

MICHAEL BALLANCE PLASTICS LIMITED - TERMS OF BUSINESS

1. BASIS OF CONTRACT: These Conditions apply to the Contract to the exclusion of any other terms that the customer seeks to impose or which are implied by trade, custom, practice or course of dealing. The Order constitutes an offer by the customer to purchase the goods as described in the specification in accordance with these Conditions. The customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate and confirm the goods as suitable for the intended purpose of the customer. The Order shall only be deemed to be accepted when MBPL issues a written acceptance of the Order, at which point the Contract shall come into existence. The Contract constitutes the entire agreement between the parties. The customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MBPL which is not set out in the Contract. Any samples, descriptive matter, or advertising produced by MBPL and any descriptions or illustrations contained in MBPL's brochures are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract or have any contractual force. A quotation for the goods given by MBPL shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue (or such shorter period as is stated by MBPL at the time). The customer acknowledges that MBPL is a Distributor of the goods and that MBPL shall have no liability if it is unable to fulfil a Contract due to the unavailability or non-delivery of the goods to it. In the event that the customer cancels an Order and MBPL has ordered the goods which are the subject of that Order from its Supplier the customer shall be liable for the full value of the goods plus any costs incurred by MBPL in processing that Order. MBPL reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

2. DELIVERY: MBPL shall ensure that each delivery of the goods is accompanied by a delivery note identifying the date of the Order, all relevant customer/Supplier reference numbers, type and quantity of the goods (including the code number where applicable), special storage instructions (if any) and, if being delivered by instalments, the outstanding balance of goods yet to be delivered; and if MBPL requires the customer to return any packaging to MBPL, it will be clearly stated on the delivery note. The customer shall make any such packaging materials available for collection at such times as MBPL shall reasonably request. Returns of packaging materials shall be at MBPL's expense.

MBPL shall deliver the goods to the location set out in the order or such other location as the parties may agree at any time after MBPL notifies the customer that the goods are ready. Delivery of the goods shall be completed on the arrival of goods at the Delivery Location. Any dates quoted for delivery are approximate only; the time of delivery is not of the essence. MBPL shall not be liable for any delay in delivery caused by a Force Majeure Event or the customer's failure to provide MBPL with adequate delivery instructions or any other relevant instructions.

If the customer fails to accept delivery of goods within 3 Business Days of MBPL notifying the customer that the goods are ready, then:

- delivery of the goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which MBPL notified the customer that the goods were ready; and
- MBPL shall store the goods until delivery takes place, and charge the customer for all related costs and expenses (including insurance).

If 10 Business Days after MBPL notified that the goods were ready for delivery the customer has not accepted delivery of them, MBPL may resell or otherwise dispose of part or all of the goods and deduct reasonable storage/selling costs and charge the customer for any shortfall below the price of the goods. The customer shall not be entitled to reject the goods if MBPL delivers up to 5% more or less than the quantity of goods ordered. A pro rata adjustment shall be made to the Order invoice on receipt of notice from the customer that the wrong quantity was delivered. MBPL may deliver the goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the customer to cancel any other instalment.

3. QUALITY MBPL warrants that on delivery, the goods shall conform with the specification, save where they are sold as "redundant stock" in which case they will be taken "as is" subject to:

- the customer giving notice in writing to MBPL within 10 Business Days that some or all of the goods do not comply with the specification.
- MBPL be given a reasonable opportunity to examine such goods and conclude that they are not to specification and MBPL shall, at its option, replace the goods, or refund the price of the goods in full. MBPL shall not be liable for goods' failure to comply to specification in any of the following events:
 - the customer makes any further use of such goods after giving notice of non-compliance
 - the defect arises because the customer failed to follow MBPL's written instructions as to the storage, commissioning, installation, use and maintenance of the goods.
 - MBPL is not notified within 10 Business days of the problem with specification
 - the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or
 - the goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

It remains the customers' responsibility to ensure naked eye visual checks on material prior to its addition to material already in silo. MBPL will not accept any consequential loss of any material that the customer has added to from alleged defective stock supplied by MBPL.

Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law where excluded from the contract.

These Conditions in respect of quality shall apply to any replacement goods supplied by MBPL.

4. TITLE AND RISK. The risk in the goods shall pass to the customer on completion of delivery. Title to the goods shall not pass to the customer until MBPL has received payment in full (in cash or cleared funds) for the goods. Until title to the goods has passed to the customer, the customer shall:

- hold the goods on a fiduciary basis as MBPL's Bailee and store the goods separately from other goods held by the customer and ensure the goods remain readily identifiable as MBPL's property;
 - not remove, deface or obscure any identifying mark or packaging on the goods and maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- but the customer may resell or use the goods in the ordinary course of its business.

5. PRICE AND PAYMENT. The price of the goods shall be the price set out in the order however; MBPL may, by giving notice to the customer at any time up to 5 Business Days before delivery, increase the price of the goods to reflect any increase in the cost of the goods that is due to:

- any request by the customer to change the delivery location, date(s), quantities or types of goods ordered, or the Specification; or
- any delay caused by any instructions of the customer or failure of the customer to give MBPL adequate or accurate information or instructions.

Unless stated otherwise the price of the goods is inclusive of the costs and charges of packaging, insurance and transport of the goods.

The price of the goods is exclusive of amounts in respect of value added tax (VAT). The customer shall, on receipt of a valid VAT invoice from MBPL, pay to MBPL or their Invoice Finance Provider such additional amounts in respect of VAT as are chargeable on the supply of the goods.

The customer shall pay the invoice in full within the time period stated in the invoice. Payment shall be made to the bank account detailed on the invoice provided by MBPL.

If the customer fails to make any payment due to MBPL under the Contract by the due date, the customer shall pay interest on a daily basis from the due date on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate. The customer shall pay the interest together with the overdue amount.

The customer shall pay all amounts due in full without any deduction. The customer shall not be entitled to assert any credit, set-off or counterclaim against MBPL in order to justify withholding payment in whole or in part.

6. CONSIGNMENTS. Where goods are supplied to the customer on a consignment basis, 30 days from the date of delivery the customer or MBPL shall perform a stock take of the goods and all goods sold since delivery shall be paid for by the customer within the period stated by MBPL. On the date 60 days from delivery the customer or MBPL shall perform a second stock take and all goods sold since the 1st stock take shall be paid for by the customer within the period stated by MBPL. At the date 90 days from delivery all goods not accounted for during either of the stock takes referred to above shall be paid for by the customer.

The customer shall allow, on reasonable notice, MBPL to perform a stock take of all goods held by the customer at any time.

6. INSOLVENCY OR INCAPACITY If the customer becomes subject to insolvency or incapacity or MBPL reasonably believes that the customer is about to become subject to the same, MBPL may cancel/suspend all further deliveries under contract without incurring any liability to the customer. All outstanding sums shall become immediately due. The above shall apply in the event that:

- the customer gives any indication that it may suspend payment of its debts, or is unable to pay its debts or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or is deemed unable to pay its debts or as having no reasonable prospect of so doing,
- the customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors.
- any petition is filed for or in connection with the winding up of the customer, other than for the sole purpose of a scheme for a solvent amalgamation of the customer with one or more other companies or the solvent reconstruction of the customer;
- the customer is the subject of a bankruptcy petition or order; a creditor or encumbrance of the customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

7. LIMITATION OF LIABILITY. MBPL shall under no circumstances whatever be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and MBPL's total liability to the customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise

8. FORCE MAJEURE

MBPL shall not be liable for any failure in performing its obligations under Contract where the failure is caused by a Force Majeure Event as defined: any event beyond reasonable control, which could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

9. ASSIGNMENT AND SUB-CONTRACTING. MBPL may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of MBPL.

10. NOTICES Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at the relevant address and shall be deemed to have been received at 9.00 am on the second Business Day after posting or if delivered by commercial courier, on the date and time that the courier's delivery receipt is signed or upon receipt of a read receipt if being sent by email. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11. SEVERANCE AND WAIVER If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12. THIRD PARTY RIGHTS. A person who is not a party to the Contract shall not have any rights under or in connection with it.

13. VARIATION. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by MBPL.

14. GOVERNING LAW AND JURISDICTION. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales