



# Aotea Plastics Industries Ltd

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## Aotea Plastics Industries Ltd

### Terms and Conditions of Sale

1. **Contract:**  
All services and products ("Goods") supplied by Aotea Plastics Industries Ltd ("the Company" "the Supplier") to the Applicant Business or Person ("the Buyer") are supplied subject to the following Terms and Conditions of Sale which shall prevail despite any indication to the contrary by any person, agent or representative acting or purporting to act on behalf of the company.
2. **Acceptance:**  
Acceptance of the goods shall be completed upon the Buyer signing the order or otherwise accepting the order (whether in writing or verbally) or accepting delivery of the Goods.
3. **Risk:**  
Risk of any loss, deterioration or damage of or to the goods shall be borne by the buyer from the time of dispatch from the premises of the company. The Buyer shall ensure that the Buyer's insurance covers the Goods from the time of dispatch.
4. **Price:**  
All quotations will be on an ex store basis unless otherwise agreed with the Supplier in writing.  
The price of Goods supplied is as per the Company's written or verbal quotation as at the date of delivery. While the company makes every endeavour to hold quoted prices for a period of 30 days, the Company may alter prices at any time without notice.  
The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent those taxes are expressly included in any written quotation given by the Supplier.  
The price may be increased or decreased by the amount of any increase or decrease in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the goods between the date of this contract and the date of delivery.  
An extra charge may be made where additional work results from lack of precision in the Buyers specifications or the Buyer alters the specifications after the date of this contract.  
The Buyer is bound to pay the price from the time that an order is placed with the Supplier, with there being no obligation on the Supplier to inquire as to the authority of any person placing an order on behalf of the Buyer.  
No order may be cancelled without the Suppliers prior approval, and then only upon such terms as the Supplier may specify.  
Alterations to any price list shall be effective from the date specified by the Supplier at the time of giving notice to the Buyer.
5. **Payment:**
  - 5.1 Full payment for the goods supplied shall be due from the Buyer on the earlier of the following: ("the Due Date"):
    - a) The Buyer shall be deemed to be a bailee of the Company and acting in a fiduciary capacity in respect of any Goods supplied by the Company and shall insure the Goods with the interest of the Company noted.
    - b) On or before the 20<sup>th</sup> of the month following invoice date unless otherwise advised in writing by the company;
    - c) Immediately when the Buyer sells or otherwise disposes of the Goods;
    - d) Immediately upon the commencement of any action or proceeding which involves the Buyer's solvency (and in such a situation the Buyers shall keep the proceeds of any sales separate from the Buyers funds).
  - except that; -
  - 5.2 The Buyer may not withhold payment or make any deductions from any Amount Owing without the Suppliers prior written consent.
6. **Defaults in Payment:**  
The Company reserves the right to charge interest at a rate equal to 4% above our current overdraft rate on all sums and overdue amounts outstanding from the due date or date of default as the case may be until payment is made. The levying of interest shall not extend the due date of payment. Interest will be compounded monthly and added to the overdue amount. If a Solicitor or Debt Collector is instructed by the Company to enforce or attempt to enforce any rights pursuant to the Terms and Conditions of sale the Buyer agrees to reimburse (with all other monies due) any liabilities, fees, disbursements as charged to the Company as a result.
7. **Ownership and Risk:**  
The ownership of the Goods will remain vested in the Company until the Buyer has made full payment for all Goods supplied by the Company to the Buyer together with all interest and monies due. Until ownership has passed from the Company to the Buyer then the following terms shall apply:
  - a) The Buyer shall be deemed to be a bailee of the Company and acting in a fiduciary capacity in respect of any Goods supplied by the Company and shall insure the Goods with the interest of the Company noted.
  - b) The Buyer shall store the goods in such a way and in such a condition and place as to make it clear that they are owned by the Company, and;
  - c) The Buyer shall not under any circumstances mix the Goods with other personal property in any manner.If the Buyer defaults in payment for the Goods then, subject to any contrary provision of the PPSA, the Company shall have leave and license to enter upon any property occupied by the Buyer or by purchaser from the Buyer without notice in order to inspect, search for and remove the Goods and the following removal to resell the Goods and apply the proceeds to overdue amounts. The Company shall not be liable to the Buyer or third party for the exercise of its rights under this clause and the Buyer indemnifies the Company against all costs and claims in respect of the Company's rights exercised under this clause.
8. **Disputes and Credits:**  
Disputes and credits will only be considered valid if bought to the Company's attention within 10 days of the date of supply or service. To be accepted by the Company, all Goods to be returned must be in the manufacturers (or suppliers) original, unsoiled, uncontaminated and undamaged packaging including copies of the original invoice. Credits will not be given for procured Goods.
9. **Security Interest:**
  - 9.1 The Buyer grants to the Company a security interest:
    - 9.1.1 In all present and future supplies of Goods which the Supplier:
      - a) Supplies to the Buyer for the Buyer to use as Inventory
      - b) Supplies to the Buyer for the Buyer to use as Equipment in the business of the Buyer
      - c) Supplies to the Buyer for the Buyer to use primarily for personal, domestic or household purposes; and
    - 9.1.2 In all proceeds which the Buyer receives from selling Goods supplied by the Supplier.
  - 9.2 The Buyer acknowledges that the Supplier may, at the cost of the Buyer, register a Financing Statement in respect of any Security Interest created by this agreement and do all such other acts and things as may be reasonably required by the Supplier for the purposes of ensuring that at all times the Supplier holds a perfected Security interest under the Personal Property and Securities Act 1999 ("PPSA") in respect of any Goods supplied to the Buyer under this agreement.
  - 9.3 The Buyer waives its rights under sections 121, 125, 129, 131, 132 and 148 of the PPSA. This includes, but is not limited to the Buyer agrees that the Supplier does not have to provide a verification Statement to the Buyer when the Supplier registers a Financing Statement in respect of any Security Interest created by this agreement.
  - 9.4 For the avoidance of doubt, words or phrases used in Clause 7 herein have the same meaning as that which is given to them in Section 16 of the PPSA.
  - 9.5 The Buyer shall pay the Company's costs of any discharge or amendment of any financing statement.
  - 9.6 These terms shall apply notwithstanding anything express or implied to the contrary contained in the Buyer's purchase order.
  - 9.7 The Buyer agrees that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to this contract, or the security under these terms.The Buyer undertakes to:
  - Sign any further documents and/or do such further acts and/or provide any further information (such information the buyer warrants to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to enable registration of a security interest including for the purpose of registering a financing statement or financing charge statement on the Personal Properties Security Register;
  - Not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal Properties Security Register a financing change statement under the PPSA in respect of the goods; and
  - Give the Supplier not less than 14 days prior written notice of any proposed change in the Buyer's name/and or other change in its details (including but not limited to changes to address, facsimile number, trading name or business practice).
10. **Consumer Guarantees Act 1993:**  
The Buyer shall acknowledge that the Consumer Guarantees Act 1993 does not apply to any goods or services acquired for business purposes.
11. **Guarantees and Conditions:**  
Where the Consumer Guarantees Act 1993 applies to this contract:
  - If the Goods are acquired by the Buyer for business purposes, the Buyer agrees that the Consumer Guarantees Act 1993 does not apply; and
  - If the goods are not acquired by the Buyer for business purposes, The Company reserves the right to replace any goods which fail to comply with any guarantee contained in the Consumers Guarantees Act 1993.

Where the Buyer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Buyers contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the goods.

The Buyer acknowledges that the Company does not provide any Express Guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by the Company in writing.  
Where the Buyer supplies the goods to any other person in the course of trading, the Buyer must not give or make any undertaking, assertion or representation in relation to the goods without the Company's prior approval in writing.  
The Buyer agrees to indemnify the Company against any liability or cost incurred by the Supplier under the Consumer Guarantees Act 1993, as a result of any breach by the Buyer of the obligations contained in this contract.

## Terms and Conditions of Sale

### 12. Exclusions of Liability

To the maximum extent permitted by law, the Company shall not be liable for lost profits, loss of goodwill or any incidental, special or consequential damages even if advised of the possibility of same. No warranty or condition shall be implied herein against the Company by Statute, common Law, regulation or otherwise other than the warranty by the Company that it has the right to deal in Goods.

The Supplier accepts no liability for any Claim by the Buyer or any other person, including without limitation any Claim relating to or arising from:

- any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise, or
- any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by the Supplier in writing, and the Buyer agrees to indemnify the Supplier against any such claim.
- In any event, The Supplier's liability under any claim shall not exceed the purchase price of the goods.

### 13. Ownership of Works:

All works produced by or for the Supplier (including, without limitation, samples, designs, prototypes, artwork, drawings, dies, blow moulds or injection moulds in whatever form) and any intellectual property in and to such works remain the exclusive property of the Supplier unless otherwise agreed in writing and the Supplier may charge the Buyer for maintenance, re working and storage of such works.

Where the Buyer supplies, or reimburses the Seller for the cost of, a mould, die, tool, printing stamp or any artwork or other item used in the manufacturing process:

- The Supplier shall not be liable for any loss or damage (whether due to the negligence of the Supplier, or its employees, agents, contractors or otherwise) of any such item;
- The Supplier reserves the right to charge the Buyer for the re-working of any such item; and
- The Buyer shall reimburse the Supplier for all maintenance expenses.

### 14. Intellectual Property:

Any technical information, knowledge or processing methods at any time transmitted either orally, electronically or in writing by the Supplier to the Buyer and any samples, designs and artwork produced by or for the Supplier shall remain the Suppliers property and shall be considered absolutely confidential by the Buyer and the Buyer shall not use them for any purpose nor sell, transfer or divulge them in any manner to anyone without the Supplier's prior written consent.

The Buyer warrants that the use by the Supplier of any designs or instructions supplied by the Buyer will not infringe the patents, trade marks, designs, design marks or copyright ("Intellectual Property") of any other person and the Buyer agrees to indemnify the Supplier against any Claim relating to or arising from the infringement of any intellectual property of any other person.

If at any time a Claim is made against the Supplier or the Supplier becomes aware that a Claim is likely to be made against the Supplier for infringing any intellectual property or contributing to any such infringement by the Supplier or any other person as a result of supplying the goods, the Supplier may immediately terminate or suspend this contract.

### 15. Use of Information:

The Buyer agrees that the Supplier may obtain information about the Buyer from the Buyer or any other person and any credit or debt collection agencies in the course of the Suppliers business, including credit assessment and debt collecting, and the Buyer consents to any person providing the Supplier with such information.

The Buyer agrees that the Supplier may use information it has about the Buyer relating to the Buyers credit worthiness and give that information to any other person, including any credit or debt collection agency for credit assessment and debt collection purposes.

The Buyer agrees that any information collected by the Supplier about the Buyer is accessed or collected for the use of any member of Aotea Plastics Industries Ltd in the course of its business.

The Buyer must notify the Supplier of any change in circumstances that may affect the accuracy of the information provided by the Buyer to the Supplier or to Aotea Plastics Industries Ltd.

If the Buyer is an individual, i.e.; a natural person, the Buyer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Supplier holds about the Buyer.

### 16. Other Agreements:

Unless otherwise agreed in writing by the parties these terms prevail over any order submitted by the Buyer (whether in writing, verbally or by Electronic Data Interchange (EDI) or any other arrangement between the parties.

### 17. Waiver:

If the Supplier exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Suppliers rights in exercising that or any other right or remedy.

Waiver of any term of this contract must be specified in writing and signed by an authorised officer of the Supplier.

### 18. No Assignment:

The Buyer must not transfer or assign its rights under this contract to anyone else without the Suppliers prior consent in writing.

### 19. Jurisdiction:

These Terms and Conditions shall be governed by and in accordance with the law of New Zealand and the parties unconditionally and irrevocably submit to exclusive jurisdiction of the New Zealand courts.

### 20. Words Used in this Contract:

"Amount Owing" means price charged by the Supplier for the goods, and any other sums which the Supplier is entitled to charge under this contract.

"Buyer" means the person purchasing the goods from the Supplier pursuant to this contract, including that person's successors and assigns.

"Claim" includes any claim:

- for loss of profits, or
- for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
- any breach of the Supplier's obligations under this contract: or
- any cancellation of this contract; or
- any negligence, misrepresentation or other act or omission by the Supplier or its employees, agents or contractors; or
- for compensation, demand, remedy, liability or action.

An "Event of Default" means an event where:

- the Buyer fails to comply with the terms of this contract or any other contract with the Supplier: or
- the Buyer commits an act of bankruptcy; or
- the Buyer enters into any composition or arrangement with its creditors; or
- if the Buyer is a company.

- the Buyer does anything which would make it liable to be put into liquidation; or
- a resolution is passed or an application is made for the liquidation of the Buyer; or

- a receiver or statutory or official manager is appointed over all or any of the Buyer's assets.

"goods" means goods ordered by the Buyer from time to time under this contract and includes any services forming part of the supply of the goods and in respect of each order of goods from the Buyer accepted by the Supplier, means the goods (and or services) described in the invoice by the Supplier in respect of the relevant order.

"ownership" means the property in and legal and beneficial ownership.

"person" includes a corporation, association, firm, company, partnership, trust or individual.

"PPSA" means the Personal Property Securities Act 1999.

"price" means the purchase price of the goods and any costs payable by the Buyer under this contract relating to transportation, storage and insurance.

"Supplier" means Aotea Plastics Industries Ltd trading as Aotea Plastics its successors and assigns.

"terms" or "contract" means these terms and conditions of sale and, in respect of each order of goods from the Buyer accepted by the Supplier, includes the invoice issued by the Supplier in respect of the relevant order.

I have read and acknowledge and accept the Aotea Plastics Industries Ltd terms and conditions of Sale herein and agree to be bound by them. I agree that this document constitutes a security agreement as defined in Section 16 of the Personal Properties Securities Act 1999.

Full Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_