

## **Terms and Conditions of Sale of Trimfold Envelopes Limited**

### **1. DEFINITIONS**

Words and expressions defined in the Sale of Goods Acts, 1893 and 1980 shall, when used in these Terms and Conditions, save where the context otherwise requires bear the same meanings as therein-

"Bespoke Goods" means any Goods (including any instalment of Goods) manufactured and/or supplied by the Company to the Purchaser in respect of which Goods the Purchaser has provided the Company with a specification in writing.

"The Company" means Trimfold Envelopes Limited.

"Goods" means any Goods including, where the context so admits. Bespoke Goods, (including any instalment of Goods) manufactured and/or supplied by the Company to the Purchaser pursuant to an order placed by the Purchaser.

"Purchaser" means the person ordering the Goods.

### **2. GENERAL**

(a) These Terms and Conditions shall apply to all sales of Goods and no variation or purported variation (including in particular any terms and conditions on the Purchaser's contract or order form), whether before or after the making of the contract, shall have effect unless expressly agreed to in writing by the Company.

(b) There shall be no contract between the Company and the Purchaser for the sale of Goods or Bespoke Goods unless and until the Purchaser's order is accepted in writing by the Company **provided** that where the Company delivers Goods to the Purchaser pursuant to a verbal order for Goods received by the Company from the Purchaser these Terms and Conditions, a copy of which shall have been delivered to the Purchaser, shall be deemed to apply to any such order and sale of Goods.

(c) THE CONTRACTUAL RIGHTS WHICH THE PURCHASER ENJOYS BY VIRTUE OF SECTIONS 12, 13, 14 AND 15 OF THE SALE OF GOODS ACT, 1893 (AS AMENDED) ARE IN NO WAY PREJUDICED BY ANYTHING CONTAINED IN THESE TERMS AND CONDITIONS SAVE (IF THE PURCHASER IS NOT DEALING AS CONSUMER OR IN THE CASE OF AN INTERNATIONAL SALE OF GOODS) TO THE EXTENT PERMITTED BY LAW.

### **3. TRANSFER OF OWNERSHIP**

(a) The property in the Goods shall remain in the Company until the Company has received payment in full for all sums due and owing on any account by the Purchaser.

(b) If the Purchaser shall sell or otherwise dispose of the Goods before payment in full as aforesaid has been made to the Company- the Purchaser shall in such case hold all monies received by him from such sale or disposal in trust for the Company and shall on request furnish the Company with the names and addresses of the persons to whom such disposals have been made together with all necessary particulars to enable the Company to recover any outstanding sums due from such persons.

(c) So long as the property in the Goods shall remain in the Company, the Purchaser shall hold the Goods as bailee for the Company and store the Goods so as to clearly show them to be the property of the Company, and the Company shall have the right, without prejudice to the obligations of the Purchaser to purchase the Goods, to retake possession of the Goods (and for that purpose to go upon any premises occupied by the Purchaser).

(d) Nothing in this clause shall confer any right upon the Purchaser to return the Goods. The Company may maintain an action for the price notwithstanding that property in the Goods shall not have vested in the Purchaser.

### **4. DELIVERY**

(a) Any times quoted for delivery are estimates only and the Company shall not be liable for failure to deliver within the time quoted.

(b) Unless otherwise expressly agreed in writing by the Company, delivery of Bespoke Goods will be affected by the Company to the Purchaser within 10 days of manufacture by the Company of such Bespoke Goods, to a single delivery address specified in writing to the Company by the Purchaser.

(c) If the Goods are not received by the Purchaser within six days from the date of the relevant invoice, the company must at once be informed.

(d) The Company shall be entitled to make partial deliveries or deliveries by instalments and the terms and conditions herein contained shall apply to each partial or instalment delivery,

(e) Deviations in quantity of the Goods (representing not more than 10 per cent by value) from that stated in the contract 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.

(f) Subject to the provisions of clause 7(a) hereof, the Company may, in its absolute discretion, provide to the Purchaser a copy of an invoice issued to the Purchaser by the Company, or a copy of any further documentation requested by the Customer, where such request is received by the Company from the Purchaser within 60 days of the date of that invoice.

### **5. RISK OF LOSS OR DAMAGE**

(a) Notwithstanding that the property in the Goods may not have passed to the Purchaser, the Purchaser shall carry all risk of loss of and damage to the Goods from the time when the Goods are delivered to the Purchaser's address, or, if appropriate the stipulated place of delivery or, if the Purchaser fails to take delivery of the Goods, from the time when the Company has tendered delivery of the Goods, any of which events shall constitute delivery to the Purchaser, and Sections 32(2) and (3) of the Sale of Goods Act, 1893 shall not apply.

(b) From when the risk of loss of and damage to the Goods commences to be carried by the Purchaser until the Company is paid in full for the Goods, the Purchaser shall:

(i) Indemnify and keep indemnified the Company against all loss of and damage to the Goods and against any reduction in the re-sale value thereof below the price to be paid therefor by the Purchaser;

(ii) Insure and keep insured the Goods in an amount at least equal to the price to be paid therefor by the Purchaser; and

(iii) Hold upon trust for the Company absolutely all proceeds of such insurance.

## 6. PRICES

(a) Unless otherwise agreed in writing, all prices shall be as specified in the Company's price list as published from time to time and shall be exclusive of VAT and any other applicable taxes or duties and the cost of any import or other licences or clearances. In addition unless otherwise agreed in writing by the Company, Goods will be invoiced in the local currency pertaining at the Purchasers address.

(b) The Company reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in the cost to it of materials, labour and services or of any currency and services or of any currency fluctuations which increase the cost to it of Goods.

(c) Subject to clause 3(d), the Company may at its absolute discretion, by agreement in writing, agree to accept the return of non defective Goods from the Purchaser. Where the Company does so agree it shall be entitled to charge a fee of not less than 20% of the price of the Goods so returned.

(d) Where, for any one delivery, (i) the value of Goods to be delivered by the Company to the Purchaser is not less than €100 and such delivery is to be made in the Republic of Ireland or, (ii) where the value of Goods to be delivered by the Company to the Purchaser is not less than STG€100 and such delivery is to be made in Northern Ireland; then the price of those Goods shall be deemed to include the cost of delivery at the location within the Republic of Ireland or Northern Ireland (as the case may be), agreed between the Company and the Purchaser and insurance in transit thereto. If the value of Goods to be delivered in any such delivery in (i) the Republic of Ireland is less than €100 or (ii) Northern Ireland is less than STG€100 (as the case may be) or delivery of the Goods is to be made outside the Republic of Ireland or Northern Ireland the price is ex-works at Athboy Road, Trim, Co. Meath and, if the Company shall arrange for the delivery of the Goods to any location and/or any insurance of the Goods, the cost thereof shall be added to and shall form part of the price of the Goods.

## 7. TERMS OF PAYMENT

(a) Payment shall be made in the invoice currency within thirty days of the date of the Company's invoice unless otherwise stated. A request by the Purchaser for a further copy of such invoice, or for any other copy documentation, will not extend the above mentioned thirty day period from the date of the Company's invoice. The Purchaser shall not be entitled to make any deduction whether by reason of set off or otherwise.

(b) **The Purchaser shall pay to the Company interest on overdue payments calculated on the day-to-day balance** at a rate of interest equal to that from time to time payable by the Company on overdraft borrowings. Such interest shall be payable on demand and may be charged and added to the balance of overdue payments, and thereby compounded, from time to time as the Company may determine. A statement from the Company as to the rate of interest applicable under this paragraph shall, in the absence of manifest error, be conclusive and binding

(c) Nothing in this clause shall be taken as limiting the Company's rights under clause 9.

## 8. REMEDIES FOR ANY DEFECTS ETC.

(a) If by reason of any defect in the Goods there shall be a breach of any implied condition or warranty applicable thereto, the Company shall at its option either repair or replace the Goods or issue credit to the Purchaser, provided that

(i) The Company is notified in writing within 3 days of the discovery of any such defects by the Purchaser and in any event not later than 28 days after purchase;

(ii) The relevant Goods are returned to the Company at the cost of the Purchaser;

(iii) examination of such Goods by the Company shall disclose to its satisfaction that the defect or failure to conform to specifications existed at the time of delivery or that a breach of an implied condition or warranty shall have occurred as aforesaid, and in particular that the Goods shall not have been affected by misuse, neglect, accident, improper storage, installation or handling or by repair or alteration not effected by the Company; and

(iv) The Purchaser shall pay to the Company the cost (as stated by the Company) of any examination of the Goods as a result of which the Company does not admit liability.

**The Company's name and address are:**

**Trimfold Envelopes Limited Athboy Road Trim Co. Meath**

(b) All implied conditions and warranties other than those arising under Section 12 of the Sale of Goods Act, 1893 (as amended) are hereby excluded in relation to any parts, components and accessories supplied by, but not manufactured by, the Company, but the Company will so far as possible pass to the Purchaser the benefit of any guarantee, condition or warranty given to the Company by the manufacturer.

(c) The Company's liability for any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of or in connection with or resulting from the manufacture, sale, delivery, resale, replacement or use of any of the Goods shall in no case exceed the price paid by the Purchaser to the Company for the Goods which give rise to the claim, plus expenses of customs, taxes, freight and insurance. In no event shall the Company be liable for any loss of profits, or special or consequential damages suffered by the Purchaser, including interest charges. Nothing contained in this paragraph shall by implication create any liability or obligation on the part of the Company, or effect or diminish any disclaimer or liability elsewhere contained herein.

(d) Except as expressly stated above all other warranties, conditions and representations, express or implied, statutory or otherwise, in relation to the quality or fitness for any particular purpose of the Goods are hereby excluded and the Company shall not be liable in contract, tort or otherwise for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or in connection with the Goods sold or any defect in them or from any other cause, whether or not any such matter amounts to a fundamental breach of a fundamental term of the contract and, in particular, and without prejudice to the generality of the foregoing, where the Purchaser is not a Consumer, and, subject to clause 2(c) hereof, the Company makes no warranty, condition or representation that the Goods are fit for use on mail inserting machines or on printers or photocopiers.

(e) The Company's liability under this provision shall be limited to a period of one year from the date of receipt of the Goods by the Purchaser.

(f) The Purchaser shall not reject any Goods or cancel or purport to cancel the contract or any part of it because of an alleged default unless and until the Company shall have failed to correct such alleged default within thirty days of written notice specifying the default.

(g) Nothing in this Section 8 shall be taken as in any way limiting or excluding any liability which the Company may have to the Purchaser under Section 2 of the Liability for Defective Products Act, 1991.

## **9. DEFAULT BY PURCHASER**

(a) If the Purchaser

- (i) Fails to comply with any term of the contract (including stipulations as to payment);
- (ii) Commits an act of bankruptcy, makes an arrangement or composition with creditors or suffers any distress or execution; or
- (iii) Resolves or is ordered to be wound up or has a receiver appointed then, in any such event, the Company shall have the right (without prejudice to any other remedies) to cancel any uncompleted order and withhold or suspend delivery of further Goods, and to demand payment forthwith of all sums due by the Purchaser to the Company.

(b) In the event the Company exercises any rights it may have to stop Goods in transit because of the Purchaser's financial condition, the Company may at its option resell such Goods at public or private sale without notice to the Purchaser and without affecting the Company's rights to hold the Purchaser liable for any loss or damage caused by breach of contract by the Purchaser.

## **10. INFRINGEMENT**

The Purchaser shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable as a result of work done or the supply of Goods in accordance with the Purchaser's specifications which involves the infringement of any letters patent, registered design, copyright trademark or trade name or other rights of confidentiality of information or industrial, commercial or intellectual property.

## **11. FORCE MAJEURE**

The Company shall not be under any liability of whatever kind for non-performance in whole or in part of its obligations under the contract due to causes beyond the control of the Company or beyond *the* control of the Company's suppliers including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, acts of the Purchaser or a third party, failure or delay in transportation, acts of any Government or any agency or sub-division thereof.

Government regulations, judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, delay in delivery to the Company or the Company's suppliers or shortage of labour, fuel, raw materials or machinery or technical failure. In any such event, the Company may, without liability, cancel or vary the terms of contract including, but not limited to, extending the time for performing the contract for a period at least equal to the time lost by reason of such causes.

## **12. ASSIGNMENT**

The Purchaser shall not assign or transfer or purport to assign or transfer to any other person the contract or the benefit thereof or the benefit of any condition, warranty or guarantee or other term or condition (express or implied) forming part thereof or relating to the Goods.

## **13. HEADINGS**

The headings of these Terms and Conditions are for convenience only and shall have no effect on the interpretation thereof.

## **14. GOVERNING LAW**

This contract shall be governed and construed in all respects in accordance with the laws of the Republic of Ireland