

## Icon Polymer Limited Terms & Conditions of Sale

### Interpretation

- 1.1. In these Conditions:
- 1.1.1. 'COMPANY' means ICON POLYMER Limited (registered in England under number 282648) whose registered office is at Thrumpton Lane, Retford, DN22 6HH
- 1.1.2. 'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Customer and the Company
- 1.1.3. 'CONTRACT' means the contract for the purchase and sale of the Goods
- 1.1.4. 'CUSTOMER' means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company
- 1.1.5. 'GOODS' means the goods and services (including any installation of the goods or any parts for them) which the Company is to supply in accordance with these Conditions
- 1.1.6. 'WRITING' includes cable, facsimile transmission and comparable means of communication.
- 1.2. Any reference in these Conditions to any provisions 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 Conditions are for convenience only and shall not affect their interpretation.

### 2. Basis of the sale

- 2.1. The Company shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Customer and subsequently confirmed in Writing by the Company, any acknowledgement of order issued by the Company to the Customer, any invoice issued by the Company to the Customer, or any written order of the Customer 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 Customer.
- 2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Company.
- 2.3. 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 Customer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.4. 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 the Company shall be subject to correction without any liability on the part of the Company.
- 2.5. The Company reserves the right to withdraw any quotation without notice after 28 days.
3. **Orders and specifications**
- 3.1. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representatives.
- 3.2. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification, drawing or design) submitted by or on behalf of the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company).
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification, drawing or design submitted by the Customer, the Customer warrants to the Company that it has full right and title to procure for the Company the right to manufacture the Goods in accordance with the specification or design and the Customer 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 industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.
- 3.5. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.6. No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company 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 the Company as a result of cancellation.
- 3.7. All plans, drawings, designs, specifications and other written technical material prepared by the Company for use in relation to the Contract and the copyright therein shall remain the property of the Company and the Customer shall not copy or disclose them to third parties without the prior written consent of the Company.

### 4. Price of the Goods

- 4.1. The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Company's published export price list shall apply. All prices shall be valid for 28 days only or until earlier acceptance by the Customer, after which time they may be altered by the Company without giving notice to the Customer.
- 4.2. The Company reserves the right, by giving notice to the Customer 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 which is requested by the Customer, or any delay caused by any instructions of the Customer or the Company or to give the Company adequate information or instructions.
- 4.3. 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 Customer 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 Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 4.4. The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.
- 4.5. Packing is non-returnable (whether or not included in the charges for the Goods) unless specified on the invoice to be returnable in which event upon the prompt return of the packing material in good condition carriage paid the amount charged in respect thereof shall be credited to the Customer.

### 5. Terms of payment

- 5.1. Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 5.2. The Customer shall pay the price of the Goods at the end of the month following the date of the Company's invoice, 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 Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3. The Customer shall have no deduction or set-off of any kind from nor apply any discount to any invoice of the Company without the prior written consent of the Company.
- 5.4. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
  - 5.4.1. cancel the Contract or suspend any further deliveries to the Customer;
  - 5.4.2. appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 5.4.3. charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of three per cent per annum above Lloyds TSB Bank 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).

### 6. Delivery

- 6.1. Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time during normal working hours after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 6.2. Any date quoted for the delivery of the Goods is approximate and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 6.3. Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to ten per cent more or less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.5. If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.6. If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
  - 6.6.1. store the Goods at the sole risk and cost of the Customer until actual delivery and charge the Customer 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 Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 6.7. All Goods are consigned at Customer's risk.
7. **Inserts and components**
- 7.1. If inserts or other components are to be provided by the Customer the following provisions shall apply:
  - 7.1.1. Delivery shall be of such quantities as will allow of uninterrupted production in accordance with an agreed rate of delivery and shall be made at the times stipulated by the Company.
  - 7.1.2. The Company shall be provided with a minimum of 2% per cent excess quantity of inserts or components to cover manufacturing losses. Excess inserts or components which are not actually required shall be returned to the Customer at its expense.
- 7.3. All inserts and components shall be of suitable quality, shall comply strictly with the agreed dimensions and tolerances and shall be delivered to the Company free of all charges in a condition suitable for incorporation in the Goods.
- 7.4. Any defect whatsoever in the Goods which shall be attributable to unsuitable or faulty inserts or components shall not entitle the Customer to rescind the Contract, reject any Goods, make any deduction from the agreed price or claim damages in respect of any such defect.
- 7.5. Couplings shall be supplied in accordance with the appropriate British Standard Specification, unless otherwise agreed in Writing by the Company.

### 8. Tooling

- 8.1. Unless otherwise agreed the Company is solely entitled to the property in and use of all moulds, dies, jigs or other tooling provided by the Company even where an agreed charge or contribution towards the cost is levied.
9. **Lien**
- 9.1. Customer's property sent to the Company for treatment and moulds sent to the Company for use in production are subject to a general lien for work done upon or with them and also for the general balance of the account. Whilst every care will be exercised, the Company cannot accept any liability for damage to such items whilst in its possession, nor can it agree to accept any debit or charge in connection with such goods when sent forward to the Company.
10. **Inspection and special tests**
- 10.1. All Goods are inspected before despatch and the Company accepts no liability for any damage or loss sustained in the event of the Goods being submitted to any special tests unless such tests were specified in the Customer's order and the Company has accepted in Writing the imposition of such tests. Colours shall be subject to reasonable variation.
11. **Risk and property**
- 11.1. Risk of damage to or loss of the Goods shall pass to the Customer:
  - 11.1.1. in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or
  - 11.1.2. in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 11.1.3. 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 Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.
- 11.2. Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 11.3. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

### 12. Warranties and liability

- 12.1. Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of three months from the date of their initial use or three months from delivery, whichever is the first to expire.
- 12.2. The above warranty is given by the Company subject to the following conditions:
  - 12.2.1. 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 Customer;
  - 12.2.2. the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in Writing), misuse or alteration (or part) of the Good without the Company's approval;
  - 12.2.3. the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - 12.2.4. the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 12.3. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.4. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.
- 12.5. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 30 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 Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 12.6. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, grant to the customer such credit as is calculated by the Company or refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer. Where any such valid claim is made the Company shall be entitled to require the Customer to return such Goods to the Company carriage paid.
- 12.7. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether or not caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 12.8. The Company shall not be liable to the Customer 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 cause 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:
  - 12.8.1. Act of God, explosion, flood, pest, fire or accident;
  - 12.8.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 12.8.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 12.8.4. import or export regulations or embargoes;
  - 12.8.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
  - 12.8.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 12.8.7. power failure or breakdown in machinery;
  - 12.8.8. fire, government regulations or failure of the Customer to supply any necessary information and drawings required in order to fulfill the order.
  - 12.8.9. If any delay is caused as aforesaid continues or in the opinion of the Company is likely to continue for more than three months, the Company shall have the right immediately to cancel the Contract or any unfulfilled portion thereof by notice in Writing to the Customer.
13. **Insolvency of the Customer**
- 13.1. This clause applies if:
  - 13.1.1. the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
  - 13.1.2. an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
  - 13.1.3. the Customer ceases to carry on business, or
  - 13.1.3. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 13.2. If this clause applies then, without prejudice to any of any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
14. **Export terms**
- 14.1. In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 14.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 14 shall (subject to any special terms agreed in Writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions.
- 14.3. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 14.4. Unless otherwise agreed in Writing between the Customer and the Company, the Goods shall be delivered ex-works Retford, Nottinghamshire, DN22 6HH and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 14.5. The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 14.6. Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company or, if the Company has agreed in Writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Company at such branch of Lloyds TSB Bank in England as may be specified in the bill of exchange.

### 15. General

- 15.1. The Company is a member of the group of companies whose holding company is ICON POLYMER GROUP Limited, and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.
- 15.2. The benefits of this Contract may not be assigned or transferred to any other person, firm or company by the Customer without the prior written consent of the Company.
- 15.3. 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 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.
- 15.4. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 15.6. Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society of England and Wales.
- 15.7. The Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts