

# SAINT-GOBAIN PERFORMANCE PLASTICS RENCOL LIMITED - CONDITIONS OF SALE

## 1. Interpretation

1.1 In these Conditions:-

"Buyer" means the person whose order for the goods is accepted by the Seller. "Goods" means the goods (including any instalment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions. "Seller" means Saint-Gobain Performance Plastics Rencol Limited (registered no. 2755773) of Saint-Gobain House, Binley Business Park, Coventry CV3 2TT. "Conditions" means the terms and conditions of sale set out in this document and (unless the content otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with Condition 2.3. "Contract" means the contract for the sale and purchase of the Goods.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer which is accepted by the Seller subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.

2.2 Quotations issued to the Buyer by the Seller may be withdrawn or varied at any time and unless otherwise specified shall be automatically withdrawn after thirty days. No binding contract shall in any event arise until the Buyer's written order has been accepted by the Seller and confirmed in writing by the Seller's authorised representative.

2.3 No variation of these Conditions shall be binding unless agreed in writing between the authorised representatives of the Seller and the Buyer.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing for valuable consideration.

2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

## 3. Orders and Specifications

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of, and/or any specification for, the Goods shall be those set out in the Buyer's order (if accepted by the Seller).

3.3 No order which has been accepted by the Seller may be cancelled by the Buyer (unless the Seller is itself in breach of contract) except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss, costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4. Price of the Goods

4.1 The price of the Goods shall be the price quoted by the Seller and accepted by the Buyer.

4.2 In addition to the rights of the Seller under Condition 4.1 the Seller reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any significant increase in the costs of labour materials or other costs of manufacture) any change in delivery dates, quantities or specifications for Goods which is requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give the Seller accurate information or instructions.

4.3 Unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, loading, unloading, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax or any other tax arising from the sale, conversion or use of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

## 5. Payment Terms

5.1 The Buyer shall pay the price of the Goods in full (less any prompt payment discount to which the Buyer is entitled but without any other deduction or set-off) within thirty (30) days of receipt of the Goods or, if the Buyer fails to accept delivery, within thirty days of the date on which the Buyer should have taken delivery under the terms of the Contract. The time of payment shall be of the essence of the Contract.

5.2 If the Buyer fails to make any payment on the due date then, without prejudice to any right or remedy available to the Seller, the Seller shall be entitled to:-

- (1) cancel the Contract or suspend any further deliveries to the Buyer;
- (2) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- (3) charge the Buyer interest (both before and after any judgement) on the

amount unpaid, at the rate of three (3) per cent per annum over the base rate for the time being of Lloyds Bank PLC (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made in full.

5.3 The Buyer may not withhold payment or make any set-off on any account (other than any admitted credit or overpayment or any prompt payment discount to which the Buyer is entitled).

## 6. Delivery

6.1 Delivery dates are based on the best judgement of the Seller at the time the quotation is given. Any changes in factory schedules by the time the order is received, any requests from the Buyer for changes, revisions and/or approvals of/to specifications or drawings, or any other cause outside the reasonable control of the Seller (including but not limited to industrial disputes) may alter the quoted delivery time, which may be extended by a reasonable period of time.

6.2 Where the Goods are delivered by instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claims by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole repudiated.

6.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the value of such Goods (ex VAT and ex works).

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:-

- (1) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (2) sell the Goods at scrap metal value and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

- (1) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- (2) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time

when the Seller or its nominated contractor has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Subject to Condition 7.4, until that time the Buyer shall be entitled to resell the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 The Buyer's right to possession of the Goods shall cease if he becomes bankrupt, does anything or fails to do anything which would entitle a Receiver to take possession of any assets or which would enable any person to present a petition for winding-up or to appoint an administrator over any of the Buyer's assets.

7.5 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8. Warranties and Liability**

8.1 Subject to Condition 8.2, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of delivery.

8.2 The Seller shall be under no liability in respect of:-

- (1) any defect in the Goods arising from any drawing, design, test, validation, study or specification supplied by the Buyer;
- (2) any defect arising from fair wear and tear, wilful or accidental damage, negligence, failure to follow the Seller's instructions (whether oral or in writing), misuse, improper installation or assembly, alteration, or repair of the Goods without the Seller's approval.

8.3 Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Statements in literature and/or correspondence concerning properties and analyses of Goods are only indicative of typical qualities and shall not constitute a term of these Conditions and in the event that samples shall have been submitted to the Buyer for testing the sale shall not be deemed to be a sale by sample.

8.5 Advice and opinions expressed concerning the Goods shall in no way be deemed to be approval of the design or method of construction of the product in which the Goods are to be incorporated unless the Seller specifically undertakes the liability for the same for consideration in writing.

8.6 Any claim which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified in writing to the Seller within fourteen (14) days of the discovery of the defect or failure. If the Buyer does so notify the Seller the Buyer shall provide details of the alleged defect, preserve the Goods alleged to be defective and allow the Seller reasonable access to inspect the Goods. If the Buyer does not notify the Seller of any claim in accordance with the provisions of this Condition, or otherwise fails to comply with the provisions of this Condition the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall, at its sole discretion, replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.8 Without prejudice to Conditions 8.9 and 8.10, the Seller's total liability in respect of Goods delivered otherwise than in accordance with the Contract, or any other claim arising in connection with the Contract (whether in contract, tort (including negligence), restitution, for breach of statutory duty or misrepresentation, or otherwise) shall be limited to the price paid or payable by the Buyer to the Seller in respect of the quantities of Goods (ex VAT and ex works) to which the claim relates.

8.9 Without prejudice to Condition 8.10, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for loss of profit, loss of business opportunity or damage to reputation or for any indirect or consequential loss or damage, costs,

expenses which arise out of or in connection with the supply of the Goods or their resale by the Buyer, except as otherwise expressly provided in these Conditions.

8.10 Nothing in these Conditions shall limit or exclude the liability of the Seller, its employees, agents or contractors for death or personal injury caused by their negligence. Furthermore, the limitations and exclusions set out in this Condition 8 shall have no application to any other liability which cannot lawfully be limited or excluded.

8.11 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-

- (1) Act of God, explosion, flood, tempest, fire or accident;
- (2) shortages of supplies required for or in connection with the Goods or compliance with any import or export regulations or embargoes or any order or request of any national, port, local or other authority;
- (3) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties).

8.12 The price for the Goods is based on the liability of the Seller being subject to the limitations and exceptions set out in this Condition 8.

## **9. Tools and Designs**

9.1 All drawings, designs, moulds, tools, materials, specifications, manufacturing processes and other information created obtained or provided by the Seller for the purposes of fulfilling any order or proposed order by the Buyer ("the Tools and Designs") shall be and remain the Seller's property together with any patent, design right, copyright, trade mark or other intellectual property right therein.

9.2 Any amount payable by the Buyer to the Seller in respect of the Tools and Designs is deemed to be part of the Contract price and payment of such sum shall not give the Buyer any right, title or interest in the Tools and Designs or any part thereof unless otherwise agreed.

9.3 The Buyer warrants to the Seller that none of the drawings, designs or specifications which it might supply to the Seller in connection with a Contract will infringe the rights of any third party and that it has full authority to provide the same to the Seller for use in connection with the Contract. The Buyer shall indemnify and hold harmless the Seller and its employees and agents against any claim made against, or any loss, cost, damage, injury or expense suffered by the Seller or its employees or agents due to any action, claim or demand brought or threatened by a third party in connection with the infringement of the rights of such a third party.

9.4 The Seller makes no guarantee that the sale or use of any Goods made to the

Buyer's specifications and/or design will not infringe the rights of any third party.

## **10. Insolvency of Buyer**

10.1 This Condition applies if:-

(1) the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or  
(2) an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Buyer; or  
(3) the Buyer ceases, or threatens to cease, to carry on business; or  
(4) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or  
(5) the Buyer commits a material breach of any of the terms of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of written notice from the Seller giving particulars of the breach and requiring it to be remedied.

10.2 If this Condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **11. Export terms**

11.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, these Conditions shall prevail.

11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

11.4 Where in accordance with Condition 4.3 the Seller agrees with the Buyer that it will be

responsible for delivering the Goods the Goods shall (unless agreed otherwise in writing between the Seller and the Buyer) be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under s.32(3) of the Sale of Goods Act 1979.

11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

11.6 The Buyer shall be liable for and shall indemnify and hold the Seller harmless from any and all liability, loss, claims, damages and costs, which the Seller may sustain or incur, arising out of or in any way connected with the Buyer's failure to comply with Conditions 11.3 and/or 13.

## **12. Bribery Act compliance**

The Buyer shall ensure that in any dealings with the Seller, neither the Buyer nor any of its employees or agents shall commit any offence under the Bribery Act 2010 ("the Act") including not engaging in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Act. The Buyer shall inform the Seller immediately it becomes aware of any actions between the parties that could constitute an offence under the Act.

## **13. Sanctions Compliance**

It is the Seller's (and the Seller's group's) policy to comply with all applicable sanctions and legal requirements for the import and export of goods, technology and services. The Seller is committed to ensuring compliance with all regulatory and licensing requirements relating to international trade. The Seller does not permit the supply of any of its goods to any individuals, companies or organisations that are subject to any trade, economic or financial sanctions, embargoes or similar restrictive measures administered, enacted or enforced by the UK, EU, UN or USA ("Sanctioned Entities"). By entering into this Contract the Buyer agrees not to re-sell or otherwise transfer the Goods, either directly or indirectly, to any Sanctioned Entities.

## **14. General**

14.1 The Seller is a member of the group of companies whose ultimate holding company is Compagnie de Saint Gobain S.A., and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be

deemed to be the act or omission of the Seller.

14.2 Without affecting any other right or remedy available to it, the Seller may terminate any Contract with the Buyer with immediate effect by giving written notice to the Buyer if the Buyer commits a material breach of any term of these Conditions and/or the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified in writing to do so

14.3 The Buyer shall not assign the benefit of the Contract without the prior written consent of the Seller.

14.4 The Buyer shall hold all drawings, designs, samples, specifications and other information supplied or provided by the Seller in strict confidence and will not disclose or provide any part thereof to any third party.

14.5 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14.6 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

14.8 The Contracts (Rights of the Third Parties) Act 1999 shall not apply to these Conditions or any Contract so they may not be enforced by any third parties unless such right exists independently of that Act.

14.9 These Conditions and all Contracts shall be governed by and construed in all respects in accordance with English Law and, subject to Condition 14.9, shall be subject to the non-exclusive jurisdiction of the English Courts.

14.10 Condition 14.8 is for the benefit of the Seller. As a result, the Seller is not prevented from taking proceedings against the Buyer in any other court of competent jurisdiction. To the extent permitted by law, the Seller may take concurrent proceedings in any number of jurisdictions.

14.11 The Seller confirms that it follows the EICC code of conduct with regard to its recruitment practices.

October 2015