

# CANYON (PLASTICS) GROUP LIMITED -- TERMS OF TRADE

## **APPLICABLE TERMS AND ACCEPTANCE OF ORDER**

These terms of contract between CANYON PLASTICS GROUP (the "Company") and the Buyer (the "Buyer") shall apply to all orders for plastic and resin products ("Goods") accepted by the Company from the Buyer and that these Terms and Conditions shall prevail and take precedence over any document or oral message from the Buyer. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right.

### **Quotation and Price**

The Company shall confirm the price of goods and services as a quotation and the Buyer shall confirm acceptance by signing the order.

No quotation shall constitute an offer unless signed by the Company and the Company may withdraw any quotation before the Buyer's signed acceptance. The quotation price may be increased if the Company suffers any cost increases which are beyond its control in the supply, production and delivery of Goods (including increases in imported materials and duties) between the date of Contract (or where the Contract arises from a quotation, the date of quotation) and the date of delivery, or if the Buyer varies or alters the requirements for the Goods. All prices are exclusive of GST, insurance, freight and other handling charges which shall be invoiced by the Company and payable by the Buyer.

### **Conditions for Special Orders (non catalogue)**

Where the buyer orders Goods that are to be specially made for the Buyer and where the Goods are non-catalogue Goods, the Buyer shall accept:

- (a) That any commissioning or acceptance procedure agreed in the quotation that has been successfully completed by the Company, the Buyer shall not make any claim against the Company that the supply of the order does not meet the Buyer's requirements with regard to the completion of the order.
  - (b) That the Company shall warrant that it shall supply the Goods according to the designs and specifications provided by the Company and issued to the Buyer (or the customer of the Buyer on behalf of the Buyer).
- OR
- (c) That the Company shall warrant that it shall supply the Goods according to the designs and specifications provided by the Buyer (or the customer of the Buyer on behalf of the Buyer) in which case the Buyer agrees that liability for the Goods will remain with the Buyer and the Buyer will pay the Company in full for the Goods and will not hold the Company responsible for any economic or consequential loss that may be incurred by the Buyer as a result of the Goods produced from incorrect or mistaken designs, specifications or instructions.

### **Tools and Dies (Price, Risk and Buyer Inspection)**

The price of tools and dies shall be quoted separately to the Goods. Alternatively the Buyer may provide tools and dies for the Company to use in manufacture. In either situation where tools and dies are damaged or deteriorate the Buyer shall accept charges for such repair or replacement.

Where the Buyer provides tools or dies for use in manufacture the Company warrants that it will supply the Goods according to the condition of the tools or dies supplied by the Buyer and that liability for Goods supplied under these circumstances shall remain with the Buyer and the Buyer will not hold the Company responsible for any economic or consequential loss that may be suffered by the Buyer as a result of incorrect or mistaken instructions, specifications or tools or dies provided by the Buyer or worn tools or dies owned by the Buyer.

The Buyer agrees that where Goods supplied have been made from tools or dies owned by the Buyer, the Company may retain tools and dies by way of lien against any indebtedness and may take possession of such tools and dies until the Buyer pays the Company in full for the Goods.

### **Payment**

Payment shall be made upon delivery of the Goods except where the Company has agreed to provide credit to the Buyer in which case payment shall be made by the 20th of the month following date of invoice. The Buyer shall make payment of all amounts due to the Company without any delay or deduction whether by way of set-off, counterclaim or otherwise. If at any time the Company reasonably deems the credit of the Buyer to be unsatisfactory, it may require the Buyer to provide at the Buyer's cost, security for payment and/or the Company may suspend performance of its obligations under this Contract until security is provided to the Company's satisfaction and the Company may require the Buyer to pay all costs incurred as a result of suspension and re-commencement of supply.

### **Interest for Late Payment**

The Company may charge the Buyer interest on any money's outstanding under the Contract on a daily basis at a rate equal to 5% above the Company's bank indicator lending rate. Interest is payable from the date payment was due until the date the Company receives payment. The Company's right to charge interest is without prejudice to the Company's other rights or remedies for the Buyer's default in failing to pay on the due date, and the Company may suspend performance of any of its obligations and secure any Goods in its possession until payment is made in full.

### **Delivery**

Delivery by the Company to a carrier accepted by the Buyer or delivery from the Company's premises when the Company advises it is ready to deliver constitutes delivery. If the Buyer fails to take delivery the Company has the right to charge the Buyer for costs of storage or transport or both.

Delivery of +- ten per cent of the quantity of the Goods ordered by the Buyer constitutes performance of the Contract. The Buyer will accept a pro-rata cost for the quantity of Goods supplied.

Goods may be delivered in instalments and charged upon delivery and in such case each delivery will be regarded as a separate contract and Goods delivered shall be paid by the Buyer in accordance with the Terms of Payment.

The Company will make every effort to ensure delivery of Goods but will not be liable for any loss or damage or consequential loss to the Buyer arising from delays in delivery.

### **Risk, Ownership and Title**

The Buyer agrees that the Company has legal and equitable right to title in the Goods (ownership) until the contract price is paid.

Regardless of the Company ownership of the Goods, the Buyer agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods while in the possession of the Buyer. This means that the Buyer shall agree to properly store, protect and insure the Goods under the risk policy of the Buyer.

Failure by the Buyer to properly protect and insure the Goods shall not absolve the Buyer of the legal responsibility to the Company to pay for the Goods in the event of fire or loss damage or theft while under the care and responsibility of the Buyer.

Notwithstanding that property in the Goods is retained by the Company, the Buyer shall store the Goods separately in the premises of the Buyer and in such a way that they are identifiable as the property of the Company and shall not alter the Goods in any way or mix the Goods with other goods owned by the Buyer unless the Buyer has paid the Company in full.

The Company authorises the Buyer to sell the Goods in the ordinary course of business and to deal with such proceeds of sale as fiduciary agent and bailee of the Company until the Buyer pays the Company in full without deduction or setoff. The Buyer shall agree as fiduciary agent and bailee of the Company that the proceeds of sale are the property of the Company until the outstanding debt to the Company has been paid.

The Company may revoke the authority given to the Buyer to sell the Goods that have not been paid in full by giving written notice at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default of its obligations under the contract or any other contract between the Company and the Buyer, and shall be deemed automatically revoked if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with creditors, or (in the case of a Company) do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Buyer or a Receiver is appointed in respect of all or any assets of the Buyer.

Where Goods in respect of which property has not passed to the Buyer are sold by the Buyer pursuant to the authority granted any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Buyer, shall be held upon trust by the Buyer for the Company and any proceeds of sale so received by the Buyer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Buyer to the Company.

If the Goods, the subject of this contract, have become the constituent of mixed with or attached to any other goods, meaning Goods that are sold by the Company, and those goods are sold by the Buyer prior to the Company receiving payment, then a portion of the proceeds of that sale, attributable to the value of the Company's Goods, shall be the property of the Company, and the Buyer shall ensure that such proceeds are at all times held in a separate fund in trust for the Company.

The Buyer shall inform its creditors of the terms upon which it buys Goods from the Company and shall provide the Company when requested for the business name, address and contact details of its creditors purchasing Goods in which the Company has retained title and also including that the Company may create and register a Purchase Money Security Interest over the Goods under the Personal Property Securities Act. The Buyer also agrees to waive the right to receive a verification statement for purposes of s.148 of the Act and shall also inform any Trustee in Bankruptcy or Liquidator of the Buyer or any Receiver of the Buyer's business or assets of the rights of the Company and title to the proceeds of sale.

In any event where Goods remain unpaid by the Buyer, the Company has unreserved right to enter the property of the Buyer or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the Credit (repossession) Act and the Buyer will not hold the Company responsible for any economic or consequential loss that the Buyer may suffer as a result, whether the Goods are attached to other goods or property owned by the Buyer, or not.

The Buyer agrees that where Goods supplied have been made from specifications and Intellectual Property provided by the Buyer such specifications and Intellectual Property shall constitute part of the value of the Goods supplied and that the Company has an unreserved lien over and may take possession of such specifications and Intellectual Property until the buyer pays in full for the Goods.

### **Claims for Returned, Damaged or Defective Goods**

The Company may, at its discretion, repair or replace any damaged or defective Goods or make a reasonable allowance on the purchase of goods to replace the Goods provided:

- (a) The Buyer returns the Goods within thirty (30) days of delivery at the Buyers cost, together with a copy of the invoice and a claim specifically identifying the damage or defect(s); and
- (b) The Company has reasonable opportunity to investigate the claim.

If the Buyer does not comply with the above requirements, the Buyer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

The Buyer agrees that claims shall not be considered in respect of Goods which:

- (i) are not intact and in original condition
- (ii) have been abused or improperly stored or suffered damage
- (iii) have been sold to the Buyer on a non-refundable basis
- (iv) have been sold to the Buyer on tender or in non-standard lots or special labelling.
- (v) are more than (12) twelve months after the date of delivery.
- (vi) in the case of discrepancies in order quantity or type of Goods where the claim is not in writing within (7) seven working days of receipt of the order.

### **Company Guarantee & Liability**

The Company's liability in respect of any claim shall relate only to specific defects in the Goods arising from faulty materials or workmanship of the Company from period of twelve months following the date of delivery.

The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond the Company's reasonable control. The occurrence of such an event shall not give the Buyer a right of cancellation of the contract.

### **Consumer Guarantees Act 1993**

Nothing in these terms is intended to have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act where the Buyer acquires the Goods in a business to business situation and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.

The Buyer shall not, in relation to the supply by the Purchaser of the Goods, give or make any undertaking, assertion or representation in relation to the Goods without the prior approval in writing of the Company, and the Buyer shall indemnify the Company against any liability or cost incurred by the Company as a result of any breach by the Buyer of this provision.

**Grounds for Termination by the Company**

This Agreement may be terminated by the Company immediately on written notice to the Buyer, if an Event of Default of payments due to the Company by the Buyer occurs.

Default will also mean, if the Buyer:

- (a) Fails to commence operation of the contract meaning orders given to the Company on or before commencement date meaning the date of the Buyers order.
- (b) Fails to comply with any quality or standards for the care of the Goods issued by the Company.
- (c) Shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors.
- (d) Where the Buyer is a Company or incorporation do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Company or incorporation or if a Receiver is appointed in respect of all or any assets of the Company or incorporation.

**Immediate Steps Upon Termination.**

Upon the termination of this agreement for any reason, all rights of the Buyer granted by this agreement shall terminate and any Intellectual Property provided by the Buyer to the Company shall become the property of the Company and the Buyer will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this agreement.

**No release from obligations.**

Terminations of this agreement shall not relieve the Buyer of its obligations to pay all money owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement shall not relieve the Buyer from liability arising from any antecedent breach of the terms of this agreement.

**Applicable Law for Dispute and Arbitration**

In the event of any dispute between the Company and the Buyer arising out of this Agreement, the substantive laws of New Zealand shall apply and such dispute shall be referred to a Mediator to be agreed between the parties and upon failure to accept the resolution of the Mediator shall be referred to an Arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996 and any amendments thereof and such arbitration and legal hearings shall be conducted in New Zealand.

**Guarantor**

Where the Buyer is a Company, the person(s) referred to as guarantor'(s) in this Agreement shall personally guarantee the obligations of the Buyer.

**Signed on behalf of the Company**

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**Signed on behalf of the Buyer**

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**Signed as Guarantor for the Buyer**

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