

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), which the seller is to supply in accordance with these Conditions.

'SELLER' means The Precision Plastic Ball Company Ltd.

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the content 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 telex, cable, facsimile transmission, email 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 or verbal quotation of the Seller, which is accepted by the Buyer, or any written or verbal 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 authorized representations of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorized 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 sales literature, quotation, price list, acceptance 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 The quantity, quality and description 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 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.
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing by 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. Prices of the goods

- 4.1 The price of 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. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller, which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods, which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 In addition to the price the Buyer shall pay the cost incurred by the Seller in delivering the goods to the Buyer at the address shown on the quotation or order as the case may be with a minimum charge of £6.00
- 4.6 The Buyer shall pay a minimum price of £30, exclusive of postage, packing and VAT for any one contract (other than a contract treated as such by condition 6.4, solely because it represents a delivery of one instalment of Goods).

5. Terms of Payment

- 5.1 Unless the Seller has agreed to grant credit terms to the Buyer, payment in full shall be made by the Buyer when ordering the goods.
- 5.2 If either credit terms have been agreed or the Seller has accepted the Buyer's order for the goods without payment or on payment of a deposit only then 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 less deposit paid on the Contract ('the Price') on or at any time after delivery of the Goods, unless 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 Seller has tendered delivery of the Goods.
- 5.3 Unless clause 5.1 applies the Buyer shall pay the price within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the 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.
- 5.4 If the Buyer fails to make any payment on the due date then, without prejudices 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;
- 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); and
- 5.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above National Westminster Bank 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 Seller delivering the Goods to the address shown on the quotation or order or if no address is shown by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 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 Where delivery of the goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10% more or 10% less than the quantity ordered and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure to 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) or 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 and all other Goods agreed to be sold by the Seller 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 the Seller's fiduciary agent and bailee, and shall keep the Goods properly stored, protected and insured and identified as the Seller's property. Until that time if the Buyer shall resell or use the Goods, he 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. **Liability**

- 8.1 In cases of claims for defective material or workmanship the seller's liability is limited to the replacement or repair of such material. In no event shall the seller be liable for prospective profits, or indirect, incidental or consequential damages of the buyer. The right to replacement or repair of such parts or goods determined to be defective shall constitute the sale and exclusive remedy of the buyer hereunder. At the absolute discretion of the seller, the seller may elect to repay to the buyer the price of such material paid by the buyer to the seller in lieu of any obligation to replace or repair.
- 8.2 Subject as expressly provided in these conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.3 Except in respect of death or personal injury caused by the seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the seller 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 the seller, 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 the seller under or in connection with the contract shall not exceed the price of the goods except as expressly provided in these terms.
- 8.4 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. Without limiting the foregoing the following shall be regarded as causes beyond the seller's reasonable control:
- 8.4.1 Act of God, explosion, flood, tempest, fire or accident;
 - 8.4.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.4.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.4.4 Import or export regulations or embargoes;
 - 8.4.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of seller or of a third party);

- 8.4.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.4.7 Power failure or breakdown in machinery.
- 8.5 The seller shall not be liable to the buyer in respect of any defect where the buyer provides specifications for the goods and the goods are supplied in accordance with these specifications.
- 8.6 Where the identification of the manufacturer is known to the buyer (and this is not the seller) it is the sole responsibility of the buyer to audit and enquire as to the suitability of the manufacturer to its own satisfaction, including the quality control checks employed by the manufacturer, such that the buyer will rely upon the manufacturer (and not the seller) to establish the likely rate of failure of goods or materials sold in bulk numbers to conform with the buyers precise specifications for these goods or materials.
- 8.7 The seller shall not be liable to the buyer in any instance of defect where the goods are utilised alongside or incorporated in any additional product and it is the duty of the buyer to inspect the goods or materials before such use.

9. Indemnity

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights or any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that;
 - 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
 - 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
 - 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 - 9.1.4 the Buyer shall do nothing which would or might violate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
 - 9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
 - 9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

10. Insolvency of Buyer

- 10.1 This clause applies if:
 - 10.1.1 the Buyer makes any voluntary arrangement with his creditors or 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
 - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 10.1.4 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.

- 10.2 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.
- 11. Export Terms**
- 11.1 In these conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of Clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.
- 11.3 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 thereon.
- 11.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered f.o.b. the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- 11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 12. General**
- 12.1 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 (in the case of notice to be given to the Buyer) at the address shown on the quotation as the address to which delivery of the Goods shall be made under Condition 6.1 or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Seller or 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.
- 12.3 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.
- 12.4 The Contract shall be governed by the laws of England.