

PURPLE MUSTARD LIMITED
TERMS & CONDITIONS OF SUPPLY

REVISED May, 2017

1. Definitions

1.1 In these terms and conditions the following wording shall have the following meanings:-

“the **Company**” means Purple Mustard Limited of Unit 2 Pant Glas Industrial, Estate, Bedwas Road, Bedwas, Caerphilly, CF83 8DR or any subsidiary thereof;

“**Contract**” means any contract between the Company and the Purchaser for the sale and purchase of the Goods, incorporating these conditions.

“the **Goods**” means the goods (including any instalment of the goods or any part of them) which the company is to supply in accordance with these terms and conditions;

“the **Purchaser**” means the corporate entity, firm or person to whom the Goods are supplied by the Company;

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 Condition headings do not affect the interpretation of these conditions.

2. Application of terms

2.1 Subject to any variation under condition 2.2 the Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Purchaser's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Purchaser from the Company shall be deemed to be an offer by the Purchaser to buy Goods subject to these conditions.

2.5 No order placed by the Purchaser shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Purchaser.

3. Description

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3 Whilst the Company takes every precaution in the preparation of its catalogue, technical circulars, price lists and its other literature, these documents are for the Purchaser's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

3.4 All sizes quoted are approximate. There is a manufacturer's tolerance depending on the type of mat. Please allow for tolerances on the final size. Tolerances are in the range of +/- 6%.

4. Making the Contract

4.1 Any estimate or quotation which the Company provides to the Purchaser, comprises an 'invitation to treat' which is open for a period of 30 days only from the date presented, provided that the Company has not previously withdrawn it. Any order issued by the Purchaser is subject to acceptance by the Company and a contract will only be formed when the Company has accepted the Purchaser's offer to buy.

4.2 All orders by the Purchaser are placed under these terms and conditions alone and are accepted subject to the Company's minimum batch quantities. The Company reserves the right to request advance commitment in respect of raw materials for orders or schedules of certain value.

4.3 The Purchaser will be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser and will provide the Company any necessary information relating to the Goods within sufficient time to enable the Company to perform the Contract in accordance with its terms.

4.4 Schedules or estimates issued by the Purchaser shall not form an integral part of any contract.

4.5 Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is

followed or acted on entirely at the Purchaser's risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

- 4.6 The Company reserves the right to make changes in the specification of the Goods which are required to conform with any applicable statutory changes or EU Directives or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

5. Cancellation

- 5.1 No order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in writing of the Company and on terms that the Purchaser shall indemnify the Company 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 Company as a result of cancellation.

6. Price

- 6.1 All prices quoted are those ruling at the date of delivery of the Goods.
- 6.2 Unless otherwise stated all prices for the Goods quoted are exclusive of carriage charges, exclusive of VAT (which will be applied at the prevailing rate) and all costs or charges in relation to loading, unloading, carriage and insurance, all amounts of which the Purchaser shall pay in addition when it is due to pay for the Goods.
- 6.3 The Company reserves the right at any time prior to delivery to adjust the price to take account of any increase in the cost of raw materials, labour or services or any currency fluctuations affecting the cost of imported raw materials.

7. Additional Costs

- 7.1 The Purchaser agrees to pay for any loss or extra cost incurred by the Company through the Purchaser's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default on the part of the Purchaser, its employees or agents.

8. Terms Of Payment

- 8.1 Unless the Company otherwise agrees in writing, all sums become due and payable under these terms and conditions within 30 days [thirty] from date of invoice.
- 8.2 Time for payment shall be the essence.
- 8.3 If the Purchaser fails to pay the Company any sum due pursuant to the Contract, the Purchaser shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank PLC accruing on a daily basis until payment is made, whether before or after any judgment.
- 8.4 The price of Goods shall be due in full to the Company in accordance with the Contract and the Purchaser shall not be entitled to exercise any set off, lien or other similar right or claim; the Purchaser shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Purchaser.
- 8.5 If the Purchaser shall commit an Act of Insolvency as set out at clause 12 then they will be deemed to have terminated the Contract.
- 8.6 The Company reserves the right at any time and at its discretion to demand security for payment before continuing with or delivering any order.
- 8.7 If upon the terms applicable to any order the price shall be payable by instalments or if the Purchaser has agreed to take specified quantities of Goods at specified times, a default by the Purchaser of the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due and payable forthwith.
- 8.8 Payment of the price for the Goods is due in pounds sterling and no payment shall be deemed to have been received until the Company has received cleared funds.
- 8.9 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

9. Delivery

- 9.1 Delivery will be deemed to have been effected: -
- (a) when the Goods leave the Company's premises if the Purchaser's own (or their customer's) or Purchaser's contracted transport company is used; or
 - (b) when the Goods are delivered to the Purchaser's or their Customer's premises or such other premises as may be agreed by the Company and the Purchaser if the Company's carrier is used; and unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
- 9.2 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.
- 9.3 All times or dates given for delivery of the Goods is approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time of delivery is not of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Purchaser; if no dates are so specified, delivery shall be within a reasonable time.

- 9.4 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
- 9.5 When the delivery is to be by instalments under clause 9.3 hereof or if there be delay in the delivery of any one or more instalments for whatever reason, this will not entitle the Purchaser to treat the contract as repudiated or to damages; each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Purchaser to repudiate or cancel any other Contract or instalment.
- 9.6 Deviations in quantity of the Goods delivered (representing not more than 10 per cent by value) from that stated in these terms and conditions shall not give the Purchaser any right to reject the Goods or to claim damages and the Purchaser shall be obliged to accept and pay at the contract rate for the quantity of the Goods delivered.
- 9.7 Where the delivery is refused by the Purchaser or is delayed, suspended or made by instalments at the request of the Purchaser or where the Company is unable to deliver the Goods due to circumstances beyond its reasonable control, the Company on giving notification of its readiness to deliver, shall be entitled either to: -
- (a) treat the contract as fulfilled and place the Goods into store. Delivery will be deemed to have taken place for invoicing payment and the passing of risk. Without limitation, the cost of storage and insurance of the Goods shall be for the Purchaser's account; or
 - (b) sell the Goods at the best price readily obtainable and after (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the contract or charge the Purchaser for any shortfall below the price under the contract.
- 9.8 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) in any event the Purchaser must give written notice to the Company of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

10. Inspection/Shortages

- 10.1 The Purchaser is under a duty wherever possible to inspect the Goods on delivery or on collection as the case may be.
- 10.2 Where the Goods cannot be examined the carrier's note or such other notes as appropriate shall be marked "not examined".
- 10.3 No liability for non-delivery, partial loss or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the contract will attach to the Company unless claims to that effect are notified in writing by the Purchaser to the Company (and in the case of claims for non-delivery partial loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods): -
- (a) within seven days of delivery for the partial loss or damage or non-compliance with the contract; or
 - (b) within ten days of the date of the invoice for non-delivery;
- 10.4 In the event of a valid claim for non-delivery, partial loss or damage the Company undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, partial loss or damage or non-compliance.
- 10.5 If the Purchaser shall fail to give notice in accordance with Clause 10.3 above the Goods shall be deemed to be in all respects in accordance with the contract and the Purchaser shall be bound to accept and pay for the same accordingly.
- 10.6 Where the Goods are delivered by the Company to the Purchaser's premises it shall be the absolute responsibility of the Purchaser to ensure that the Goods are off-loaded into the correct storage area.

11. Returns

- 11.1 Goods supplied in accordance with the contract cannot be returned without prior written permission of the Company. The Company will not accept or take responsibility for the Goods returned without its prior written permission. Duly authorised returns shall be sent to the Company's premises at the Purchaser's expense.

12. Risk and the Passing of Property

- 12.1 The Goods are at the risk of the Purchaser from the time of delivery.
- 12.2 Ownership of the Goods shall not pass to the Purchaser until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Purchaser on any account.
- 12.3 Until ownership of the Goods has passed to the Purchaser, the Purchaser shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Purchaser shall produce the policy of insurance to the Company.
- 12.4 The Purchaser's right to possession of the Goods shall terminate immediately if:

- (a) the Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into any voluntary arrangement, liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or
 - (b) the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or
 - (c) the Purchaser encumbers or in any way charges any of the Goods.
- 12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 12.6 The Purchaser grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.
- 12.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Purchaser's right to possession has terminated, the Purchaser shall be deemed to have sold all goods of the kind sold by the Company to the Purchaser in the order in which they were invoiced to the Purchaser.
- 12.8 If any of the Goods are incorporated in or used as material for other products, or used in property whatsoever before payment in full is made, then the property in the whole of such other goods may be and remain with the Company until such payment has been made, or the other goods have been sold and all the Company's rights hereunder in the material shall extend to those other goods.
- 12.9 Demand for, or recovery of any of the parts or Goods by the Company shall not of itself discharge either the Customer's liability to pay the whole of the price and take delivery of the parts or Goods or the Company's right to sue for the whole price.
- 12.10 On termination of the Contract, howsoever caused, the Company's (but not the Purchaser's) rights contained in this condition 12 shall remain in effect.
- 13. Stoppage**
- 13.1 If the Purchaser shall fail to accept the Goods or any instalment or part instalment thereof or shall fail to pay any sum due to the Company or shall commit an Act of Insolvency as set out in Clause 12.4, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every Contract between the Company and the Purchaser may by notice in writing suspend further deliveries of Goods until any default by the Purchaser be remedied.
- 13.2 For the avoidance of doubt it is hereby declared that nothing in these terms and conditions shall affect the rights given to the Company by Sections 38-48 of the Sale of Goods Act 1979 or any statutory amendment or re-enactment thereof.
- 14. Warranties and Conditions**
- 14.1 The Company warrants that it has title to and the unencumbered right to sell the Goods.
- 14.2 Every description or specification of the Goods is given in good faith based on average results of standard tests but any conditions or warranties (express or implied) that the Goods shall correspond with such description or specification are hereby expressly excluded and the use of any such description or specification shall not constitute a sale by description.
- 14.3 Any conditions or warranties arising from conduct or a previous course of dealing or trade custom or usage as to the quality or fitness of the Goods for any particular purpose even if that purpose is made known expressly or by implication to the Company are hereby expressly excluded.
- 14.4 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.5 Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Purchaser or results of standard tests upon a sample furnished to the Purchaser, it is hereby agreed that such sample was so exhibited and inspected or tested solely to enable the Purchaser to judge for itself the quality of the bulk and not so as to constitute a sale by sample. The Purchaser shall take the Goods at its own risk as to their corresponding with the sample or as to their quality condition and/or sufficiency for any purpose.
- 14.6 Without prejudice to the foregoing provisions of this clause the application use and processing of the Goods is the absolute responsibility of the Purchaser and the Purchaser shall be deemed to have carried out its own tests to ensure the suitability of the Goods for their intended purpose and applications.
- 15. Liability**
- 15.1 The risk of accidental loss or damage to the Goods whilst being returned will be borne by the Purchaser.

- 15.2 Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Purchaser shall be bound to accept delivery thereof.
- 15.3 The Company shall not be liable for imperfect work caused by inaccuracies in any drawings of quantities or specifications provided by or on behalf of the Purchaser.
- 15.4 The Company shall not be liable in respect of any defect arising from fair wear and tear, wilful or accidental damage, negligence, abnormal working conditions, and failure to follow the Company's instructions, misuse or alteration of or repair of the Goods without the Company's approval.
- 15.5 Subject to any relevant condition herein this clause, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser in respect of:
- (a) any breach of these conditions, including any deliberate personal repudiatory breach OR any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;
 - (b) any use made or resale by the Purchaser of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 15.6 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 15.7 Subject to condition 14.4 and condition 15.6:
- (a) The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Company shall not be liable to the Purchaser for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 16. Force Majeure**
- 16.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 28 days, the Purchaser shall be entitled to give notice in writing to the Company to terminate the Contract.
- 17. Intellectual Property**
- 17.1 The Purchaser shall indemnify the Company of all costs against claims and damages (not claimed) incurred or threatened arising out of any alleged infringement of patents, trade mark, copyright, designs or other intellectual property right occasioned by the manufacture or sale of the Goods made to the specification of special requirements of the Purchaser. The Company does not warrant and the Purchaser should ensure that its use of the Goods will not infringe any patent or any other intellectual property rights of a third party.
- 18. Tools**
- 18.1 Any tools, artwork, cutting boards and the like made or purchased for the manufacture of the Goods shall remain the property of the Company even if the Purchaser has been charged for the cost of such items.
- 19. Service Requirements**
- 19.1 Unless expressly agreed the Company does not undertake to hold stocks of or manufacture particular products after the end of the contract period. Requests for delivery after the contract period will be treated as a new enquiry for which the Company will re-quote.
- 20. Notices**
- 20.1 Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting.
- 21. Assignment**
- 21.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 21.2 The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

