

# DS SMITH PLASTICS DIVISION – STANDARD SALES CONDITIONS

## 1. INTRODUCTION

“We” are a part of DS Smith Plastics Ltd trading as Rapak and “you” are anyone to whom we are supplying goods. DS Smith Plastics Ltd is registered in England with company number 5267740 and our registered office is 4 - 16 Artillery Row, London SW1P 1RZ.

We have provided an acknowledgement of our agreement to make that supply. That acknowledgement incorporates these supply conditions (except where they are specifically amended in the acknowledgement) and

- a specification of the goods and any incidental services: if not, our standard specification will apply
- the price agreed
- the delivery or collection details.

That is the whole of our agreement for this supply and supersedes any previous agreement we may have had in relation to it. No variation to the agreement is valid unless it is in writing and is signed by authorised representatives of both of us.

By placing an order with us, you are deemed to accept that these conditions shall apply to and govern any contract between us to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order or other correspondence or documentation).

We are responsible for making the supply to you but we may arrange to do so through agents or subcontractors.

You must not assign the benefit of the agreement without our prior written consent, which will not be unreasonably withheld.

## 2. CANCELLATION AND VARIATION

You may cancel your order at any time before the supply is made. If you do, you are to pay us on demand a reasonable cancellation charge which takes into account all work we have done under the agreement, all costs we have incurred and any costs we are committed to pay, and our loss of profit.

If you ask us to vary your order and agree with us an appropriate variation to the price and to the time scale for delivery, we agree to make the supply in accordance with those variations. We may vary the price by an amount sufficient to cover any significant increase in the cost of materials or other costs we incur to fulfil your order. We may also substitute suitable alternative materials for any referred to in our acknowledgement which are not available or, if no suitable materials are available, advise you of the estimated delay in fulfilling your order. If we are unable to fulfil your order within a reasonable time due to materials being unavailable for reasons beyond our reasonable control, we may cancel the order with no further obligation to you.

## 3. PRICE

Unless otherwise stated you are to pay, in addition to the agreed price:

- applicable VAT and any other tax imposed on the supply
- the cost of packaging, carriage and insurance
- the cost of any artwork, origination and printing stereotypes, the cost of tooling specifically required and die cutting costs

## 4. PAYMENT

We will invoice you once the goods have been manufactured. You are to pay the invoice within 30 days without set-off or counterclaim. If you have a claim against us, you must notify us of it promptly and make all reasonable efforts to resolve the dispute amicably.

We are not obliged to supply any goods or services to you while any payment is overdue on this or any other agreement we may have with you.

If any payment is late we may charge you interest at the rate of 3% above the base rate from time to time of the NatWest Bank on any overdue payment from the due date for payment until the date payment is made and charge you for all costs we incur in recovering the outstanding payment.

We may set off any sums owed by you to us against any sums owed by us to you.

## 5. WARRANTY AND DEFECTS

We warrant to you that the goods will be, at the time of delivery and only for the next 6 months, free from any material defect due to faulty materials and workmanship and that any services will be provided with reasonable skill and care so long as:

- you give us full details of any defect immediately it becomes apparent
- the goods have not, in our view, suffered excess wear and tear by improper or careless use or storage, excessive stressing, improper installation, or the like.

All implied warranties or conditions are excluded to the fullest extent permitted by law.

If you endorse on the delivery note that goods are unexamined and within 3 days of delivery notify us in writing of any defects we may, after inspecting the goods (and if we are satisfied that their condition has not deteriorated following delivery) at our discretion repair or replace the defective goods, or take them back and refund the price.

You undertake to indemnify and hold us harmless from and against all liabilities, losses, damages, costs, charges, expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, proceedings, claims and demands incurred by or brought against us:

- arising directly or indirectly out of or in connection with any breach of any of your obligations under any contract or any wilful default or negligence on your part or on the part of any of your officers, employees or agents in relation to the goods; or
- resulting from our acting reasonably in accordance with your instructions (including, without limitation, any claim from a third party that we have infringed any intellectual property rights in the work carried out).

Our products may not be suitable for use with all liquids, for all filling or dispensing conditions. We cannot and do not therefore warrant that our products will be fit or suitable for the intended application. It is recommended that you satisfy yourself that the liquid to be dispensed is compatible both with the raw materials from which our products are made as well as the products themselves. Prior to introducing the use of our products to a commercial application, you should conduct all appropriate tests to identify and prevent problems resulting from environmental stress cracking, dimensional changes, chemical attack, changed mechanical properties, the effect of temperature and temperature changes and other relevant factors. You should also verify that the fit of the product to its container is satisfactory, that the product is compatible with filling

conditions, that the flow rate and flow characteristics of the product meet your requirements and that the product is suitable for the expected distribution and storage conditions. For the avoidance of doubt, we accept no liability whatsoever for any loss or damage, injury or death caused as a result of your failure to observe any of the aforementioned precautions.

## 6. DELIVERY OR COLLECTION

We are to use reasonable endeavours to have the goods ready when agreed, but this is only an estimate of the delivery or collection date. You can only refuse to accept delivery after that date if

- *after* the date of our acknowledgement of your order you have sent us a written notice specifying a deadline date and
- we have specifically accepted that deadline date in writing.

Where we are delivering goods to you, you are responsible for unloading them. Where you fail to take delivery or collect goods in accordance with the agreement, you must pay on demand our storage and additional carriage costs.

You have no right to reject goods if they vary from the specification and that variation is not material to their use or functionality or is a variation in quantity which is within 10% of the quantity ordered (but we will in this case adjust the price to take account of the variation).

## 7. PACKAGING

We decide the appropriate method of packaging. Packages and wrappers are free and non-returnable.

We charge you for cases but refund that charge when you return the cases to us in good condition.

Pallets, carboys and any other packaging identified in the acknowledgement as belonging to us remain our property and must be returned to us within one month of delivery. If not we will invoice you for their replacement cost.

## 8. CUSTOMER APPROVALS

Where we supply proofs, printing details, artwork or other specimens for you to approve as complying with your order you must do so promptly and in writing. We are not responsible for any delay you cause. Our obligation is to supply the goods in the form you approve. We are not responsible for any errors which you do not identify in writing at the time you give your approval.

All prices we give you for printing are made subject to our receiving suitable copy matter, and are on the basis that we can use our standard range of ink colours. Any deviations may result in an extra charge being made.

## 9. PASSING OF RISK AND TITLE

The goods are at your risk

- when you start loading them onto the collection vehicle, if you are collecting them or
- when you start unloading them at the delivery address, if we are responsible for delivery or
- from the agreed time for delivery or collection if you fail to accept delivery or to collect the goods as agreed.

The goods do not belong to you until we have received payment of the price and all additional payments due in full. Until then

- you hold the goods as our fiduciary agent, must clearly identify the goods (and any new product into which they are incorporated) as our property, and keep them properly stored and insured and
- we may enter your premises at any time to repossess the goods if you fail to pay the price and other payments when due or we reasonably believe that you will not be able to pay the price and other payments when due and
- We are to own all intellectual property created under this agreement. Where necessary, you are to assign or procure the assignment of all such rights (including moral rights) to us. We do not grant you the right to use any intellectual property, except as expressly set out in the specification of the goods. If the goods can be used as part of a system protected by a patent, we give you no right to use the system unless you buy the other components of the system from us. We may enter your premises at any time to repossess the goods if you fail to pay the price and other payments when due or we reasonably believe that you will not be able to pay the price and other payments when due.

## 10. TERMINATION

Either of us may terminate this agreement immediately on written notice if the other is in material or persistent breach of an obligation and cannot put it right or does not put it right within 21 days of receiving notice to do so. On termination any then existing claims which either of us has against the other remain in force.

We may terminate this agreement immediately on notice if we reasonably believe that you will not be able to pay the price or other payments when due and in that event we have no further liabilities under the agreement.

## 11. LIABILITIES

Samples, descriptions, illustrations, forecasts, brochures and other literature we may have supplied show only the general character of the goods and must not be relied on.

We do not seek to exclude or restrict our liability for death or personal injury caused by our (i) negligence or (ii) fraud.

Where we or our employees or agents negligently damage your property when delivering goods, our total liability to you in respect of an event or series of connected events is limited to £500,000.

In respect of any other claims our liability is limited, to the maximum extent permitted by law, to any direct loss or damage up to the amount of the price paid for the goods giving rise to the claim.

We have no liability (directly or indirectly) for loss of business, revenue, opportunity or profits, anticipated savings or wasted expenditure, corruption or destruction of computer data or for any indirect or consequential loss whatsoever.

Neither of us is liable for any failure to fulfil our obligations to the other where such failure is due to circumstances beyond our reasonable control.

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### 12. GENERAL

No benefits are to be conferred on any third party by this agreement.

If part of this agreement is invalid or unenforceable that does not affect the remainder. Invalidation or unenforceability in one jurisdiction does not affect validity or enforceability in another.

Where you leave any of your property with us you do so at your own risk. You must get a receipt for it.

No waiver by us of any breach of the contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

We are to own all intellectual property created under this agreement. Where necessary, you are to assign or procure the assignment of all such rights (including moral rights) to us.

Unless you object in writing, we may put your name and other details into a computerised directory. This will be only for our use and that of any other company within DS Smith Plastics Ltd worldwide.

This agreement and its subject matter are confidential and must not be disclosed to any person without our permission.

Provisions relating to warranties, limitation of liability, intellectual property, confidentiality and obligations on termination survive termination or expiration of the agreement.

English law governs the agreement. We both accept the jurisdiction of the English Courts. We may also bring proceedings against you in other jurisdictions.