

# **Dickinson Philips Ltd - Terms & Conditions of Sale**

## **1. Contract Terms**

Unless other terms and conditions are expressly accepted by Dickinson Philips Ltd by means of a specific written amendment hereto signed by Dickinson Philips Ltd or a director of Dickinson Philips Ltd the Contract will be on the terms and conditions set out below ('the Contract terms') to the exclusion of any other terms and conditions (except those implied in favour of a seller which are not inconsistent with the Contract Terms) whether or not the same are endorsed upon, delivered with or referred to in such order, specification or like document will have effect to the exclusion or amendment of the Contract Terms.

## **2. Quotation**

2.1 Any quotation is given on the basis that no Contract will come into existence until Dickinson Philips Ltd dispatches an order of acknowledgement to the Buyer.

2.2 Any quotation is valid for a period of 30 days only from its date provided that Dickinson Philips Ltd has not previously withdrawn it.

## **3. Delivery**

3.1 Dickinson Philips Ltd will endeavour to deliver the goods to be supplied under the Contract ('the Goods') which expression includes any of them or any part of them) within the time agreed and if no time is agreed within a reasonable time, but in no circumstances will Dickinson Philips Ltd be liable for loss or damage of any kind whatsoever cause directly or indirectly by any delay in delivery of goods, unless such delay exceeds (180 days will any delay entitle the Buyer to terminate or rescind the Contract.

3.2 Dickinson Philips Ltd may make delivery by instalments.;

3.3 Delivery will be made ex-Dickinson Philips Ltd's works and the Contract price is calculated on that basis unless otherwise stated on the quotation.

3.4 No claim for damage or shortages will be considered unless Dickinson Philips Ltd is advised in writing within 7 days of delivery. In the absence of such advice the Buyer will be deemed to have accepted the goods. No claim for non delivery will be considered unless Dickinson Philips Ltd is advised in writing within 21 days of the date of Dickinson Philips Ltd's invoice. Any claim for damage, shortages or non delivery shall also be notified to the carriers by the Buyer in the manner and within the appropriate time limit prescribed by the carriers' terms and conditions.

3.5 In the event of failure by the Buyer to give the appropriate notice or notices as specified in clause 3.4 the Buyer's claim will be deemed to have been waived and will be absolutely barred.

3.6 Dickinson Philips Ltd will endeavour to supply the exact quantity ordered but Dickinson Philips Ltd may supply up to 10% more or less than the exact quantity ordered. A proportionate charge or allowance against the Contract price will made to cover any variation.

## **4. Blanket Orders**

The following provisions will apply where Dickinson Philips Ltd supplies the goods under a blanket order received from the Buyer:

4.1 If the order is a scheduled order where the maximum quantity of goods required and the appropriate dates (including the terminal date) on which the requirement will be called off are specified, the whole order will be treated as a single Contract upon the Contract terms.

4.2 If the order is a non scheduled order where the maximum quantity of goods required or where the appropriate call off dates are not specified, each call off will be deemed to conclude a separate Contract under the Contract terms.

4.3 If the order is a non scheduled order where the appropriate call off dates are not specified, Dickinson Philips Ltd may require the Buyer to accept delivery of the maximum quantity of goods required within 12 months of the date of the Contract.

4.4 Without limiting the generality of any of the other Contract terms, Dickinson Philips Ltd will not be under any liability to the Buyer if at the time of any call off by the Buyer, Dickinson Philips Ltd is unable for whatever reason to supply goods in accordance with the Buyer's requirements.

## **5. Guarantee and Exclusion Causes**

5.1 Where Dickinson Philips Ltd is not the manufacturer of the goods Dickinson Philips Ltd will endeavour to transfer to the Buyer the benefit of any warranty and guarantee given by the manufacturer.

5.2 In respect of goods manufactured by Dickinson Philips Ltd, Dickinson Philips Ltd will free of charge within a period of 12 months from the date of despatch repair or at its option replace any goods which are proved to the reasonable satisfaction of Dickinson Philips Ltd to be defective in material or workmanship provided that this obligation will not apply where:

5.2.1 The goods have been altered in any way whatsoever or have been subjected to misuse or unauthorised repair; or

5.2.2 The defect is due to a defect in materials specified by the Purchaser (especially where the Purchaser has specified that any required part to be used in the injection moulding process has to come from only the specified Supplier of the Purchaser); or

5.2.3 The goods have been improperly installed or connected (unless Dickinson Philips Ltd carried out such installation or connection); or

5.2.4 The Buyer has failed to observe any maintenance requirements relating to the goods; or

5.2.5 The Buyer has failed to notify Dickinson Philips Ltd of any defect or suspected defect within 14 days of the same coming to the knowledge of the Buyer; or

5.2.6 The buyer is in breach of this or any other Contract made with Dickinson Philips Ltd. Any goods replaced with other goods supplied by Dickinson Philips Ltd belong to Dickinson Philips Ltd. Any repaired or replacement goods will be guaranteed on these terms for the unexpired portion of the 12 month period.

5.3 Save as provided in clauses 5.1 and 5.2 Dickinson Philips Ltd will be under no liability under the Contract for any personal injury, death or

damage of any kind whatsoever (other than death, personal injury resulting from Dickinson Philips Ltd's negligence) whether consequential or otherwise including but not limited to the loss of profits and Dickinson Philips Ltd hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise, which but for such exclusion would or might subsist in favour of the Buyer except that such exclusion will not apply to:

5.3.1 Any implied condition that Dickinson Philips Ltd has or will have the right to sell the goods when the property is to pass; or

5.3.2 When the Buyer deals as a customer (as defined in Section 12 of the Unfair Contract Terms Act 1977) any implied term relating to the conformity of the goods with their description or sample or as to their quality or fitness for a particular purpose.

5.4 In no circumstances will Dickinson Philips Ltd or its employees, agents or sub-Contractors be liable for any loss or damage of any kind whatsoever (other than death or personal injury from Dickinson Philips Ltd's negligence), whether consequential or otherwise, caused directly or indirectly by any negligence or other tortious act or breach of statutory duty on the part of Dickinson Philips Ltd or on the part of any of its employees, agents or sub-Contractors in connection with or arising out of the manufacture or supply of the goods or in connection with any statement given or made (or advice not given or made) by or on behalf of Dickinson Philips Ltd.

## **6. Risk**

Notwithstanding any other Contract term risk in the goods shall pass to the Buyer when the goods are delivered to the Buyer or its agent.

## **7. Reservation of Title**

7.1 The goods will, notwithstanding delivery, remain the sole property of Dickinson Philips Ltd until the price thereof has been paid and cleared in full.

7.2 The Buyer shall, notwithstanding that property in the goods has not passed, be entitled to sell the goods in the ordinary course of business until notified to the contrary by Dickinson Philips Ltd or until any of the events set out in 7.4 below have occurred. If the goods are sold by the Buyer the proceeds of sale up to the amount of the sum due to Dickinson Philips Ltd shall belong to Dickinson Philips Ltd and shall be paid forthwith on Dickinson Philips Ltd's behalf into a separate Bank account opened in Dickinson Philips Ltd's name.

7.3 Dickinson Philips Ltd shall at any time that the price has not been paid in full in accordance with the terms of this Contract have the right to give notice to the Buyer to return the goods. The Buyer shall thereupon, or if any of the events set out in 7.4 below have occurred, return the goods to Dickinson Philips Ltd. If the Buyer fails to return the goods Dickinson Philips Ltd shall have the right to retake possession of the goods, and for that purpose, by its servants or agents to enter any premises of the Buyer where the goods may be. The Buyer shall be responsible for all costs incurred by Dickinson Philips Ltd in respect of goods that have been repossessed.

7.4 The events hereinbefore referred to are:

7.4.1 Any notice to the Buyer that a Receiver or manager is to be or has been appointed; or

7.4.2 Any notice to the Buyer that a petition to wind-up the Buyer will be or has been presented or any notice of a resolution to wind-up the Buyer (save for the purpose of reconstruction or amalgamation); or

7.4.3 A decision by the Buyer that it intends to make an arrangement with its creditors; or

7.4.4 Any act of bankruptcy as defined by Section 1 of the Bankruptcy Act 1914.

## **8. Price**

8.1 The Contract price is based on the costs of materials, labour, sub-Contracts, transport, taxes, duties and currency exchange rates ruling at the date of the quotation. Dickinson Philips Ltd reserves the right to amend the Contract price to take account of any variation in these costs or the imposition of any new taxes or duties occurring from whatever cause before delivery of the goods;

8.2 Unless expressly stated otherwise, all prices are exclusive of VAT which shall be charged at the rate and in the manner prescribed by law from time to time.

## **9. Payment**

9.1 The price will become payable upon delivery and payment will be made by the Buyer by (the end of the month following the month of issue of Dickinson Philips Ltd's invoice).

9.2 Interest at an annual rate of 5% above National Westminster Bank plc. base rate from time to time will accrue daily and be calculated on a daily basis on overdue accounts from the date of invoice until payment.

9.3 Notwithstanding any Contract term allowing the Buyer credit, payment shall become due and payable to Dickinson Philips Ltd immediately upon the termination of the Contract.

9.4 Where the Buyer makes default under the Contract with Dickinson Philips Ltd in payment on the due date of any sum to Dickinson Philips Ltd, Dickinson Philips Ltd without liability may postpone any delivery or may cancel the Contract or any other Contract between Dickinson Philips Ltd and the Buyer but without prejudice to any right to remedy which Dickinson Philips Ltd may have against the Buyer in respect of such default.

9.5 Dickinson Philips Ltd will be entitled to payment for all instalment of goods delivered to the Buyer whether under a blanket order or otherwise.

9.6 Dickinson Philips Ltd at any time shall be entitled to appropriate any payment made by the Buyer in respect of any goods in settlement of such invoices or accounts in respect of such goods as Dickinson Philips Ltd may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.

## **10. Tooling**

The following provisions shall apply in relation to all tooling in the possession of Dickinson Philips Ltd from the Buyer in connection with the manufacture of the goods (the Tooling):

10.1 Dickinson Philips Ltd will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Buyer a general Lien on all Tooling and shall be entitled on the expiration of not less than 14 days notice in writing to the Buyer to dispose of such Tooling

and to apply the proceeds towards the satisfaction of such debts.

10.2 Dickinson Philips Ltd will:

10.2.1 Store the Tooling (free of charge);

10.2.2 Take reasonable care of the Tooling and make day to day repairs and carry out general maintenance of the Tooling (fair wear and tear excepted) but so that the Tooling need not be returned to the Buyer or be maintained in any better condition than it was at the date of delivery to Dickinson Philips Ltd;

10.2.3 Not move the Tooling or part with possession of the Tooling without the Buyer's consent except for maintenance or repair;

10.3 The Buyer will:

10.3.1 Insure the Tooling against all normal risks under a comprehensive policy of insurance;

10.3.2 Be responsible for the cost of servicing, refurbishing and repair of the Tooling;

10.3.3 Indemnify Dickinson Philips Ltd and keep Dickinson Philips Ltd indemnified against all costs, claims, demands and liability incurred by Dickinson Philips Ltd as a result of Dickinson Philips Ltd's use or possession of the Tooling under this Agreement infringing any intellectual property right including patents, registered designs, copyright design rights or the provision of any statutes, statutory instrument or regulations.

10.4 The Buyer warrants that:

10.4.1 The Tooling when operated normally and in accordance with manufacturing manuals made available to Dickinson Philips Ltd will manufacture goods to the then existing standards and other specification of the Buyer.

10.5

10.5.1 The Buyer acknowledges that the price for the goods has been calculated on the basis that the Buyer will insure the Tooling under a comprehensive policy. Accordingly without prejudice to clauses 5.3. and 5.4 Dickinson Philips Ltd shall not be liable for any loss or damage of any kind to the Tooling arising therefrom howsoever, whether under the Contract or caused by any negligence of Dickinson Philips Ltd or otherwise subject to clause 10.5.2.

10.5.2 Where Dickinson Philips Ltd suffers loss or damage due to wilful damage or wilful destruction of the Tooling by the Buyer, the Buyer shall be liable for the cost of repairing the Tooling or where the Tooling is a write-off, the cost of replacement.

10.6 On termination of the Contract or earlier at the written request of the Buyer, Dickinson Philips Ltd will make the Tooling available for collection by the Buyer on reasonable notice and at reasonable times.

10.7 If the Buyer fails to retake delivery of the Tooling within 7 days of request from Dickinson Philips Ltd, Dickinson Philips Ltd may at its option either store the Tooling itself or have it stored by third parties on such terms as Dickinson Philips Ltd in its absolute discretion thinks fit and in any event the cost of the storage will be borne by the Buyer.

## **11. Lien**

Dickinson Philips Ltd will (without prejudice to clause 10.2 and any other remedy available to it) have in respect of all unpaid debts due from the Buyer a general Lien on all goods (whether or not the property of the Buyer) in the possession of Dickinson Philips Ltd for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Buyer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

## **12. Cancellation**

12.1 If the Buyer cancels, extends or delays or purports to cancel, extend or delay the Contract or part thereof, or fails to take delivery of tools at the time agreed (if any) or if no time agreed within a reasonable time, then the Buyer will be liable (without prejudice to any other rights of Dickinson Philips Ltd to claim damages) to indemnify and keep indemnified Dickinson Philips Ltd against any resulting loss, damage or expense incurred by Dickinson Philips Ltd in connection with the supply or non supply of the goods including the cost of any material, plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit.

12.2 If Dickinson Philips Ltd is unable (whether temporarily or permanently) to produce any services of goods necessary to enable it to supply the goods or if the supply of the goods is prevented or hindered by reason of any cause beyond Dickinson Philips Ltd's reasonable control which for effecting shipping or carriers, currency restrictions and Acts of God, Dickinson Philips Ltd may cancel or suspend performance of the Contract by notice in writing to the Buyer so far as it relates to goods then supplied or work not then done and such cancellation or suspension shall not give rise to any claims by the Buyer provided that the Buyer shall remain liable to pay for goods delivered prior to the date of such cancellation or suspension.

## **13. Storage**

If the Buyer fails to take delivery of the goods when they are ready for delivery Dickinson Philips Ltd may at its option either store them itself or have them stored by third parts on such terms as Dickinson Philips Ltd may in its absolute discretion think fit, in any event the cost of storage will be borne by the Buyer insofar as the storage is done by Dickinson Philips Ltd then such cost will be Dickinson Philips Ltd's storage charges current at the time of storage. The cost together with any additional insurance or double handling charges will be added to and form part of the price for the goods.

## **14. Specification and Design**

14.1 Where the goods are manufactured in accordance with information of drawings supplied by the Buyer or to his design or specification or where standard goods of Dickinson Philips Ltd altered in accordance with the Buyer's instructions:

14.1.1 No guarantee or warranty is given by Dickinson Philips Ltd as to the practicability, efficiency, safety and otherwise of the goods (this being without prejudice to any other of the Contract terms);

14.1.2 The Buyer will indemnify and keep Dickinson Philips Ltd indemnified against all liability incurred by Dickinson Philips Ltd as a result of:

14.1.2 Such goods infringing any intellectual property rights including without prejudice to the generality of the foregoing patents registered designs

and copyright or the provision of any statute, statutory instrument or regulation;

14.1.3 Any impracticability, inefficiency or lack of safety or the defect in the goods where such defect is due (whether in whole or part) to faults or omission in such information, drawings, design, specification or instruction.

14.2 No variation in the specification or design of any goods which in the reasonable opinion of Dickinson Philips Ltd does not affect the suitability of the goods for the purpose for which they are supplied by Dickinson Philips Ltd will constitute a breach of Contract or impose upon Dickinson Philips Ltd any liability whatsoever.

14.3 Dickinson Philips Ltd will be under no liability whatsoever to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer should any goods supplied by Dickinson Philips Ltd infringe any intellectual property right including without prejudice to the generality of the foregoing patents registered design and copyright or the provision of any statute, statutory instrument or regulation.

14.4 Unless otherwise agreed in writing all patterns drawings, tools or other similar items produced or other property (whether intellectual property or not) owned or created by Dickinson Philips Ltd will remain the property of Dickinson Philips Ltd and must not be used or copied by the Buyer.

14.5 Where it is agreed that ownership in any data, patterns, drawings, tools or other similar items is to pass to the Buyer property shall only pass when such items have been paid for by the Buyer in full.

#### **15. Promotional Materials**

No drawings, descriptive matter, weights, dimensions or shipping specifications issued by Dickinson Philips Ltd or the manufacturer of the goods no descriptions and illustrations contained in Dickinson Philips Ltd's or manufacturer's catalogues, price lists or other promotional material will form part of the Contract or be regarded as a warranty or representation in relation to the goods.

#### **16. Right to Re-sale**

If the Buyer defaults in 'accepting delivery of or payment for or paying for the goods' Dickinson Philips Ltd reserves the right to re-sell the goods or any of them to a third party without giving notice to the Buyer of Dickinson Philips Ltd's intention to re-sell.

#### **17. Set-Off**

The Buyer will have no right of Set-Off statutory or otherwise.

#### **18. Termination**

18.1 The Contract will terminate immediately upon the happening of any one or more of the following namely that the Buyer has had a bankruptcy order made against him or has made an arrangement of composition with his creditors or otherwise taken the benefit of any Act for the time being for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver, manager, administrator or administrative receiver appointed over its undertaking or any part thereof or a resolution has been passed or a petition presented to the Court for the winding up of the Buyer or for the granting of any administration order in respect of the Buyer or any proceedings have been commenced relating to the insolvency or possible insolvency of the Buyer.

18.2 The Contract will terminate immediately upon service of written notice of termination by Dickinson Philips Ltd on the Buyer on the happening of any one or more of the following, namely that the Buyer has suffered or allowed any execution whether legal or equitable to be levied on his/its property or obtained against him/it or has failed to observe or perform any of its obligation or duties under the Contract or any other Contract between Dickinson Philips Ltd and the Buyer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Buyer has ceased to trade.

18.3 Dickinson Philips Ltd's rights contained in the clause headed 'Property in the Goods' but not the Buyer's rights) shall continue beyond the discharge of the parties primary obligations under the Contract consequent upon its termination.

#### **19. Export**

Where the goods are to be exported to the Buyer:

19.1 The Uniform Laws on International Sales Act 1967 shall not apply to the Contract;

19.2 Payment will be made in pounds sterling in England. The Buyer will establish and maintain in favour of Dickinson Philips Ltd an irrevocable letter of credit in English confirmed by a UK clearing bank payable on drafts drawn at sight upon presentation to the bank by Dickinson Philips Ltd of a certified copy of Dickinson Philips Ltd's invoice. Such letter of credit shall be established at least 30 days prior to anticipated shipment date and shall cover the full price of the goods (including applicable taxes) and such letter of credit shall be transferable. All bank charges and other expenses in relation to the letter of credit shall be paid by the Buyer.

19.3 The goods will be sold FOB or CIF at the option of Dickinson Philips Ltd and Dickinson Philips Ltd will be under no obligation to give the Buyer notice as specified in Section 32(3) of the Sale of Goods Act 1979.