

Banbury Plastic Fittings Limited Terms and Condition of Business

1. DEFINITIONS

In the context of these terms and conditions:

- "the company" means Banbury Plastic Fittings Limited.
- "the customer" means the person firm or Company by whom the order is placed
- "the goods" means the finished goods described in the order
- "the order" means the order set out below
- "the contract" means the Contract between the Customer and the Company whether created by the Company's written acceptance of the order or otherwise
- "the tooling" means the tooling described in the order or otherwise (save when they relate to standard catalogue mouldings) made for the purposes of manufacture of the goods to be supplied under any agreement to which these terms and conditions apply.
- "standard mouldings" means any mouldings described in the order other than custom mouldings
- "custom mouldings" means mouldings required by customers to conform to their own individual design and specification
- "part mould charges" means charges made in respect of the manufacture or execution of development works on tooling.
- "the products" means the goods and the tooling
- "design" means any works of design carried out (whether at the request or on the instructions of the Customer or otherwise) relating to any tooling mouldings or products

2. GENERAL

Unless otherwise expressly agreed in writing by a Director of the Company all tooling or mouldings made products or services supplied and /or work undertaken by the Company are made supplied and /or undertaken upon these Terms and Conditions of Business and no agent or representative of the Company has any authority to vary or omit these Terms and Conditions. These Terms and Conditions of Business apply to the exclusion of all other Terms and Conditions (except any which might be implied by law in favour of the Company) and in particular to the exclusion of any which the Customer may purport to apply under an Order Confirmation of Order or otherwise. All Orders shall be deemed to be an Offer by the Customer to contract with the Company pursuant to these Terms and Conditions.

3. ACCEPTANCE AND VARIATION OF PRICE

- 3.1. Quotations issued by the Company whether verbally or in writing do not constitute offers and are subject to acceptance by the Company of the Customer's order when placed and unless otherwise agreed no contract involving the manufacture of a new tool or tools shall be concluded until written acceptance by the Company of the Customer's order. Customers are asked to confirm all verbal orders in writing within ten days of the original instructions.
- 3.2. Prices quoted or listed by the Company are (where applicable) based on prices of the Company's suppliers – otherwise on the Company's estimated costs at the time of quotation or listing and are subject to adjustment prior to despatch to cover any increase in such prices or costs or in taxation or duty which might take place prior to delivery and such prices are (unless otherwise stated by the Company or agreed) exclusive of carriage and VAT but inclusive of bulk packing.
- 3.3. Standard or Custom mouldings with a net invoice value of £250 or more will be carried free of charge except where special carriage terms or delivery to an address outside main land England are specifically requested.
- 3.4. Where components are to be imported the Company reserve the right to vary the price quoted to reflect the rate of exchange for purchase of the relevant currency in pounds sterling.
- 3.5. Quoted prices are based on specific quantities and therefore do not necessarily apply to an order for a smaller or greater quantity.

4. SAMPLES AND DESIGN

- 4.1. In all cases where the Customer requires Custom Mouldings the Company will initially provide samples prior to the first production run for Customer approval with an Initial Sample inspection Report ("ISIR"). The Company will then subject to reasonable variation use all reasonable endeavors to ensure the production is consistent with the Samples that have been approved. Approval of Samples will be deemed to be acceptance of the relevant Tooling notwithstanding any deviation from any dimensions previously agreed by the parties or contained in any drawings supplied by either party.
- 4.2. The Customer shall promptly consider the ISIR supplied by the Company to the Customer with Samples produced from new Tooling or revised or modified Tooling. If the Customer is satisfied with the ISIR and the Samples then the Customer shall return the ISIR promptly endorsed and signed with his acceptance thereof. If the Customer has not done so within fourteen (14) days of receipt of the ISIR then the Customer shall be deemed to have done so and the Company shall be entitled to invoice the Customer for any un-invoiced balance of the costs of any tooling work unless in the meantime the Customer shall have drawn the attention of the Company in writing to any defects or changes. If in any circumstances Samples have been supplied by the Company to the Customer without an ISIR being available then any Order for Products placed by the Customer before an ISIR has been returned (or is deemed to have been returned) endorsed with the Customer's signed acceptance will only be accepted on the basis (which is agreed between the Company and the Customer) that the ISIR is deemed to have been accepted by the Customer.
- 4.3. Where either Custom Mouldings or Standard Mouldings are purchased the Customer shall try and test the Samples provided for suitability sizing and colour and (even if the Customer should not do so) shall be deemed to have done so and approved any such Samples provided.
- 4.4. The following provision of this condition shall apply to Designs and Drawings etc.:-
 - 4.4.1. The Customer shall accept responsibility (to the entire exclusion of the Company) for all designs supplied to the Company by the Customer and /or approved by the Customer and the Company shall have no liability or responsibility whatsoever for any Design Defect in any Goods, Tooling, Mouldings and /or Products which conform to such Design.
 - 4.4.2. The Customer shall consider promptly all Designs and Drawings prepared by the Company and (unless the Customer shall be dissatisfied in any respect in which event the Customer shall give to the Company notice in writing with full particulars forthwith upon receipt) the Customer shall return to the Company within fourteen (14) days of receipt copies of such Designs and/or Drawings signed and endorsed by the Customer with its acceptance thereof (in such form as the Company may reasonably require) and if the Customer shall not do so it shall be deemed to have done so.
 - 4.4.3. As a matter of standard practice the Company requires the Customer to give its written approval of a Design for or a Drawing of a Moulding prior to manufacture of the Tool in question and in giving such approval the Customer confirms its satisfaction with such Design or Drawing and its willingness to commission the manufacture of a Tool to provide Mouldings consistent with the Design or Drawing.

5. TOOLING

- 5.1. Payment for Tooling shall be strictly net cash on the due date stated on the Invoice therefore in accordance with the provisions of Clause 9 below. Risk of damage to or loss of the Tooling shall however be that of the Customer at all times. Property in the Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Tooling but subject however to the provisions of Clauses 5.3 and 7 below
 - 5.2.1. Notwithstanding the provisions of this Clause 5 and Clause 7 hereof, the Customer shall allow the Company to retain possession of the Tooling (free of charge) for one year following payment of all sums due in respect of the Tooling and the Customer shall not in any way whatsoever interfere with the Company's possession of such Tooling during such period.
 - 5.2.2. The rights of the Company pursuant to Clause 5.2.1 above shall be as Bailee and the Company shall have a first and paramount Lien on and over such Tooling during such period pending payment in full by the Customer to the Company of all and any such monies as are referred to in Condition 5.2.3 below.
 - 5.2.3. Should (notwithstanding Condition 5.2.1 above) the Customer give the Company notice in writing within the said period of 1 year that it wishes to remove such Tooling then it may do so on payment to the Company of such reasonable charges as the Company may raise to cover a reasonable profit on its costs of Setting Up and Manufacturing such Tooling and a reasonable Profit on anticipated Volume Production Orders during such period of 1 year (insofar as not already recovered).
 - 5.2.4. During such period of time (whether more or less than the said period of 1 year) that the Company retains possession of such Tooling it may work on alter adapt and/or amend them in such reasonable manner as it thinks fit provided that in so doing it does not make them unfit for their intended purpose.
- 5.3. If Tooling are to be manufactured and /or development work carried out on such Tooling in circumstances where Part Mould Charges are notified by the Customer on the Company's confirmation of order from the procedure referred to in clause 5.1 shall be modified as follows. Where Part Mould Charges are so notified to the Customer then a sum representing a part payment in respect of the Company's charges for the manufacture and /or development work carried out on the Tooling shall be payable upon receipt of the Order relating to those Tooling and title to the Tooling shall only pass to the buyer, subject always to the provisions of Clause 7 hereof, upon payment in full of all outstanding sums due (including the balance of such charges) in respect of the Tooling.
 - 5.3.1. The Company shall not use the Tooling for any other Customer without the Customer's prior written consent.
 - 5.4. Unless otherwise agreed the Company reserves the right to charge for Drawing Work undertaken for the customer.
 - 5.5. The company shall be under no obligation to proceed with cutting metal and /or other work in connection with the making or manufacture of Products or the production of Samples unless and until any and all relevant Drawings and /or ISIRs have been approved by the Customer in accordance with these Terms and Conditions.
 - 5.7.1. Whilst in possession of Tooling manufactured for a Customer the Company shall not be under any obligation to carry out any particular work or maintenance repair refurbishment or servicing to it and (in particular but without prejudice to the generality of the foregoing) shall not be under any obligation to maintain such Tooling after (in the reasonable opinion of the Company) it has reached or is about to reach the end of its useful life.
 - 5.7.2. The company reserves the right to charge for work of maintenance repair refurbishment or servicing to such Tooling and (in addition) to obtain agreement to its proposed charges before undertaking work.

6. DELIVERY

- 6.1. The Company will use all reasonable endeavors to deliver at the time stated but delivery dates shall be regarded as estimates only. The Company shall not be liable for any delay occasioned by any cause whatsoever beyond the Company's control.
- 6.2. Products shall be deemed to be delivered when they leave the premises of the Company or as the case may be the premises of the Company's suppliers in circumstances where the Products are delivered direct from such suppliers.
- 6.3. In the case of delivery of Goods by installments the Customer will not be entitled to treat the delivery of faulty goods in any one installment or the late delivery or non-delivery of any one installment as a repudiation of the whole contract.
- 6.4. A Variation and Delivery of up to 10% above or below the quantity of the Goods ordered shall be deemed due execution of the Order and shall not of itself give to the Customer any right of rejection or any other rights (except in the case of an under-delivery – to a pro rata adjustment of the Price payable) and the Company shall be entitled to make a pro rata adjustment to the payment due to reflect the delivered quantity.
- 6.5. When it is necessary for the Customer to supply any containers packaging labels identifications or particulars in respect of the Goods or do any other act to enable the Company to effect delivery of the Products such containers packaging labels identifications or particular must be supplied or acts performed as soon as reasonably practicable.

7. RISKS AND TITLE TO PRODUCTS

- 7.1. Risk of damage to or loss of the Products shall pass to the Customer upon delivery but Property in the products remains vested in the Company and shall only pass from the Company to the Customer upon full payment being made by the Customer of all sums due on whatsoever account or grounds to the Company from the Customer. In the event of any of the Products being sold by the Customer in such manner as to pass to a third party a valid title to such of the Products whilst any such proceeds and the Customer shall place such proceeds in a separate bank account. The company's rights under this Clause 7.1 shall attach to the proceeds of such sale. Nothing herein shall constitute the Customer the agent of the Company for the purposes of any such sub-sale.
- 7.2. The Customer agrees that prior to full payment being made as aforesaid the Company may at any time repossess any of the Products and enter upon the Customer's premises and remove such Products therefrom (and dispose of the same in any manner it may decide) and that prior to such payment the Customer shall keep such Products as fiduciary agent and bailee and separate and identifiable for this purpose.
- 7.3. In the event of the products becoming constituents of or being converted into other products whilst sums are due as provided in Clause 7.1. hereof the Company shall have the ownership of and title to such other products (but not by way of a charge) as if they were the Products and accordingly this Clause 7 shall so far as appropriate apply to such other Products subject to the Customer's right to the surplus of any monies realised by the said Products in excess of those due to the Company as provided herein.
- 7.4. Any implied authority that the Customer shall be entitled to sell the Products and pass property in the same to third parties in the normal course of its business of manufacture other Products out of the same or sell such other Products will continue until otherwise notified by the Customer by the Company or until the happening of any of the following events:-
- 7.4.1. any notice to the Customer that an Administrative Receiver or other Receiver or Manager is to be or has been appointed in respect of its undertaking or a material part thereof or other property or assets.
- 7.4.2. Any notice to the Customer that a petition to wind up the Customer is to be or has been presented to the Customer under Section 518 of the Companies Act 1985 or otherwise or any notice to the Customer of a proposal to pass a Resolution to wind up the Customer (including any proposal by the Customer so to do)
- 7.4.3. A decision by the Customer to make a voluntary arrangement or composition with its creditors or any notice to the Customer and/or any of its creditors that a proposal for the same is to be or has been made.
- 7.4.4. The Customer becoming unable to pay its debts as such expression is defined by the Insolvency Act 1986.
- 7.4.5. Any notice to the Customer that is to be the subject of a petition for an Administration Order presented to the Courts or the making of an Administration Order in respect of the Customer and upon the happening of any such events the Customer shall immediately notify a Director of the Company.
- 7.5. On receipt of written notice from the Company or on the happening of any of the events set out in Clause 7.4. above the Customer's implied authority to sell the Products shall be immediately withdrawn and all such Products and other Products made therefrom shall immediately be delivered to the Company.

8. NOTIFICATION OF LOSS OR DAMAGE

The Company must be informed in writing within five working days of delivery of any of the products in the event of any shortage or damage and within seven days of receipt of invoice if any of the Products have not been duly delivered otherwise such Products shall be deemed to have been accepted by the Customer as being in good order and in conformity with the contract.

9. PAYMENT

- 9.1. Unless otherwise stated payment for the Products is strictly net cash to be made by the due date stated on the Invoice. Failure to make due payment in respect of deliveries or installments under any contract between the Customer and the Company shall entitle the Company to delay suspend or cancel deliveries in whole or in part at its option.
- 9.2. If payment is not made in full by the due date stated on the Invoice the Company reserves the right to charge interest to the Customer at the rate of 6% per annum above the base rate from time to time of Barclays Bank Plc on the unpaid balance (such interest to accrue on a day to day basis from the due date stated in the Invoice (as well after as before any judgement)).
- 9.3. Payment shall be due whether or not property in the Products has passed by virtue of Clause 7 above and the company shall (without prejudice to any other right or remedy) accordingly be entitled to sue for the price once the same is due even if property has not passed.
- 9.4. Where the Customer shall have failed to take delivery of the Products or makes default in or commits any breach of its other obligations to the Company hereunder or any of the events referred to in Clause 7.4.1. - 7.4.5. happens or ceases or threatens to cease trade or if the Company shall reasonably doubt the solvency of the Customer then in any such case the Company reserves the right to stop manufacture and delivery of any Products ordered by the customer from the company under the terms of any contract.

10. LIABILITY

- 10.1. The Customer shall inspect the Products upon delivery. The Company will make good at its option by repair or replacement any defects in any of the Products due solely to defective workmanship or materials which are notified in writing to the Company and in the case of any defect discoverable upon reasonable examination such notification must be made within ten (10) days from the date of delivery and in the case of any defect not discoverable upon reasonable examination such notification must be made within ten (10) days of the date such defect is actually discovered provided that the aforesaid obligations on the Company shall not extend to defects caused by damage negligence (other than employees or agents of the Company) incorrect storage or application movement installation or defects caused by fair wear and tear provided further that the aforesaid obligations on behalf of the Company shall in any event only apply to defects notified within the period of 6 (six) months from the date of delivery of the Products. If required by the Company and at the Customer's cost the Products must be returned within fourteen (14) days of notification of the defect packaged and transported in accordance with the Company's requirements.
- 10.2. To the extent permitted by law and save as herein set out and for liability for death or personal injury resulting from negligence on the part of the Company and save for breach of the Company's statutory implied warranties as to title all express or implied conditions representation or warranties as to the description quality or fitness of any and all Drawings and /or Products (or Samples) supplied by the Company are expressly excluded.
- 10.3. Except in respect of death or personal injury caused by the negligence of the Company, the Company shall not be liable to the Customer 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with any Tooling or Mouldings or the design preparation manufacture or production thereof respectively or the supply of Products or their use or re-sale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price payable by the customer therefor, except as expressly provided in these conditions.
- 10.4. The Company accepts no responsibility where material or components supplied by the Customer or through his offices or from sources dictated by the Customer shall be defective or in any unsatisfactory condition and the Customer shall indemnify the Company against any loss suffered by the Company arising as a result of such defects or conditions.
- 10.5. Where the Contract is a Consumer Transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 or any Primary or Subordinate Legislation from time to time amending replacing or re-enacting the same) the statutory rights of the Customer are not affected by these conditions.

11. FORCE MAJEURE

The Company shall be excused from liability to the Customer if performance of the contract is prevented or hindered (in particular if an agreed delivery date is delayed) by any cause whatsoever beyond the Company's control and in particular without prejudice to the generality of the foregoing by Act of God war riot civil commotion Governments controls restrictions or prohibitions or any other Government act or omission whether local or national fire flood subsidence sabotage accident strike or lock out and shall not be liable for any loss or damage resulting therefrom suffered by the Customer.

12. SAFETY INSTRUCTIONS

The Customer undertakes with the Company that it will ensure compliance so far as is reasonably practicable by its employees agents licensees and customers with any instructions given by the Company or the manufacturer for the purpose of ensuring that any Products will be safe and without risk to health when properly used and will take any other steps or precautions as having regard to the nature of the Products are necessary to preserve the health and safety of persons handling using or disposing of them.

13. INDEMNITY

The Customer shall forthwith indemnify the Company on a full indemnity basis against all or any liability costs or expenses of whatsoever nature incurred by the Company due to an alleged or actual infringement of an Patent application registered Design Trade Mark Trade Name Copyright or other Intellectual Property Right arising out of Custom Mouldings or Tooling manufactured or Services provided by the Company to the Customer's order and in accordance with any Samples Designs Specifications and/or Instructions given by the Customer to the Company.

14. LEGAL INTERPRETATION

Any agreement to which these terms and conditions apply shall be governed and construed in accordance with English Law and any dispute arising out of or in connection with such agreement shall be determined by the English Courts.

15. SEVERANCE AND WAIVER

- 15.1. In the event of any part of these conditions being ineffective for any reason, the remainder thereof shall constitute the conditions binding upon the parties.
- 15.2. Failure or neglect by the Company to enforce at any time any of the provisions hereof shall not be construed as nor be deemed to be a waiver of the Company's rights hereunder nor shall such failure or neglect in any way affect the validity of the whole or any part of these terms and conditions and the Company's right to take subsequent action shall not be prejudiced thereby.
