars of the contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of me Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

### 7. Intellectual Property

- 7.1 The specification[s] and design[s] other than those specified in condition 7.2 of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller and no right or licence is granted under the contract to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use [or resell] the Goods.
- 7.2 Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller and/or for use or distribution with the Goods then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and shall keep the Seller at all times fully indemnified against all liabilities costs claims losses and expenses incurred by the Seller arising directly or indirectly from any such infringement.

### 8. Choice of law

8. The contract is subject to the law of England and Wales and all disputes arising out of the contract shall be subject to the exclusive jurisdiction of the courts of England and Wales.

### 9. Cancellation

9. The Seller may cancel the contract at any time before the Goods are delivered by giving written notice to the Buyer to such effect. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

### 10. Force Majeure

10. Without prejudice to any other conditions the Seller shall not be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of the Seller.

### 11. Insolvency or other default of Buyer

11. If the Buyer fails to make payment for the Goods in accordance with the contract or commits any other breach of the contract or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. In addition the Seller may in its absolute discretion and without prejudice to any other rights which it may have:
  - 11.1 exercise all or any of the rights specified in condition 3.6; and/or
  - 11.2 exercise all or any of its rights pursuant to clause 6.

### 12. Notices

12. Any notice required to be served pursuant to the contract shall be in writing and served by first class post or by hand on the Seller at Spitfire House Hazel Road Woolston Southampton Hampshire SO19 7GB or such other address as the Seller may from time to time notify to the Buyer in writing and on the Buyer at the Buyer's registered office or principle place of business or such other address as the Buyer may from time to time notify to the Seller in writing.

### 13. Assignment etc

13. The Seller may assign licence or sub-contract or otherwise dispose of all or any part of its rights and obligations under the contract without the Buyer's consent.

### 14. General

- 14.1 In these conditions:
  - 14.1.1 All headings are for ease of reference only and shall not affect the construction of the contract.
  - 14.1.2 Save where the context otherwise admits or requires words importing the singular number include the plural and vice versa and words importing one gender include any other gender.
- 14.2 Any provision of the contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of the contract.
- 14.3 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under the contract shall prejudice its right to do so in the future.