

# TERMS OF SALE

## **1 Interpretation**

### **1.1 In these Terms:**

"Buyer" means the person who accepts Initial's quotation for the sale of the Goods and/or Services or whose written order is accepted by Initial;  
"Contract" means the contract for the sale and purchase of the Goods and/or Services;  
"Deliverables" means any documents, products or materials developed by Initial (or its subcontractors) as part of or in relation to the Services, in any form or media and including any drafts;  
"Goods" means the goods (including any instalments of the goods or any parts of them) which Initial is to supply in accordance with these Terms;  
"Initial" means Initial Packaging Solutions Limited (Company No: 02133782) Unit 16 Everite Road Industrial Estate, Westgate, Widnes, Cheshire WA8 8RA;  
"Services" means the services, including any Deliverables which Initial is to supply in accordance with these Terms;  
"Specification" means any specification for the Goods or Services, including any sample, agreed in writing by the Buyer and Initial;  
"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Buyer and Initial.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

## **2 Basis of the sale**

2.1 Initial shall sell and the Buyer shall purchase the Goods and/or Services in accordance with Initial's quotation or the Buyer's order subject to these Terms, which shall govern the Contract to the exclusion of any other terms (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specifications or other document).

2.2 No variation to these Terms shall be binding unless agreed in writing by the authorised representative of Initial.

2.3 Initial's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by Initial in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

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

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Initial shall be subject to correction without any liability on the part of Initial.

## **3 Orders and specifications**

3.1 No order submitted by the Buyer shall be deemed to be accepted by Initial unless and until confirmed in writing by Initial's authorised representative.

3.2 The Buyer shall be responsible to Initial for ensuring the accuracy of any order (including any applicable specification) submitted by the Buyer.

3.3 The quantity, quality and description of the Goods and/or Services and any specification for them shall be as set out in Initial's quotation or acknowledgement of order.

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

3.5 Initial reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or E.U. requirements or, where the Goods and/or Services are to be supplied to Initial's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by Initial may be cancelled by the Buyer except with the agreement in writing of Initial and on terms that the Buyer shall indemnify Initial in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Initial as a result of cancellation.

## **4 Price of the goods**

4.1 Unless otherwise agreed by Initial in writing, the price of the Goods and/or Services shall be the prices set out in Initial's price list published on the date of quotation. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Initial without giving notice to the Buyer.

4.2 Initial reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to Initial which is due to any factor beyond the reasonable control of Initial (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 and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Initial adequate information or instructions.

4.3 Except as otherwise stated in Initial's written quotation or in any price list of Initial, and unless otherwise agreed in writing between the Buyer and Initial, all prices are given by Initial on an ex works basis, and where Initial agrees to deliver the Goods otherwise than at Initial's premises, the Buyer shall be liable to pay Initial's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Initial.

## **5 Terms of payment**

5.1 Subject to any special terms agreed in writing by Initial, payment of the price for the Goods and/or Services is due in pounds sterling within 30 days of the end of the calendar month in which Initial issues its invoice

5.2 Time of payment of the invoice noted in clause 5.1 above shall be of the essence of the Contract.

5.3 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set off counterclaim, discount, statement or otherwise.

5.4 Initial may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with these Terms. Any delay in payment for any instalment shall result in the total price payable becoming immediately due.

5.5 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to Initial, Initial may:

5.5.1 cancel the contract or suspend any further deliveries to the Buyer; and/or

5.5.2 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

5.5.3 exercise a general lien on all and any property belonging to the Buyer (including, for the avoidance of doubt, any printing plates or tooling held by or under the control of Initial). Such a lien shall be exercisable in respect of all sums lawfully due from the Buyer to Initial. Initial shall be entitled, on the expiry of 14 days notice in writing, to dispose of such property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

## **6 Delivery**

6.1 Unless otherwise agreed in writing by Initial, delivery of the Goods and/or Services shall take place at Initial's place of business. The Buyer shall take delivery of the Goods within 5 days of Initial giving notice that the Goods are ready for delivery.

6.2 Any dates quoted for delivery of the Goods and/or Services are approximate only and Initial shall not be liable for any delay in delivery of the Goods and/or Services however caused. Time for delivery shall not be of the essence of the Contract.

6.3 The Goods and/or Services may be delivered by Initial in advance of the quoted delivery date on giving reasonable notice to the Buyer.

6.4 Where the Goods and/or Services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Initial to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If Initial fails to deliver the Goods and/or Services (or any instalment) for any reason other than any cause beyond Initial's reasonable control or the Buyer's fault, and Initial is accordingly liable to the Buyer, Initial's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods and/or services to replace those not delivered over the price of the Goods and/or Services.

- 6.6 If the Buyer fails to take delivery of the Goods or fails to give Initial adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Initial's fault) then, without limiting any other right or remedy available to Initial, Initial may:
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.6.2 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.
- 6.7 The Buyer shall not be entitled to reject the Goods if Initial delivers up to 10% more or less than the quantity of Goods ordered but a pro rata adjustment shall be made to the price of the Goods.
- 6.8 The Buyer shall provide Initial with such information and materials as Initial may reasonably require in order to supply the Goods and/or Services in accordance with the Contract and the Buyer must ensure that such information is accurate.

## **7 Risk and property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer from the time of delivery.
- 7.2 The property in the Goods and the intellectual property rights in any Deliverables shall not pass to the Buyer until Initial has received payment in full and in cleared funds of the price of the Goods and/or Services and all other goods and/or services agreed to be sold by Initial to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Initial's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Initial's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 7.4 The Buyer grants to Initial, its agents and employees an irrevocable licence at any time to enter any premises where the Goods may be stored in order to inspect them or to recover them.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Initial, but if the Buyer does so all moneys owing by the Buyer to Initial shall (without limiting any other right or remedy of Initial) forthwith become due and payable.

## **8 Warranties and liability**

- 8.1 Subject to the following provisions, Initial warrants that:
- 8.1.1 the Goods will correspond (in all material respects) with their Specification at the time of delivery; and
- 8.1.2 the Services will be supplied in accordance with their Specification (in all material respects) and with reasonable care and skill.
- 8.2 The above warranty is given by Initial subject to the following conditions:
- 8.2.1 Initial shall be under no liability in respect of any defect in the Goods and/or Services arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 Initial shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Initial's instructions relating to the use or storage of the Goods (whether oral or in writing) and misuse or alteration or repair of the Goods without Initial's approval;
- 8.2.3 Initial shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment;
- 8.3 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods and/or Services are sold to a consumer the statutory rights of the Buyer are not affected by these Terms.
- 8.5 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or the failure of the Goods and/or Services to correspond with the warranty at 8.1 above shall (whether or not delivery is refused by the Buyer) be notified to Initial within seven 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 Initial accordingly, the Buyer shall not be entitled to reject the Goods and/or Services and Initial shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Contract.
- 8.6 Where a valid claim in respect of any of the Goods and/or Services which is based on a defect in the quality or condition of the Goods or the failure of the Goods and/or Services to meet specification is notified to Initial in accordance with these Terms, Initial may replace the relevant Goods and/or Services (or the part in question) free of charge or, at Initial's sole discretion, refund to the Buyer the price of the relevant Goods and/or Services (or a proportionate part of the price), in which case Initial shall have no further liability to the Buyer.
- 8.7 Except in respect of death or personal injury caused by Initial's negligence, or liability for defective products under the Consumer Protection Act 1987, Initial shall not be liable to the Buyer 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 loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Initial, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or Services in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of Initial under or in connection with the Contract shall not (except as expressly provided in these Terms) exceed:
- (i) the price of the Goods and/or Services payable under that Contract; or
- (ii) if greater, the sum of £500,000 (five hundred thousand pounds).
- 8.8 Initial 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 Initial's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond Initial's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Initial's reasonable control:
- 8.8.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.8.4 import or export regulations or embargoes;
- 8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Initial or of a third party);
- 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.8.7 power failure or breakdown in machinery.

## **9 Insolvency of Buyer**

- 9.1 This clause 9 applies if:
- 9.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.4 Initial reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without limiting any other right or remedy available to Initial, Initial may cancel the Contract or suspend any further deliveries or performance under the Contract without any liability to the Buyer, and if the Goods and/or Services have been delivered/performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **10 General**

- 10.1 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.2 No waiver by Initial 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.
- 10.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 10.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.