

Merriott Plastics Group (MPG) - Conditions of Sale

1) Definitions

In these Conditions

- (1) "the Purchaser" means the individual or individuals or incorporated or unincorporated body with which MPG contracts subject to these Conditions.
- (2) "Contract" means the contract made or to be made between MPG and the Purchaser subject to these Conditions.
- (3) "Goods" means the articles or things (if any) and "Services" means the services (if any) which are the subject matter of the contract.

2) General

All Contracts shall incorporate the following terms and conditions which prevail over any inconsistent terms and conditions contained in the Purchaser's order form, correspondence or otherwise. MPG shall not be bound by any variations or waiver of, or addition to these conditions unless agreed to in writing by a duly authorised employee or Director of MPG.

3) Validity

Any tender submitted by MPG is an invitation to treat not an offer. The placing of an order by the Purchaser in accordance with the terms of the tender, or without the submission of a tender shall constitute an offer by the Purchaser and the Contract shall be effected if and only if such offer is accepted in writing by MPG. However, such a tender shall only be open for the making of an offer within the period stated therein or where no period is specified within 30 days from the date thereof.

4) Price and V.A.T.

- (a) The price at which any offer is accepted shall be available only for deliveries made within 60 days of the date of acceptance provided that MPG shall have the right to vary the prices within such period in the event of unforeseen rises in the cost of raw materials and/or labour. Thereafter the price will be that ruling at the date of despatch.
- (b) All prices quoted are subject to the addition of Value Added Tax at the rate ruling at the appropriate tax point.

5) Provision of information and samples.

The offer must be accompanied by sufficient information to enable MPG (if it accepts the same) to proceed with the order forthwith. If any delay in manufacture or delivery should take place, due or partly due to the Purchaser's failure to provide such information MPG shall in addition to its other rights in respect thereof be at liberty at any time to amend the price to cover any increases which have taken place after acceptance. Any samples submitted must be returned to MPG works carriage paid within one month from the date of submission or paid for.

6) Drawings Etc.

All descriptive and shipping specifications, drawings and particulars of weight and dimensions which may be submitted with any tender are approximate only and the descriptions and illustrations contained in MPG catalogues, price lists and other sales promotion matter are intended merely to present a general idea of the goods described therein and none of these shall form part of the contract.

7) Limits of Contract

Any tender submitted by MPG includes only such goods, accessories and work as are specified therein.

8) Packing

Where packing cases are necessary they will be charged at cost and invoiced at the same time as the Goods. If these packing cases are returnable this will be stated on the invoice and a credit note will be issued after the case has been returned at the Purchaser's expense and received in good condition at MPG's Works.

9) Quantities

The price tendered is for the stated amount only and does not hold good for lesser quantities. Every endeavour will be made to deliver the correct quantity ordered but no delivery shall be treated as defective by reason of a shortage or surplus not exceeding 10%. All tenders for goods to be delivered from stock are subject to those goods being unsold on receipt of the Purchaser's offer.

10) Tools

- (a) Unless otherwise agreed the Purchaser shall pay for all tools necessary for the production of the Purchaser's Order and all replacements thereof but such tools shall be and remain the property of MPG.
- (b) The Purchaser shall bear all maintenance costs with respect to such tools.
- (c) MPG reserve the right to destroy any tools manufactured by them which have not been used for a period of 3 years on giving the Purchaser three months' Notice in writing.

11) Extra Cost

In the event of variation of suspension of work by the Purchaser's instruction or lack of instructions the contract price shall be adjusted to cover any increases

thereby incurred by MPG's storage facilities permit otherwise the Purchaser shall forthwith either take delivery or arrange for storage.

12) Delivery

- (a) Carriage – Unless otherwise stated in MPG's tender all costs of carriage shall be charged to, and payable by, the Purchaser.
- (b) Damage, shortage or loss – MPG will not accept any responsibility for damage, shortage or loss in transit unless –
 - (i) MPG and the carriers are notified in writing of such damage, shortage or loss within such a time as will enable MPG to comply with the carrier's condition of carriage as affecting damage, shortage or loss in transit.
 - (ii) When the goods have not been delivered MPG and the carriers are notified within fourteen days of despatch.
 - (iii) Where delivery is made by MPG's transport MPG are notified in writing of any damage, shortage or loss within three days after receipt of the Goods. Subject to the above MPG will repair or replace free of charge Goods lost or damaged in transit.

13) New Customers

In the case of new customers MPG reserve the right to delay manufacture and or delivery of the Goods until MPG have been provided with satisfactory proof of credit worthiness or have received payment against a pro-forma invoice.

14) Despatch

The times quoted for despatch are to be treated as estimates only and will date from MPG's acceptance of the Purchaser's offer or if later the date when all necessary information and drawings are available to enable MPG to put the order in hand.

MPG will attempt to despatch by the date given but will accept no responsibility for failure to do so unless a guarantee shall have been given in writing by a duly authorised officer of MPG under an agreed sum (as liquidated damages) for late despatch and the Purchaser has suffered loss by a reason of late despatch.

Should despatch be hindered or delayed by instructions or lack of instructions or by any cause whatsoever beyond MPG's reasonable control then a reasonable extension of time for despatch shall be granted in every case.

15) Consignments

Each consignment shall be considered a separate transaction and the failure or delay of any one delivery shall not affect the due performance of the Contract as regards other deliveries.

16) Performance

Any performance figures given by MPG are based on experience and are such as MPG expect to obtain on test.

MPG however accept no liability if these figures are not obtained unless they are specifically guaranteed in writing by a duly authorised officer of MPG under an agreed sum (as liquidated damages) and a bonus, subject to the recognised tolerances and rejection limits applicable to such figures MPG are to be given reasonable time and opportunity to comply with the terms of any such guarantee before being called upon to pay any sum in respect of such liquidating damages. If MPG fail to comply the purchaser may reject the Goods and MPG will repay to the Purchaser any sum paid by the Purchaser to MPG on account of the contract price thereof and any sum that may have accrued to the Purchaser in respect of agreed liquidated damages under this clause or under Clause 14 up to date of such rejection.

The Purchaser assumes responsibility for the capacity and performance of the Goods being sufficient and suitable for his purpose in particular (but without prejudice to the generality of the foregoing) the Goods are not intended to come into contact with food, unless written notice has been given to MPG prior to MPG's acceptance of the Purchaser's offer and MPG expressly agrees in writing to provide Goods which are intended to come into contact with food. If MPG does agree to supply Goods which are intended to come into contact with food, the purchaser must secure that any special conditions specified by MPG are observed at all times while the Goods are being used and will indemnify MPG and its employees and agents against all and any claims for damages, costs, expenses and losses which it and/or they may incur as a result of any failure to comply with any such conditions.

17) Guarantee

- (a) MPL's liability to repairing or replacing any Goods which show defects arising solely from faulty materials and/or workmanship provided always
 - (i) That notification giving full particulars or such claim shall have been received by MPG, within two months of delivery of the goods in respect of which such claims arises.
 - (ii) That any Goods with the Purchaser may claim to reject shall be returned to MPG within ten days after such notification for inspection by MPG and repair or replacement as MPG deems necessary.

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- (iii) That MPG's liability under this clause shall in no circumstances exceed the ex-works price of the goods.
- (iv) That in default of such notification being received and the Goods returned in accordance with sub clause (i) and (ii) hereof all Goods delivered shall be deemed to comply with the terms of the contract or any agreed variations thereof and be in all respects satisfactory.
- (v) That in the case of Goods not manufactured by MPG the Purchaser will be entitled only to such benefits as MPG may receive under any guarantee given to MPG in respect thereof.
- (vi) That for the purpose of sub clause (i) and (ii) hereof time shall be deemed to be the essence of the contract.

(b) This guarantee is given in place of all warranties, conditions, statements and liabilities whatsoever implied by common law, statute, trade usage or otherwise all of which shall accordingly be excluded. Furthermore, MPG and its servants and agents shall not be liable for any injury or loss or damage whatsoever whether direct, consequential or special and howsoever caused resulting from or arising out of our incidental to:-

- (i) MPG's performance or failure to perform its obligations under the Contract whether express or implied, or
- (ii) any defect in the Goods, or
- (iii) any advice given or Services supplied by MPG or on its behalf in relation to the assembly, installation or use of the Goods.

18) Payment

Unless otherwise agreed in writing payment in full shall be due within 30 days following the date of despatch. Interest will be payable from the due date of payment at a rate of 2% over the then current Bank Rate on any part of the purchase price remaining unpaid after the due date.

19) Disputes and Set Off

The Purchaser shall not be entitled to withhold payment of any sums due to MPG under the Contract or any other contract because of any claim of the Purchaser in respect of any alleged breach of the Contract or any other contract.

20) Suspension or cancellation of deliveries and lien.

If the Purchaser shall fail to pay to MPG on the due date any sum payable under the Contract or any other contract with MPG or make default in or commit a breach of the Contract or any other contract with MPG or any other of the Purchaser's obligations to MPG or a winding up order is made against the Purchaser or the Purchaser goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy or allows execution or distress to be levied against his goods MPG shall be entitled, without prejudice to its other rights and remedies :-

- (a) At MPG's option either to terminate wholly or in part any or every contract between MPG and the Purchaser or to suspend any further performance or every such contract, and
- (b) To a general lien, on all goods of the Purchaser in MPG's possession (although such goods or some of them may already have been paid for) for the unpaid price of any Goods sold and delivered to and any service performed for the Purchaser by MPG under any such contract.

21) Passing of property.

- (a) The risk in the Goods shall pass to the Purchaser on delivery and the Purchaser is recommended to take out insurance for the Goods from the moment delivery takes place.
- (b) Until full payment has been received by MPG for all Goods whatsoever supplied (and all services rendered) at any time by MPG to the Purchaser;
 - (i) The Goods shall remain the property of MPG
 - (ii) Should the Purchaser convert the goods (or any of them) into a new product whether or not such conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions the conversion shall be effected by the Purchaser solely as Agent for MPG who shall have the full legal and beneficial ownership of the new product.
 - (iii) The Purchaser shall store the Goods and the new product separately in such a way that they can be readily identified as being the property of MPG.
 - (iv) Subject to (v) and (vi) below the Purchaser shall be at liberty to sell the Goods and the new products referred to in (ii) above in the ordinary course of business on the basis that the proceeds of sale shall belong to MPG, to whom the Purchaser shall account on demand provided that the Purchaser shall have no authority to enter into any Contract of sale on behalf of MPG and any Contract of Sale shall accordingly be concluded in the name of the Purchaser.
 - (v) MPG may at any time revoke the Purchaser's Power of Sale by Notice of the Purchaser if the Purchaser is in default for longer than 7 days in the payment of any sum whatsoever due to MPG (whether in respect of Goods or any other goods supplied or

Services rendered at any time by MPG to the Purchaser) or for any other reason whatsoever or if any Bill of Exchange, cheque or other negotiable instrument drawn or accepted by the Purchaser in favour of MPG is dishonoured on presentation for payment or if MPG has bona fide doubts as to the solvency of the Purchaser.

- (vi) The Purchaser's power of sale shall automatically cease if a Receiver is appointed over any of the assets or the undertaking of the Purchaser or a winding-up order is made against the Purchaser or the Purchaser goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy or allows execution or distress to be levied against his goods.
- (vii) Upon determination of the Purchaser's power of sale under (v) or (vi) above the Purchaser shall place the goods and the new products at the disposal of MPG who shall be entitled, using only such force as may be necessary to enter upon any premises of the Purchaser for the purpose of removing such Goods and new products and to remove such Goods and new products from the premises (including severance from the realty where necessary).
- (c) Where payment is made by means of a Bill of Exchange, cheque or other negotiable instrument MPG shall be deemed not to have received payment for the purpose of sub-clause (b) until such Bill of Exchange, cheque or other instrument has been honoured on presentation for payment notwithstanding that MPG may have negotiated it and received value therefor.

22) Arbitration

If at any time any question, dispute, or difference whatsoever shall arise between the Purchaser and MPG upon in relation to or in connection with the Contract, either party may give the other notice in writing of the existence of such a question, dispute or difference and the same shall be referred to the arbitration of a person mutually agreed upon or failing agreement of some person appointed by The Director of the British Plastics Federation. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force.

23) Legal Construction

The Contract shall in all respects be constructed and operated as an English contract in conformity with English Law which shall be the proper law in connection herewith and in connection with any case stated arising from any arbitration hereunder.

24) Waiver

MPG's rights under the Contract are to be unaffected by any Waiver of Forbearance and any Waiver in respect of one breach is not to be construed as a Waiver in respect of subsequent breaches.

25) Clause Headings

The clause headings in these conditions are included for convenience only and shall not affect the interpretation hereof in any way whatsoever.