
CONDITIONS OF SALE

1. CONSTRUCTION OF CONTRACT

These conditions shall apply to all contracts between NYLACAST LIMITED (hereinafter referred to as "the Company") and any person firm or company (hereinafter called "the Customer") for the supply of goods or the carrying out of work by the Company. The Company contracts upon the terms of these Conditions only and any printed or other standard terms emanating from the Customer shall not apply. These conditions shall not be modified without the written agreement of the Company and in order that the contract shall be a complete statement of the agreement between the parties with regard to the supply of goods or the carrying out of work by the Company the Customer must ensure that any representation or instruction on which it wishes to rely has been accepted by the Company in writing. No order is deemed to be accepted or any contract made with the Company until an acknowledgement of such order or contract has been made by the Company.

2. PRICE VARIATION

Quotations given by the Company in writing remain open for acceptance by the Customer for a period of 30 days but quotations are based on the Company's current costs of production and unless agreed are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs. The Company's statement that its costs have risen or fallen in such circumstances shall be conclusive as to the existence of such rise or fall. The Company reserves the right at any time to refuse to accept any order placed as a result of any quotation.

3. TAX

All quotations are, unless specifically otherwise provided, exclusive of Value Added Tax and any other statutory charge as may be appropriate.

4. DELIVERY

- (a) The time for the performance of the Company's obligations under the contract shall commence from the date upon which the Company receives all the necessary information and documentation to enable it to supply the goods or carry out the work ordered by the Customer without interruption.
- (b) Once all necessary information and documentation mentioned in 4 (a) has been supplied to the Company, and the Company has incurred any costs and commenced production of the goods, the Customer cannot change their requirements, designs or specifications without reimbursing the Company for any and all liabilities, loss of profit and increased administration and legal costs already incurred on an indemnity basis.
- (c) Any date for delivery specified in respect of goods sold or to be sold by the Company shall be treated only as an estimate given in good faith, and such delivery is not a term of the contract and it is specifically hereby agreed that time for delivery is not of the essence. The Company shall not in any circumstances howsoever arising whether as a result of its own negligence or otherwise be under any liability to the Customer for any failure to deliver by or on such date and such failure shall not entitle the Customer to cancel or terminate the contract.
- (d) Any delivery time specified shall be extended by any period or periods during which the manufacture or delivery of the goods or other work by the Company in connection with the contract is delayed due to fire, explosion, flood, storm, tempest, sabotage, strikes, official and unofficial riot, invasion, acts of war (whether war be declared or not) shortage of labour power or materials, delay by the Company's suppliers or carriers, civil commotion, accidents, plant breakdown, technical difficulty, seizure, or other action by or in compliance with an order or an apparently competent authority and any other event or circumstance beyond the control of the Company. Notwithstanding such delays the Customer shall take and pay for at the rate of the contract price such of the goods as shall be tendered by the Company and be ready for delivery.
- (e) From the time of the despatch of the goods from the Company's premises the risk of any loss of or damage to or deterioration of the goods from whatever cause whether as a result of the Company's negligence or otherwise shall be borne by the Customer. Goods shall be deemed to have been despatched in full quantity and in good condition unless particulars of the shortage or defect alleged are notified in writing by the Customer to the Company within 7 days of the date of receipt (as recorded in the delivery documentation) by the Customer of the goods.
- (f) The Company shall be entitled to charge for and be paid all delivery and insurance costs incurred and not specifically included in the contract price.

5. VOLUME VARIATION

Subject to the terms below, any Customer seeking to vary an order for which it has provided an estimate for requirements must provide written notice to the Company. In addition, where the Customer has provided an estimate of requirements, it shall not:

- (a) within 30 days of the proposed delivery date of any estimated order, be entitled to vary such order and any order under which goods are due for delivery in 30 days or less shall be considered as a binding order;
- (b) within 60 days of the proposed delivery date of any estimated order, be entitled to vary such order unless the Customer agrees to pay any resulting costs in order to address the increase or decrease in raw materials to be used by the Company to fulfil the order. If special requirements on the part of the Customer mean that longer cancellation terms have to be given to the Company's suppliers of such raw materials, the Customer shall account to the Company in respect of the Company's costs in relation to these requirements.

6. RETENTION OF TITLE

(c) **Title**

The title to any goods supplied by the Company to the Customer shall not pass from the Company to the Customer unless and until the Company has received payment in cash in cleared funds in full for such goods and for any work done by the Company on behalf of the Customer and for any other debts owed by the Customer to the Company on any other account whatsoever.

(d) **Storage of the Goods**

Until payment for all goods supplied and for all work done has been made in full, including payment of any interest due, the Customer shall store all goods supplied by the Company in such a way as to enable them to be identified as the property of the Company and shall hold such goods as bailee for the Company. The Customer shall not dispose or part with the possession of such goods until title has passed, save that the Customer may sell the goods in the normal course of business.

(e) **Risk**

The risk in any goods supplied by the Company shall pass to the Customer when they are despatched from the Company's premises either for delivery to the Customer or as a result of collection by the Customer. The Customer shall keep such goods fully insured until title has passed to the Customer.

(f) **Recovery of the Goods**

If the Customer does not pay to the Company any sums due under any contract between the parties, the Company may repossess and uplift any goods supplied to the Customer and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's employees and agents to enter upon all or any of its vehicles or premises in which such goods or other products are stored with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Company thereunder or otherwise.

(g) **Recovery of Proceeds of Sale of Goods in the Event of Non-Payment**

If the Customer re-sells any goods supplied by the Company, notwithstanding that payment to the Company has not been made and that title to such goods has not passed to the Customer, the proceeds of any such re-sale equivalent to all sums owing ("the Proceeds") shall belong to the Company until payment has been received in full. The Customer will hold the Proceeds in a fiduciary capacity and keep them in a separate account, to be remitted forthwith to the Company.

(h) **Termination of Customer's Rights**

The Customer's right to possession of goods owned by the Company shall cease forthwith upon the occurrence of any of the events in clause 10 of this contract.

(i) **Mitigation**

All mitigation/recovery activities by the Company under the contract between the parties are agreed to be entirely without prejudice to any additional claims it may have against the Customer for any failure by the Customer to complete its obligations under the contract.

7. PAYMENT

- (a) The contract price is to be paid by the Customer no later than 30 days from date of invoice (unless alternative payment period is agreed in writing between the Company and the Customer. The Company shall make the goods available for collection by the Customer from the Company's premises and accordingly the prices of all goods are based on delivery ex-works. If the Customer delays taking delivery of the goods beyond the agreed delivery date, the goods may be invoiced and payment due 30 days thereafter, and the Company reserves the right to charge the Customer reasonable storage or delivery costs for any goods ready for collection. Payment shall be made to the Company and the Company's official receipt shall be the only acknowledged discharge of the debt. The Customer shall not be entitled to withhold payment of any amount due to the Company by reason of any payment credit set off counterclaim allegation of incorrect or defective goods or work or for any reason whatsoever which the Customer may allege excuses it from performing any obligation under the contract. Interest shall accrue on any amount as remains outstanding after the period of 30 days at the rate of 2.5% per month calculated from day to day or at the rate of interest prescribed by law whichever is higher.
- (b) If the Customer does not take delivery of all of the goods ordered by the Customer in a contract less than 12 months after the date of the contract, then the Company may in its sole discretion terminate such a contract immediately. On such termination all monies payable to the Company by the Customer under such a contract will be immediately due irrespective of whether all goods ordered by the Customer in a contract have been supplied to the Customer. This clause 6 (b) shall not apply if the Customer does not receive all deliveries less than 12 months after the date of the contract due to the Company's non-compliance with the delivery date provided by the Company.
- (c) The Company and the Customer agree that the price for the goods is based on the Customer purchasing a minimum number of goods from the Company ("the Minimum Purchase Commitment"). If the Customer fails to purchase the Minimum Purchase Commitment from the Company within 12 months from the date of this contract the Customer shall pay to the Company the difference between the total price of goods purchased by the Customer pursuant to the contract and the total sum payable under the Minimum Purchase Commitment. In such circumstances, the Company may also terminate this contract on notice with immediate effect and without liability thereof.
- (d) Time for payment of the goods shall be of the essence.
- (e) No payment shall be deemed to have been received until the Company has received payment in full and cleared funds.
- (f) The Customer shall pay for the goods in pounds sterling unless otherwise agreed by the Company in writing.

8. PERFORMANCE

The Company accepts no liability for any loss or damage arising by reason of the failure of the goods to comply with any written estimate as to the performance thereof provided that the Company shall be given reasonable opportunity to remedy any defect as to estimated performance and in the event that such defect shall not be so remedied, then the Company shall without prejudice to its exclusion of liability hereunder give credit to or reimburse the Customer for the cost of the goods on the return thereof to the Company.

9. ASSIGNMENT OF RIGHTS AND OBLIGATIONS

- (a) The Customer shall not assign, sub-contract, delegate, transfer, place in trust or dispose of this contract and/or any of its rights or obligations under it without the prior written consent of the Company.
- (b) The Company shall be entitled to assign, sub-contract, delegate, transfer, place in trust or dispose of this contract and/or any of its rights or obligations under it without the prior written consent of the Customer.

10. THE COMPANY'S LIABILITY

- (a) The Company warrants any goods of its manufacture to be free from defects caused by faulty material or poor workmanship but gives no warranty or makes no representation whether express or implied as to any other matters whatsoever including without limitation conditions as to merchantability or fitness for purpose or performance. Such warranty is limited to a period of 6 months from the sooner of the date of delivery or the date that the Customer was notified that the goods were available for delivery and is expressly conditional upon the Company being promptly notified in writing upon discovery of any such defects, the Customer forthwith ceasing to use the defective goods unless otherwise authorised by the Company in writing and the defective item immediately being returned to the Company, transportation charges being prepaid by the Customer. All warranties, terms, conditions, and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- (b) The Company's liability in respect of the contract for defective goods shall solely be limited to replacing, repairing or issuing credit at its option for any goods returned by the Customer within the aforesaid period which the Company, in its sole discretion, considers to be defective.
- (c) The Company shall have no liability to the Customer for any:
 - (i) loss of profits and/or damage to goodwill;
 - (ii) pure economic and/or other similar losses;
 - (iii) special damages;
 - (iv) aggravated, punitive and/or exemplary damages;
 - (v) business interruption, loss of business, loss of contracts, loss of opportunity and/or production;
 - (vi) consequential losses and/or indirect losses.
- (d) The Company's total aggregate liability to the Customer in connection with this contract shall not exceed 125% of the contract price payable by the Customer to the Company under this contract.
- (e) The Company shall be entitled without any liability of whatever nature to cancel any contract with the Customer at any time should the Company not be able to obtain a credit reference in respect of the Customer which in the opinion of the Company, in its sole absolute and unfettered discretion it regards as an acceptable credit reference. Following such cancellation the Company shall be entitled to payment for all works carried out by the Company to the date of such cancellation and if such works only compromise a part of the contract then an appropriate part of the contract price as reflects their worth.
- (f) Each of the limitations and/or exclusions in this contract shall be deemed to be repeated and apply as a separate provision for each of:
 - (i) liability in contract (including fundamental breach);
 - (ii) liability in tort (including negligence);
 - (iii) liability for breach of statutory duty; and
 - (iv) liability for breach of common law and/or under any other legal basis; except that the clauses above placing financial caps on the Company's liability shall apply once in respect of all of the said types of liability.
- (g) Nothing in this contract shall exclude or limit the Company's liability for death or personal injury due to its negligence or any liability which is due to its fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

11. CANCELLATION

- (a) If the Customer:
 - (i) fails to make any payment when due;
 - (ii) breaches the terms of this contract (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);
 - (iii) persistently breaches any one or more terms of this contract;
 - (iv) ceases or threatens to cease to carry on business;
 - (v) is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, has any execution or distress levied against its assets, fails to satisfy a judgement debt against it, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances; and/or
 - (vi) being a body corporate undergoes a change of control as defined in section 416 of the Income and Corporation Taxes Act 1988.

then the Company shall be entitled forthwith to determine this contract in whole or in part by written notice with immediate effect.

- (b) If the Company terminates this contract pursuant to clause 10(a) then;
 - (i) all costs, expenses, overheads and loss of profits incurred by the Company in connection with the contract shall forthwith become payable by the Customer as a debt due from the Customer to the Company;
 - (ii) the Customer shall cease to sell goods belonging to the Company in the normal course of the Customer's business;
 - (iii) any goods of the Company kept by the Customer shall forthwith be delivered up by the Customer to the Company or to the Company's nominee who shall be given access to the goods in order to remove the same; and the price of any goods delivered by the Company to the Customer or any goods ordered by the Customer in respect of which the Company has notified the Customer that such goods are available for delivery to the Customer shall become due and payable forthwith.

12. INDEMNITY

Without prejudice to any other remedies the Company may have, the Customer agrees to indemnify and keep the Company indemnified against any and all liabilities, loss of profit, increased administration and professional and legal costs on a full indemnity basis suffered by the Company (without set-off, counterclaim and/or reduction) arising out of or in connection with the non-fulfilment or non-completion of contracts by the Customer.

13. TERMINATION ON DEFAULT OR INSOLVENCY

The Company may immediately terminate the contract by written notice if the Customer:

- (a) fails to make any payment when due;
- (b) breaches the terms of the contract (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);
- (c) persistently breaches any one or more terms of the contract;
- (d) ceases or threatens to cease to carry on business; and/or
- (e) is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances.

14. INTELLECTUAL PROPERTY RIGHTS

- (a) Any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) in the goods or in any computer programs, moulds, tools (physical or virtual), designs, drawings, or goods or data (IPR) owned by the Company or created by the Company in the course of the performance of the contract or otherwise used in the manufacture of the goods shall remain the Company's property unless otherwise expressly agreed by the Company in writing.
- (b) The Company grants, on full payment for the goods the non-exclusive right for the Customer and bona fide purchasers from the Company to use, for the operation of the goods for their intended purpose only, (i) any software supplied with, or embedded in, the goods, and (ii) technical manuals and instructions relating to operation and maintenance of the goods.
- (c) The Customer hereby grants to the Company, a non-assignable non-exclusive, royalty-free licence to use any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) owned by the Customer to the extent necessary for the Company to supply the whole or any part of the goods in accordance with the contract.
- (d) Except as expressly stated in this clause 14, nothing in the contract shall be deemed to have given the Customer a licence or any other right to use any of the IPR of the Company.

15. GENERAL LIEN

Without prejudice to other remedies, the Company shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to the Customer to dispose of such goods or property as it thinks fit and to apply any proceeds towards such debts.

16. CONTINGENCIES

The Company shall not be liable for failure to perform in whole or in part any of its obligations hereunder by reason of anything out of its control, including but not limited to an act of God, war, insurrection, government regulations, embargoes, strikes or lock-outs, flood, fire, tempest or any other cause beyond the control of the Company.

GENERAL

- (a) Any notice under this contract shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at the address set out on the first page of this contract or such other address as that other party may from time to time notify in writing and shall have been deemed to have been served if sent by registered post 48 hours after posting.
- (b) This contract contains the whole agreement between the parties and it supersedes any written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this contract on the basis of any representation that is not expressly incorporated into this contract. Nothing in this contract shall exclude liability for any fraudulent statement or act made prior to this contract.

The proper law of the contract shall be English law and any disputes arising thereunder shall be dealt with exclusively by the courts of England save that the Company shall be entitled to bring proceedings against the Customer in the courts of any other jurisdiction where the Customer resides or carries on business.

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