

Com-Plas Packaging Limited - Terms and Conditions of Trade

1. **Definitions**
- 1.1 "Agent" shall mean Com-Plas Packaging limited its successors and assigns or any person acting on behalf of and with the authority Com-Plas Packaging Limited.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Agent to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Agent to the Client.
- 1.5 "Services" shall mean all services supplied by the Agent to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Agent and the Client subject to clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the Agent from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Agent.
- 2.4 The Client undertakes to give the Agent at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.
3. **Price And Payment**
- 3.1 At the Agent's sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by the Agent to the Client in respect of Goods supplied; or
 - (b) The Agent's quoted Price which shall be binding upon the Agent provided that the Client shall accept the Agent's quotation in writing within thirty (30) days.
- 3.2 Trade Payments shall be subject to strict approved credit limits. Invoices shall be due Thirty (30) days from date of invoice. The Agents may still require a level of deposit depending on the values.
- 3.3 The Agent may require 100% payment to escrow (central fund) with full agreement with all parties directly involved in the commissioning of the contract.
- 3.4 Payment will be made by cheque, by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Agent.
- 3.5 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery of Goods**
- 4.1 At the Agent's sole discretion delivery of the Goods shall take place when;
 - (a) the Client takes possession of the Goods at the Agent's address; or
 - (b) the Client takes possession of the Goods at the Client's address (in the event that the Goods are delivered by the Agent or the Agent's nominated carrier); or
 - (c) The Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 4.2 At the Agent's sole discretion the costs of delivery are included in the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.5 The Agent may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;
 - (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) The Price shall be adjusted pro rata to the discrepancy.
- 4.7 Goods will be delivered to the kerbside adjacent to the delivery site. If at the Client's request, the delivery vehicle leaves the road and enters the delivery site to unload the Client is responsible for providing suitable and safe access for the Agent's delivery vehicle and agrees to indemnify the Agent and its agents for all damage and injury to any person and to any public or private property which may result, including any costs associated with enabling the delivery vehicle to leave the site.
- 4.8 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.
- 4.9 The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to deliver the Goods (or any of them) promptly or at all.
5. **Risk**
- 5.1 If the Agent retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
6. **Title**
- 6.1 It is the intention of the Agent and agreed by the Client that ownership of the Goods shall not pass until:
 - (a) the Client has paid all amounts owing for the particular Goods, and
 - (b) The Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client.
- 6.2 Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Agent's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Agent shall have received payment and all other obligations of the Client are met; and
 - (b) Until such time as ownership of the Goods shall pass from the Agent to the Client the Agent may give notice in writing to the Client to return the Goods or any of them to the Agent. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Agent shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) the Client is only a bailee of the Goods and until such time as the Agent has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Agent; and
 - (e) the Client shall not deal with the money of the Agent in any way which may be adverse to the Agent; and
 - (f) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Agent; and
 - (g) the Agent can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (h) Until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Agent will be the owner of the end products.
7. **Client's Disclaimer**
- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Agent and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
8. **Defects**
- 8.1 The Client shall inspect the Goods on delivery and shall within fifteen (15) days notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods.
9. **Warranty**
- 9.1 To the extent permitted by statute, no warranty is given by the Agent as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Agent shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
10. **Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**
- 10.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 10.2 Notwithstanding clause 10.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 10.3 In particular where the Client buys Goods as a consumer the provisions of Clauses 8 and 9 above shall be subject to any laws or legislation governing the rights of consumers.
11. **Literature**
- 11.1 All literature, samples, specifications, dimensions and weights submitted by the Seller are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with products and services the Seller supplies, and the Seller reserves the right to supply products that have minor modifications in specifications as the Seller sees fit.
- 11.2 The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the contract of sale of the products.
12. **Default & Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs. Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment); the Agent may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent exercised its rights under this clause.
- 12.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
13. **Security and Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
14. **Cancellation**
- 14.1 The Agent may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Agent shall repay to the Client any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for 25% of the quotation price and any other loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.
15. **Data Protection Act 1988 & Data Protection Act 2003**
- 15.1 The Client and the Guarantor/s (if separate to the Client) authorises the Agent to:
 - (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - (b) to disclose information about the Client, whether collected by the Agent from the Client directly or obtained by the Agent from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Client on publicly accessible credit reporting databases.
- 15.2 Where the Client is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 15.3 The Client shall have the right to request the Agent for a copy of the information about the Client retained by the Agent and the right to request the Agent to correct any incorrect information about the Client held by the Agent.
16. **General**
- 16.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 16.3 The Agent shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions.
- 16.4 In the event of any breach of this contract by the Agent the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Agent exceed the Price of the Goods.
- 16.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Agent.
- 16.6 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change. Except where the Agent supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.9 The Agent may use photographs of completed contracts for advertising and promotional purposes strictly with the client's approval and at no stage will the address or specifics of the contract will be visible.