

**International Plastic Systems Limited**  
**Terms and Conditions of Business**

**1 INTERPRETATION**

- 1.1 In these Conditions the following expressions will have the following meanings unless inconsistent with the context:  
Business Day: any day excluding Saturday, Sunday or a bank or public holiday in England  
Contract: any contract between IPS and the Customer for the sale and purchase of the Goods formed in accordance with clause 3  
Contract Price: the total value excluding VAT of the Goods specified in the Order Confirmation  
Customer: the customer as stated on the Order Confirmation  
Delivery Date: the date upon which the Goods are delivered to the Delivery Point  
Delivery Note: the document accompanying the Goods on delivery and to be signed by the Customer or on behalf of the Customer to acknowledge receipt, whether or not such document is produced by IPS  
Delivery Point: IPS's Premises or such other location as specified on an Order Confirmation at which delivery of the Goods is to take place  
Due Date: the date by which payment of an invoice is due which shall be as specified by IPS, at IPS's discretion, either 30 days after the date of the invoice or prior to dispatch of the Goods  
Fabricated and Custom Made Goods: Goods manufactured, fabricated or modified by IPS or on its behalf pursuant to designs, drawings or specifications provided by the Customer  
Goods: the items purchased by the Customer from IPS as specified in an Order Confirmation  
Intellectual Property Rights: all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions  
IPS: International Plastic Systems Limited and where the context so admits, any reference to "IPS" shall include its employees, agents, subcontractors and other persons acting on behalf of IPS  
IPS's Premises: Seaham Grange Industrial Estate, Seaham, Co. Durham SR7 0PT  
Order: an order for Goods or a quotation submitted by the Customer to IPS by email, fax, post or telephone  
Order Confirmation: an order confirmation document sent by IPS to the Customer, agreeing to fulfil the Order.
- 1.2 Words in the singular include the plural and in the plural include the singular.
- 1.3 A reference to a person includes an incorporated or unincorporated body.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Unless the context otherwise requires, the words including and include and words of similar effect shall not be deemed to limit the general effect of the words which precede them.
- 1.6 The headings in the Contract are for ease of reference only and shall not affect its construction or interpretation.

**2 GENERAL APPLICABILITY**

- 2.1 The Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any Order, confirmation of order, specification or other document).
- 2.2 These Conditions shall only be varied or amended where such variations or amendments have been confirmed in writing by IPS.

**3 ACCEPTANCE OF ORDER**

- 3.1 Each Order shall be deemed to be an offer by the Customer to buy the Goods subject to these Conditions.
- 3.2 The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.
- 3.3 The Contract is formed when the Customer's Order is accepted by IPS, by way of a written or e-mailed Order Confirmation. In the absence of such Order Confirmation, delivery of the Goods will be deemed conclusive evidence of IPS's acceptance of the Customer's Order.
- 3.4 The Customer may not cancel the Contract once IPS has given its Order Confirmation.
- 3.5 Any quotation is valid for a period of 30 days only from its date (unless otherwise agreed by IPS in writing), provided that IPS has not previously withdrawn it. All quotations are made subject to the availability of products or materials.

**4 THE GOODS**

- 4.1 All samples, drawings, descriptive matter, illustrations, specifications and advertising issued by IPS (or the manufacturer of the Goods) and any descriptions or illustrations contained in IPS's catalogues, brochures and website are issued or published for the sole purpose of giving an approximate idea of the Goods represented or described in them. They will not form part of the Contract and this is not a sale by sample.
- 4.2 IPS may make changes to the specification, design, materials or finish of the Goods which:
- 4.2.1 - are required to conform with any applicable safety or other statutory or regulatory requirements; or
- 4.2.2 - do not materially affect their quality or performance.
- 4.3 Where a Customer orders goods or materials of a type, size or quality not produced by IPS in the ordinary course of business, IPS will use all reasonable endeavours to execute the Order. If it subsequently proves impossible, impracticable or uneconomical to carry out or complete the Order, IPS reserves the right to cancel the Contract or the incomplete balance thereof, in which event the Customer will only be liable to pay the Contract Price for such part of the Contract as has been performed (if any).

**5 PRICES**

- Unless otherwise expressly stated the Contract Price is exclusive of Value Added Tax and any other tax or duty relating to the performance of the Contract and does not include delivery costs, handling costs or insurance.

**6 TERMS OF PAYMENT**

- 6.1 The Contract Price is payable on or prior to the Due Date and time for payment is of the essence.
- 6.2 If the Customer fails to make payment to IPS by the Due Date then without prejudice to any other rights which IPS may have, IPS may without liability suspend future deliveries of Goods on the same Contract and on any other Contract for the Customer until such time as payment is made or satisfactory security for payments has been provided. IPS also reserves the right to charge interest on overdue accounts at the rate of 3% per annum over the Base Lending Rate of National Westminster Bank Limited from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount. Notwithstanding this clause 6.2 IPS may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.3 All payments payable to IPS under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 6.4 The Customer shall make all payments due under the Contract without any deduction whether by way of set off, counter claim or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by IPS to the Customer.
- 6.5 IPS may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for separately.

**7 DELIVERY DATES**

- 7.1 All Delivery Dates quoted or specified in the Contract are estimated only and, unless otherwise agreed by IPS in writing, time for delivery shall not be of essence of the Contract. Lead times shall be computed from the date of IPS's despatch of the Order Confirmation.
- 7.2 Without prejudice to the generality of clause 7.1, IPS shall not be liable in any circumstances for delay caused by any act or omission of the Customer, including a failure to give detailed or adequate instructions, a failure to take delivery of the Goods when they are ready for delivery, variations requested by the Customer or delays on the part of the third parties supplying goods and/or materials to IPS (whether or not nominated by the Customer).

**8 DELIVERY**

- 8.1 Delivery will take place in one of the following ways as specified in the Order Confirmation and at the Customer's expense:
- 8.1.1 - the Customer will collect the Goods from the Delivery Point and risk in the Goods passes to the Customer upon signature of the Delivery Note by or on behalf of the Customer;
- 8.1.2 - the Goods are delivered by IPS to the Delivery Point and risk in the Goods passes upon signature of the Delivery Note by the Customer; or
- 8.1.3 - the Goods are delivered by a courier to the Delivery Point and risk in the Goods passes upon signature of the Delivery Note by the Customer.
- 8.2 Where goods are delivered by IPS it is done so on the understanding that the Delivery Point is accessible by metalled roads and that the Customer is responsible for off-loading and storage thereof.

**9 IMPORT AND EXPORT LICENCES**

- The Customer is responsible for obtaining, at its own cost, such import licences and other documents, licences and consents in relation to the Goods as are required from time to time and, if required by IPS, the Customer shall make those licences and consents available to IPS prior to despatch of the Goods.

**10 ASSIGNMENT AND SUB-CONTRACTING**

- The Customer may not assign or transfer or sub-contract any of its rights, benefits or obligations under the Contract without the prior written consent of IPS.

**11 FORCE MAJEURE**

- IPS will be deemed not to be in breach of the Contract or otherwise liable to the Customer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to circumstances beyond the reasonable control of IPS including acts of God, fire, governmental actions, war or national emergency, acts or threat of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, or other official strikes or other labour disputes relating to a manufacturer or IPS, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, element, or exceptional weather conditions, shortage of labour, materials, power or the Goods or in the case of Fabricated and Custom Made Goods, stocks or supplies necessary to manufacture such Fabricated and Custom Made Goods, or any other cause whatever beyond IPS's control or of an unexpected or exceptional nature. If the event in question continues for a continuous period in excess of 20 days, the Customer shall be entitled to give notice in writing to IPS to terminate the Contract. The notice to terminate must specify the termination date which must not be less than 14 days after the date on which the notice is served.

**12 WARRANTY**

- 12.1 IPS will, free of charge, within a period of 12 months from the date of delivery of Goods which are proved to the reasonable satisfaction of IPS to be defective due to defects in material, workmanship or design (other than a design made, furnished or specified by the Customer), repair, or at IPS's option, replace, such Goods. This obligation will not apply where:
- 12.1.1 - the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- 12.1.2 - the Goods have been improperly installed or connected;
- 12.1.3 - any maintenance requirements or instructions as to storage relating to the Goods have not been complied with;
- 12.1.4 - the Customer has failed to notify IPS of any defect or suspected defect within 14 days of delivery where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Customer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 12 months from the date of delivery of the Goods.
- 12.2 Any Goods which have been replaced will belong to IPS. Any repaired or replacement Goods will have the benefit of the warranty in clause 12.1 for the unexpired portion of the 12 month period from the date of delivery of the original Goods.

- 12.3 In relation to Goods not manufactured by IPS (including parts and components supplied by others for Fabricated and Custom Made Goods) IPS shall, in so far as it is able to do so, transfer to the Customer the benefit of any express guarantee or warranty by the manufacturer or supplier of such Goods.
- 12.4 A claim in relation to any Goods in accordance with clauses 12.1 and 12.2 will not entitle a Customer to terminate the Contract or any part thereof or to refuse to take delivery of or pay for the Goods or any other goods (whether under the same or any other contract with IPS).
- 12.5 This clause sets out the entire liability of IPS to the Customer in respect of any defects in the Goods.

**13 LIMITATION OF LIABILITY**

- 13.1 Nothing in these Conditions excludes or limits the liability of IPS for death or personal injury caused by IPS's negligence, fraudulent misrepresentation or for any other matter for which it would be illegal for IPS to exclude or attempt to exclude its liability.
- 13.2 Subject to clause 13.1, IPS shall not be liable to the Customer for pure economic loss, loss of profit, loss of business, or depletion of goodwill howsoever arising in each case where direct, indirect or consequential, or any claims for consequential loss whatsoever (howsoever caused including those caused by the negligence of IPS) which arise out of or in connection with the Contract.
- 13.3 Subject to clauses 13.1 and 13.2, IPS's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lesser of the Contract Price or £1,000,000.
- 13.4 IPS hereby excludes to the fullest extent permissible in law all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might sustain in favour of the Customer.

**14 RETURN OF UNUSED GOODS**

- 14.1 Goods purchased from IPS may, at IPS's sole discretion, be accepted by IPS for return to stock subject to notice of the return being given to IPS, the Goods being returned to IPS's Premises within 7 Business Days of the Delivery Date, the Goods being in the opinion of IPS in "as new" condition and in original packaging, provided always that such Goods were originally purchased from IPS. This clause 14.1 shall not apply to Fabricated and Custom Made Goods.
- 14.2 IPS will issue credit in full for the proportion of the Contract Price to which the Goods returned relate (excluding any carriage or extra costs incurred by IPS in the return of the Goods).
- 14.3 In the event that the Goods to be returned are delivered to IPS after 7 days from the Delivery Date, IPS may, at its sole discretion, accept return of the Goods and reserve the right to apply a minimum handling charge of 15% to any credit issued. The Customer shall in all cases be obliged to provide full details of the Delivery Date and associated documentation.
- 14.4 In relation to clauses 14.1 and 14.3 the Customer shall bear the cost of physical delivery of the Goods to IPS's Premises. Risk and title to the Goods will pass to IPS upon the issue of a Returns Receipt Form by IPS to the Customer.
- 14.5 In all cases IPS reserves the right to refuse to re-purchase Goods.

**15 LOSS OR DAMAGE IN TRANSIT**

- 15.1 Risk of damage to or loss of the Goods will pass to the Customer upon delivery in accordance with clause 8.1.
- 15.2 Claims for any damage, shortage or loss in transit must be made by the Customer as soon as practicable and in any case in writing within 48 hours of the Customer signing the Delivery Note.

**16 TITLE TO GOODS**

- 16.1 Title to the Goods will not pass to the Customer until IPS has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to IPS from the Customer on any account. Until such time the Customer shall hold the Goods as bailee for IPS and shall store the Goods in such a way that they are separately identifiable from other goods of the Customer.
- 16.2 The Customer shall be entitled to use the Goods in the normal course of business or to resell the Goods to third parties in the normal course of business.
- 16.3 The Customer's rights under clause 16.2 regarding the Goods or any article manufactured from or incorporating the Goods will terminate immediately upon the occurrence of any of the circumstances set out in clause 17.1.
- 16.4 IPS will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from IPS.
- 16.5 Until title to the Goods has passed to the Customer in accordance with clause 16.1, the Customer grants IPS an irrevocable licence at any time to enter any premises where such Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.

**17 TERMINATION**

- 17.1 IPS may by notice in writing terminate the Contract immediately upon the happening of any one or more of the following events or where IPS reasonably anticipates that one of the or more of the following events is about to occur:
- 17.1.1 - the Customer has a bankruptcy order made against him, becomes insolvent, or makes an arrangement or composition with his creditors, otherwise takes the benefit of any act for the time being in force for the relief of insolvent debtors, has a receiver appointed under the Mental Health Act 1983 or dies; or
- 17.1.2 - the Customer, being a body corporate convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof; or
- 17.1.3 - a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer; or
- 17.1.4 - the Customer has any distraint, execution or other process levied or enforced on any of its property; or
- 17.1.5 - the Customer ceases to trade; or
- 17.1.6 - the Customer has a change in its senior management and/or control as defined by section 840 Income and Corporation Taxes Act 1988; or
- 17.1.7 - the Customer is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Customer fails to remedy such breach within 14 days' service of a written notice from IPS, specifying the breach and requiring it to be remedied. For the avoidance of doubt, a failure to pay any sums due under the Contract on the Due Date shall be a material breach of the terms of the Contract which is not capable of remedy.
- 17.2 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Customer or IPS accrued prior to termination and the clauses which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

**18 INTELLECTUAL PROPERTY RIGHTS**

- 18.1 The Customer agrees to indemnify, keep indemnified and hold harmless IPS from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, direct, indirect and consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which IPS incurs or suffers as a consequence of or in connection with any claim made against IPS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with compliance by IPS with the Customer's instructions, including use of drawings, designs or specifications supplied by the Customer.
- 18.2 IPS gives no warranty and makes no representation that the manufacture, use, sale or supply of the Goods does not or will not infringe the rights of any third party or any other Intellectual Property Rights of any third party.

**19 PRIVACY POLICY**

- 19.1 Information provided by the Customer relating to individuals will be held by IPS in accordance with the Data Protection Act 1998 and added to IPS's marketing databases. It may be used for internal statistical analysis, to fulfil any requests from the Customer for further information and services and to contact the Customer by mail, telephone or (if the Customer gives IPS a contact email address) electronic communication about other products or services offered by IPS. IPS may transfer the Customer's details to any successor to the business of IPS (or relevant part of it). This applies to all information that IPS holds about the Customer.
- 19.2 If the Customer does not wish to receive further information about products or services offered by IPS or if the Customer wishes to have access to, modify, correct or object to the further processing of information then the Customer should either write to the Sales Manager, IPS Flow Systems, Seaham Grange Industrial Estate, Seaham, Co Durham, SR7 0PT, England or send an email to info@ipsflowsystems.com

**20 REMEDIES**

- The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

**21 NOTICES**

- 21.1 Any notice or other communication to be given under the Contract shall be in writing and in the English language and may be delivered or sent by pre-paid first-class post, fax or electronic mail to the party to be served at the party's registered office or last-known trading address, fax number or e-mail address (as the case may be).
- 21.2 Any notice or document shall be deemed served:
- 21.2.1 - if delivered by hand, at the time of delivery;
- 21.2.2 - if posted, 48 hours after posting;
- 21.2.3 - if sent by fax, at the time of transmission printed on the transmission confirmation sheet; and
- 21.2.4 - if delivered by electronic mail, at the time of transmission provided that an automated bounce-back is not received; provided that, where in the case of delivery by hand, fax or electronic mail, such delivery or transmission occurs either after 4.00pm on a Business Day or on a day other than a Business Day, service will be deemed to occur at 9.00am on the next following Business Day.

**22 SEVERANCE**

- 22.1 If any provision of the Contract (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**23 WAIVER**

- 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.

**24 RIGHTS OF THIRD PARTIES**

- It is not intended that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**25 APPLICABLE LAW**

- The Contract shall in all respects be governed by and construed in accordance with the Laws of England and the Customer hereby agrees to submit to the exclusive jurisdiction of the English Courts.