

# Classique Plastics Limited - Terms and Conditions of Trade

**1. Definitions**

1.1 'Seller' shall mean Classique Plastics Limited, or any agents, employees, successors or assigns thereof.

1.2 'Buyer' shall mean the entity or person named on any form provided by the Seller to the Buyer (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy Goods, if the Buyer includes two or more persons, those persons' liability is joint and several.

1.3 'Goods' shall mean all Goods (including but not limited to future goods, specific goods, and any advice or recommendations given regarding the Goods) supplied by the Seller to the Buyer and are as described on any invoice or quotation provided by the Seller to the Buyer.

1.4 'Works' shall mean all Works undertaken by the Seller (including, but not limited to installing or repairing Goods and includes any advice or recommendations given regarding the Works) and are as described on any invoice or quotation provided by the Seller to the Buyer.

1.5 'PPSA' shall mean the Personal Properties Securities Act 1999.

1.6 'Price' shall mean the cost of the Works and/or Goods as determined by the Seller and any other amounts owing to the Seller by the Buyer.

2. Acceptance

2.1 Any instructions received by the Seller from the Buyer for the supply of Works and Goods and/or the Buyer's acceptance of Works and Goods supplied by the Seller shall constitute acceptance of this contract.

2.2 The Seller will only supply Works and Goods on these terms and conditions unless agreed otherwise in writing.

2.3 These terms and conditions along with invoices, credit application, quotations, estimates, order forms, or any other documents issued by the Seller together, form the contract and are the full agreement between the parties.

3. General

3.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words referring to one gender include the other.

3.2 If any provision of this contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.

3.3 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Seller.

3.4 The Seller may sub-contract any part of this contract. No sub-contractor has any authority to agree to any variation of this contract on behalf of the Seller.

3.5 The Seller's failure or delay in exercising or enforcing any right it has under this contract shall not operate as a waiver of the Seller's rights to exercise or enforce such rights or any other rights in the future.

3.6 The Seller may, and the Buyer may not, vary or replace this contract and it will be a condition of the Seller continuing to supply Works and/or Goods to the Buyer that the Buyer agrees to sign any variation or replacement of this contract.

3.7 Any waiver of these terms and conditions by the Seller must be made in writing.

3.8 The Buyer may not assign all or any of the Buyer's rights or obligations under this contract without the written permission of the Seller.

3.9 The Seller shall not be bound by any error or omission made by the Seller on any invoice, quotation, estimate, or any other document issued by the Seller.

3.10 The Buyer shall notify the Seller of any intention to cease trading and/or of any change in the Buyers name and/or contact details by giving at least seven (7) days notice in writing prior to any such events taking effect.

4. Cancellation

4.1 Under this clause, the Seller may cancel the contract at any given time. The Buyer will be notified of such cancellation in writing.

4.2 The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

4.3 If the Buyer serves the Seller with a cancellation notice at any time, the Buyer shall be liable for full costs of the Works, Goods and/or Services provided by the Seller, including any Works and/or Goods ordered and/or purchased, up to the date of cancellation.

5. Compliance with Laws & Acts

5.1 The Buyer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works. If and where applicable, this shall include and not be limited to, Sale of Goods Act 1998, Fair Trading Act 1986 and Consumer Guarantees Act 1993.

5.2 The Buyer shall obtain (at the expense of the Buyer) any licences and approvals that may be required for the Works.

5.3 The Buyer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

5.4 PPSA

5.5 The Buyer acknowledges that this contract creates a security interest in the Works and/or Goods and, for avoidance of doubt, the proceeds of the sale of the Works and/or Goods. The Buyer will if requested by the Seller, sign any documents, provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected purchase money security interest.

5.6 Until payment of the Price has been made in full the Buyer acknowledges and agrees that in relation to Works and/or Goods that are inventory, the Buyer will not allow any non-purchase money security interest to arise in respect of the Works and/or Goods unless the Seller has perfected the Seller's purchase money security interest prior to the Buyer taking possession of the Works and/or Goods.

5.7 The Seller and the Buyer agree that nothing in sections 114(1) (a), 117(1) (c), 120, 122, 133 and 134 of the PPSA shall apply to these terms and conditions.

5.8 The Buyer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

5.9 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

6. Risk

6.1 Risk in the Works and Goods shall pass from the Seller to the Buyer upon delivery of the Works and Goods.

6.2 The Buyer shall keep the Works and Goods insured against fire, accident, theft and other risk as the Seller may require in the names of the Seller and the Buyer for their respective rights and interests as well as providing for payment of policy proceeds to the Seller until such time as payment is made in full and title in the Works and Goods has passed to the Buyer.

6.3 The Seller reserves the right to claim insurance proceeds direct.

7. Retention of Title

7.1 Title will not pass to the Buyer, but will remain with the Seller, until payment in full of the Price.

7.2 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such instrument is paid in full.

7.3 Until Title in the Works passes to the Buyer:

- a) the Buyer shall hold the Works and/or Goods as fiduciary bailee and agent for the Seller, and
- b) the Seller shall have a right of lien over any Works and/or Goods, whether or not those Works and/or Goods have been paid for by the Buyer. Such rights shall be additional to the Seller's rights referred to herein; and
- c) the Seller shall be entitled to enter upon the Buyer's premises to inspect the Works and/or Goods; and
- d) the Works and/or Goods shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices issued by the Seller to the Buyer; and
- e) the Buyer acknowledges that if it mixes the Works and/or Goods with other products or items such that the Works and/or Goods are no longer separately identifiable then the Buyer and Seller shall be Seller's in common of the new product or item; and
- f) If the Buyer is in default of payment then the Buyer shall deliver the Works and/or Goods to the Seller upon demand and in the event the Buyer does not comply with such a demand then the Seller shall be entitled to enter upon the Buyer's premises at any time and do all things necessary in order to take possession of the Works and/or Goods. The Buyer shall be liable for all costs of whatsoever nature associated with the exercise of the Seller's rights under this clause.

8. Privacy Act

8.1 The Buyer acknowledges that personal information collected or held by the Seller is provided and may be held, used and disclosed for the following purposes:

- a) administering, whether directly or indirectly, the Seller's contracts and enforcing the Seller's rights there under, and
- b) marketing Works provided by the Seller, and
- c) ascertaining at any time the Buyer's creditworthiness and obtaining at any time credit reports, character references or credit statements; and
- d) enabling the Seller to notify any credit agency of any application for credit or default on any obligation of the Buyer to the Seller and enabling the Seller to provide such personal information to any credit agency so such credit agency can maintain correct accounting records; and
- e) enabling the Seller to communicate with the Buyer for any purpose.

8.2 Where the Buyer and/or Guarantors are an individual the authorities under clause 8.1 are authorities or consents for the purposes of the Privacy Act 1993.

8.3 The Buyer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Seller.

9. Default

9.1 Without prejudice to any other rights or remedies that the Seller may have against the Buyer, the Buyer agrees that in the event of default in payment by the Buyer that the Buyer agrees to pay on demand:

- a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Seller in recovering any amounts payable by the Buyer to the Seller; and
- b) interest on the amount outstanding at the end of each month in which the Buyer's account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and
- c) a monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Buyer's account is in default.

9.2 The Seller may at the Seller's sole discretion stop further performance of this contract, require payment in cash before further performance of this contract, or terminate this contract without notice to the Buyer upon the happening of any of the following events:

- a) the Buyer makes default in payment due under this contract or in payment of any monies due by the Buyer to the Seller on any account whatsoever; or
- b) the Buyer is insolvent or takes any proceedings to reschedule any indebtedness; or
- c) in the Seller's opinion the Buyer is unable to pay indebtedness as it falls due; or
- d) a receiver or manager is appointed to any property of the Buyer.

10. Caveat & Mortgage

10.1 The Buyer and/or Guarantor of the Buyer agree that the Seller shall have the right to complete and register a mortgage over any property owned by the Buyer and/or Guarantor of the Buyer to secure any amount outstanding and that the Seller shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Buyer and/or Guarantor hereby irrevocably appoint the Seller as the attorney of the Buyer and/or the Guarantor for the purpose of the Seller exercising its rights under this clause whilst any amount remains in default.

10.2 Should the Seller elect to proceed in any manner in accordance with the clause the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

11. Quotations

11.1 Where a quotation is given for the Price then:

- a) the quotation shall only be binding upon the Seller for thirty (30) days from the date of issue; and
- b) where Works and Goods are required in addition to the quotation then the Buyer agrees to pay the additional Price of such Works and Goods; and

12.1 The Seller reserves the right to amend the quotation in the event of circumstances beyond the Seller's control.

13. Price

13.1 The Seller may require a deposit of a percentage of the Price before commencing the Works. This will be shown on the quotation and/or cash sales form.

13.2 The Price of the Works and Goods shall be either:

- a) as shown on the Seller's invoice and/or cash sales form; or
- b) stipulated (subject to clause 12) in the Seller's quotation.

13.3 Unless otherwise agreed, no allowance has been made in the Price for the deduction of retentions.

13.4 Unless otherwise agreed the Price is exclusive of Goods and Services Tax, and any other applicable taxes, duties, charges and costs payable by the Buyer in addition to the Price.

13.5 The Prices quoted by the Seller shall only apply to the manufacture and/or supply of the specific Works and Goods as itemised or specified in the quotation. Any additional Works or Goods outside the scope of the Works and Goods itemised in the quotation, requested by the Buyer, will be subject to a variation, and will be charged at the Seller's standard prices and/or rates prevailing at the time of supply.

14. Variations

14.1 In the event that the Buyer requests a variation all such requests shall be made in writing.

14.2 In the event that the Seller accepts a variation, the Seller will, in writing state the reason for the variation and provide a full description of the variation and state any effect the variation will have on the contract, including but not limited to, the Price, Completion Date and whether further permission and authorisations are required.

14.3 Other than for the events outlined in clause 14.2 the Seller shall obtain written acceptance by the Buyer of any variation requested by the Seller before commencing work on the variation.

14.4 In the event of unforeseeable problems which are only anticipated when undertaking the site/works the Seller considers should be rectified for the safe completion of the Works, or a delay by the Buyer in undertaking plumbing, electrical or other services to be undertaken by the Buyer, then the Seller may carry out any Works needed to fix any such problems. Any such additional Works necessary are to be treated as a variation. However, if a Price is not agreed upon then the Buyer agrees to be charged at the Seller's actual cost plus twenty percent (20%) for the rectification Works.

15. Payment

15.1 Unless otherwise agreed to in writing by the Seller, payment of invoice's shall be due, either on Delivery or Completion of the Works and/or Goods, or, on the 20<sup>th</sup> of the month following the date on which an invoice is issued for the Price. The due date will be noted on the Seller's invoice.

15.2 All Cash Sales orders will require a minimum deposit of 50% of the Price quoted for Works and/or Goods ordered by the Buyer from the Seller, with the balance due on completion of the Works and/or Goods.

15.3 The Seller will accept payment by, Bank Transfer, Cash, or by way of a Cheque.

15.4 The Seller may submit a detailed payment claim at intervals of not less than one (1) month for work performed up to the end of each month. The value of Works so performed shall include the value of authorised variations, and the value of Works and/or Goods delivered to the site but not installed.

15.5 The Seller has the right to apply or appropriate any payment to any account of the Buyer. Should the Buyer have a number of accounts, then the Seller is hereby given the right to combine any account and also set-off any amount between such accounts.

15.6 All payments by the Buyer must be made in full and without any retentions or, deductions or, right of set-off or counterclaim. The Buyer agrees, however, that any monies that the Seller may owe the Buyer on any account whatsoever may, at the Seller's option, be set-off against payments due by the Buyer to the Seller.

16. Limitation of Liabilities

16.1 The Seller shall not be liable to the Buyer, or to any other person, for any loss or damage either:

- a) caused by any delay in delivery however that delay is caused; or
- b) arising directly or indirectly from the Works and/or Goods or their use.

16.2 The Seller shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of the Seller (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

16.3 Whilst the Seller will take all care to avoid damage to any underground services the Buyer agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to underground services not precisely located and notified to the Seller by the Buyer.

16.4 The Seller shall not be liable for any consequential, indirect or special damages or loss of any kind suffered by the Buyer or any other person caused by any breach of the Seller of any of the Seller's obligations under this contract.

16.5 If the Seller is liable to the Buyer, or any other person, and the Seller can not rely on the exclusions or representations, warranties, or liabilities set out in these terms and conditions then the Seller's liability is in all cases limited to the Price of the Goods and/or Services provided.

17. Delivery

17.1 Delivery of the Works and/or Goods shall be deemed to be completed when:

- a) the Seller gives possession of the Works and/or Goods directly to the Buyer, or
- b) possession of the Works and/or Goods is given to a carrier, courier or other bailee for the purpose of transmission to the Buyer.

17.2 Where delivery of the Works and/or Goods is made at the Buyer's address then unloading is at the Buyer's risk. Where delivery of the Works and/or Goods is made at the Seller's address then loading is at the Buyer's risk.

17.3 The costs of delivery shall be in addition to the Price.

17.4 Where the Buyer does not take delivery of the Works and/or Goods by the delivery date specified the Buyer shall either:

- a) pay a delivery fee; and/or
- b) pay reasonable storage costs until such time as the Buyer accepts the Works and/or Goods.

17.5 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence.

18. Completion

18.1 The Works shall be deemed to be completed when the Works carried out under this contract have been completed without any omissions or defects in accordance with the plans, specifications or instructions set out in the quotation or any work authority.

18.2 The Works start date or installation date will be put back and the completion period extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Buyer written notice) where the Works are delayed by an event beyond the Seller's control, including but not limited to any failure by the Buyer to make a selection, or have the site ready for installation, or notify the Seller that the site is ready.

19. Defects, Shortages & Returns

19.1 Any claim by the Buyer as to incorrect performance or breach of this contract must be made to the Seller in writing within seven (7) days of completion (time being of the essence) of the Works otherwise the Seller shall be entitled to presume that the Works and Goods have been delivered and/or completed in good order and without defect or shortage in quantity.

19.2 The Seller will not accept return of Works and/or Goods for credit.

20. Workmanship Warranty

20.1 Subject to the conditions of warranty set out below the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within seven (7) days of the date of completion (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the Seller's workmanship.

20.2 No claim may be made by this warranty unless:

- a) it is received by the Seller as soon as practicable after the defect complained of becomes apparent; and
- b) the claim is confirmed in writing; and
- c) the Seller is given reasonable opportunity to inspect and verify the Buyer's claim.

20.3 This warranty does not cover:

- a) any defect caused or contributed to by the Buyer (including but not limited to, a failure to properly maintain the Works and Goods or follow any instructions or guidelines given by the Seller); or
- b) any Works, Goods or Materials not manufactured by the Seller (in which case the Buyer shall only have the benefit of the warranty, if any, provided by the manufacturer); or
- c) fair wear and tear; or
- d) any act of God.

20.4 This warranty is void in the event that:

- a) any attempt is made to repair the Works by any person not authorised by the Seller; or
- b) use of the Works continues after any defect becomes apparent; or
- c) the Buyer's account is in default.

20.5 To the extent permitted by statute the Seller excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort, or under any other legal principle, or otherwise.

21. Goods Warranty

21.1 Subject to the Seller's conditions any Goods not manufactured by the Seller, means the Buyer shall only have the benefit of the warranty (if any) provided by the manufacturer.

21.2 To the extent permitted by statute the Seller excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort, or under any other legal principle, or otherwise.

21.3 Goods manufactured by the Seller shall have the benefit of a statute twelve (12) months warranty period from the date of completion, provided by the Seller.

22. Workers Lien

22.1 Where the Seller has not received or been tendered the whole of the Price, or payment has been dishonoured, the Seller shall have:

- a) a lien on the Works and/or Goods; and/or
- b) the right to retain the Works and/or Goods for the Price while the Seller is in possession of them; and/or
- c) a right to stop the Works and/or Goods in transit whether or not delivery has been made or ownership passed; and/or
- d) a right to reseize; and/or
- e) the foregoing right to dispose, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

23. Copyright

23.1 Any copyright, patent and intellectual property of any designs, drawings, specifications, sketches, or samples provided by the Seller shall remain the property of the Seller and shall only be used by the Buyer for the use for which they were intended or supplied.

23.2 Where the Seller has followed a design or instruction furnished by, or given by the Buyer, then the Buyer shall indemnify the Seller against all damages, penalties, costs and expenses of the Seller. In respect of which the Seller may become liable through any work required to be done in accordance with such instructions involving an infringement of a patent, trademark, registered design or common law right.

24. Site Access

24.1 The Seller shall not be liable for any loss or damage caused in accessing any work sites beyond reasonable control of the Seller (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

25. Disputes

25.1 Any and all disputes arising between the parties under this contract will be referred to a single arbitrator to be mutually agreed upon by the parties (or failing such agreement as appointed by the Arbitrators Institute of New Zealand and Council). Any determination of such arbitrator shall be final and binding on the parties and not subject to review.

26. Force Majeure

26.1 Notwithstanding anything in the contract, if the Seller shall fail to perform any obligation hereby imposed upon it, and such failure shall be caused by Acts of God, Strikes, Earthquakes, Floods, or any act of Government or any other cause beyond the reasonable control of the Seller, then the Seller shall be exempt from all liability to the extent due to or arising from such failure.