

Counterplas Ltd

Standard Conditions of Sale

Definitions

1 In these conditions the following words and expressions shall have the meaning set out opposite them.

“the Company”	Counterplas Ltd and where the context admits its subsidiary and associated companies;
“export contract”	a contract for the sale of Goods to be consigned outside the United Kingdom;
“Ex- Works”	as defined in the ICC Incoterms as amended from time to time;
“FOB”	as defined in the ICC Incoterms as amended from time to time;
“Goods”	any goods or services of whatsoever nature which are supplied by the Company to the Purchaser;
“the Purchaser”	the company, firm or person who has bought or agree to buy Goods.

General

2 Goods are sold and supplied by the Company only on the following general terms which supersede and cancel all previous conditions of sale.

Payment Conditions

- 3 The Purchaser shall not be entitled to withhold the whole or any part of the payment due for Goods sold on the ground of any alleged defect or any other claim whatsoever against the Company unless the defect or other claim is recognised by the Company and the Company agrees to such retention
- 4 Non payment on the due date shall entitle the Company to suspend any deliveries and/or the supply of any services and/or Cancel the contract without further notice and the provisions of this clause shall apply to this contract and any other contract between the Company and the Purchaser.
- 5 In addition to any lien to which the Company may otherwise be entitled, the Company shall in the event of the Purchaser Failing to pay the purchase price under this or any other contract with the Company (including any contract treated as a separate agreement by virtue of clause 18 of these conditions) and/or upon the occurrence of any if the events set out in clause 23(e) of these conditions, be entitled to general lien on all Goods of the Purchaser including tooling in possession of the Company for all sums due and payable from the Purchaser to the Company.

Delivery

- 6 Unless otherwise agreed by the company in writing Goods shall be regarded as delivered to the Purchaser upon the first in Time to occur on:-
 - (a) the physical delivery of the Goods to the Purchaser at the Company’s premises;
 - (b) physical delivery of the Goods to the Purchasers delivery agent or to an independent carrier for the purpose of transmission to the Purchaser or its nominee; or
 - (c) delivery of the Goods by the Company to the address specified by the Purchaser.
- 7 The Company shall be entitled to determine the route and manner of delivery of Goods and in particular shall have the Purchaser’s authority to make such contracts with any other carrier as the Company may consider reasonable. If the route of delivery involves sea transit the company shall not be obliged to give the Purchaser notice as specified in section 32(3) of the Sale Of Goods Act 1979.
- 8 The company shall be entitled to make delivery by instalments and in such case each instalment shall be regarded as constituting a separate agreement to which each of these conditions apply.

Risk and Insurance

9 Risk in the Goods shall pass to the Purchaser upon delivery or, if earlier, when they are placed at the Purchasers disposal.

Retention of Title

- 10 (a) Ownership of the goods shall remain with the company who reserves the right to dispose of the goods until the company has received payment in full. Such payment shall become due immediately upon the commencement of any act of proceeding in which the purchaser solvency is involved.
 - (b) The Purchaser hereby grants to the Company, its servants and agents, an irrevocable licence to enter upon any premises



- of the Purchaser for the purpose of the Company has terminated the Purchaser's right for resale pursuant to paragraph (e) below for the purposes of recovering any Goods in respect of which property has not passed to the Purchaser.
- (c) Until title to the Goods has passed to the Purchaser, it shall possess the Goods as a bailee of the Company the terms of the bailee being modified by this contract. If the Company so requires the Purchaser shall store the Goods separately from other goods and shall ensure they are clearly identifiable as belonging to the Company.
 - (d) Notwithstanding that the title has not passed and subject to paragraph (e) of this clause and the Purchaser may sell the Goods as a mercantile agent but only on terms that title to the Goods shall not pass to the buyer until the Purchaser as mercantile agent has received payment in full of all monies owing from such buyer. Until such payment is made the Company reserves the right to recover payment for the Goods from such buyer in accordance with the provisions of sub-section 12(3) of the Factors Act 1889.
 - (e) The purchaser's right of resale may be terminated by the Company upon oral or written notice to the Purchaser immediately if the Purchaser defaults in payment of any sum when due or if the Purchaser is in material breach of any obligations hereunder and shall automatically cease if a receiver is appointed over any of the assets of the Purchaser, or any person shall become entitled to levy distress in respect of the Purchaser and is not paid out within seven days, or a petition is presented for an administration order in respect of the Purchaser, or a petition is presented or notice is given of a resolution to wind up the Purchaser or the Purchase is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
 - (f) The Purchaser shall not be entitled to pledge or grant any security in any way for any indebtedness over or in respect of any of the Goods which remain the property of the Company.

Force Majeure

- 11 The company shall be relieved from any liability under any contract incorporating these conditions if and to the extent that it may become unable to carry out all or any of its obligations as a result of any event or matter beyond its reasonable control. By way of illustration and not of limitation, the following are considered as events beyond the reasonable control of the Company: Strike, lock-out or other industrial dispute, public disorder, riot, revolution, mobilisation, hostilities, war (whether or not formally declared), epidemic, fire, earthquake, storm, flood and other acts of God, official regulations, orders, requirements or acts of government, governmental or administrative authority, transportation difficulties, working difficulties, machine breakdowns, failure of supplies or other causes whether similar or not. Where there is a shortage of Goods materials, energy or labour the Company will endeavour to allocate available resources fairly between one customer and another. The Company's decision as to any such allocation shall be final and insofar as such allocation results in a shortfall, delay or non-performance of these conditions such as shortfall, delay or non-performance shall be deemed to arise from matters beyond the control of the Company and the Company shall be relieved from liability accordingly.

Complaints and Returns

- 12 (a) The Purchaser will, within 3 days, inspect the Goods and in the event of loss or damage give written notice (otherwise than by endorsement on the carriers delivery note) to the carrier and (without prejudice to section 32 of The Sale of Goods Act 1979) to the company within three days of the date of delivery.
- (b) In the event of non delivery the Purchaser must give written notice to the Company, within 3 days, upon whichever shall be the earlier of receipt of the Company's invoice or where an estimated arrival time has been given upon the expiry of such time.
- (c) If the Goods do not conform to the delivery note the Purchaser must notify the Company immediately and at least within three days of the receipt for the delivery note. The delivery note must accompany the claim.
- (d) Goods shall not be returned without a written authorisation and instructions from the Company nor will returned goods be accepted if compliance is not made with such instructions.
- (e) The company shall be given a reasonable opportunity to examine any alleged defect.

Limitation of Liability

- 13 The Company's liability arising in connection with the sale of Goods to the Purchaser shall be limited to:
- (a) any liability which the Company may have for death or personal injury resulting from the Company's negligence;
 - (b) any liability from breach of the obligations arising under section 12 of The Sale of Goods Act 1979; and
 - (c) in the case of any Goods of any constituent part of the Goods having been purchased by the Company from a third party and such Goods or constituent proving to be defective, a sum not greater than the amount received by the Company in settlement of the liability of such third party to the Company in respect of such defect after deduction of costs incurred by the Company in recovering such amount.
- 14 Other than expressly provided in these conditions the Company shall not be liable in respect of any loss or damage of any kind which may arise in connection with Goods delivered by the Company or failure by the Company to deliver Goods, however such loss or damage may be caused and whether such liability arises in contract or tort or by reason of any representation. No terms shall be included in the contract as to the fitness for any purpose or merchantability of any Goods delivered.
- 15 These conditions shall not affect the statutory rights of a consumer under the relevant law of the United Kingdom.
- 16 These conditions reflect the insurance cover which the Company has obtained. The Purchaser is advised to affect its own insurance if it seeks further protection against loss or alternatively to negotiate with the company with a view to the company accepting greater liability to be covered by insurance in consolidation for an increase in the contract price and to test the Goods promptly to ascertain their fitness and suitability for the Purchaser's purpose as the Company is unable to accept greater liability than set forth in these conditions.



Undertaking and Indemnity

17 The Purchaser undertakes that it will comply and will procure that its employees, agents and representatives and every other person working with, on or near, or using any Goods complies with all instructions and recommendations made in all relevant operation instructions, handbooks or manuals which are provided by the Company or the manufacturer of the Goods in connection with the use and operation of the Goods.

18 The Purchaser shall indemnify the Company and keep the Company fully indemnified against all actions, claims, liabilities,

Costs, damages, awards and expenses of whatever nature brought or made, incurred or suffered or awarded against the Company in connection with any Goods including without limitation prejudice to the generality of the foregoing actions, claims, liabilities, costs, damages, awards and expenses arising as a result (whether direct or indirect) of the death of, or any injury to any person, any physical loss or damage to, any property of any person, or consequential loss, (including without limitation loss of profit, loss of use and loss of or damage to, any property of any person, or consequential loss, (including without limitation loss of profit, loss of use and loss of damage to goodwill to any person.

Intellectual Property Rights

19 The Purchaser shall promptly notify the Company of any actual, threatened or suspected infringement of any trade marks registered designs or similar protection, patent or similar protection, copyright, design print and all other rights in the nature of copyright or design right or other intellectual rights subsisting or capable of subsisting in respect of the Goods (“intellectual Property Rights”) which comes to its notice and shall request at the expense of the Company (as out of pocket expenses) do all things as may be reasonably required to assist the Company in admission of liability nor compromise any such claim or any claim made by the Company in connection with such to take all necessary proceedings in its own name and in the name of the Purchaser and the conduct of such negotiations and proceedings shall be at the absolute discretion of the Company.

20 The Purchaser shall have no rights in respect of any intellectual Property Rights belonging to or used by the Company in relation to Goods or the goodwill associated therewith and the Purchaser acknowledges that it shall not acquire the rights in respect thereof and that all rights and goodwill are and shall remain vested in the Company.

Export Contracts

21 In the case of export contracts all import duties, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary export and import licences in respect of Goods shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of Goods exported without the necessary export and import licences.

Assignability

22 The Purchaser shall not be entitled to assign, transfer, sub-let or otherwise allow any other person to exercise its rights under any contract incorporating these conditions or to which these conditions apply without the prior written consent of the Company. The Company may in its absolute discretion sub-contract the whole or part of its obligation under any part of its obligations under any such contract.

Law

23 These conditions and any contract in which they are incorporated, shall be governed by and construed in accordance with English Law and the Purchaser hereby submits to the jurisdiction of the English Courts.

24 If any of these conditions or any contract in which they are incorporated or held by a court of competent jurisdiction to be unenforceable the remaining terms and condition shall continue.

Agreement to terms and conditions

You hereby agree to Counterplas Limited Standard Conditions of Sale

Signed:

Position:

Print Name:

Date: