

FORWARD PLASTICS LTD TERMS & CONDITIONS

50-52 Grayson Avenue, Manukau 2104
PO Box 97462, Manukau 2241
PH: 09 278 9262 FAX: 09 278 9282
Debbie@forward-plastics.co.nz



APPLICABLE TERMS AND ACCEPTANCE OF ORDER

These Terms of Trade between FORWARD PLASTICS LTD (the "Company") and the Buyer (the "Buyer") shall apply to all the orders for Plastic Mouldings and ancillary products ("Goods") accepted by the Company from the Buyer and that these terms and conditions shall prevail and take precedence over any document or oral message from the Buyer. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any terms or condition or right.

The Buyer and the Company shall acknowledge that these Terms of Trade constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, Collateral shall include all and any Goods supplied by the Company and the process from the sale of all Goods. The buyer shall also agree not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without prior written consent of the Company.

▪ Quotation and Price

The Company shall confirm the price of Goods in its price list or as a quotation and the Buyer shall confirm acceptance of the price or quotation by signing the quotation or providing an order.

No quotation shall constitute an offer unless signed by the Company and the Company shall withdraw and quotation before the Buyers signed acceptance. The quotation price will be exclusive of GST and shall be valid for a period of thirty (30) days. Freight, Insurance, and other handling charges shall be the responsibility of the Buyer.

▪ No cancellation for Make to Order Goods

Upon acceptance of a Company quotation by the Buyer or Buyer order to the Company for goods that are designed or procured specifically for the Buyer (meaning no standard or indented to order) cannot be cancelled without the Buyer paying the full cost to manufacturer or procurement of the Goods to the time of cancellation.

▪ Payment

Payment shall be made according to the terms stated in the Company invoice or terms of the Buyer order and confirmed in the quotation by the 20th of the month following date of Invoice. The Buyer shall make payment of all amounts due to the Company without any delay or deduction whether by way of set-off or counterclaim even under the dispute of the invoice.

The Buyer shall agree that the Company has sole discretion to apply payments from the Buyer to any transaction or Company invoice notwithstanding that the Buyer may have applied the payment to a particular transaction or invoice.

▪ Interest for Late Payment

The Company reserves the right to charge the Buyer interest on any monies outstanding under this contract on a daily basis. Interest is payable from the date payment was due until the date the Company receives payment. The Company's right to charge interest is without prejudice to the Company's other rights or remedies for the Buyers default in failing to pay on the due date.

▪ Suspension of Contract for Non Payment

If at any time the Company reasonably deems the credit of the Buyer to be unsatisfactory, it will require the Buyer to provide at the Buyer's cost, security for payment and/or the Company may suspend performance of its obligations including suspension of the supply of Goods under this contract.

The Company may secure any or all Goods previously supplied by the Company and in possession of the buyer under the Retention of the Title clause to the value of the outstanding amount owed until payment is made in full OR until security is provided to the Company's satisfaction and the Company may require the Buyer to pay all costs incurred as a result of the suspension and re-commencement of supply including debt collection and legal costs.

The Buyer agrees that the Company may at its discretion hold as security dies or moulds or other materials owned by the Buyer until such time as all moneys owed by the Buyer to the Company have been paid in full.

▪ Delivery

The Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. Delivery by the Company to a carrier normally used by the Company shall constitute delivery and the Buyer shall accept risk in the Goods once the Goods are in the care of the carrier and Buyer agrees that the Company shall not be liable for damage caused by the carrier.

Delivery by the Company to the premises of the Buyer shall also constitute delivery and the Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. The Buyer agrees that the Company shall not be responsible for the validity of the person accepting the Goods on behalf of the Buyer at the time of delivery.

Goods that are finished items buy only part of an order may be delivered in installments at the Company's discretion and in such case each delivery will be regarded as a separate contract and any Goods delivered shall be paid by the Buyer in accordance with the terms of Payment.

The Company will make every effort to ensure delivery of Goods on time but will not be liable for any loss or damage or consequential loss to the Buyer arising from delays in delivery.

▪ Risk, Ownership and Title

Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Buyer from the time of delivery of the Goods into the Buyers care and control and the Buyer shall properly insure the Goods from theft, fire or loss damage. Where the Buyer fails to insure the Goods upon delivery and suffers loss or damage to the Goods, and where the Goods remain unpaid, the Buyer shall agree to pay the Company for the full cost of the Goods.

The Buyer agrees that the Company has legal and equitable right to title in all and any Goods supplied that remain unpaid and ownership shall only pass to the Buyer when the contract price is paid. For as long as ownership in the Goods is retained by the Company the Buyer may use the Goods in such a way that they are identifiable as the property of the Company.

Where the goods remain unpaid the Buyer hereby irrevocably gives the Company, its agents or servants, the free uninterrupted right to enter its premises during normal business hours in accordance with the Credit (Repossession) Act, to search for, inspect and remove any of the Goods supplied in which the Company has retained ownership and the Buyer will not hold the Company responsible for any economic or consequential loss that the Buyer may suffer as a result of the Goods being removed or dismantled from the property of the Buyer.

▪ **Title upon Sale to a Third Party**

Notwithstanding that property in the Goods is retained by the Company, the Buyer is hereby authorized to see the Goods in the ordinary course of business and to deal with such proceeds as fiduciary agent and bailee of the Company until the Buyer pays the Company in full without deduction or setoff: provided that such authority may be revoked by written notice at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default of its obligations under the Contract or any other contract between the Company and the Buyer.

Where any Goods in respect of which title has not passed to the Buyer are sold by the Buyer pursuant to the authority granted, any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Buyer shall be held upon trust by the Buyer for the Company. Proceeds of sale so received by the Buyer shall be placed in a separate bank account held as a separate fund in trust for the Company and shall first be applied towards the satisfaction of all indebtedness of the Buyer to the Company.

▪ **Personal Property Securities Act**

The Buyer shall inform its creditors of the terms upon which it buys Goods from the Company and that the Company may create and register a Purchase Money Security Interest under the PPSA for any and all Goods and that the Buyer agrees to waive the right to receive a verification statement for purpose of s.148 of the act. The Buyer shall inform any Trustee in Bankruptcy or Liquidation of the Buyer or any Receiver of the Buyers business or assets of the rights of the Company and title to the proceeds of sale.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by the Company. The security interest granted in the Collateral by the same priority in relation to any and all of the Goods and Services supplied to the Buyer at any time.

▪ **Company Warranty & Liability**

The Company's liability in respect of any claim shall relate only to specific defects in the Goods arising from faulty manufacture or from damage proven to occur before delivery by the Company. If the Buyer uses the Goods for other purposes than that specified by the Company in its publications or packaging the Buyer agrees to be responsible for the fitness of the Goods for the purposes required by the Buyer and the Company shall not be responsible and the warranty will not apply to the Goods where the Buyer fails to ascertain the correctness of the Goods for purposes intended by the Buyer.

The warranty of the Goods shall be the warranty of the original manufacturer and will apply from the date of delivery to the Buyer.

Where the Company accepts liability for damage or defect under its warranty and elects to repair or replace Goods it shall repair or replace the Goods to their original condition but where this cannot be done the Company will refund the purchase price in full.

The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond the Company's reasonable control. The occurrence of such an event shall not give the Buyers a right of cancellation of contract.

▪ **Claims for Damaged or Defective Goods, Discrepancies and Shortages**

The Company may, at its discretion, repair or replace any damaged or defective Goods provided that the Buyer advises the Company of the claim within seven (7) days of the defect occurring together with a claim specifically identifying the damage or defect(s); and provided that the Buyer does not continue to use the Goods once the defect is known. Discrepancies and shortage must be notified to the Company within seven (7) days of delivery.

▪ **When Claims will not be considered**

The Company's liability in respect of any claim shall relate only to specific manufacturing defects in the Goods. The Buyer agrees that the Company will not consider claims from the Buyer in respect of Goods which:

- (i) Are not intact and in original condition subject to normal wear and tear.
- (ii) Have been improperly stored and suffered damage.
- (iii) Have been used for other than purposes specified in Company publications or packaging
- (iv) Have been altered from the condition in which they were supplied or repaired by persons other than the Company
- (v) Have not been maintained according to information in Company publications or packaging

If the Buyer does not comply with the above requirements for warranty and claims the Buyer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

▪ **Claims for Goods Incorrectly Ordered**

The Company reserves the right to allow claims for Goods that are incorrectly ordered by the Customer (provided that they are not made to order) by retaining fifteen per cent (15%) of the invoice price as an administrative charge and handling fee. Claims for Goods incorrectly ordered will not be recognized by the Company unless the Goods are in original condition and unless the Customer advises the Company within seven (7) days of delivery.

▪ **Packaging**

Packaging used in the supply of product ordered by the Buyer will be charged by the Company to the Buyer as separate items. This includes pallets, cartons, carton polyliners, layerboards and other packaging used from time to time which may vary. Pallets and cartons ONLY are returnable for a refund of 100% of the chargeable rate providing the packaging returned is in the same condition as delivered. Damaged packaging will not be accepted for return. Packaging must be returned within 90 calendar days from date of the original delivery. Freight charges for packaging returns are the responsibility of the Buyer.

▪ **Consumer Guarantees Act 1993**

Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act where the Buyer acquires the Goods in a business situation for the business purposes of a business and all provisions of these terms shall be ready as modified to the extent necessary to give effect to that intention.

▪ **Intellectual Property**

The Buyer agrees that where the Company supplies intellectual property in the form of patents, trademarks and copyrights or written instructions, drawings, plan, manuals and other technical information the ownership of such intellectual property shall always remain with the Company and the Buyer further agrees that it shall not use the intellectual property in any manner whatsoever whether in complete form or in any way adapting or altering except for its purpose in operating the Goods.

- **Dispute and Arbitration**

In the event of any dispute between the Company and the Buyer arising out of this Contract, the Buyer agrees to pay the undisputed part of the outstanding monies owed and such dispute shall be referred to a Mediator to be agreed between the parties and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitration Act 1996 and any amendments thereof.

Upon signing the Company Credit Application OR signing acceptance of a Company Quotation OR providing any order to the Company, the Buyer agrees that these Terms & Conditions of Trade shall apply.