



## TERMS AND CONDITIONS OF SALE

### 1. Interpretation

#### 1.1 In these Terms:

“BUYER” means the person who accepts the Seller’s Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller.

“CONTRACT” means the contract for the sale and purchase of the Goods.

“CMR RULES” means the rules set out in the Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 19 May 1956).

“DELIVERY DATE” means the date specified by the Seller when the Goods are to be delivered or shipped.

“GOODS” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms.

“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.

“SELLER” means The Lenticular Plastic Company of Europe Limited.

“TERMS” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller.

“WRITING”, and any similar expression, includes facsimile transmission and comparable means of communication, including electronic mail.

1.2 A reference in these Terms to a 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 Terms 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 the Seller’s Written quotation (if accepted by the Buyer), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer

acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

- 2.4 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.
- 2.5 No representation, claim, specification or price given in any advertising or promotional literature of the Seller shall form part of the contract (and is hereby excluded therefrom) unless specifically stated in the accepted order or specification for or of the Goods.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3. Orders and specifications**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 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.
- 3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled nor may shipments be deferred by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), 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 Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 In addition to the price of the Goods, as determined under clause 4.1, the Buyer shall pay to the Seller the amount of all taxes, excises or charges, if any, that the Seller may be required to pay by any governmental authority with respect to the production, sale, or transportation of any

product, plastic lenticular sheet or packaging furnished hereunder, except where the law of the Republic of Ireland otherwise provides or as stipulated in the Contract.

- 4.3 The Seller reserves the right, by giving Written 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 foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The Buyer shall not make any set-off against the price of the Goods or raise any counterclaim in diminution of the price due but must pay the price and all other charges due on the due date or dates for payment agreed. Any complaints regarding short delivery, alleged defects or faults in the Goods, failure to deliver in accordance with the term of the Contract, or other complaint shall leave the Buyer's obligation to pay the entire price for the Goods and all other charges due under the Contract intact.
- 4.6 The Buyer warrants and agrees as a fundamental term of the supply of the Goods that it will not offer for sale or require or induce or attempt to require or induce any person (whether directly or indirectly) to resell or offer for resale the Goods or to advertise or otherwise specify resale prices for the Goods at less than the net invoice price of the Goods (as such expression is defined in the Restrictive Practices (Groceries) Order, 1987).

## **5. Terms of payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods before delivery of the Goods and payment for the Goods shall be made prior to delivery unless, based upon a satisfactory credit evaluation of the Buyer, other terms of payment may be proposed by the Seller. Time for payment shall be of the essence of the contract.
- 5.2 Unless otherwise expressly provided for between the Buyer and Seller payment shall be made upon demand, without discount, in the Euro currency. The Seller reserves the right, amongst other remedies, either to terminate the Contract or suspend further deliveries upon failure of the Buyer to make any payment as herein specified or to accept shipments as by the Delivery Date. If the financial position of the Buyer shall, in the opinion of the Seller, become impaired at any time the Seller may terminate the Contract unless the Buyer makes each payment or provides satisfactory security to the Seller.
- 5.3 The Seller shall impose and the Buyer shall pay interest at a one and a half per cent per month on invoices due for payment.
- 5.4 All payments are due by credit transfer. The Seller reserves the right in respect of every payment to decline to accept payment by credit transfer and to require instead payment by (at the Seller's option) banker's draft, cash or irrevocable letter of credit. All bank charges related to payment shall be charged to the Buyer.

## **6. Delivery**

- 6.1 Delivery of the Goods shall be made by common carrier unless alternative arrangements are agreed in Writing between the Seller and Buyer. The Seller reserves the right to specify the routing on all shipments to the Buyer
- 6.2 The Seller shall not be bound to deliver the Goods until the Buyer has paid for them, unless otherwise agreed in Writing between the Seller and the Buyer.

- 6.3 In the case of delivery by instalments, each delivery shall be regarded as a separate and independent Contract. The Seller reserves the right to make partial deliveries, and 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.
- 6.4 The Goods sold under the Contract will be shipped at the earliest practical date by the Seller unless specific shipping dates are otherwise agreed, in Writing, between the Buyer and Seller.
- 6.5 The Buyer acknowledges and agrees that, when stated, shipping dates are approximate and that shipment within 10 days of the Delivery Date shall be considered timely.
- 6.6 Without limiting in any way clause 6.4 above the Seller shall not be liable for delay in delivering the Goods caused by circumstances beyond the Seller's reasonable control, including but not limited to, acts of God, fires, floods, wars, sabotage, accidents, labour disputes or shortages, governmental action, laws, ordinances, rules and obligations, whether valid or invalid (including but not limited to priorities, requisitions, allocations and price adjustment restrictions, and inability to obtain material equipment or transportation). At the option of the Seller the Delivery Date shall be extended by the amount of any such delay caused by such circumstances or the quantity of Goods to be delivered may be reduced by the quantity scheduled for delivery in the period of such delay.
- 6.7 The Seller reserves the right to deliver, and the Buyer shall accept, overruns or under runs of not greater than 5% of the quantity of Goods ordered.
- 6.8 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 limiting any other right or remedy available to the Seller, the Seller may:
  - 6.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.8.2 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.

## **7. Risk and property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the FOB Destination or, where transportation is organised by the Buyer, at the FOB Location, unless otherwise agreed, in Writing, by the Parties.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, 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, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 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 moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

- 7.6 The Buyer assumes all risks and liabilities for the results obtained by the use of any material delivered hereunder in any printing, finishing and manufacturing circumstances.

## **8. Warranties and liability**

- 8.1 Subject to the following provisions 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 Thirty Days from delivery.
- 8.2 Without prejudice to the following provisions the warranty contained in clause 8.1 shall cease to apply, and the Seller shall not be liable to the Buyer for any defects arising at any time after the Goods have been printed upon, finished or otherwise altered in any way by the Buyer.
- 8.3 The above warranty is given by the Seller subject to the following conditions:
- 8.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods or removal of the Goods from the skid in which they are delivered without the Seller's approval;
- 8.3.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.3.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3.5 the Seller shall not be under any liability to the Buyer or any other person, whether pursuant to the above warranty or otherwise, howsoever arising (to the extent that this is legally permissible), (or any other warranty, condition or guarantee) if the Buyer has made any mark or alteration in either permanent or semi-permanent form, on the Goods supplied by either pen, pencil, marker, offset printing or in any other durable form.
- 8.3.6 that the Goods, more specifically the plastic lenticular sheets, shall be stored in accordance with the storage specifications as previously furnished to the Buyer and which should be reviewed on the Seller's website [www.lpc-europe.com](http://www.lpc-europe.com).
- 8.3.7 the Seller shall be under no liability to the Buyer, or any other person, whether pursuant to the above warranty or otherwise, in the event that the size and specification of the Goods, more specifically the plastic lenticular sheets, are altered by the Goods being cut or reshaped in any manner whatsoever.
- 8.4 The above warranty is the Seller's sole warranty with respect to the Goods and plastic lenticular sheets. The Seller specifically disclaims responsibility for damages of any kind or description, including consequential damage, whether to person or property, in any way connected with or arising out of the use of said products or plastic lenticular sheets.
- 8.5 Subject as expressly provided in these Terms all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.6 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification due to damages caused to the Goods during transportation shall (whether or not delivery is refused by the Buyer) be notified to the Seller

within eight days under CMR Rules from the date of delivery or if due to damages caused otherwise, shall (whether or not delivery is refused by the Buyer) be notified to the Seller within thirty days from the date of delivery or in both cases (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. The Buyer shall, within the applicable period, furnish the Seller with full written details of the grounds and reasons for any such claim. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract. The Buyer shall have no such claim under this clause 8.6 where transportation is organised by the Buyer.

- 8.7 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods (or the part in question) free of charge provided that the Goods in question are unprinted or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 8.8 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Liability for Defective Products Act 1991, 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 or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 8.9 The Buyer represents to the Seller that the Buyer buys the Goods from the Seller in the course of a business of selling Goods of the class ordered or for the purpose of a trade or undertaking carried on by the Buyer and that the Buyer does not deal with the Seller as a "Consumer" within the meaning of Section 3 of the Sale of Goods and Supply of Services Act, 1980.
- 8.10 In the event of a valid claim made by the Buyer against the Seller whether pursuant to the provisions of these terms or otherwise howsoever the maximum liability of the Seller to the Buyer shall not exceed the value of the disputed Goods.
- 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 limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
  - 8.11.1 Act of God, explosion, flood, tempest, fire or accident;
  - 8.11.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 8.11.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 8.11.4 import or export regulations or embargoes;
  - 8.11.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 8.11.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 8.11.7 power failure or breakdown in machinery.

## **9. Intellectual Property Rights**

- 9.1 If a claim is made against the Seller that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person resulting from the Seller's compliance with drawings, specifications, instructions furnished by the Buyer to the Seller with respect to any product or plastic lenticular lens sheet, moulds or tools furnished hereunder the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with the claim, or paid or agreed to be paid by the Seller in settlement of the claim and the Buyer shall defend or settle, at his own expense, any suit or proceedings brought against the Seller for such infringement provided that the Buyer is notified promptly, in writing, of the commencement of the said suit or proceedings.
- 9.2 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 9.3 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim.
- 9.4 All information concerning weights and dimensions, drawings, explanations, descriptions and illustrations submitted by the Seller are to be considered as approximate only and are not binding.
- 9.5 The Seller will retain the exclusive ownership and all copyrights in respect of any drawings and other documents. Drawings and other documents must not be made accessible to third parties without the Seller's consent and shall be returned, if so requested.

## **10. Insolvency of buyer**

- 10.1 This clause 10 applies if:
  - 10.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
  - 10.1.4 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.
- 10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may 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 the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **11. Export terms**

- 11.1 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 Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

- 11.2 Where the Goods are supplied for export from the Republic of Ireland or any other location, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.
- 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 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act, 1893.
- 11.5 Where transportation is organised by the Buyer, 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.

## **12. General**

- 12.1 A notice required or permitted to be given by either party to the other under these Terms 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.
- 12.2 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.
- 12.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 12.4 The Contract shall be governed by the laws of the Republic of Ireland, and the Buyer agrees to submit to the non-exclusive jurisdiction of the Irish courts.
- 12.5 The terms "F.D.A" or "EN" which may appear on the Seller's invoices or acknowledgements indicate that the Seller has used materials that are generally accepted as safe by the Food and Drug Administration. However it is for the buyer of the products or plastic lenticular sheet to test and approve the materials used for the particular Food and Drug product that the Buyer is packaging and the Seller assumes no responsibility for any use of the material or product in contact with any Food or Drug product.
- 12.6 These terms and conditions shall be binding upon and inure for the benefit of the respective successors and assigns of each of the parties hereto. However any assignment thereof by either the Seller or the Buyer shall not be valid unless approved, in writing, by an authorised representative of the Seller at its registered office, nor shall any such assignment be effected by the acknowledgement or acceptance or purchase order forms containing other or different terms or conditions whether or not signed by an authorised representative of the Seller.
- 12.7 Any dispute or difference arising out of or relating to these conditions or any contract or to any breach thereof which cannot be settled amicably without undue delay by the interested parties shall be referred to the arbitration in Dublin of an arbitrator to be appointed by the parties hereto or in default of appointment by the President for the time being of the Law Society of Ireland and subject to the provisions of the Arbitration Acts 1954 and 1980 or any statutory modification thereof for the time being in force. The award of such arbitrator shall be final and binding on both parties.
- 12.8 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.