

Avoncourt Packaging Ltd

Conditions of Sale (1 September 1998)

1.0 GENERAL

1.1 The following shall apply for every contract for the sale of goods by the Seller unless variations have been accepted in writing by or on behalf of the Seller. Should any of these Conditions conflict with conditions stipulated by the Buyer in his Conditions of Purchase the Seller's Conditions shall prevail. The absence of any reply by the Seller to the Buyer does not constitute acceptance of the Contract.

1.2 No oral agreement for the sale of goods shall be binding upon the Seller unless and until the same shall have been confirmed in writing by or on behalf of the Seller.

2.0 VARIATION IN PRICE

2.1 The Seller shall be entitled to adjust the purchase price of the goods before or after the making of the Agreement to which these Conditions relate in the event of any variation in the costs of the goods supplied to the Seller or any part thereof caused by any reason whatsoever beyond the control of the Seller including (without prejudice of the generality of the foregoing) changes in Exchange Rates or the action of any Government or Authority.

2.2 If the purchase price at the date of delivery shall be higher than the price at the date of the confirmation of an order, the Buyer may within 7 calendar days after receipt of notice of the adjusted price by the Seller and provided that the goods are not scheduled for production, in production, manufactured or in transit terminate the Contract to which these Conditions relate with respect to such goods and/or goods thereafter to be delivered under the terms hereof without further obligation or liability on the part of either party.

3.0 INSPECTION AND ACCEPTANCE

The Buyer shall inspect and examine the goods immediately on the arrival thereof and shall within 3 calendar days of actual receipt give notice in writing to the Seller of any alleged defect in or damage to the goods. Thereafter the goods shall be deemed to have been accepted and any further claims for damages in regard to such goods shall be excluded. Such defects as cannot be detected by such examination shall be notified to the Seller in writing immediately after discovery, provided however that no claims whatsoever in regard to any defects can be made after the expiration of 3 months after delivery.

4.0 WARRANTIES

The Seller warrants that the goods sold comply with their general description and are produced within the tolerance levels of the standard specifications. Samples constitute only approximate characteristics and do not guarantee specific qualities or specifications. If the goods are agreed by the Seller to be defective or faulty the Seller will (at his option) either rectify the fault or replace any such goods or credit the invoice value of the goods and such rectification or replacement or credit will have been made in full satisfaction of any claim to which the buyer may have been entitled in regard to such goods themselves.

5.0 DELIVERY

5.1 Delivery of all the goods shall be made by the Seller delivering to the place notified by the Buyer. Collection of the goods by the Buyer at the Seller's premises can only take place after the Buyer has been notified that the goods are ready for despatch or collection.

5.2 Any dates quoted for the delivery of the goods are approximate only and the Seller shall not be liable for any delay in delivery of the goods howsoever caused. Time for the delivery shall not be of the essence unless previously agreed by the Seller in writing. The goods may be delivered by the Seller in writing. The goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

5.3 The delivery period shall be deemed to be the scheduled delivery date or week plus or minus 7 calendar days. In the event of a delay in delivery, the Buyer may only withdraw from the contract if on the expiry of the delivery period, the Buyer allows a further reasonable period (at least three weeks) and has stated in writing not to accept the goods if the further period has expired. There will be no entitlement to claim damages on any legal grounds.

5.4 Where delivery of the goods is to be made by the Seller, the Seller reserves the right to deliver up to ten percent (10%) more or ten percent (10%) less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.

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

5.6 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 excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

5.7 If the Buyer fails to take the delivery of Goods or fails to give the Seller adequate delivery instructions at the time stated for the 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:

5.7.1 Store the Goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage or

5.7.2 Sell the Goods at the best price readily obtainable 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.

6.0 LIMITATIONS OF LIABILITY

Subject to such provisions of the Unfair Contract Terms Act, 1977 as cannot be contracted out the Seller's liability (any liability for consequential loss or damage of any kind) for any defect or unsuitability for any purpose of the goods or any part thereof whether the same be due to any act of omission

negligence or willful default of the Seller or its servants or agents or material or any other cause whatsoever, including (without prejudice to the generality of the foregoing) any breach by the Seller its servants or agents of any term of the contract of which these Conditions form part shall be limited to the amount of purchase price of the respective goods.

All other Conditions, warranties or other terms whether express or implied, statutory or otherwise inconsistent with the provisions of these Conditions are hereby expressly excluded.

All claims to which this clause may apply are excluded unless they are made and notified to the Seller within 3 months after delivery of Goods.

7.0 PAYMENT (AND CONSEQUENCES OF NON-PAYMENT)

7.1 All goods and each instalment of goods shall be paid within 30 days from the invoice date unless previously agreed in writing with the Seller. The failure of the Buyer to pay in accordance with the foregoing stipulation shall entitle the Seller to treat such failure as repudiation of such contract and himself to withhold further performance thereof and to recover damages of breach of such contract. In the event of the Buyer's insolvency the Seller shall have the right to treat all pending contracts to be at an end. All invoices not paid within 60 days from the date of the Seller's invoice shall carry interest at the rate of 5 percent above Republic of Ireland clearing bank base rate as published by the Irish Times as at such date with a minimum of 9 percent. Payment by bill of exchange, promissory note or cheque shall not be payment within the meaning of this clause unless and until such bill of exchange, promissory note or cheque shall have been honoured.

7.2 Prices are quoted and charged in Irish Pounds unless otherwise stated.

7.3 Payment shall be deemed to have been made only when such payment is received at the Company's office in Cork, Republic Of Ireland or the Company's bankers.

7.4 The Buyer is not permitted to offset or with-hold full or part-payment by virtue of disputed claims or counterclaims.

7.5 Bills of exchange, promissory notes and other financial instruments with the exception of Irish cheques are only accepted by special arrangement in writing. The Buyer shall bear all costs including those incurred by the Seller for encashment.

7.6 Any payment made will be applied to the oldest outstanding invoice or part invoice.

7.7 If after the contract is concluded, the Seller receives information which suggests that it is not reasonable to allow credit to the Buyer, to the amount invoiced in the contract, or if there are facts which give doubt in this respect, such as, in particular an appreciable deterioration in financial standing (e.g. a cessation of payments, revised credit limit, a creditors petition of bankruptcy, the winding up of the business, a transfer of the business, the pledging of goods or stock) or if the Buyer fails to pay overdue invoices including interest despite reminders and applications for payment by the Seller, then the Seller, without prejudice to his other legal claims, will be entitled to require prepayment or security of payment in cash, irrespective of any earlier agreements to the contrary, or else withdraw from the contract by notification in writing without notice to the Buyer. In these circumstances the Seller will always be entitled to inspect the Buyers warehouse or other places where goods are stored, to demand the handing over of goods to which he has retention of title, to secure them in manner suitable to the Seller and at the cost of the Buyer, and to offer them for sale and to realise them offsetting the price realised against any money due to the Seller by the Buyer and to prohibit the disposal of goods covered by the Seller retention of title and to require sight of the Buyers invoices relating to the sale of the Sellers products whether sold as converted, worked or otherwise altered by the Buyer or not.

8.0 FORCE MAJEURE

in the event of war, civil unrest, invasion, act of foreign enemy, hostilities (whether war has been declared or not) civil war, rebellion, revolution, insurrection, or military or usurped power, the Seller shall be relieved of liabilities incurred under any relevant contract whenever and to the extent to which the fulfillment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by any statute, rules, regulations, orders or requisitions issued by a government, department, council or other duly constituted authority or from strikes, lockouts, breakdown of plant or any other causes (whether or not of a like of nature) beyond the Seller's control.

9.0 RESERVATION OF OWNERSHIP

9.1 Ownership to remain with the Seller.

9.1 The (legal and equitable) ownership of the Goods to be delivered by the Seller shall only pass to the Buyer when the latter has paid the full purchase price and any ancillary costs associated with the contract thereof to the Seller. Until such payment has been made the Buyer shall on request of the Seller keep such goods concerned clearly marked in order to show that they are in the ownership of the Seller.

If the Buyer has not effected payment within the time agreed therefore, the Seller shall be entitled to take back all the goods for which the full purchase price and ancillary costs has then not been paid. The Seller may for the purpose of recovering its goods enter upon any premises or vehicles where they are stored or where they are reasonably thought to be stored and may repossess the same. The exercise of this right shall not have the consequence that the contract of sale between the parties is terminated.

9.2 Admixture of goods sold with other goods or combination of goods with other goods

If the Buyer shall make new objects from the goods or materials delivered by the Seller or mix or blend such goods or materials in any other way and these shall become a constituent part of another object or objects, the Seller shall automatically acquire the ownership therein.

However, in respect of such part of the new object or objects which is not made from goods delivered by the Seller, but is made either from goods or materials belonging to the Buyer or a third person, the Seller shall automatically become joint owners of such a new object or objects with the Buyer or the said third person in the proportion of the commercial value which shall, however, not be less than the invoice price charged by the Seller of the goods delivered by him and used in the making of the new object or objects.

9.3 Buyer's duty as Bailee

In any of the events described under 9.2, until full payment of the purchase price of the original objects delivered by the Seller, the Buyer shall keep the said object or objects after they have been processed as described under clause 9.2 for the Seller in the latter's capacity as a bailor and if required by the Seller, subject to the Buyer's right to sell them as hereinafter referred, to hold the said object or objects as stated in the foregoing paragraph 9.1

9.4 Buyer's right to sell and to an assignment of claims against Sub-purchasers to the Seller

The Buyer shall be entitled to sell the goods delivered to him by the Seller or such new objects as mentioned in this clause, within the usual and ordinary conduct of his business and to deliver them to a third party.

As long as there still exists in indebtedness by the Buyer in relation to the goods delivered but not yet paid, the Buyer shall sell or is respectively deemed to have sold these goods as the Seller's agent, so that all rights occurring through such sale against a third party are those of the Seller. On the request of the Seller the Buyer shall without delay notify the Seller of all then outstanding debts against the party whose particulars are to be given to the Seller in order to enable the latter to collect such debts from the said party directly and forthwith. In the event of the Buyer's accepting payment by a third party after such notification to the Seller, the Buyer shall also act as the agent of the Seller and account to him forthwith in regard to any debt paid to him on such resale.

9.5 Costs incurred in the return of goods.

If and when the Seller exercises his right or rights arising from the reservation of ownership as stated in paragraphs 9.1 and 7.7 the Buyer shall co-operate with the Seller in the actual return of any goods claimed by the Seller and shall bear all costs necessarily incurred by the Seller in connection with such return including costs of transport, insurance, customs duties, if any, from the place from which they will have to be returned to the Seller's place of despatch.

10.0 INSOLVENCY OF BUYER

10.1 This clause applies if:

10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or

10.1.2 If this clause 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 any liability to the Buyer and if the Goods have been delivered but not paid for all monies shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11.0 NOTICES

11.1 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 its 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.

11.2 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.

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

12.0 JURISDICTION

This Contract is subject to the laws of the Republic of Ireland and all disputes arising out of this Contract shall be subject to the exclusive jurisdiction of the Courts of the Republic of Ireland.