

Conditions of Sale

All offers and quotations made by the Company and all orders accepted by the Company are subject to the following terms and conditions as if they were included in each such offer, quotation or order. In the event of any inconsistency or conflict between these terms and conditions and the terms and conditions of the enquiry or order of the customer these conditions shall prevail. In these conditions "the Company" means Owen Greenings & Mumford Limited.

1. FORMATION OF CONTRACT

Quotations unless previously withdrawn shall be valid for a period not exceeding 30 days from the date of the quotation. No order shall be accepted by the Company until the Company's written acknowledgement and acceptance incorporating these terms and conditions into the contract without amendment has been despatched by the Company.

2. QUANTITIES

The price quoted by the Company shall be for the stipulated quantities only and shall not be taken to apply to an order for any lesser quantity. Delivery of up to 10% above or below the quantities ordered shall not be a breach of contract.

3. COLOUR

The colour of goods supplied may be subject to reasonable variation and such a variation shall not be a breach of contract.

4. INSERTS

If inserts are to be provided the following provisions shall apply:-

(a) The customer shall deliver inserts or (at the election of the Company) the customer shall provide inserts for collection by the Company at such place as shall be reasonably notified to the Company in the quantities and at the times specified by the Company and if the customer fails to do so the Company shall have the option to either suspend the performance of the contract (in whole or in part) or to terminate the contract.

(b) The Company is to be provided with a sufficient excess of inserts to cover manufacturing losses. Excess inserts which are not actually required will be returned to the customer if so required.

(c) All inserts shall be of suitable quality, shall strictly comply with the agreed dimensions and tolerances and shall be delivered to the Company free of all costs and charges in a condition suitable for incorporation (without alteration) into the mouldings.

(d) Any defects whatsoever in the mouldings which is attributable to unsuitable or faulty inserts shall not entitle the customer to rescind the contract reject any goods make any deductions from the agreed price or to claim damages in respect of such defect. The Company reserves the right to charge the customer for correcting any defects in the mouldings which are so attributable.

5. TOOLS

(a) The Company reserves the right to destroy such tools which have not been used for a period of three years on giving the customer three months notice in writing.

(b) In the case of tooling or moulds or other equipment supplied by a customer, the customer shall pay the Company for any alterations which may have to be made to the same in order to make them function satisfactorily and the customer shall also pay for any maintenance or repair work which may be necessitated in respect of the same during the period of manufacture of the goods concerned by the Company.

6. DELIVERY

Any stipulated time for delivery shall date either from the receipt by the Company of the customer's written order to proceed or from the receipt by the Company of all the necessary information, drawings and inserts to enable the Company to put the work in hand whichever shall be the later.

Whilst the Company shall endeavour to keep the stipulated delivery time, the Company shall not be liable for any delay in delivery due to any necessary tools required to execute the order not being available to the Company or due to any other cause beyond the reasonable control of the Company.

7. CARRIAGE

Where a delivery price is quoted, this will normally be by a national carrier at standard freight rates. When, on the customers' instructions, goods are sent same day or over-night or next day delivery, this will be charged extra at cost.

8. LIABILITY

(a) The Company shall be under no liability for breakage or damage to the goods or any other defects in the goods occurring after despatch of the goods by the Company.

(b) On making a claim that any goods are defective, the customer shall return them or the relevant parts thereof to the Company for inspection at the customer's risk within ten days from the date the customer receives the goods. If the Company is reasonably satisfied after such inspection that the goods are defective by reason of faulty materials or workmanship, the Company will at its discretion repair the goods or supply equivalent goods to those agreed to be defective or will credit the customer to the value of the goods agreed to be defective. If after such inspection the Company is not reasonably satisfied that the goods are defective, the customer shall pay a reasonable charge for such inspection.

(c) The liability of the Company pursuant to (b) above shall not extend to cover goods which have inadequately stored handled maintained or subject to improper use by the customer otherwise than strictly in accordance with any instructions provided by the Company or which have been modified or repaired by anyone other than the Company or its authorised agent.

(d) Subject to (b) above the Company shall not be liable for any loss damage compensation costs (including loss of profit and goodwill) expenses or any other liability whatsoever whether direct or indirect consequential or otherwise and whether suffered by the customer or by any third party and any other remedy which would otherwise be available in law to such parties is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.

9. INDEMNITY

(a) The customer shall indemnify the Company against all claims in respect of any loss injury or damage sustained by a third party howsoever caused after receipt of the goods by the customer and shall also pay and shall indemnify the Company against all royalties or other payments in respect of any patents registered designs or other rights which may be claimed as a result of goods being made according to any design or specification supplied by the customer and shall also indemnify the Company against all claims expenses and costs in connection with any infringement or alleged infringement of any patent registered design or other right in the manufacture of such goods.

(b) The customer shall indemnify and keep the Company indemnified against all costs claims expenses damages and losses for personal injury and property damage arising as a result of proceedings under Section 2 of the Consumer Protection Act 1987 brought against the Company in respect of the goods supplied. Furthermore this indemnity shall apply notwithstanding that any claim or action is less than the minimum recoverable loss under the Consumer Protection Act 1987.

10. PERFORMANCE OF CONTRACT

Each delivery shall be considered a separate transaction and the failure of any one delivery for any reason whatsoever shall not affect the due performance of the contract as regards other deliveries.

11. PRICE VARIATION

Whilst every effort will be made to adhere to quoted prices, the Company reserves the right to increase such prices in the event of increases in the prices of raw materials labour or any other increases in other costs affecting manufacture of the goods which may take place on any date after the date of the quotation by the Company.

12. TERMS AND PAYMENT

Customers' accounts are payable strictly within 30 days of the date of invoice of charges except in the case of the manufacture of customers' moulds when the cost of manufacture thereof shall be paid one third with order, one third on submission of first samples and the final third after approval by the customer of sample mouldings taken from the said moulds. Such samples shall be approved (or disapproved for good reason only) within 7 days of the receipt of the samples by the customer.

13. RETENTION OF TITLE

- (a) Risk in the goods shall pass to the customer when the goods are despatched to or collected by the customer or its agent (whichever is the earlier).
- (b) Notwithstanding risk in the goods passing in accordance with sub-clause (a) above title in the goods shall not pass to the customer until whichever shall be the first to occur of the following:-
- (i) payment being received by the Company for the goods and no other amounts then being outstanding from the customer to the Company in respect of other goods supplied by the Company
- (ii) the customer selling the goods in accordance with the provisions of these terms and conditions in which case title to the goods shall be deemed to have passed to the customer immediately prior to delivery of the goods supplied to the customer's purchaser (subject to the customer complying with sub-clause (e) below) and
- (iii) the Company waiving its right under this clause in respect of specified goods whereupon title to the said goods shall forthwith vest in the customer.
- (c) Before title has passed to the customer under the terms of sub-clause (b) above and without prejudice to any of its other rights the Company shall have the right to recover or re-sell the goods or any of them and the customer irrevocably authorises the Company to enter upon the customer's premises, or any other premises where the goods are stored, by its servants or agents for that purpose.
- (d) Should the customer alter the goods by subjecting them to any manufacturing process or incorporating them into another product or mixing them in any way then the resulting product ("altered goods") will pass into the ownership of the Company until payment due under all contracts between the Company and the customer has been made in full and all the Company's rights hereunder shall extend to these altered goods.
- (e) Until payment due under all contracts between the Company and the customer has been made in full:-
- (i) the customer shall hold upon trust for the Company the goods and the altered goods
- (ii) in the event of the sale or hire of the goods or the altered goods by the customer he shall hold the proceeds of such sale or hire on trust for the Company in a separate bank account opened by the customer for that purpose and designated as such
- (iii) the Company shall be entitled to trace all such proceeds of sale or hire charges received by the customer through any bank or other account maintained by the customer
- (iv) in the event of sale or hire of the goods or the altered goods by the customer in the ordinary course of its business the customer shall assign its rights to recover the selling price or hire charges from the third parties concerned to the Company if required to do so in writing by the Company
- (v) the customer shall store all goods supplied by the Company in a separate storage area and such goods shall be clearly labelled as the property of the Company.
- (f) As the insurable risk in the goods shall pass to the customer as soon as the goods are delivered to him or to his order and pending disposal the customer shall keep the goods insured in the amount of the price at which the goods are sold to the customer against all insurable risks.
- (g) If the goods are destroyed by an insured risk prior to the same being paid for by the customer, the customer shall receive the proceeds of any such insurance as trustee for the company.

14. TERMINATION

Where the customer applies a trade description within the meaning of the Trade Description Act 1968 to any goods ordered by him, the Company shall be discharged from any liability under the said Act on the customer's acceptance in writing of samples supplied for approval subject to the goods supplied complying with the standards of the approved samples. The customer shall indemnify the Company against all claims costs and expenses made against the Company in connection with any infringement or alleged infringement of the said Act.

15. LIEN

The Company shall have a general lien on all property in the Company's possession belonging to the customer as long as any monies are owing by the customer to the Company whether in respect of this or any other contract between the parties.

16. FORBEARANCE

No forbearance indulgence time or relaxation on the part of the Company shown or granted to the customer in respect of any of these terms and conditions shall in any way effect diminish restrict or prejudice the rights or powers of the Company under this contract or operate as or be deemed to be a waiver of any breach by the customer of any of these terms and conditions.

17. NOTICES

Any notice to be given by either party to the other may be sent by first class post to the address of the other party as appearing in the contract or such other address as such party may from time to time have communicated to the other in writing and if so sent shall be deemed to be served 48 hours following the date of posting.

18. HEADINGS

The headings in this agreement are for convenience of reference only and shall not affect the construction hereof.

19. SEVERABILITY

In the event that any of these terms or conditions shall be determined invalid unlawful or unenforceable to any extent such terms or conditions shall be severed from the body of the contract and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.

20. GOVERNING LAW

This contract shall be governed by and construed in accordance with the laws of England and Wales.

21. ALTERATIONS TO TERMS AND CONDITIONS

The Company reserve the right to alter these terms and conditions by 90 days prior written notice to the customer containing a statement of the intended alteration. Such alteration shall affect agreements which are current at the date of the alteration on expiry of the notice period and the customer shall be deemed to have accepted the alteration unless that customer has notified the Company to the contrary in writing within the period of notice.