



PAR-PAK EUROPE LIMITED - TERMS AND CONDITIONS OF SALE (Edition: June 2008)

THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CONDITIONS 12, 13, 14 AND 15 WHICH CONTAIN EXCLUSIONS AND RESTRICTIONS ON THE SELLER'S LIABILITY

1. Definitions.

In these Conditions:

1.1 "the Agreement" means the agreements, warranties, conditions, representations and other expressly agreed terms between the Seller and the Buyer set out in the Quotation Letter for the purchase of the Goods (including these Conditions).

1.2 "the 'Buyer'" means the person, firm or corporation to whom the Quotation Letter is addressed.

1.3 "the Goods" means the goods, which are the subject of the Quotation Letter.

1.4 The "Price per Call-off" and "Price" shall mean the sums set opposite those expressions respectively in the Quotation Letter.

1.5 "the Seller" means Par-Pak Europe Limited.

1.6 "Tools" means all moulds or templates manufactured and/or used by the Seller to manufacture the Goods.

2. The Agreement.

2.1 The Quotation Letter and these Conditions contain all the terms upon which the Seller is prepared to bind itself contractually with the Buyer in respect of the sale and purchase of the Goods. The Quotation Letter is valid for 30 days from its date, provided the Seller has not previously withdrawn it.

2.2 Each order or call-off for Goods or acceptance by the Buyer of the Quotation Letter shall be deemed to be an offer by the Buyer to buy the Goods subject to these Conditions. No order or call-off for Goods shall be deemed to be accepted by the Seller until the Seller issues a written acknowledgement of order or (if earlier) the Seller delivers the Goods to the Buyer.

2.3 These Conditions shall override any contrary, different or additional terms or conditions (if any) contained or referred to in an order form or other documents or correspondence sent by the Buyer to the Seller.

2.4 No addition, alteration or substitution of these Conditions will bind the Seller or form part of the Agreement unless they are expressly accepted in writing by a person authorised in writing to sign on the Seller's behalf.

2.5 The Agreement constitutes the entire agreement and understanding of the Seller and the Buyer in respect of its subject matter and supersedes and extinguishes any previous agreement relating to its subject matter. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not expressly set out in the Agreement.

3. Offers and Supply of Information.

3.1 The Seller's catalogues, samples, drawings and price lists are for the sole purpose of giving an approximate idea of the Goods described in them and shall not constitute offers made by the Seller and the Seller reserves the right to withdraw or revise the same at any time. They shall not form part of the Agreement and the Agreement is not a sale by sample.

3.2 It is the Buyer's responsibility to ensure that the Goods are suitable for their intended purpose. The Seller does not warrant that the Goods are suitable for any specific use or application including, without limitation, use for freezing, heating or shipping.

4. Prices and Payment.

4.1 If the sale of the Goods is ex-works the Seller, the Seller shall send an invoice in respect thereof to the Buyer on the date the Goods are made available for delivery.

4.2 If the sale of the Goods is not ex-works the Seller, the Seller shall send an invoice to the Buyer in accordance with the Quotation Letter, but no later than the date of delivery of the Goods pursuant thereto.

4.3 Payment for the Goods shall be due in full and cleared funds in Pounds Sterling within thirty days of the date of the Seller's invoice.

4.4 In the case of any sale of the Goods to any person, firm or corporation whose place of business is outside the United Kingdom, payment for the Goods shall be made by an irrevocable confirmed letter of credit (acceptable to the Seller) established by the Buyer in favour of the Seller immediately upon receipt by the Seller of acceptance of an offer in accordance with these Conditions.

4.5 In the event of any payment becoming overdue (and without prejudice to any other right the Seller may have) the Seller shall be entitled to charge interest at the rate of four per cent (4%) above the base rate of Barclays Bank PLC from the due date for payment thereof until receipt by the Seller of the full amount whether before or after judgment, such interest to accrue daily and shall constitute a debt payable on demand from the Buyer to the Seller

4.6 The Seller reserves the right to at any time require full or partial payment for the Goods prior to delivery or the provision of security for payment by the Buyer in a form acceptable to the Seller.

4.7 Prices are subject to global fluctuations in resins (raw materials) and other costs. If the cost of resins or any other materials used by us to manufacture the Goods or the cost of delivery, packaging and/or insurance increase, we shall be entitled to increase the Price and/or Price per Call-Off to take account of such increases upon giving written notice to you.

4.8 Time for payment of invoices is of the essence. All amounts due under the Agreement from the Buyer shall be paid in full without any deduction or set-off or withholding other than as required by law.

4.9 All payments payable to the Seller under the Agreement shall become due immediately on its termination.

5. Customs Duties and Taxes.

5.1 Unless specified otherwise all Customs and Excise duties, import or export duties and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, supply, delivery or use of the Goods (including, without limitation, VAT) or payments for them or upon freight or other charges shall be borne by the Buyer.

6. Delivery.

6.1 Delivery shall be deemed to take effect (i) where the sale is ex works the Seller, when the Seller gives the Buyer notice that the Goods are available for collection or (ii) where the sale is not ex works the Seller, when the Goods are delivered to the Buyer's premises.

6.2 Unless otherwise expressly set out in the Quotation Letter, all sales of the Goods are ex-works the Seller and risk in the Goods shall pass to the Buyer on delivery. The Buyer shall take delivery of the Goods within 14 days of the Seller giving notice that the Goods are ready for delivery.

6.3 Any period or date for delivery stated in the Quotation Letter is intended to be an estimate and the Seller shall not be liable for any damages or losses arising out of any delay.

6.4 If the Buyer refuses or fails to take delivery of all the Goods or any call-off thereof or fails to take any action necessary on its part for delivery or shipment of the Goods, the Seller shall be entitled to:

6.4.1 Terminate the Agreement or such part as the Seller in its absolute discretion shall think fit with immediate effect; and/or

6.4.2 Dispose of the Goods as the Seller may determine; and/or

6.4.3 recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure and to retain any payment made prior to such refusal or failure; and/or

6.4.4 Require the Buyer to pay the balance of the Price per Call-off/Price as the Seller shall certify to be its actual loss.

7. Installment Deliveries.

7.1 Delivery of the Goods by call-offs shall be as specified in the Quotation Letter.

7.2 The Buyer shall abide strictly to the lead times for any call-offs specified in the Quotation Letter.

7.3 Each instalment shall be a separate contract and invoiced and paid for separately. No cancellation or termination of any one contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other contract or instalment.

8. Quantities. On all orders the Seller shall have the right to deliver and be paid for a quantity of the Goods greater or less than the exact quantity ordered by the Buyer up to a variation of ten per cent (10%) and in such event the Buyer shall pay for the actual quantity delivered. The quantity of any Goods delivered recorded by the Seller shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence to the contrary.

9. Passing of Property.

9.1 The Goods shall remain the property of the Seller as legal and equitable owner and no property in or title to

The Goods shall pass to the Buyer until the Seller has received in full (in cleared funds) all sums due to it in respect of: (i) the Goods and (ii) all other sums which are or which become due to the Seller from the Buyer on any account.

9.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods (at no cost to the Seller) separate from those of the Buyer and any third parties and properly identified as the Seller's property and shall not during such time destroy, deface or obscure any identifying marks on or relating to the Goods and shall, at its own expense, maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller (and on request, the Buyer shall produce the policy of insurance to the Seller). Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business only.

9.3 Without prejudice to any other remedies the Seller may have, the Buyer's rights to possession of the Goods shall terminate immediately and the Seller may repossess the Goods and the Buyer shall indemnify the Seller for all costs incurred by it as a result thereof if any of the following circumstances shall occur:

a bankruptcy order is made against the Buyer or there is an arrangement or composition with the Buyer's creditors or he/it otherwise takes the benefit of any statutory provision for the relief of insolvent debtors, or a meeting of the Buyer's creditors is convened, or it enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator and/or administrative receiver appointed over its undertaking or any part thereof or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer 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 petition presented to any court for the winding up of the

Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency of the Buyer or the Buyer suffers/allows any execution 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 Agreement (including, without limitation, as to payment) or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade or the Buyer encumbers or otherwise charges any of the Goods.

9.4 For the purpose of giving effect to this Condition 9, the Buyer hereby grants to the Seller, its employees and agents an irrevocable licence to enter upon its premises to inspect the Goods or, where the Buyer's right to possession has terminated, to recover them.

9.5 Notwithstanding the provisions of this Condition 9, the Seller shall be entitled to bring an action against the Buyer for payment of any invoice sent pursuant hereto and unpaid by the due date as if the property in the Goods had already passed to the Buyer or shall have the right by notice in writing to the Buyer at any time after the agreed delivery date to pass the property in the Goods to the Buyer as from the date of commencement of such action.

9.6 On termination of the Agreement, howsoever caused, the Seller's rights in this Condition 9 shall remain in effect.

9.7 The Buyer shall not return any of the Goods to the Seller without the Seller's written consent and the Seller shall not be under any liability whatsoever for the Goods returned by the Buyer without such consent.

9.8 If any of the events in Condition 9.3 occur, then without prejudice to any other right or remedy to which the Seller is entitled, the Seller may suspend any and all future deliveries of Goods to the Buyer and/or terminate the Agreement.

10. Specification and Information.

10.1 Specifications submitted by the Seller to the Buyer remain the property of the Seller and must not be communicated to any third party without the prior written permission of the Seller.

10.2 Unless agreed in writing by the Seller all specifications and particulars of weights and densities submitted by the Seller are approximate only and the Seller shall have no liability in respect of any deviation therefrom. The Seller accepts no responsibility for any errors, omissions or other defects in any specifications not prepared by the Seller.

10.3 Where the Goods' design (including Tools) will be or was designed by the Seller pursuant to a commission from the Buyer (whether in consideration of the order or otherwise) then the Buyer hereby assigns or agrees to assign to the Seller as beneficial owner all the Buyer's right to and interest in that design (together with the right to apply for registration of that design, if applicable) to hold the same unto the Seller absolutely.

10.4 Without prejudice to Condition 10.3 above, the Buyer acknowledges and agrees that any and all intellectual property rights and confidential information created and/or developed by the Seller in connection with the Goods (including the Tools) shall be and remain the sole property of the Seller, unless otherwise expressly agreed in writing.

10.5 The Buyer shall indemnify (and keep indemnified) the Seller against all liabilities, costs and expenses which the Seller may incur as a result of any materials and/or specifications being used on or in connection with the Goods where such materials and/or specifications have been provided by the Buyer.

11. Statutory Liability.

Nothing in the Agreement (including in Condition 13 below) shall be interpreted as excluding or restricting any liability of the Seller for (i) death or personal injury resulting from the negligence of the Seller, its employees, agents or sub-contractors or (ii) the Seller's obligations under Section 12 of the Sale of Goods Act 1979 or section 2(3) of the Consumer Protection Act 1987 or (iii) fraud or fraudulent misrepresentation or (iv) any matter for which it would be illegal or unlawful for the Seller to exclude or attempt to exclude its liability.

12. Liability of Seller.

12.1 The Buyer shall serve notice of any claims against the Seller within five days of delivery in the case of any alleged shortage of quantity of Goods and within ten days of delivery in the case of any failure of Goods to be of adequate quality. The Seller shall be afforded a reasonable opportunity after receiving notice to investigate any claim or complaint so that it can remedy such claim or complaint.

12.2 In the event that the Buyer fails to serve notice as provided in clause 12.1 above the Buyer thereby acknowledges that the Buyer has had a reasonable period of time to inspect the Goods and further shall be deemed to have received the full consignment of the Goods ordered and shall be deemed to have accepted the Goods for the purpose of Section 35(4) Sale of Goods Act 1979.

12.3 Having been deemed to have accepted the Goods in accordance with Clause 12.2 above the Buyer shall have no right to reject the Goods.

13. Limitation of Liability.

13.1 The Seller shall be under no liability to the Buyer for any damages or losses, direct or indirect, resulting from defects in design, materials or workmanship or from any act or default of the Seller, whether negligent or otherwise.

13.2 The Seller shall have no liability for any indirect or consequential losses or expenses suffered by the Buyer arising in respect of or in connection with the Agreement, however caused, including but not limited to economic loss, loss of profits, goodwill, reputation, business receipt or contracts, or losses or expenses resulting from third party claims. The Seller strongly recommends that the Buyer obtains insurance in respect of such losses.

13.3 The Seller's total aggregate liability to the Buyer arising in connection with the Agreement, whether for tort (including negligence or breach of statutory duty), breach of contract, misrepresentation or otherwise shall in no circumstances exceed the price paid for the Goods by the Buyer.

13.4 The Buyer's sole remedy in respect of any defective or faulty Goods shall be for the Seller to, at the Seller's option, repair or replace such Goods (or the defective part) or refund the price of the Goods at a pro rata rate provided that the Buyer shall, if the Seller requests, return the Goods (or the part of such Goods) which is defective or faulty to the Seller.

13.5 All conditions, warranties, representations and/or undertakings, express or implied, statutory or otherwise, are to the fullest extent permitted by law, excluded.

14. Indemnity - Product Liability.

The Buyer agrees to indemnify the Seller against any damages, losses, costs, claims or expenses incurred by the Seller in respect of any liability of the Seller towards a third party arising out of or in connection with any of the Goods supplied by the Seller or their operation or use and whether arising by reason of the negligence of the Seller or otherwise insofar as liability arises as a result of any dealing with the Goods otherwise than as expressly instructed or as would be reasonably expected in the normal course of business.

15. Force Majeure.

15.1 The Seller shall have no liability in respect of any failure or delay in fulfilling any of its obligations to the extent that fulfilment thereof is prevented, frustrated, impeded and/or delayed or rendered uneconomic as a consequence of any circumstance or event beyond the Seller's reasonable control including without limitation, compliance with any order, regulation, request or control of any national or local authority, government department or other competent authority of any country, or any delays in or cancellations of deliveries or provisions of services by third parties or shortages of the Goods, materials or parts or raw materials therefore, or any strikes, lock-outs or trade disputes whether involving the Seller's employees or others, fire, explosion, accident, breakdown of plant or machinery, calamity or civil disturbance, action of the elements, national calamity, war, riot or act of God or failure in whole or in part of any power or energy supply.

15.2 The Seller shall use reasonable endeavours to overcome the difficulties arising in connection therewith but in the event of any of the events or circumstances referred to in Condition 15.1 the Seller reserves the right to allocate as it may think fit the Goods available and resources between customers with whom it has contractual obligations in respect thereof and shall not be obliged to purchase the Goods from third parties to make good such shortages.

15.3 In the event of any deliveries by the Seller being delayed on account of any of the foregoing the period for delivery shall be correspondingly extended provided that if the deliveries are delayed for six months or more the Seller may at its option, exercisable by notice in writing to the Buyer, either terminate the Agreement or elect not to deliver any undelivered Goods without liability in either case. Save that the

Seller shall in such event refund an equitable proportion of any monies paid by the Buyer for the Goods at the date of termination without interest.

16. Packaging.

The Buyer shall meet the cost of any special packaging of the Goods requested by the Buyer or any packaging rendered necessary by delivery by any means other than the means of delivery specified in the Quotation Letter.

17. Tooling.

17.1 Notwithstanding anything to the contrary (unless otherwise agreed in writing by the parties) (i) Tools shall be and remain the sole property of the Seller and (ii) if the Seller manufactures or purchases Tools (whether or not bespoke) in order to manufacture the Goods the Buyer will be invoiced for the cost of the Tools in addition to the Price.

17.2 If the Tools can be used for further orders placed by the Buyer with the Seller then (whether or not the Tools are the property of the Seller) the Seller shall be entitled at any time to: (i) reuse the Tools unless in the Seller's opinion the Tools require to be replaced whereupon the Seller will replace the Tools at the Buyer's cost and (ii) charge the Buyer for any maintenance, repair and/or modification costs or charges incurred by the Seller in relation to the Tools.

17.3 Without prejudice to the provisions of this Agreement, if this Agreement is terminated for any reason (or the Buyer ceases for any reason to place orders or call-offs for Goods with the Seller during any three month period), the Buyer shall reimburse the Seller on demand for all expenditure of a capital nature incurred by the Seller in connection with the provision of the Goods (including but without limitation the Tools) to the extent that such expenditure has not already been amortised by the Seller and/or recovered from the Buyer in whole or in part through the Price and/or the Price per Call-off.

18. Licences.

If any licence or consent of any government or other authority shall be required for the acquisition, carriage, storage or use of the Goods, the Buyer shall obtain the same at its own expense and produce evidence of the same to the Seller on demand.

19. Miscellaneous.

19.1 The Buyer shall not assign or otherwise transfer, charge, dispose or deal with all or any of its rights, interests or obligations under the Agreement. Any or all of the Seller's rights, interests or obligations under the Agreement may be assigned, transferred, charged or otherwise disposed of or dealt with (including sub-contracted) by the Seller.

19.2 The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any other or subsequent

breach. The rights and remedies of the Seller provided in this Agreement are not exclusive of any rights or remedies provided by law.

19.3 The headings do not form part of these Conditions and shall not affect the interpretation thereof.

19.4 If any provision(s) of these Conditions (or any part of a provision) are held to be wholly or partly invalid, illegal or unenforceable, such provision(s) shall, to the extent of such invalidity, illegality or unenforceability, for that purpose be deemed to have been omitted but shall not prejudice the effectiveness of the rest of the Conditions (or the remainder of such provision, if appropriate).

19.5 Any notice hereunder must be in writing and shall be deemed to have been given if delivered by hand or sent by prepaid first class post or facsimile (confirmed by telephone and followed by notice by post) to the party concerned at its last known address/number, and deemed to have been received on the date of dispatch/transmission, if delivered by hand/sent by facsimile and on the third day after posting if sent by post.

19.6 The formation, construction and performance of the Agreement shall be governed in all respects by English Law and the parties hereby expressly consent to the exclusive jurisdiction of the English Courts.

19.7 The Agreement is made for the benefit of the parties and their successors and permitted assigns and shall not benefit or create any right enforceable by any other person (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

19.8 Any references to a statutory provision shall include references to any statutory modifications, consolidations, amendments or re-enactments for the time being in force and all statutory instruments, orders, regulations or other subordinate legislation made under it or to them.