



ELLIOTT PACKAGING LTD

TERMS AND CONDITIONS OF SALE

1. Interpretation

In these Conditions:-

"Buyer" means a person, firm or company who accepts a quotation of the Company for the sale of the Goods or whose order for Goods is accepted by the Company.

"Goods" means the goods which the Company is to supply in accordance with these Conditions.

"Company" means Elliott Packaging Limited.

"Conditions" means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in Writing between the Buyer and the Company.

"Contract" means the contract for the purchase and sale of the Goods "Writing" includes facsimile transmission.

2. Basis of Sale

2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company or any oral quotation of the Company which is subsequently confirmed in Writing or any written order of the Buyer which is accepted by the Company subject in each 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. Terms and conditions put forward by the Buyer on the Buyer's order form or other document or otherwise shall not be binding on the Company. No Contract shall be made until the Company has accepted the Buyer's order by issuing a written confirmation of order.

2.2 Any quotation by the Company shall remain open for acceptance for 30 days from the date on which the Company sends the written quotation to the Buyer, unless the written quotation refers to an alternative period during which the quotation may be accepted.

2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representative of the Buyer and the Company.

2.4 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4.1 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application use or performance of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.4.2 In the event of the Company being liable under Clause 2.5.1 the Company shall be liable only to accept the return of the Goods concerned and to refund the Buyer the price or any part of the price of such Goods paid by the Buyer

3. Orders and Specifications.

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until acknowledged in Writing by the Company.

3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order including the contents, wording, design, colouring or positioning of printed matter on the Goods and specification submitted by the Buyer and for giving the Company any further necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract.

3.3 If the Goods are to be manufactured or any printing or other process is to be applied to the Goods by the Company in accordance with a specification or proof submitted by the Buyer then the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from the Company's use of the Buyer's specification or proof.

3.4 Any order accepted by the Company and confirmed in Writing concerning the printing of characters on flexible film shall be subject to a tolerance of +/-2% in the repeat length.

3.5 The Company will use its reasonable endeavours to supply the Goods in accordance with any sample which may be submitted but save as provided in Clause 9 no guarantee warranty condition or representation is given (whether express or implied) that the bulk will correspond with the sample.

3.6 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any statutory or EC requirements or where the Goods are to be supplied to the Buyer's specification which do not materially affect their quality or performance.

4. Packaging

Packaging for the Goods shall be at the discretion of the Company which shall have the right to pack the Goods in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit unless detailed packaging instructions are received in Writing from the Buyer prior to agreeing a price for the Goods.

5. Price

5.1 The price of the Goods shall be the Company's quoted price.

5.2 The Company 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 Company which is due to any factor beyond the control of the Company (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 requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

- 5.3 All prices quoted are exclusive of VALUE ADDED TAX which the Buyer shall be additionally liable to pay to the Company
- 5.4 Except as otherwise stated under the terms of any quotation or in any price list of the Company and unless otherwise agreed in Writing between the Buyer and the Company all prices are given by the Company on an ex works basis and where the Company agrees to deliver the Goods otherwise than at the Company's premises the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 5.5 The price of returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned to the Company before the due payment date.

6. Payment

- 6.1 Subject to any terms agreed in Writing between the Buyer and the Company the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time following delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or the Company has tendered delivery.
- 6.2 Unless otherwise agreed and confirmed in Writing by the Company the Buyer shall pay the price of the Goods within 30 days from the end of the month in which the Company's invoice is raised and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer by virtue of clause 10. The time of payment of the price shall be of the essence of the Contract.
- 6.3 If the Buyer fails to make full payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:
- 6.3.1 cancel the Contract or suspend any further deliveries to the Buyer
- 6.3.2 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 Company) as the Company may think fit (notwithstanding any purposed appropriation by the Buyer)
- 6.3.3 instruct a debt collection agency to recover the sums outstanding from the Buyer and the Buyer shall be liable to pay the Company's costs in instructing the said agency and
- 6.3.4 charge the Buyer interest on all sums unpaid after the due date until the day payment is received at the rate of 2% per annum above the base rate from time to time of Barclays Bank Plc accruing from day to day until payment is received.

7. Delivery

- 7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises or other delivery location agreed between the Company and the Buyer provided that if the Buyer collects or arranges collection of the Goods or nominates a carrier for the Goods, delivery shall take place when the Goods are loaded on to the collection or carriers vehicle.
- 7.2 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company the Company may:-
- 7.2.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or
- 7.2.2 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
- 7.2.3 it is the Buyer's responsibility to notify the Company if the Goods have not been received by the Buyer and such notification must be given to the Company within 7 days of the date of receipt of the Company's invoice therefore or 21 days in respect of Goods supplied for export. If no notification is received the Buyer shall be deemed to have received the Goods.
- 7.3 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault and the Company is accordingly liable to the Buyer, the Company'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.
- 7.4 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to 10% more or 10% less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.

8. Examination and Claims

- 8.1 The Buyer shall upon delivery examine the Goods which shall be supplied in accordance with the manufacturing standards and tolerances generally accepted within the flexible packaging industry and any claim by the Buyer which is based on any defect in the quality or condition of the Goods or printing or their failure to correspond with a proof or specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Company accordingly the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.2 The Buyer shall comply with the carrier's rules, regulations and requirements so as when appropriate to enable the Company to make a claim against the carrier in respect of any damage or loss in transit.

9. Defective Goods and Warranty

- 9.1 The Company will rectify or at its option replace free of charge any Goods supplied and of its own manufacture which are returned to the Company's works, carriage paid by the Buyer within 3 months of the date of their original delivery and which are shown to the Company's reasonable satisfaction to be defective by reason of faulty material or workmanship on the part of the Company subject to the following conditions:
- 9.1.1 the Company shall be under no liability in respect of any defect in the goods arising from any drawing design or specification supplied by the Buyer
- 9.1.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, extreme climatic conditions, wilful damage, negligence, failure to follow the Company's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Company's written approval

- 9.1.3 the Company shall be under no liability under the above (or any other condition or guarantee) if the total price for the Goods has not been paid by the due date for payment
- 9.1.4 the above does not extend to parts, materials or equipment not manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company (if any) and to the extent that it is possible to make available to the Buyer the said benefit
- 9.1.5 the Company's obligation to refund or replace as aforesaid shall constitute the full extent of the Company's liability in respect of any loss or damage sustained by the Buyer whether caused by any breach of the Contract or by misrepresentation or by the negligence of the Company, its employees or agents or arising from any other cause whatsoever and the Company shall not be liable for any consequential economic direct or indirect loss suffered by the Buyer arising therefrom
- 9.1.6 The Company warrants to the Buyer that the Goods will (at the date of delivery) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 (as amended)) and fit for any purpose made known to the Company in Writing at the time of placing the order

10. Retention of Title and Risk

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 10.1.1 in the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Buyer that the Goods are available for collection or
 - 10.1.2 in the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the Company has rendered delivery
- 10.2 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 Company has received in cash or cleared funds payment in full for the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due
- 10.3 Until property in the Goods passes to the Buyer in accordance with clause 10.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Buyer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property
- 10.4 Notwithstanding that the Goods (or any of them) remain the property of the Company, the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Company the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money
- 10.5 The Company shall be entitled to recover the price (plus Value Added Tax) notwithstanding that property in any of the Goods has not passed from the Company
- 10.6 Until such time as property in the Goods passes from the Company the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Company. If the Buyer fails to do so the Company may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 10.4 shall cease
- 10.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company. Without prejudice to the other rights of the Company if the Buyer does so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable
- 10.8 The Buyer shall insure and keep insured the Goods to the full price against "all risks" to the reasonable satisfaction of the Company until the date that property in the Goods passes from the Company and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company if the Buyer fails to do so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable
- 10.9 The Buyer shall give immediate notice in Writing to the Company if the Buyer fails to make any payment to any of its creditors when due, compounds with its creditors, executes an assignment for the benefit of any of its creditors, commits any act of bankruptcy or being a company enters into voluntary or compulsory administration or has an administrator receiver, administrative receiver or manager appointed over all or part of its assets or takes or suffers any similar action in consequence of debts or becomes insolvent or if any steps are taken to achieve any of the above
- 10.10 If the Buyer is a company it must give fourteen days written notice to the Company before applying to the court for the appointment of an administrator or if an application is made by any other party the Buyer must give immediate written notice to the Company upon the application coming to the Buyer's notice. Immediately on the giving of notice in accordance with this clause the Buyer must surrender possession of any goods owned by the Company. Failure to give notice in the manner described above to the Company shall be deemed to amount to a fundamental breach of the Contract on the part of the Buyer entitling the Company at its sole discretion and without prejudice to any other rights or remedies under the Contract to suspend contractual performance or terminate the Contract forthwith on written notice to the Buyer. Nothing in this clause shall prevent the Company from suing for the price when due
- 10.11 If the Buyer fails to make payment for the Goods in accordance with this Contract or commits any other breach of this Contract or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind-up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Company may in its absolute discretion and without prejudice to any rights which it may have:
 - 10.11.1 suspend all future deliveries of Goods to the Buyer and/or terminate the Contract without liability upon its part and/or
 - 10.11.2 exercise any of its rights pursuant to clause 10.6

- 11. Breach by or Insolvency by the Buyer**
If the Buyer shall not comply with any of its obligations to the Company or upon the occurrence of the one of the events referred to in clause 10.11 the Company shall have the right forthwith to terminate the Contract but without affecting any other claim right or remedy of the Company against the Buyer
- 12. Artwork and Proofs**
- 12.1 Where the Company includes in its quote a charge for designs, artwork, proofs and/or disks in addition to the price of the Goods then unless otherwise agreed in Writing by the Company such designs, artwork, proofs and or disks and the copyright in such shall remain the property of the Company
- 12.2 In respect of any designs, artwork, proof and/or disks supplied to the Company by the Buyer in connection with the Goods unless otherwise agreed in Writing by the Company, the Company shall not be obliged to retain such for a period in excess of 3 years from the date of Completion of the last order
- 12.3 Any designs, artwork, proofs and/or disks supplied to the Company by the Buyer in connection with an order shall remain at the Buyer's risk to the extent that the Company shall not be responsible for any loss or damage to such which is not covered as an "insured risk" under the Company's policy of insurance in force from time to time
- 13. Cancellation, Suspension and Termination**
- 13.1 Cancellation of the whole or any part of the Contract shall only become effective upon confirmation in Writing by the Company. The cost of any work carried out or special material procured up until that time shall be payable in full by the Buyer unless otherwise agreed in Writing by the Company
- 13.2 If for any cause whatsoever beyond its control the Company is unable to make any delivery on the applicable delivery date or perform any of its other obligations under the contract the Company may by notice in Writing to the Buyer terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer
- 14. Force Majeure**
- 14.1 The Company 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 Company's obligations in relation to the Goods if the delay or failure was due to any course beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control:
- 14.1.1 Act of God, explosion, flood, tempest, fire or accident
- 14.1.2 war or threat of war, sabotage, insurrection or civil disturbance
- 14.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
- 14.1.4 import or export regulations or embargoes
- 14.1.5 strikes, lock-outs or other industrial actions (whether involving employees of the Company or of third party)
- 14.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery
- 14.1.7 power failure or breakdown in machinery
- 14.2 If the Company's performance of the Contract is affected as outlined in clause 14.1 then the Company may elect at its absolute discretion either:-
- 14.2.1 to terminate the Contract or
- 14.2.2 to proceed to perform or continue performance under the Contract
- 14.3 In the event that the Company makes an election under clause 15 the Buyer shall accept the Goods or such part of them as are delivered to it notwithstanding the delay
- 15. Replaced Goods**
These Conditions shall apply mutatis mutandis to any goods supplied or any work done by the Company by way of replacement, rectification or improvement under any of these Conditions
- 16. Sub-contractors**
The Company shall be entitled without the prior consent of the Buyer to subcontract the whole or any part of the Contract or to employ a sub-contractor to perform its obligations under any such Contract. This shall not in anyway vary or limit the obligations of the Company under the Contract
- 17. Dispute Resolution**
- 17.1 Without prejudice to the Company's specific rights in respect of payment as outlined in clause 6 above, the parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract promptly through negotiations between the representatives of the parties who have authority to settle the same
- 17.2 If the matter is not resolved through negotiations the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the ADR Group
- 17.3 If the matter has not been resolved by an ADR procedure within 45 days of the initiation of such procedure or if either party will not participate in the ADR procedure, the dispute may proceed to litigation
- 18. General**
- 18.1 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 principle place of business or such other address as may at the relevant time have been notified to the Party giving the notice
- 18.2 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
- 18.3 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts