

## TERMS AND CONDITIONS OF SALE

### PRIMO DANMARK A/S June 2005

Tistrup, June 2005  
PF-62/3 rev. 1

#### 1.

##### **Introduction**

The following general terms and conditions of sale shall apply to all sales of goods and services by Primo Danmark A/S unless otherwise agreed in writing between the parties.

The aforementioned terms and conditions shall apply regardless of any purchasing terms and conditions applied by the customers, unless such terms and conditions are approved in writing by Primo Danmark A/S.

#### 2.

##### **Basis of agreement**

In the event of doubt regarding interpretation of agreement between the parties, a written order confirmation or quotation from Primo Danmark A/S shall form the basis of agreement between the parties.

#### 3.

##### **Prices**

All prices will be stated in Danish Crowns exclusive of VAT unless otherwise stated. The Buyer undertakes to accept price changes arising from documented increases in costs for the Vendor due to currency fluctuations, customs duties, taxes, levies, material prices, labour costs and other manufacturing costs concerning the goods or services subject to the agreement up unto the time of delivery.

#### 4.

##### **Quantities**

The right to a discrepancy of plus/minus 10% of the quantity ordered is reserved.

#### 5.

##### **Payment**

Payment shall be made by no later than the due date stated on the invoice. Should such a date not be stated, payment will be due upon delivery.

Should delivery be postponed due to the Buyer's circumstances (claimant's default) the Buyer undertakes to make all payments to the Vendor as if delivery had been made on time unless the Vendor advises the Buyer to the contrary in writing.

Payment received after the due date will be subject to the application of interest on the outstanding balance (incl. accumulated interest) from the due date at the official bank discount rate plus 5% per month or part thereof, but no less than the interest rate stated on the invoice.

#### 6.

##### **Right of ownership**

The Vendor reserves all right of ownership in the goods sold - subject to those limitations imposed by legislation - until the entire purchase price plus accumulated costs are paid in full.

#### 7.

##### **Delivery**

Delivery shall be ex-works at the Vendor's address and at the Buyer's expense and risk in accordance with INCOTERMS rules.

Unless specifically requested to do so by the Buyer, the Vendor will not take out special transport insurance or any other form of insurance on the goods sold.

The delivery date shall be determined by the Vendor to his best estimate given the conditions prevailing at the time of quotation/agreement.

Should delayed delivery be due to the Vendor being in a situation as stated in item 10, delivery will be postponed by such time as the hindrance lasts, although either party shall be entitled to cancel the agreement without recourse when the hindrance has been in effect for more than 4 months. This proviso shall apply notwithstanding whether the delay occurs before or after the expiry of the agreed delivery date.

## **8. Documentation**

The Vendor will supply documentation for the goods sold upon request in the form of a certificate of analysis and certificate of origin.

Primo Danmark A/S' documentation for goods supplied shall in all respects be regarded as sufficient for the Buyer, such that the Buyer cannot apply notification of defects as a result of deficient or insufficient documentation.

## **9. Claims, liability for deficiencies and compensation**

It is incumbent upon the Buyer to examine the goods upon receipt and claims for deficiencies arising thereof shall be advised in writing immediately and no later than on the day of receipt to the Vendor.

In the event of deficient deliveries, the Vendor is entitled to deliver substitutions at no cost to the Buyer. The Vendor shall not be liable for expenses related to the removal of deficient parts. Neither shall the Vendor be liable for loss due to delay, day fines, consequential loss or other form of indirect loss arising from deficient delivery.

The Vendor's liability for deficient deliveries shall not exceed the provisions of section 54, item 1 of the Danish Sale of Goods Act. Although for deliveries for construction work in Denmark our liability for deficient deliveries shall expire 5 years after handover of the building that comprises the delivery, although no more than 6 years from delivery of the materials to the Vendor in accordance with section 54, item 2 of the Danish Sale of Goods Act.

Providing it can be established that a claim concerning a deficient delivery cannot – or only with great difficulty – be pursued against the Buyer or subsequent Buyers, we acknowledge that the claim can be applied directly to us.

In such instances, we can only be held liable for deficiencies to the extent that our own deliveries were deficient at the time of delivery and only to the extent defined in our contractual relationship with the Buyer (with reference to clause 2 above), and only to the extent that the claimant has not lost his right to lay claim against intermediate elements of the supply chain.

A compensation claim against the Vendor cannot exceed the invoiced value of the goods sold.

The Vendor cannot be held liable for consequential loss, loss of profits, day fines or other indirect losses linked to the agreement, including indirect loss arising from delayed or deficient goods sold.

We do however recognise that legal proceedings can be launched against us along with the Buyer or subsequent Buyers as a result of our mutual relationship. Such cases will be considered by the Danish Court of Arbitration for the Building and Construction Industry.

## **10. Force majeure**

Force majeure, strikes or lockouts in Denmark or abroad, fire, major mechanical damage, loss of power, war or war-like conditions in Denmark or abroad, absence or delay of raw materials or prefabricated components or other corresponding supply difficulties shall entitle us, according to our own best judgement, to wholly or partially cancel or postpone delivery.

No claim can be made against us for any extension of the delivery date regardless of the reason.

Should the value of the Danish Crown fluctuate or an event such as those described above cause extra expense for us in fulfilment of our supply obligations, we do however undertake to fulfil them providing the Buyer indemnifies us against payment of the estimated extra cost. If this is not the case, the Vendor is not obliged to deliver and can claim any additional costs related to the order from the Buyer upon provision of documentation for the same.

## **11. Product liability**

The Vendor can only be held liable for personal injury if it can be shown that such injury arises from defects or neglect on the part of the Vendor for which he is liable.

The Vendor cannot be held liable for damage to property or items that occur whilst the material is in the Vendor's possession. Neither can the Vendor be held liable for damage to products manufactured by the Buyer or products of which they are an

element. The Vendor can only be held liable for damage to property and items on the same terms as for personal injury in all other respects.

The Vendor cannot be held liable for consequential loss, loss of earnings or other indirect loss.

To the extent the Vendor may be held liable for product liability to a third party, the Buyer undertakes to indemnify the Vendor to the same extent to which the Vendor's liability is limited according to the 3 preceding items. Such limitations to the Vendor's liability shall not apply if he is guilty of gross negligence.

Should a third party make a claim against one of the parties for compensation in relation to this item, that party shall immediately inform the other.

Vendor and Buyer are mutually obliged to submit to proceedings at a court of law or arbitration that may consider any claim for compensation made against them arising from damage allegedly caused by the material.

## **12.**

### **Tools etc.**

New tools partially debited remain our property and will not be delivered. Should the quantity stipulated in our quotation as an estimate not be taken in full within the stipulated timeframe, we reserve the right to debit an additional amount according to our best estimate to cover that part of the tool costs concerned.

The above procedure can also be applied in the event of tools being manufactured but not debited.

Exclusive rights of ownership for tools partially debited shall lapse when no profiles are produced and delivered using such tools to the customer in question within a period of 12 months.

Injection moulding work is subject in all respects to the Plastindustrien i Danmarks Standardbetingelser A (Danish Plastic Industry, Standard Terms A) for forms and tools in the plastics industry.

## **13.**

### **Cancellation**

Orders manufactured in whole or part according to the Buyer's instructions cannot be cancelled, in accordance with the Danish Plastic Industry, Standard Terms (version 12) for forms and tools in the plastics industry.

## **14.**

### **Applicable law and venue**

Any dispute arising from agreements for the sale of goods from Primo Danmark A/S shall be referred to the Danish Court of Arbitration for the Building and Construction Industries.

All disputes shall be subject to Danish law.

## **15.**

### **Extraordinary terms and conditions**

Implementation of this order – in full or part - is provisional on the necessary raw materials being available.

Goods sold can only be returned by prior written agreement.