

**STANDARD TERMS AND CONDITIONS
FOR THE SALE OF GOODS**

F66.1 Issued 22 March 2010

1. Application of Conditions

- 1.1 Harold Fisher (Plastics) Ltd - HF(P)L - shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of HF(P)L which is accepted by the Buyer, or any order of the Buyer which is accepted by HF(P)L,
- 1.2 These Conditions 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 Buyer.

2. Basis of Sale

- 2.1 HF(P)L's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by HF(P)L in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and HF(P)L.
- 2.3 No order submitted by the Buyer shall be deemed to be accepted by HF(P)L unless and until confirmed in writing by HF(P)L's authorised representative.
- 2.4 No order which has been accepted by HF(P)L may be cancelled by the Buyer except with the agreement in writing of HF(P)L on the terms that the Buyer shall indemnify HF(P)L 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 HF(P)L as a result of cancellation.
- 2.5 HF(P)L reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to HF(P)L which is due to any factor beyond the control of HF(P)L (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 Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give HF(P)L adequate information or instructions.
- 2.6 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of HF(P)L.

3. Delivery

- 3.1 The Delivery Date shall not be of the essence of the contract unless previously agreed by HF(P)L in writing.
- 3.2 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by HF(P)L to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.





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- 3.3 If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, HF(P)L shall be entitled upon given written notice to the Buyer to store or arrange for the storage of the Goods and then notwithstanding the provision of Condition 10.1 of these Conditions risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to HF(P)L all costs and expenses including storage and insurance charges arising from such failure.
4. **Inspection/Shortage**
- 4.1 The Buyer is under a duty whenever possible to inspect the Goods on delivery or on collection as the case may be. Where the Goods cannot be examined the carriers note or such other note as appropriate shall be marked "not examined".
- 4.2 HF(P)L shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the terms of this clause are not complied with and, in any event will be under no liability if a written complaint is not delivered to HF(P)L within three days of delivery detailing the alleged damage or shortage.
- 4.3 Subject to condition 4.1 and condition 4.2, HF(P)L shall make good any shortage in the Goods and where appropriate replace any goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.
5. **Defective Goods**
- 5.1 If on delivery any of the Goods are defective in any material respect and either the Buyer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery "condition and contents unknown" the Buyer gives written notice of such defect to HF(P)L within three business days of such delivery, HF(P)L shall at its option replace the defective Goods within a reasonable time or refund to the Buyer the price for the goods which are defective but HF(P)L shall have no further liability to the Buyer in respect thereof and the Buyer may not reject the Goods if delivery is not refused or notice given by the Buyer as aforesaid.
- 5.2 No Goods may be returned to HF(P)L without the prior agreement in writing of HF(P)L. Subject thereto any Goods returned which HF(P)L is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at HF(P)L's sole discretion HF(P)L shall refund or credit to the Buyer the price of such defective Goods but HF(P)L shall have no further liability to the Buyer.
6. **Payment**
- 6.1 HF(P)L shall invoice the Buyer for the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event HF(P)L shall invoice the Buyer for the Goods at any time after HF(P)L has notified the Buyer that the Goods are ready for collection.
- 6.2 The Buyer shall pay the invoice for the Goods by the end of the month following that in which the invoice is raised. If at any time HF(P)L is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further goods will be delivered to the Buyer other than against cleared payment and all amounts owing by the Buyer to HF(P)L shall be immediately payable.



6.3 HF(P)L will retain the tool(s) used for the manufacture of the goods until all moneys due are paid. If the tool(s) do not belong to the buyer, the buyer is obligated to reach this agreement with the owner of the tool(s). In the event that the moneys due are delayed for more than six months then HF(P)L reserve the right to dispose of the tool(s) in whatever way it deems fit or to keep the tool(s) and to credit the buyer with the scrap value of the metal in the tool(s).

7. Buyer's Default

7.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to HF(P)L, HF(P)L shall be entitled to:-

7.1.1 cancel the order or suspend any further deliveries to the Buyer;

7.1.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and HF(P)L) as HF(P)L may think fit (notwithstanding any purported appropriation by the Buyer); and

7.1.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of two per cent per annum above the National Base Rate until payment in full is made.

7.2 This condition applies if:-

7.2.1 the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or

7.2.2 the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or

7.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

7.2.4 the Buyer ceases, or threatens to cease, to carry on business; or

7.2.5 HF(P)L reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

7.3 If Condition 7.2 applies then, without prejudice to any other right or remedy available to HF(P)L, HF(P)L shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the invoice shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

8. Retention of Title

8.1 The legal and beneficial title of the Goods shall not pass to the Buyer until HF(P)L has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by HF(P)L and the Buyer has repaid all moneys owed to HF(P)L, regardless of how such indebtedness arose.

8.2 Until payment has been made to HF(P)L in accordance with these Conditions and title in the Goods has passed to the Buyer, the Buyer shall be in possession of the Goods as bailee for HF(P)L and the Buyer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by HF(P)L and shall insure the Goods against all reasonable risks.

- 8.3 In the event that the Buyer sells or transfers the Goods to a third party before legal and beneficial title has passed to him under these Conditions, the proceeds of the sub-sale or transfer (or such proportion as is due to HF(P)L) shall be held by the Buyer on behalf of HF(P)L.
- 8.4 If the Goods are manufactured into another form or are used in the process of manufacturing other goods, the Supplier shall acquire legal and beneficial title to the resulting goods, or a proportion of the title equal to the contribution made to the resulting goods by the Goods.
- 8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of HF(P)L, but if the Buyer does so all money owing by the Buyer to HF(P)L shall (without prejudice to any other right or remedy of HF(P)L) forthwith become due and payable.
- 8.6 HF(P)L reserves the right to repossess any Goods in which HF(P)L retains title without notice. The Buyer irrevocably authorises HF(P)L to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which HF(P)L retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-clause 7.2.
- 8.7 The Buyer's right to possession of the Goods in which HF(P)L maintains legal and beneficial title shall terminate if;
- 8.7.1 The Buyer commits or permits any material breach of his obligations under these Conditions;
- 8.7.2 The Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with his creditors;
- 8.7.3 The Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- 8.7.4 The Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

9. Limitation of Liability

- 9.1 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2 Nothing in these conditions excludes or limits the liability of HF(P)L:
- 9.2.1 for death or personal injury caused by HF(P)L's negligence; or
- 9.2.2 for any matter which it would be illegal for HF(P)L to exclude or attempt to exclude its liability; or
- 9.2.3 for fraud or fraudulent misrepresentation.
- 9.3 Subject to condition 9.2 and condition 9.3:





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- 9.3.1 HF(P)L's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 9.3.2 HF(P)L shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10. Confidentiality, Publications and Endorsements

10.1 The Buyer undertakes to HF(P)L that:-

- 10.1.1 the Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of HF(P)L and will not use or disclose to any third party such information without HF(P)L's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default. This Condition shall survive the termination of the Contract.

11. Force Majeure

- 11.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout, the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.
- 11.2 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.
- 11.3 If and when the period of such incapacity exceeds four months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

12. Interpretation

- 12.1 In this document "the Buyer" means the person who accepts a quotation or offer of HF(P)L for the sale of the Goods or whose order for the Goods is accepted by HF(P)L, and "in writing" includes any communications effected by telex, facsimile transmission, electronic mail or any comparable means.
- 12.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 12.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

13. Third Party Rights

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

14. Governing Law and Jurisdiction

The Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

