

DS SMITH PLASTICS DIVISION – STANDARD PURCHASE CONDITIONS

1. INTRODUCTION

“We” are the Rapak Division of DS Smith Plastics Ltd and “you” are anyone from whom we purchase goods or services. DS Smith Plastics Ltd is registered in England with company number 5267740 and our registered office is 4-16 Artillery Row, London SW1P 1RZ.

We have sent you a purchase order which incorporates these purchase conditions and

- a specification of what we have ordered
- the price we are to pay
- delivery or collection details.

That is the whole of our agreement for this purchase and supersedes any previous agreement we may have had in relation to it. Save as provided under Clause 2 below, no variation to the agreement is valid unless it is in writing and is signed by authorised representatives of both of us.

By accepting our purchase order, you are deemed to accept that these conditions shall apply to and govern any contract between us to the exclusion of all other terms and conditions (including any terms and conditions which you purport to apply under any purchase order, confirmation of order or other correspondence or documentation).

You must not assign the benefit of the agreement without our prior written consent, which will not be unreasonably withheld.

You must supply the goods or services yourselves unless we have agreed in writing to accept them from someone else.

We may ask you to make the supply to any other company within the DS Smith Plastics Ltd and to deal with that other company as if they were us.

2. CANCELLATION AND VARIATION

We may cancel the purchase order at any time before the supply is made. If we do, we agree to pay you a reasonable charge for what you may have done under the agreement, and for any reasonable costs which you properly incurred before the cancellation and which cannot be recouped elsewhere. We have no other obligations to you.

We may suspend the purchase order at any time. If we do, for reasons other than your default, we agree to pay any reasonable additional costs you incur as a result.

If we ask you to vary our order and agree with you an appropriate variation to the price and to the time scale for delivery, you agree to make the supply in accordance with those variations.

3. PRICE AND PAYMENT

The price is a fixed price apart from applicable VAT and any other tax imposed on the supply.

You will not invoice us until you have made the supply. We are to pay your invoice within 45 days after the end of the month in which the invoice is submitted. We reserve the right to withhold payment if we have a claim against you and/or to set off any sums owed by you to us against any sums owed by us to you.

In the case of consignment stock, you will not invoice us for goods supplied to you until we have given you written notice that we have used the goods.

We will not be liable to pay any invoice submitted by you unless (a) the invoice submitted by you is accompanied by the corresponding delivery note countersigned by our customer at the time of delivery and (b) you have fully complied with any invoicing procedures we may have agreed with you in writing.

If you supply goods in excess of the quantity of goods specified in the purchase order, we may (at our option) refuse to pay for the excess goods and require you to collect them from us at your cost. All excess goods will remain at your risk until they are collected by you.

4. WARRANTY AND DEFECTS

You warrant to us that what you supply will be

- what we specified in the purchase order
- free from any defects
- provided with all reasonable care and skill

If we become aware of any defects in goods or services supplied we may, at our discretion

- reject them and require you to replace them (if goods) or re-perform them (if services)
- accept them but require an appropriate reduction in price
- require you to carry out remedial work
- reject them, repudiate the agreement and claim from you any loss we suffer as a result.

These provisions are in addition to any other rights we may have.

5. TIME

Time is of the essence of this agreement. If a date for the supply is specified, and you do not make the supply by that date, we may treat that failure as a fundamental breach of the agreement. In that event we would have no further obligations to you but you would be liable to make good any loss to us.

6. PASSING OF RISK AND TITLE

Goods remain at your risk until

- they have been loaded onto the collection vehicle, if we are arranging their collection or

- they have been unloaded at the delivery address, if you are delivering them.

Goods become our property when:

- they have been unconditionally allocated to fulfil our purchase order, or (if earlier)
- we have paid any part of the price for them.

If goods that belong to us are in your possession you must clearly label them as our property and keep them separate from goods belonging to you or others.

You agree to give us access (on reasonable notice to any premises where goods are being manufactured or stored for us for any reasonable purpose under this agreement.

7. MATERIALS AND TOOLING

Any materials and/or tooling issued to you by us will remain our property. You will be responsible for any loss of or damage to materials and tooling until they are returned to us.

You will use our materials and tooling efficiently and only in the performance of your obligations under this agreement.

You will insure our materials and tooling to their full replacement value against all usual risks and will apply all proceeds of such insurance as we may reasonably require. You will provide evidence of such insurance cover at our request.

If we ask you to do so, you will promptly return (at your cost) all our materials and tooling to us.

The price is inclusive of any tooling costs incurred by you in connection with the supply of goods and/or services under this agreement.

8. TERMINATION

We may terminate this agreement immediately on written notice if:

- you are in breach of an obligation and
 - you cannot put it right
 - you do not put it right within seven days of receiving notice from us to do so
 - we have given you notice of a breach of the same obligation at least once before
 - we reasonably believe that you will not be able to pay your debts as they fall due or that you will be unable to fulfil your obligations under this agreement

On termination we have no further liabilities under the agreement.

9. LIABILITY AND INSURANCE

You agree to pay us on demand an amount sufficient to cover all liability, claims, damages, loss and expenses which may arise, directly or indirectly, as a result of:

- any breach by you of your obligations under the agreement
- any claim that the goods or their use or resale infringe any intellectual property rights of any person, except to the extent that such claim arises from compliance with any design or specification supplied by us
- your act, omission, neglect or default or that of your employees or agents or
- the termination of the agreement under clause 8.

You must maintain adequate insurance cover against risks you incur under this agreement and provide evidence of that cover at our request.

10. GENERAL

No benefits are to be conferred on any third party by this agreement.

If part of this agreement is invalid or unenforceable, that does not affect the remainder; invalidity or unenforceability in one jurisdiction does not affect validity or unenforceability in another.

We are to own all intellectual property created under this agreement. Where necessary, you are to assign or procure the assignment of all such rights (including moral rights) to us.

Unless you object in writing, we may put your name and other details into a computerised directory. This will only be for our use and that of any other company within the DS Smith Plastics Ltd worldwide.

All film and injection mouldings purchased must comply to the Plastic Materials and Articles in contact with Food Regulations 1998.

This agreement and its subject matter are confidential and must not be disclosed to any person without our permission. You will enter into a separate confidentiality agreement forthwith at our request.

Provisions relating to warranties, limitation of liability, intellectual property, confidentiality and obligations on termination survive termination or expiration of this agreement.

English Law applies to the agreement. We both accept the jurisdiction of the English Courts. We may also bring proceedings against you in other jurisdictions.