

CONDITIONS OF BUSINESS  
ACTION PLASTIC STORAGE EQUIPMENT LIMITED

1. GENERAL

- 1.1 In these conditions, "the Company" means Action Plastic Storage Equipment Limited and "the Purchaser" means the individual, firm, company or other party with whom the Company contracts.
- 1.2 No quotation by the Company constitutes an offer and no order in pursuance of any quotation or otherwise shall be binding on the company unless and until the Company accepts such order. Any contract made between the Company and the Purchaser (herein called "the Contract") shall be subject to these conditions and no representative or agent of the company has authority to make any representations inconsistent with them or to enter into any contract except on the basis of them; any such representation or contract will bind the Company only if in writing and signed by a director or Manager of the Company.
- 1.3 Unless otherwise agreed in writing by the Company these conditions shall override any terms and conditions stipulated or referred to by the Purchaser in his order or pre-contract negotiations.
- 1.4 Any description or the colour of any illustration contained in the Company's catalogues, samples, price lists or other advertising material are intended merely to present a general picture of the Company's products and shall not form representations or be part of the Contract.
- 1.5 In the event that the Company has not given a written acknowledgement of the Purchaser's order these conditions, provided the Purchaser shall have had prior notice of them, shall nonetheless apply to the Contract.
- 1.6 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

2. DESIGN

- 2.1 Where goods are made to a Purchaser's own specification or design, the Purchaser undertakes full responsibility for the suitability and fitness of the specification or design and undertakes to indemnify the Company against the Company against any infringement of any patent registered design or copyright and any loss damage or expense which it may incur by reason of such infringement in any country.
- 2.2 Where under the contract goods are to be installed by the Company:
  - (a) The Purchaser is responsible for ensuring that his premises are adequate to withstand the loads to be imposed and by ordering the goods the Purchaser is deemed to warrant that the floors foundations partitions beams and other parts of the premises are in a fit condition and suitable and sufficient to carry the loads recommended in the Company's brochure or quotation.
  - (b) The Purchaser shall obtain any necessary consents or approvals required by Statute Regulation or Bye-law and by ordering the goods is deemed to warrant so to have done.

3. PRICE

- 3.1 Subject to any agreement to the contrary the Company's quotations are provisional insofar as they are subject to alteration by reference to any changes in the price of raw materials, rates of wages and other costs of production taking place between the date of quotation and the Company's acceptance of the Purchaser's order.
- 3.2 Unless otherwise stated all prices quoted or shown in the Company's catalogues and price lists are exclusive of VAT.
- 3.3 If delivery and/or installation of any goods is delayed at the request of the Purchaser beyond any date previously agreed upon the Company shall be entitled to invoice the goods on the said date and for the purposes of paragraph 5 hereof the despatch of the goods or, as the case may be, practical completion of installation, shall be deemed to have been made on that date. The Company shall then effect delivery and/or installation on or as soon as reasonably practicable after the date requested by the Purchaser.
- 3.4 If under the contract the Company is to install any goods the Purchaser shall provide for the Company's employees and/or sub-contractors throughout the period of installation reasonable and sufficient access to site offloading and parking facilities and electricity and water and shall indemnify the Company in respect of any costs, losses and expenses arising out of or in connection with any failure or delay in any such provision.

4. DELIVERY

- 4.1 Unless otherwise agreed the contract price for the goods excludes the cost of carriage to the contractor's place of delivery which cost will be charged extra.
- 4.2 Where goods are to be delivered by container delivery shall be complete when they are delivered to the container depot.
- 4.3 Where goods are sold F.O.B. delivery shall be complete when they are placed on board ship.
- 4.4 Collection by the Purchaser or his servants or agents shall constitute delivery.
- 4.5 In the event of any suspension of work owing to strikes, lockouts, disputes, breakdowns, accidents or force majeure, deliveries may be wholly or partly suspended until such time as work is resumed.
- 4.6 While the Company will endeavour to deliver and/or install the goods by any date agreed upon such dates are estimates only given in good faith and the Company will not be liable for any failure to deliver or install by such date. Moreover, the Company shall be entitled to retain the goods until any monies due to the Company have been received.

5. TERMS OF PAYMENT

Unless otherwise specified in writing by the Company, payment shall be made by the Purchaser nett cash not later than the end of the month following the month in which the goods are despatched or in which practical completion of any installation to be carried out by the Company is effected. For this purpose time for payment shall be the essence of the contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at the rate of eight per cent above the Bank of England base rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1999.

6. CANCELLATION

- 6.1 If the Purchaser shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have a receiver appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Purchaser of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract of which these conditions form part as determined but without prejudice to its right to any unpaid purchase price for goods delivered and damages for any loss suffered in consequence of such determination.
- 6.2 Cancellation by the Purchaser will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of the cancellation and all loss or damage resulting to the Company by reason of such cancellation will be reimbursed by the Purchaser to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing.
- 6.3 A charge will be made for any costs incurred by the Company due to suspension or deferment of any order.

7. WARRANTIES

- 7.1 Where damage or loss occurs to the goods in transit and before delivery thereof to the Purchaser the Company will replace or (in its discretion) repair such goods, PROVIDED that the Company's liability, if any, shall be limited to such replacement or repair and the Purchaser shall not be entitled to make any claim against the Company for consequential loss.  
Conditions precedent to the Company's liability hereunder are that the Purchaser
  - (a) Shall have given to the Company written notice of such damage or loss with reasonable particulars thereof within 7 days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch.
  - (b) Shall if so requested have returned damaged goods to the Company within 28 days of receipt.
- 7.2 Save as otherwise provided in these conditions the Company's liability whether in contract tort or otherwise in respect of any defect in or failure of goods supplied or work done is limited to replacing or (in its discretion) repairing goods which within 6 months of delivery to the Purchaser or installation by the Company are found to be defective by reason of any defect arising from faulty design workmanship materials or installation.

- Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practicable the Purchaser
- (a) Shall have given to the Company reasonable notice of the defect or failure
  - (b) Shall have either returned the goods to the Company or provided authority for the Company's servants and agents to inspect them.
- 7.3 Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the Contract shall be extended for such period as the Company may reasonably require.
- 7.4 All goods supplied by the Company are supplied with the benefit of the terms implied by Section 12 of the Sale of Goods Act 1979 and, where the Purchaser is not dealing or holding himself out as dealing in the course of a business, sections 13, 14 and 15 thereof. Subject thereto all other conditions, warranties and other terms express or implied, statutory or otherwise, are excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made there under shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.
8. TITLE TO GOODS
- The following provisions shall apply to all goods that under the contract the Company agrees to sell or supply to the Purchaser. No failure by the Company to enforce strict compliance by the Purchaser with such provisions shall constitute a waiver thereof and no termination of the contract shall prejudice limit or extinguish the Company's rights under this paragraph.
- 8.1 Upon delivery of the goods the Purchaser shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Purchaser shall have paid to the Company all sums due to the Company whether under the Contract or any other contract. Until such time the Purchaser if so required shall store the goods separately from goods not being the property of the Company and in such fashion as to be readily identifiable by the Company.
- 8.2 The Company may require the Purchaser to return the goods and may recover and re-sell the same (if they are in the Purchaser's possession or under its control) at any time when any sum owed by the Purchaser to the Company under the Contract or any other contract is not paid on the due date for payment. For the purpose of exercising its rights under this sub-paragraph the Company, its employees or agents together with all necessary and appropriate transport shall be entitled to free and unrestricted entry upon the Purchaser's premises and any other location where the goods are situated.
- 8.3 The Purchaser is hereby licensed to sell the goods and any products incorporating any of them but shall hold the whole of the proceeds of the sale as trustee and agent for the Company and shall not mingle any of the proceeds of sale with his own monies or in any bank account with other monies but shall ensure that all such receipts of sale are kept separate and identifiable. Moreover the Purchaser shall immediately upon receipt of the proceeds of sale remit to the Company the full purchase price of the goods less any part thereof that has already been paid.
- 8.4 If the Purchaser does not receive any proceeds of any such sale on the due date he shall within 7 days notify the Company, and, if called upon to do so, assign to the Company any claim of any nature whatsoever against the person or persons to whom he has supplied the goods or any of them.
9. INSURANCE
- The risk in all goods shall pass to the Purchaser on delivery and the Purchaser shall be responsible for effecting appropriate insurance cover and for storing any goods to be installed by the Company. In the case of goods to be sent by sea the Company shall be under no obligation to give the Purchaser the notice specified in section 32 (3) of the Sale of Goods Act 1979.
10. HEALTH AND SAFETY AT WORK ACT 1974
- The Company will on request make available information on the design construction and installation of its products to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used. It is the responsibility of the Purchaser to take such steps as are necessary to ensure that the appropriate information is made available to any person to whom the Purchaser supplies any goods supplied by the Company.
11. SUB-CONTACTING
- Unless otherwise agreed in writing the Company may sub-contract all or any part of any work agreed to be done by it.
12. JURISDICTION
- The proper law of all contracts with the Company is English Law which shall govern in all respects the construction and effect of such contracts and these terms of business.