

# CONDITIONS OF SALE FOR CROMWELL POLYTHENE LIMITED

The following Standard Conditions of Sale, as varied from time to time by the Seller, will govern the transaction and all contracts between the parties except as otherwise specifically agreed in writing by the Buyer and Seller.

## 1. Orders and Acceptance

No binding contracts for the sale of goods or on delivery of the goods shall exist until the Seller has accepted the Buyers order in writing.

## 2. Prices

(a) Any price quotation given by the Seller is for information only. All prices quoted are exclusive of Value Added Tax ("VAT") and any other duties that may be payable.

(b) Notwithstanding that an order has been accepted, prices and rates of VAT withheld will be those current on the date of despatch to the Buyer.

(c) The Seller shall use its best endeavours to deliver the goods at the agreed price but the Seller may increase the price of the goods to reflect increases in the company's costs due to factors beyond its control such as foreign exchange rate, duties and the cost of labour and materials as well as other manufacturing costs. The Seller will notify any price increase to the Buyer as soon as possible.

## 3. Payment

(a) Payment shall be made net cash on delivery unless otherwise expressly agreed in writing by the Seller. The Seller reserves the right to charge interest at 1.5% per month on any overdue account.

(b) Liability to make payment shall arise on the Seller's acceptance of the Buyer's order or on delivery of the goods and the Seller shall be entitled to sue for the current price of goods ordered, even if property in those goods has not passed pursuant to Clause 7. The Seller shall be entitled to suspend further deliveries of goods ordered if any sums are owed by the Buyer.

(c) Where the Buyer disputes any invoice it shall advise the Seller within 5 days of the invoice date.

## 4. Delivery and Inspection

(a) Any complaint of short delivery, quality or of damage to goods in transit must be notified to the Seller in writing otherwise than upon a consignment note or delivery document within 48 hours of receipt of the goods and if any complaint of failure to deliver goods invoiced must be so notified within 7 days of the date of the invoice otherwise the goods will be deemed as accepted.

(b) The Seller will make every effort to keep to delivery and shipment dates but such dates are not to be treated as terms of the contract and the Seller will not be responsible for any loss or damage which may result from late delivery.

(c) The Seller shall be entitled to make additional charges in respect of costs arising from any variation in standard delivery arrangements, or if the Buyer does not permit delivery to take place as agreed.

(d) The Seller shall be entitled to deliver the goods in instalments where appropriate.

## 5. Quality and Warranties

(a) Liability of the Seller in respect of defective goods shall be restricted to defects notified in accordance with Clause 4 (a) above, and in any event shall (except in the case of death or personal injury caused by the negligence of the Seller) be limited to refunding that part of the purchase price which relates to the defective item.

(b) Except as expressly stated by the Seller, in these terms, the Seller shall have no liability of any kind to the Buyer, whether arising from a breach of these terms, or a breach of any duty of care owned by the Seller, or otherwise, and no responsibility is accepted by the Seller (except in respect of death or personal injury resulting from the Seller's negligence) for any consequential damage or loss arising directly or indirectly out of the goods, supplied by it.

(c) All conditions and warranties, whether express, or implied by state or otherwise (including those as to the merchantable quality of the goods ordered or as to their suitability for any purpose) or correspondence with sample shall be excluded insofar as they are inconsistent with these terms to the fullest extent permitted by the law.

(d) The Seller's liability whether in contract or tort (including negligence) except in relation to personal injury or death shall be limited to the sum insured under the Sellers Liability Insurance at the time of the sale.

## 6. Design Work

(a) Where the Buyer requires design or printing work to be undertaken in respect of the goods ordered the Seller shall act as the Buyer's agent in arranging the work to be undertaken by a third party and the Buyer agrees to be bound by any terms that are imposed by that third party.

(b) No responsibility shall be accepted by the Seller for the quality of the printing work undertaken nor shall the Seller be responsible in any way for any errors in proof, which has been submitted to and approved by the Buyer.

(c) All origination work remains the property of the Seller until paid for by the Buyer.

(d) The Buyer is fully responsible for all designs supplied in relation to printing work and shall keep the Seller fully indemnified in respect of all costs, expenses, losses and liabilities incurred by the Seller which result from any claims by third parties that any design, in whole or in part, infringes that party's intellectual property rights, including but not limited to copyright, trade or service marks, whether or not registered, or in respect of any other claim whatsoever.

(e) All blocks, nibbers, printing plates, sketchers and other original work produced by the Company in connection with the order shall remain the property of the Company unless paid for by the purchaser.

## 7. Title and Risk

The Seller and the Buyer expressly agree that until the Seller has been paid in full for the goods comprised in a sale contract between them.

(a) Ownership of the goods to be delivered by the Company will only be transferred to the Buyer when all monies owing to the Seller have been paid, whether in respect of the goods concerned or other goods (although the risk therein passes to the Buyer at the point when delivery is made to the Buyer).

(b) Until property in the goods has passed to the Buyer:

(i) The Buyer shall keep the goods as bailee and will clearly mark or designate the goods so that they remain readily identifiable as the property of the Seller and shall store the same in a proper manner without charge to the Seller. The Seller may recover the goods at any time from the Buyer, if in his possession, and if the amount outstanding from the Buyer to the Seller in respect of those goods shall remain unpaid after the due date for payment has passed, and for that purpose the Seller, its servants and agents may enter upon any land or building upon which the goods are situated.

(ii) If any of the goods is incorporated in or used as material for other goods before payment to the Seller, the property in the whole of those goods shall be and remain with the Seller until payment shall have been received or the other goods have been sold and all the Seller's rights under this agreement in the material shall extend to those other goods. The Seller's right to the material and/or the other goods is recognised in this agreement and it is the intention of both parties that ownership of that material and/or goods shall vest in the Seller.

(iii) In the event of such disposal the proceeds of sale and/or the claims to such proceeds shall at all times be held on trust for Seller and the Buyer shall pay all such proceeds into a bank account separate from all other monies and the Buyer has the fiduciary duty to account to the Seller for the proceeds of sale, but may retain there from an excess of such proceeds over the amount outstanding under the sale contract.

(iv) The Seller has the additional right to recover sums due in respect of the goods directly from the Buyer's customer to the extent unpaid by that customer, if the Seller avails itself of such right the Seller will account to the Buyer for any such excess as aforesaid less any expenses incurred by the Seller in respect of such recovery. The Buyer shall ensure that its contracts with its customers reflect the provisions of this clause.

(v) Until such time as legal title in the goods passes to the Buyer, the Seller may at any time require the Buyer, its liquidator, receiver or administrator to return the goods and/or may repossess the goods by entering upon any premises of the Buyer or any third party where the goods are reasonably believed to be stored.

(vi) If the buyer makes default in any terms of these Conditions, or if distress or execution shall be levied on the Buyer's property, or he shall enter into any arrangement with his creditors or commit any act of bankruptcy, or if the Buyer being a Limited Company passes a Resolution to wind up such company's business, or a petition for winding up is presented against it, or if a Receiver of such company's undertaking property or assets or any part thereof shall be appointed, the Seller shall be entitled forthwith to determine any contract then subsisting and to exercise all or any remedies available to it for recovery of the goods and/or payment or money due.

## 8. Materials

Whilst every endeavour will be made to supply material in accordance with the quality of samples submitted or quoted for, the contract is not a contract of sale by sample.

## 9. Purchaser's property

The Purchaser's property when supplied to the Company will be held at the Purchaser's risk. Every care will be taken by the Company to secure the best results from such material, but no responsibility will be accepted for the imperfect work caused by the defects in or unsuitability of the material so supplied.

## 10. Force Majeure

The Seller shall not be liable for failing to perform the contract whether wholly or in part, if the failure is caused either wholly or partly by any circumstance or circumstances outside the Seller's reasonable control.

## 11. Tolerances and Samples

(a) Except where otherwise agreed in writing the Seller shall be deemed to have fulfilled its obligations under a contract by supplying goods within the tolerances stated in the Codes of Practice of the Packaging & Films Association from time to time in force.

(b) Where orders are placed by the Buyer in reliance upon samples provided by the Seller, the Seller shall endeavour to ensure that the goods comply with the quality and dimensions of the sample, but no responsibility can be accepted for discrepancies between samples and the goods delivered.

## 12. Governing Law

The validity, construction and performance of all contracts made between the parties shall be governed by the laws of England.

## 13. Confidentiality

The information contained in this contract is confidential; neither party shall divulge any matter to a third party without the others party's consent.

## 14. Entire Agreement

The contract shall set forth the entire agreement and understanding of the parties.

## 15. Assignment

Neither party shall assign or transfer this contract without the express written consent of the order.

## 16. Waiver

No waiver or forbearance of the Seller in enforcing any rights under the contract will prejudice its right to do so at a later date