

TERMS AND CONDITIONS OF SALE

1. Interpretation

- 1.1 In these conditions 'Buyer' means the person whose order for the goods is accepted by the seller. 'Goods' means the goods (including any instalment of the goods or any parts for them) which the seller is to supply in accordance with these conditions. 'Seller' means PH Flexible Packaging Limited. '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 Buyer and the Seller, and 'Contract' means the contract for the purchase and sale of the Goods.
- 1.2 Any Reference in these conditions to any provision 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

- 1.4 The Contract shall be effected upon the seller giving written acceptance of the Buyer's order and the date of the contract shall be deemed to be the date of the acceptance unless otherwise expressly specified. The Contract shall incorporate and be subject to these Conditions in all respects and no variation of or addition to these Conditions shall form part of the Contract or be effective against the Company unless expressly made or approved by the Company in writing. All quotations shall be invitations to treat only and shall not constitute offers capable of acceptance by the Buyer and shall be valid only for a period of thirty (30) days from the date of the quotation unless otherwise specifically provided. These Conditions shall override and take the place of any other conditions in any document or other communication used by the Buyer in concluding any contract with the Seller. In the event that no quotation or acceptance is given by the Seller and the Seller shall have received an order from the Buyer, provided that the Buyer shall have notice of these Conditions, any Contract of sale between the Seller and the Buyer shall be deemed to incorporate these conditions. These conditions embody the entire understanding of the Seller and the Buyer relating to the Contract and save where otherwise provided and supersede all prior promises, representations, understandings or implications relating thereto.
- 1.5 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 Seller shall be subject to correction without any liability on the part of the Seller.

2 Specifications, descriptions and drawings

- 3.1 All drawings, designs, sketches and samples prepared by the Seller and the copyright therein shall remain the property of the Seller and shall be returned to it by the Buyer on demand. All such drawings, designs, sketches and samples are confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Seller. All tools supplied by the Seller in relation to the Goods remain the property of the Seller whether or not a charge is made to the Buyer in respect of their use or any of them.
- 3.2 If the goods are to be manufactured or any process is to be applied to the goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller 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 Seller's use of the Buyer's speculation.
- 3.3 The Seller reserves the right to make any changes to 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 Seller's specification, which do not materially affect their quality or performance.
- 3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

4 Price of the Goods

- 4.1 The price of the Goods is the price quoted on the face hereof. All prices quoted are valid for thirty (30) days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller 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 cost to the Seller which is due to any factor beyond the control of the Seller (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 the Seller adequate information or instructions.

- 4.3 Except as otherwise stated, and unless agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The cost of the pallets, boxes, packages and other returnable containers may be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the buyer provided they are returned to the Seller before the due payment date.
- 4.6 Shortages or surpluses within the permitted delivery variations (as per condition 6.6) shall be charged pro-rata the agreed price of the Goods.

5 Terms of payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the 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 the Seller shall be entitled to invoice the Buyer for the price at any time the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within thirty (30) days from the date of the invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property of the Goods has not [passed to the Buyer. The time of payment of the price shall be of the essence of the contract.
- 5.3 All preliminary work (including the costs of acquiring or preparing appropriate tools where necessary) done by the Seller at the request of the Buyer in relation to the Contract of the Goods or materials used in conjunction therewith shall be paid for by the Buyer upon demand by the Seller.
- 5.4 If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer, appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other Contract between the Buyer and the Seller) as the Seller may think it (notwithstanding any purported appropriation by the Buyer), and charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of two (2%) per month (calculated on a day to day basis) until payment in full is made.

6 Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller 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 Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller 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.
- 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.
- 6.5 If the buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for deliver (otherwise than by reason of any cause beyond the Seller's fault) then, without prejudice to any other right available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage.
- 6.6 The Seller shall have been deemed to have fulfilled its contract by delivery of quantities with the following variations:
 - 6.6.1 Bags – delivery variations of not more than 10% of each type of printed or non-standard plain bag resulting from over or under runs except that the allowable variations in deliveries of each type of printed or non-standard bag ordered in quantities of less than 5,000 shall be 25%.
 - 6.6.2 Film – delivery variations of not more than 10% of each type of printed or non-printed film resulting from over or under runs except that the allowable variations in deliveries of each type of printed film ordered in quantities of less than 10,000 printed impressions shall be 25%.

- 6.6.3 Durable mailers – delivery variations of not more than (i) 10% when ordered in quantities of greater than 50,000 units (ii) 15% when ordered in quantities between 25,000 units to 49,999; (iii) 20% when ordered in quantities between 10,000 units and 24,999 units.
- 6.6.4 All other packaging materials of not more than 10% where the material content of the Contract does not exceed 10 tonnes or 7.5% where the material content of the Contract exceeds 10 tonnes.
- 6.7 Goods are not returnable and no credit will be given for Goods returned without the Seller's prior agreement in writing. In the case of Goods returned with the Seller's agreement, a restocking charge of 30% of the price of the Goods will be levied.
- 6.8 Any query regarding delivery documentation and invoices shall be notified to the Seller within thirty (30) days of the date of invoice. If the Buyer does not notify the Seller accordingly the Buyer shall be deemed to have accepted the sufficiency and accuracy of such delivery documentation and invoices and shall accordingly pay the price on the due date.

7 Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer: in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or in the case of Goods to be delivered otherwise that at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods.
- 7.2 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 Buyer until the Seller 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 Seller to the Buyer for which payment is then due. In the case of machinery or other equipment by the Seller on hire, lease, lease purchase or other equivalent, title in such machinery or equipment shall only pass (if at all) in accordance with the specific terms agreed between the Seller and the Buyer in respect of such arrangement.
- 7.3 Until such a time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be

entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

- 7.5 The Buyer shall not be entitled to pledge or in any way change by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 All tools, moulds and other equipment made, prepared or obtained by the Seller shall be and remain the property of the Seller whether or not a charge is made to the Buyer in respect thereof and the Seller shall have the exclusive rights to any patents, registered designs, trade marks, copyright or other intellectual property rights retained therein.

8 Warranties and liability

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will be of normal commercial quality and where appropriate correspond with their specification at the time of delivery.
- 8.2 The above warranty is given by the Seller subject to the following conditions: the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer, the Seller shall be under no liability in respect of any defect, failure, breakdown, malfunction or breakage arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval; the Seller 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; the above warranty does not extend to parts, materials of equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 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 status or common law are excluded to the fullest extent permitted by law. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.
- 8.4 Any claim by the buyer 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 buyer) be notified to the Seller within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5 Where any valid claim in respect of any of the Goods which on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the buyer the price of the goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.6 In the case of printed Goods the Seller will not accept liability or responsibility for any infringement of copyrights or trade marks and the Buyer will hold the Seller harmless from any liability therefore. The Seller will not be liable or responsible for any errors in proofs which have been passed by the buyer and any charge incurred by the Seller in the preparation of all special tools, sketches, printing blocks etc. shall be charged extra.
- 8.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer 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 loss, injury or damage of any nature whatsoever (whether for loss of profit or otherwise) whether direct or consequential, or other claims for compensation whatsoever (whether caused by the negligence of the Seller, 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 Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these conditions.
- 8.8 The Seller shall not be liable to the Buyer 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control, but not limited to Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

- 8.9 Insofar as the Seller is under a duty pursuant to S.6 of the Health and safety at Work Act 1974 in respect of the design, manufacture and supply of any article for use at work the Buyer shall be deemed to have been afforded by the Seller reasonable opportunity for the testing and examination of goods or materials prior to delivery to the Buyer in respect of their safety and any risk to health and the Buyer shall be deemed to have been afforded by the Seller adequate information about the goods and materials in respect of the used for which they are designed and have been tested and of any conditions necessary to ensure that when put to use they will be safe and without risk to health whether or not the said information has been requested by the Buyer.

9 Patents and Trade Marks

- 9.1.1 No representation, warranty or indemnity is given by the Seller that the Goods do not infringe any letters patent, trade marks, registered designs or other industrial property rights.

10 Insolvency of Buyer

- 10.1 This clause applies if: the Buyer 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 amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the buyer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller 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 price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10.3 The Seller may set-off (contra) any debt due to it from the Buyer against any payment required from the Buyer under another Contract.

11 Export terms

- 11.1 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 defined of given 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.

- 11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.
- 11.3 The Buyer 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.
- 11.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

12 Printing, Sketches, Buyer's Requirements

- 12.1 All sketches and original work produced by the Seller remain the property of the Seller. Alterations from original copy on and after first proof will be charged extra. Proofs of all work may be submitted for the Buyer's approval and no responsibility will be accepted for any errors in proofs which may be passed by him. The Buyer shall be wholly responsible (in respect of copyright, trade mark, design all common law and statutory rights and otherwise howsoever) for any matter or work which they instruct the Seller to print or perform and for any other design, sketch, drawing, painting, construction, work or thing which they supply and/or instruct the Seller to supply or execute and for all claims by third parties arising therefrom and the Buyer shall keep the Seller indemnified against all proceedings, claims, costs, expenses and liability whatsoever in respect thereof.

13 General

- 13.1 The Buyer shall not assign the Contract or any part thereof or any rights thereunder in whole or in part without the prior written consent of the Seller.
- 13.2 Any notice required or permitted to be given by either party to the other under these conditions shall 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.
- 13.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.4 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.

- 13.5 The Contract shall be governed by and construed in accordance with the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts as regards any dispute arising under or in connection with these conditions or the sale of the Goods.