

**GENERAL CONDITIONS OF SALES  
OF THE  
PLASTICS CONVERTING INDUSTRY  
-PARTS ACCORDING TO ESTIMATE-**



LA PLASTURGIE  
FÉDÉRATION

## 1 GENERAL PROVISIONS

1.1. The present terms are consistent with the customs and practices prevailing in the European Economic Space (EES). They determine the rights and obligations of the plastic converter, hereafter named 'Supplier' and of the ordering party, hereafter named 'Client', related to contracts for the supply of parts, as well as associated services the supplier could be led to agree to; these contracts being either sales agreements or corporate agreements.

1.2. These general terms constitute the legal basis for the aforementioned contracts, excepted for provisions coming under particular written conventions.

1.3. They make void any contrary provision expressed in any way by the purchaser, barring written acceptance by the supplier.

1.4. Should the purchaser or a group of purchasers decide to set up permanent business relations within an industrial partnership, these general terms, as well as the buying terms of the purchaser, will serve as basis for the wording of the final agreement under which the future transactions will be carried out.

## 2 DESIGN OF THE PARTS

2.1. Unless otherwise expressly agreed, the supplier does not act as the designer of the parts he is producing; his position is that of an industrial subcontractor. The design sums up the complete specifications of the part, it may nevertheless be subcontracted, in the same way as above, wholly or partially; it being understood that in the last instance, the client bears the entire responsibility for the required industrial result. This is the case especially for computerized design, done by the supplier on behalf and at the request of the client, based on specifications made available by the latter.

2.2. In the peculiar event of the supplier being both, sole designer and manufacturer of the parts ordered by the client, a specific agreement has to be worked out between the contracting parties, which is outside the scope of these general conditions

## 3 OFFERS AND ORDERS

3.1 The client's appeal for tenders shall include all needed specifications.

3.2 The supplier's offer cannot be held as firm, as long as no time-limit for its validity is expressly mentioned. The same applies each time the client chooses to modify the technical specifications or the outturn samples which may be put at his disposal by the supplier.

3.3 The commitment of the supplier, to carry out the client's firm and final order, is established once the supplier, according to his terms, has given notice by letter or any other means of communication producing written evidence. An open order, making provisions for periodic or regular spaced deliveries, cannot be met but for a limited length of time, agreed upon in advance by the supplier and the client.

## 4 STUDIES

4.1 Unless otherwise stated, the sale of parts does not imply the transfer to the client of the supplier's title of ownership on his production studies.

The same applies to studies proposed by the supplier, aiming at improvement of quality or cost price of the parts, involving a creative modification of the original technical specifications. If accepted by the client, an agreement has to be reached by the parties as to the conditions of its utilisation within the framework of the order.

4.2. In no instance may the client make use of the supplier's studies, drawings, patterns and documents, which remain the latter's ownership. Therefore, no use can be made of them by the client, neither copies taken, nor patents applied for, as well as communication given to third, without written notice by the supplier.

4.3. In the same way, the client may neither make use, for his own purpose, of patents, patterns or know-how, belonging to the supplier, nor make disclosure of these without having acquired expressly their ownership, joint ownership or any other title of utilisation.

## 5 TOOLS, MOULDS AND SPECIFIC EQUIPMENT

5.1. Tools, moulds and specific equipment made available by the client

If provided by the client, the tools, moulds and other specific equipment, thereafter named 'Tools', must clearly bear distinctive marks, assembly or usage references and be delivered free of charge to the site specified by the supplier. It is within the client's liability to ascertain that the 'tools' fully match the drawings and specifications. However, and at the client's request, the supplier will check their concordance and invoice the cost of it.

Should the supplier deem it essential that modifications be made in order to ensure the production performance of the parts, the thus involved costs will be chargeable to the client, his expressly agreement having been secured beforehand. As a rule and unless otherwise agreed in writing with the client, the supplier will not guarantee the 'tools' service life. In any case, if the 'tools' received by the supplier are not in accordance with the use for which they were meant, the initially agreed price for the parts may be subject to review

on the part of the supplier, an agreement being necessarily reached before the start of production.

### **5.2. Tools, moulds and specific equipment carried out by the supplier, on request of the client**

When entrusted by the client with the production of the 'tools', be it directly or through a third party, the supplier will carry out or have carried out the work accordingly. The cost of the latter, as well as the charges resulting from replacement or reconditioning after wear, will be paid by the client independently of the parts price.

### **5.3. Price of the 'tools'**

The price of the 'tools' produced by the supplier or having been made available through him, does not include the suppliers titles of intellectual property on these 'tools', i.e. his contribution of know-how or patents for study, achievement and development.

The same applies for possible adjustments being made by the supplier on the 'tools' put at his disposal by the client, in order to ensure that the parts are well made.

On completion of the order, the supplier will keep the 'tools' stored; the client will not be entitled to take them over before a written agreement has been given on the conditions of use of the supplier's intellectual property and all types of pending invoices being paid.

These 'tools' are to be kept in good working order by the supplier, the consequences of wear, repair or replacement being charged to the client.

Where nothing is agreed to the contrary, the price of the 'tools' is to be paid with 50% on order acknowledgement and 50% after completion or at the date of acceptance of the relevant outturn sample, should such be the case.

### **5.4. Conditions of storage and insurance**

The supplier will deny himself at any time the use of the 'tools' belonging to the client, on behalf of a third party, without prior written agreement.

The client, fully responsible for the 'tools' he owns, has to take out, at his expense, an appropriate insurance against damage or destruction supposed to take place on the supplier's premises and waives any recourse versus the latter.

These 'tools' will be surrendered as they stand to the client, on his request or to the liking of the supplier, subject to their complete payment and full compliance with all contractual obligations. If the 'tools' remain stored on the supplier's premises, they will be kept free of charge for two years at most, starting with the last production run of parts.

Beyond this deadline, in absence of any claim from the client's side to recover the 'tools' or his not having reached any agreement with the supplier on an extension of their keeping storage, the latter is entitled to proceed to their destruction, following notice by registered letter, being unanswered past three months of remittance.

An untimely recovery of the 'tools' by the client, before actual redemption of the supplier's expenses incurred for studies and engineering work prior to production, will entail

the payment of a compensation on the part of the client, amounting to a lump sum equal to 30% of the price of the 'tools'.

Whenever a special production is requested, involving the ordering of material or any other specific equipment, the client commits himself to buy it back at its net book value.

## **6 PROVISION OF RAW MATERIALS AND/OR COMPONENTS BY THE CLIENT**

In the event of the supplier processing material provided by the client, the latter will deliver or have delivered, at his cost and risk, the needed materials and/or components according to specifications and including a suitable extra quantity of 5% at least. The delivery shall be made, taking into account the normal time-limits for manufacturing and production hazards at the supplier's end.

## **7 DELIVERY PERIODS**

**7.1.** Delivery periods start with the date of confirmation of the order by the supplier and at the earliest at the date of receipt by the latter of all documents, specific equipment and details conveyed by the client and necessary for completion of the order. Moreover, the client will have met all relevant preliminary requirements, including the payment of the 'tools'.

**7.2.** The strictness of the delivery deadline must be clearly stated in the contract, together with the information relating to its kind (time of availability, presentation for inspection or acceptance, actual date of delivery a.s.o.).

For lack of those specifications, the time of delivery is considered as approximate. Any alteration of the contractual conditions of supply will involve fixing of a new deadline.

**7.3.** The contractual time-limits for delivery may be extended on request of either the supplier or the purchaser for any occurrence beyond their control, resulting in the inability of the requesting party to fulfil its obligations.

The defaulting party shall give written notice to the other party as soon as such a situation has arisen, in order to agree immediately afterwards about the steps to be taken.

## **8 PACKAGING**

If not otherwise expressly agreed, the supplier will propose one or several types of packaging.

## **9 DELIVERY AND TRANSFER OF RISKS**

**9.1.** The transfer of risks takes place at the time of delivery of the parts, either directly to the client or to the carrier appointed by him, or if not so, by the supplier.

**9.2.** Unless otherwise stated, in the event of a serial production, a deviation of generally  $\pm 5\%$  on the number of ordered parts is admitted.

## **10 TRANSPORT**

**10.1.** At any rate, the supplier is acting only as the client's representative for the dispatching and associated transport operations. The client will refund the costs for freight on receipt of the invoice. Thence it lies with the client who assumes all risks of the aforesaid operations, to check on their arrival the condition, quantity and conformity of the supplies, according to the consignment note.

**10.2.** Any variance must be immediately notified to the supplier, without prejudice to legal actions, the exertion of which against the carrier behoves to the client.

**10.3.** The client bears the freight charges and carriage risks, as well for the dispatch as for the return of the 'tools', mentioned under 5. 1. , and the reference samples.

**10.4.** The goods may be covered by an all-inclusive insurance, according to the written instructions of the client and at his expense, for a value to be agreed.

## **11 PRICES**

**11.1.** Prices are, according to the agreement included in the contract :

- either definite during a limited period
- or subject to modification according to appropriate formulas, included in the offer, taking into account the variations of raw materials quotations, of energy cost, of wages and of side costs connected with the order, occurring between the contracting date and that of the agreed delivery unless other dates are mentioned within the contract.

In any case, especially in the situation of open orders, should any event beyond the parties' control happen which compromises the global economy of the contract,, the parties agree to sincerely negotiate an additional clause which will restore the initial balance.

Should the parties not reach an agreement, the Supplier will be allowed to cancel the contract with a thirty day notice.

**11.2** Unless otherwise agreed, prices are ex-works, excluding packaging and taxes.

**11.3** If the contract provides for the price being based on the weight of the part, the final price is obtained from the weight of the approved outturn sample.

**11.4.** The price of the 'tools' may include the costs of providing samples, but includes neither the cost of testing- and machining-rigs, nor the cost of modifications initiated by the ordering party.

## **12 TERMS OF PAYMENT**

**12.1.** All payments have to be made to the supplier's head office.

The terms and ways of payment, as well as possible instalments on account, must be expressly agreed in the contract.

The payments are held to be effected within 30 days of the invoice date, without discount.

**12.2.** Without prejudice to the right of retention of title, referred to under item 15., the non-return of bills with acceptance and bank domiciliation, within 7 days following their dispatch, the default payment on terms or founded doubts on the solvency of the ordering party, especially the disclosure of any protest or pledge on business assets, will entail, as of right, without formal notice and at the supplier's own will

- either the forfeiture of the term and, consequently, the immediate call for payment of the remaining amounts due for whatever reason and/or the suspension of all deliveries
- or the withdrawal from all running contracts and the retention of already paid instalments, as well as of the 'tools' and parts being held by the supplier, until a possible, appropriate compensation has been found.

**12.3.** Without advance notice, all payables automatically bear minimum interest from the date of the invoice to the effective date of payment, at three times the legal interest rate set annually by Banque de France.

In addition to the aforesaid penalties, any late payment automatically gives rise to the payment by the Customer of a lump sum indemnification of € 40 for collection costs.

An additional indemnification may be claimed when it is proven that the collection costs exceed that amount.

**12.4.** The client cannot defer a contracted payment term, should the proceedings of acceptance or the forwarding of the goods made available at the supplier's works, be delayed or impossible to be carried out, for reasons outside of the supplier's control.

The same applies to payment of the difference between the total amount of the invoice and the value of the contested parts liable to give rise to refunding or credit notes; the latter being possibly granted by the supplier in pursuance of item 14.

The client can neither deny payment of all or part of any amount owing to the supplier, nor delay payment on account of any claim, especially because of rights for guarantee, without the supplier's agreement.

## **13 INSPECTION AND ACCEPTANCE**

**13.1.** In the event of the client assuming the entire responsibility for the design of the parts, with respect to the industrial result aimed at - the latter being precisely known solely by him - he will, consequently, lay down the relevant specifications featuring all aspects of the parts to be

produced, as well as the methods and ways to carry out inspections, controls and tests required for acceptance.

Acceptance by the client of proposals for an improvement in the technical specifications or a modification in the drawings of the parts may in no way result in a transfer of responsibility. The design remains in this case the exclusive responsibility of the client.

**13.2.** In any case, even though delivery may not be subject to official acceptance, the kind and scope of required inspections and tests, of standards, as well as of tolerances of any kind, are to be precisely stated in the drawings and the specifications; and they must be attached with the purchaser's call for an offer and be confirmed in the contract between the supplier and the purchaser.

**13.3.** The inspections and tests required by the client may be carried out on his request, by the supplier, by a laboratory appointed for this purpose or by another third party body. These procedures, their kind, scope and cost will have to be laid down on conclusion of the contract, at the latest.

In those instances where an acceptance is required, its scope and conditions will have to be decided upon, at the latest, on the contract's conclusion. Unless otherwise agreed, acceptance will take place on the supplier's premises, at the expense of the client, at the latest during the week following the supplier's notice of availability and readiness for acceptance by the client or another for this purpose designated body. In case of defaulting on the part of the client himself or the designated body in charge of the acceptance, the parts will be stored by the supplier at the client's expense and risk. After a second notification sent by the supplier and remained ineffective past 15 days of mailing date, the parts made available are held to be accepted and the supplier is entitled to invoice them.

As the principle and the methods of non-destructive inspections and tests cannot be defined but according to the design of the parts, the client is bound to state precisely in his call for an offer, as well as in making out his order, the inspections and tests he has decided on and where they are meant to take place on the part, in order to be able to determine in particular the conditions of exercise of guarantee, as stated under item 14.

In any case, inspections and acceptances are carried out according to relevant standards and following conditions determined by the client in the specifications and proper documents and accepted by the supplier.

**13.4.** In the absence of specifications relating to inspections and tests to be carried out on the parts, the supplier merely subjects the latter to a visual and dimensional check up.

**13.5.** The costs of inspections and tests are, as a rule, charged separately from the parts, they may nevertheless be included following an agreement between the supplier and the purchaser.

These charges will take into account the costs of any additional arrangements to meet the conditions of well

performed inspections, especially if these are non-destructive.

**13.6.** Supplies made within a scheme of quality insurance, require that this provision be mentioned in the purchaser's call for an offer, as well as in the subsequent order. The supplier, for his part, will have to confirm this requirement in his offer and in his acceptance of the order, without prejudice to provisions made under previous items.

## **14 GUARANTEE**

**14.1.** The supplier is under the obligation to provide parts consistent with the drawings and provisions of the technical specifications appended to the contract.

In case of claims lodged by the client, relating to the supplied parts, the supplier reserves to himself full liberty to inspect them on site.

For each order of serial-production parts, the client will call on the supplier for submission of a relevant reference pattern, to be paid for. The client, after appropriate inspections and tests will convey his acceptance to the supplier, by letter or any other means of communication producing a document. This acceptance will be at the outset of any new time-limit for new deliveries to be made.

**14.2.** The supplier's guarantee, after agreement with the client, provides for :

- crediting the latter with the value of those parts whose non-conformity with drawings and contractual specifications, or with the accepted reference pattern, must have been acknowledged - or, instead, replacing the defective parts free of charge

- or, carrying out and should such be the case, having carried out work to make them suitable for fitness.

The parts replaced by the supplier will be subject to a credit note, the replacing parts being invoiced at the same price.

In case of the supplier's process of making parts conform the latter will be carried out according to the ways and means decided and/or agreed by the purchaser. The supplier will bear its cost, whether he does undertake the work by his own means or agrees to the purchaser's proposal of carrying out the essential improvements by himself, at a price made known beforehand.

The replacement or process of making parts conform having taken place following an agreement between both parties, cannot, in any case, alter the mode of guarantee.

The parts for which the client has obtained from the supplier, a credit note, the replacement or the process of making parts conform for their functional fitness, must be returned to the latter, at his expense, unless otherwise agreed, the carrier being the supplier's choice.

**14.3.** The client loses all rights previously stated in relation to defects, if he does not notify the latter as soon as discovered and expressly request replacement or remedial action for the claimed parts, at the latest, starting with the date of delivery,

- 10 days for apparent defects

- 6 months for other defects, this deadline being reduced to 1 month for serial productions

Beyond these time-limits, no more redress is allowable. Without written agreement of the supplier on the principle and the cost incurred in case of remedial action by the client, the guarantee will become void.

**14.4.** The guarantee does not cover, in any case:

- damages caused by a defective part during its use, if the purchaser, being the designer of the part, has failed to carry out or to have carried out, before its commissioning, all examinations and tests required by its design, its use and the industrial result aimed at

- the costs of additional work possibly performed on the parts, before use
- the costs of assembly, disassembly and withdrawal from service of these parts by the purchaser and, generally speaking,
- any other damages, except those resulting from a serious professional fault on the part of the supplier.

**14.5.** In any case, the parties will agree on a cost of insurance beyond which the Customer and his Insurer will renounce any claim against the Supplier.

## **15 RESERVED RIGHTS OF OWNERSHIP**

**15.1.** Supplies of parts are made with retention of title. The goods will become the property of the purchaser, once they have been paid for in full. Nevertheless, as soon as they are delivered, it behoves to the purchaser to secure the goods from all hazards; he may neither alter them, nor sell them, without the supplier's agreement. In any case, the Customer must grant the Supplier the full benefit of all rights which guarantee sales in the country of the Customer.

**15.2** Whenever the contract is a standard company contract, the Supplier will take advantage of the Parliament act dated 12/31/75 and therefore his Customer will have to get him approved by the contracting authority and, in the event of a public contract, obtain direct payment for him.

**15.3** The aforementioned provisions do not, in any way, alter the attribution of competence stated under item 18.

## **16 INDUSTRIAL PROPERTY**

**16.1.** In all instances corresponding to item 2. 1., the purchaser ensures to the supplier freedom from third party protection rights, covering patents, trade marks and registered patterns or any other exclusive rights, for all ordered supplies and services. The purchaser will guarantee

the supplier from any related claims and accepts liability for any damages which may arise.

**16.2.** The remittance of the parts to the purchaser does not involve surrender of the supplier's rights of industrial ownership or intellectual property on his research work, drawings and technical documents relating to the ordered parts.

The same applies to the supplier's proposals to investigate possible improvements of quality or cost price, leading to a creative modification of the original specifications. If accepted by the purchaser, the latter is to agree with the supplier on the conditions of its use into effect with the order's scope. In no way, the purchaser may make use, for himself, of the supplier's specific research work, nor make any disclosures relating to the latter, without having expressly acquired intellectual ownership.

**16.3.** If not denied by writing, the purchaser enables the supplier to display selected parts produced by the latter, during public events, such as fairs, exhibitions or public show-rooms, as well as to their use in commercial and advertising printed matter.

## **17 CANCELLATION**

An order cancelled totally or partially by the purchaser, or its date of delivery being postponed, without the supplier being at fault, will entail the payment by the purchaser of a compensation equal to the total amount of expenses committed at the date of receipt of the ordering client's notification, without prejudice to possible direct or indirect consequences which the supplier will have to face, following this decision.

## **18 JURISDICTION**

The contracts are governed by the legislation of the supplier's country.

The parties will endeavour to settle out of court in an amicable manner, all disputes arising from the interpretation and/or the accomplishment of the general conditions of sale and contracts.

If this were not the case and unless otherwise agreed, the court the supplier's head office is registered at will be sole qualified to handle all complaints relating to the contracts of supply, whatever the conditions of these and the payment terms might be, even in case of third action party or a plurality of defendants.

However, if the supplier is the litigant, he reserves to himself the option of laying the matter before the court the purchaser's head office and in this case, he may possibly waive the application of his own legislation.