

GENERAL CONDITIONS OF SALE

1. DEFINITIONS

"Additional Terms" means such terms and conditions additional to these Conditions as may be relevant to the supply of the specific Goods, as notified by the Company to the Buyer in accordance with condition 2.2.

"Buyer" means the party to which the Goods are supplied.

"Company" means RPC Containers Limited.

"Contract" means any contract for the sale of the Goods by the Company.

"Goods" means the items supplied by the Company to a Buyer pursuant to an order.

"Returnable Packaging" means pallets, metal cages, cartons and any other external packaging utilised by the Company in the delivery of Goods which may be specified by the Company as being Returnable Packaging.

2. APPLICATION AND STRUCTURE

2.1 Subject to condition 2.2, every Contract between the Buyer and the Company for the supply of Goods will be subject only to these Conditions and all other terms, conditions and warranties, whether express or implied (including any terms or conditions which the Buyer purports to apply under any purchase order, call-off order, confirmation of order or similar document), will be invalid.

2.2 If the Goods requested by the Buyer are subject to Additional Terms, then the Company shall communicate those Additional Terms to the Buyer and those Additional Terms shall be deemed to be incorporated into the Contract for the supply of the relevant Goods, together with these Conditions. In the event of any inconsistency between these Conditions and any relevant Additional Terms, the Additional Terms shall prevail.

2.3 The Company will supply the Goods only on these Conditions and all other terms, conditions and warranties, whether express or implied, are hereby excluded. Acceptance by the Buyer (or a third party, where delivery is to be made at the Buyer's direction to such third party) of the delivery of the Goods or collection of the Goods by the Buyer shall constitute unqualified acceptance of these Conditions.

2.4 No variation in these Conditions shall be binding on the Company unless in writing and signed on behalf of the Company.

2.5 Save for such employees as the Company may specify as authorised representatives, the Company's employees and agents are not authorised to accept, confirm or vary any order to the detriment of the Company, nor to make any representation or promise on the Company's behalf. In entering into any Contract, the Buyer acknowledges that it does not rely on any representations, variations or promises made by any employee or agent of the Company which are not subsequently confirmed by the Company in writing.

3. ORDERS, QUOTATIONS AND ORDER ACKNOWLEDGEMENTS

3.1 All quotations provided by the Company to the Buyer for the supply of Goods:

- (a) are based upon the cost of materials, utilities, transport and labour current at the date of the quotation;
- (b) are subject to these Conditions;
- (c) are valid for 30 days from the date of the quotation unless otherwise notified in writing by the Company; and
- (d) do not constitute an offer to supply goods.

3.2 The Buyer shall ensure that the details included in an order are complete and accurate in all respects.

3.3 Each order for Goods placed by the Buyer with the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

3.4 Following receipt of an order from the Buyer, the Company shall communicate to the Buyer whether or not it accepts the order in accordance with its terms. The Company shall not be bound in respect of any oral or written order from the Buyer unless such order is accepted on the Company's order acknowledgement form. An e-mail containing the Company's order acknowledgement sent from the e-mail address of an authorised representative of the Company will also constitute valid acceptance. Once an acknowledgement is sent by the Company, a Contract shall be deemed to be formed between the parties.

3.5 Subject to condition 6.1, a Contract formed as set out above shall be binding on the parties and shall not be subject to change in any way by the Buyer.

4. MANUFACTURE

All moulds and other equipment of whatsoever nature used to manufacture the Goods, including but not limited to any prototypes, shall remain the property of the Company unless otherwise agreed in writing.

5. CANCELLATION

5.1 No cancellation by the Buyer of any order or part thereof is permitted except where expressly agreed by the Company in writing.

5.2 If the Company agrees to the cancellation of an order (or part thereof), the Buyer will indemnify the Company fully against all losses, costs, claims and expenses:

- (a) incurred by the Company (or any sub-contractor of the Company) up to the time of such cancellation; and
- (b) committed to be incurred by the Company (or any sub-contractor of the Company) after the date of the cancellation but which cannot reasonably be avoided.

The Company shall use reasonable endeavours to mitigate any losses for which the Buyer may be liable under this indemnity (it being acknowledged that any failure to do so by the Company shall not operate as a barrier to recovery under this condition).

6. PRICE

6.1 The Company reserves the right at any time prior to delivery of the Goods to revise prices listed in the quotation or order acknowledgement to take account of increases in its own costs in producing or delivering the Goods, including, without limitation, the cost of any raw materials, electricity or other utilities, carriage, labour or overheads, and the increase or imposition of any tax, duty or other levy. If the Company revises the prices relevant to an order, the Company shall notify the Buyer as soon as reasonably practicable and such notification shall operate as a variation of the Contract for the supply of the relevant Goods.

6.2 All prices quoted are net of value added tax and all other taxes or duties.

6.3 The Company shall only consider granting credit to the Buyer on receipt of its signed credit application form. The Company shall be entitled, in its absolute discretion, to reject the application or grant such a facility for whatever amount the Company may decide, whether or not this is less than the amount applied for. The Company may decrease the amount of credit offered or remove the facility entirely on whatever notice it deems appropriate or on no notice and without giving any reason for the change.

7. QUANTITIES AND INSTALMENT DELIVERIES

7.1 The Buyer acknowledges that the Company delivers Goods in full boxes/pallets/cages (as appropriate to the relevant Goods) only. Accordingly, the Company shall be deemed to have fulfilled its obligations in respect of the supply of any order of Goods if it supplies an amount of Goods in full boxes/pallets/cages (as appropriate) which most closely approximates to the quantity of Goods ordered by the Buyer (either over or under the quantity ordered by +/- 10%, or otherwise at the discretion of the Company). In such circumstances, the Buyer shall pay for the actual quantity of Goods delivered. Where delivery is to be by instalments, then for the purposes of this condition, the instalments shall be aggregated.

7.2 Unless agreed otherwise by the Company, the Goods may be delivered in instalments and each such instalment shall be treated as a separate Contract (other than for the purposes of condition 7.1).

8. DELIVERY, DELIVERY DATES AND PACKAGING

8.1 In the absence of any agreed delivery schedule, delivery shall take place on the date notified by the Company to the Buyer.

8.2 Delivery shall take place at the location notified by the Buyer to the Company under the order (or to such other location as may be specified pursuant to the arrangements agreed under condition 8.1). Delivery of the Goods shall be by road transport within the mainland of the United Kingdom. The cost of such delivery is included in the price unless the Company informs the Buyer otherwise. Any alternative method or location of delivery shall be at the Buyer's expense, having first been agreed in writing by the Company.

8.3 Without prejudice to condition 8.2, the Company reserves the right to charge an additional premium for delivery if the Company's delivery sub-contractor charges any additional premium to the Company in respect of such delivery.

8.4 Unless otherwise agreed in writing, delivery dates quoted or notified by the Company are estimates only and cannot be guaranteed. Time for delivery by the Company is not of the essence and shall not be made so by the service of any notice. The Company will use reasonable endeavours to comply with such dates but shall not be liable to the Buyer for any loss or damage sustained by the Buyer as a result of failure to comply with such dates.

8.5 If the Buyer or (where delivery is to be made to a third party at the Buyer's direction) the third party refuses or fails to take delivery of the Goods delivered by the Company, the Company may:

- (a) terminate the Contract in respect of the relevant Goods with immediate effect;
- (b) dispose of the Goods as it sees fit; and
- (c) recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

8.6 Where the Goods are delivered using Returnable Packaging, the Buyer shall hold such Returnable Packaging in appropriate storage and in good condition and arrange for such Returnable Packaging to be returned to the Company or, if the Company shall so specify, make it available for the Company to collect at such reasonable time as the Company may designate. The Company is entitled to invoice the Buyer

for the cost of all Returnable Packaging used in a delivery unless it is returned to the Company in good condition, within 28 days after the date of delivery.

8.7 The Buyer shall meet the cost of any extra packing materials of any type which it may, in the Company's sole discretion, be necessary or which the Buyer may request. The Buyer shall be solely responsible for the disposal or recycling of all packaging (other than Returnable Packaging returned to the Company) in accordance with all regulations, whether statutory nor otherwise, in force from time to time, governing the recycling or disposal of packaging.

9. DAMAGE IN TRANSIT

In the event of loss or damage to the Goods in transit, the Company's entire liability shall be limited to replacing or repairing (at the Company's option) the Goods or the part thereof lost or. The Company shall have no liability for loss or damage to Goods in transit unless the Buyer notifies the Company in writing:

- (a) in the event of partial loss or damage – within 5 days after the date of delivery; or
- (b) in the event of total loss – within 5 days of advice of despatch.

10. PAYMENT

10.1 Payment for the Goods shall be made in full to the Company as it shall direct but in any event within 20 days after the end of the month in which dispatch of the relevant Goods took place. The Company may suspend the supply of the Goods to the Buyer where any sums are overdue under any Contract until all such amounts have been paid in full.

10.2 The Company shall be entitled to charge interest and recover from the Buyer on any amount overdue at the monthly rate of 2 per cent. above National Westminster Bank Base Rate run from the due date for payment and receipt by the Company of the full amount (including any accrued interest) whether before or after judgment.

10.3 The Buyer shall have no right of set-off, statutory or otherwise.

11. RISK AND OWNERSHIP OF GOODS

11.1 Risk of damage to, or loss of, the Goods the subject of a Contract shall pass to the Buyer at the time of delivery.

11.2 The Buyer shall be responsible for ensuring the security of the Goods from the time of delivery. For avoidance of doubt, the Company shall under no circumstances be liable for any breach of security from the time of delivery and the Buyer shall indemnify the Company from and against any loss of or damage to the Goods due to any breach of security of the Goods during the period for which the Buyer is responsible for them.

11.3 Notwithstanding risk in the Goods passing in accordance with condition 11.1, title in the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Buyer on any account.

11.4 The Buyer is licensed by the Company to use or to agree to use or to agree to sell the Goods delivered to the Buyer subject to the express condition that the entire proceeds of any sale are held in trust for the Company and are not mixed with other moneys or paid into an overdraft bank account and shall at all times be identifiable as the Company's moneys.

11.5 Until ownership of the Goods has passed to the Buyer and unless the Buyer resells the Goods before ownership passes to it (as envisaged in condition 11.4), the Buyer must:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition, insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company (and on request the Buyer shall produce the policy of insurance to the Company for inspection); and
- (e) hold any proceeds of the insurance referred to in condition 11.5(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdraft bank account.

11.6 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Company accordingly; and
- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

11.7 Where the Company is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

11.8 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

11.9 The Buyer grants (and shall procure that any third party on whose premises the Goods may be stored shall grant) the Company, its agents and employees an irrevocable licence at any time to enter any premises where Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has ended, to recover them.

11.10 For the avoidance of doubt it is hereby declared that the rights in this condition are in addition to (and not in place of) the rights given to the Company by sections 38-48 of the Sale of Goods Act 1979.

12. WARRANTY

12.1 The Company warrants that it has title to and the unencumbered right to sell the Goods.

12.2 Save as expressly set out in these Conditions, all conditions and warranties, express or implied by operation of law or otherwise, are hereby excluded to the fullest extent permitted by law.

13. LIABILITY

13.1 The Company shall free of charge either repair or, at its option, replace defective Goods (being Goods which do not comply with the agreed specification) where the defects appear within 14 days after the date of delivery to the Buyer (or a third party where delivery is to be made to such third party), provided that:

- (a) notice in writing of the defects complained of shall be given to the Company upon their appearance; and
- (b) such defects shall be found to the Company's satisfaction to have arisen solely from the Company's faulty design, manufacture, workmanship or materials.

13.2 The Company will collect the defective Goods from the point of delivery.

13.3 The Buyer shall not be entitled to claim the benefit of the Company's undertaking set out in condition 13.1 if:

- (a) it uses the Goods after notifying the Company of the defect;
- (b) it alters or repairs the Goods without the Company's consent; or
- (c) it becomes involved in any dispute, suit, action, proceedings, controversy or claim of whatever nature arising out of or in any way related to the Goods and it does not notify the Company of such involvement as soon as reasonably practicable.

13.4 Any repaired or replaced Goods shall be delivered by the Company as soon as reasonably practical to the original point of delivery in accordance with and subject to these Conditions.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 13.5-13.7

13.5 Save as provided in condition 13.1, the Company SHALL NOT BE LIABLE to the Buyer for any loss or damage whatsoever suffered or howsoever arising as a result of a defect in the Goods or for any loss or damage to or caused by the Goods or by the acts or omissions of its employees, agents and sub-contractors or for any representation, statement or tortious act or omission including negligence arising under or in connection with any Contract, and all other conditions, warranties or other statements concerning the Goods are hereby excluded.

13.6 Subject to condition 13.8, the Company shall not in any event be liable to the Buyer for any indirect or consequential loss damage or expenses of any nature, for any loss of profit, business, contracts, revenues or anticipated savings, for any costs associated with a product recall or for any loss or damage suffered by the Buyer as a result of any action brought by a third party, even if any such loss was reasonably foreseeable or the Company had been advised of the possibility of the Buyer incurring it.

13.7 Subject to condition 13.8, the Company's entire liability to the Buyer in respect of any Contract, whether in contract, tort or howsoever arising, shall be limited to the price of the Goods specified in the Contract.

13.8 The Company's liability to the Buyer for death or injury resulting from its negligence shall not be limited and no exclusions or limitations shall apply in the case of fraud or fraudulent misrepresentation.

14. SPECIFICATIONS

14.1 Unless expressly agreed otherwise in writing by the Company, all drawings, designs, specifications and particulars submitted by the Company are approximate only and the Company is not liable for any deviation from them.

14.2 All drawing designs, specifications and information submitted by the Company shall be treated as confidential and shall not be disclosed to any third party without the Company's written consent or used by the Buyer other than for purposes authorised by the Company.

14.3 The Company accepts no responsibility for any errors, omissions or other defects in any drawings, design or specifications not prepared by the Company. The Buyer shall indemnify the Company against each loss, liability and cost which the Company incurs arising from them.

15. LICENCES AND CONSENTS

If a licence or consent of any governmental or other authority is required in connection with the Buyer's purchase or use of the Goods, the Buyer shall obtain the licence or consent at its own expense and produce evidence of it to the Company on demand.

Failure to obtain any licence or consent does not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Company resulting from such failure shall be paid by the Buyer.

16. FORCE MAJEURE

16.1 The Company shall not be liable for any failure to deliver the Goods or otherwise to perform any obligations under any Contract to the extent arising from circumstances outside the Company's reasonable control including, but not limited to, strikes and lockouts (a "Force Majeure Event").

16.2 Should the Company be prevented from performing its obligations due to a Force Majeure Event, it shall give the Buyer written notice of this fact as soon as reasonably practicable

17. TERMINATION

17.1 The Company shall have the right (without prejudice to the exercise of any other rights it may have against the Buyer) to terminate a Contract by written notice to the Buyer upon:

(a) any breach by the Buyer of the relevant Contract (or any other contract between the Buyer and the Company), including (without limitation) a failure to pay in accordance with condition 10; or
(b) the Buyer entering into any composition or arrangements with or for the benefit of creditors or having a receiving order made against him or (being a company) having a winding up petition presented or resolving to wind up or having an administrator, receiver or manager appointed over all or any part of its assets, or (being an individual) becoming bankrupt or insolvent or taking or suffering action in consequence of debts or carrying out or undergoing any analogous act or proceeding under the applicable law of any jurisdiction.

17.2 Upon termination, any indebtedness of the Buyer to the Company shall become immediately due and payable and the Company shall be under no further obligations to supply Goods to the Buyer. In addition, the Company shall be entitled to exercise any other rights it may have under this Contract or in law in respect of the Goods supplied.

18. INFRINGEMENT OF THIRD PARTY RIGHTS

18.1 The Buyer shall indemnify the Company against any loss, liability, cost, claim, damage or expense which the Company may incur as a result of any claim by any third party that the compliance by the Company with any requirements or specifications provided by or on behalf of the Buyer infringe the intellectual property rights or any other rights of any third party.

18.2 The Buyer shall notify the Company immediately of any actual or threatened claim or action alleging infringement of any rights of any third party. The Company shall have control over and shall conduct any such proceeding in such manner as it shall determine. The Buyer shall provide all reasonable assistance as the Company may request. The cost of such proceedings shall be borne by the Buyer where the actions of the Buyer have led to the alleged infringement of the relevant third party's rights.

19. INTELLECTUAL PROPERTY

19.1 Nothing in these Conditions nor in any Contract shall operate to transfer to the Buyer any intellectual property rights belonging to the Company.

19.2 The Buyer shall immediately bring to the Company's attention any probable or actual infringement of the Company's intellectual property rights of which it becomes aware.

19.3 Where the Company designs the Goods pursuant to a commission from the Buyer, then any intellectual property rights in the Goods shall vest in the Company and the Buyer agrees that it shall do any acts and execute any documentation required by the Company to secure vesting of such rights in the Company.

19.4 To the extent that the Buyer owns intellectual property rights in the Goods or any specification, drawing or other material used in the creation of the Goods, it hereby grants the Company such rights over those intellectual property rights as may be necessary for the Company to fulfil its obligations under these Conditions.

19.5 No warranty is given that Goods do not infringe the intellectual property rights of any third party.

20 SALES PROMOTION DOCUMENTATION

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

21 ASSIGNMENT

The Buyer may not assign or, transfer, declare a trust over or in any other way make over to any third party (or purport to do so), any of its rights or obligations under a Contract without the Company's prior written consent.

22 EXCLUSION OF THIRD PARTY RIGHTS

The operation of the Contracts (Rights of Third Parties) Act 1999 is excluded from these Conditions and each Contract.

23 NOTICES

Any notices to be given in respect of this contract shall be delivered to such address as a party may from time to time notify to the other and shall be deemed to have been duly given to the party concerned, if sent by post, 48 hours after posting, or if sent by fax or email, immediately after sending. Notification by email shall not be effective for notices under clauses 5, 9, 13, 16, 18 and 19.

24 HEADINGS

The headings of these Conditions are for convenience only and shall have no effect on the interpretation thereof.

25 INVALIDITY

If any provisions of these Conditions is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision shall not be affected or impaired in any way.

26 WAIVER

No waiver by the Company of 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.

27 LAW

The formation, construction, performance, validity and all aspects of each Contract shall be governed by English law, and any dispute, controversy or disagreement arising in connection with any Contract shall be subject to the exclusive jurisdiction of the Courts of England and Wales.