

Rosti standard terms & conditions of sale

1.0 Definitions

In these conditions:

"Buyer" means the person, firm or company by whom the Order is made;

"Seller" means the person, firm or company to whom the Order is addressed;

"the Parties" means the Buyer and the Seller;

"Force Majeure" means any cause whatsoever beyond the control of the Seller including, but not limited to, strikes, lock outs, boycotts, blockades, riot and civil commotion, laws or measures introduced by government or public authorities or the like, war (declared, undeclared or imminent) or acts of God;

"Goods" means the articles or things or any of them described in the order, to be manufactured by the Seller;

"Specification" means the technical description of the Goods (if any) contained or referred to in the order;

"Order" means the order placed by the Buyer for the sale or supply of Goods and includes any amendment or addition to the Order specified by the Seller when accepting the Order;

"Tool" means any die, pattern, mould or other tooling, jigs and fixtures provided by the Seller or Buyer for the purpose of manufacturing the Goods and not for any other purpose.

2.0 Quotation

2.1 Quotations submitted by the Seller do not constitute a binding offer.

2.2 The price quoted in the Seller's quotation is for the quantities stipulated only and must not be taken to apply to an Order for different quantities.

2.3 Unless otherwise expressly stated the price quoted in the Seller's quotation is based on current costs of manufacture at the date of the quotation and is subject to confirmation on acceptance of the order by the Seller.

2.4 Quotations are valid for a period of 30 days from the date specified on the Quotation.

3.0 Formation of Contract

Rosti standard terms & conditions of sale

3.1 All orders are received and accepted, and all agreements entered into, by the Seller only on these terms and conditions. Any terms of the Order put forward by the Buyer which are inconsistent with these terms and conditions, and any standard terms and conditions put forward by the Buyer are hereby rejected. No part of the Order which is not in writing and in the English language forms part of the contract.

3.2 No order by the Buyer (including an order placed in response to a quotation by the Seller) shall be deemed accepted unless accepted by the Seller in writing.

3.3 No addition or variation to these terms and conditions shall be effective unless in writing signed by a Director of the Seller and by the Buyer.

4.0 Goods – Descriptions and Samples

4.1 The description of the Goods given in the Order or any description given by the Seller shall be by way of identification only and the use of such description shall not constitute a sale by description.

4.2 The production of a sample moulding to the Buyer shall be for the purpose of enabling the Buyer to judge the quality of the bulk and shall not constitute a sale by sample. The Buyer shall take the Goods at his own risk as to their correspondence with any such sample.

5.0 Colour, Dimensions and materials

5.1 The colour of the Goods shall be subject to reasonable variation within the specification agreed in writing by the Buyer and the Seller.

5.2 Except as agreed between the parties, any dimensions stipulated by the Buyer in the Order shall be observed as nearly as possible but the Goods shall be deemed to comply with the Order despite any alteration in, or deviation from, such dimensions which does not adversely affect the Goods to a material extent having regard to any use for which they are intended and which is notified to the Seller.

5.3 The Goods will be supplied to the standard specified in the Order or otherwise agreed in writing. Drawings are for the guidance of the Seller only and do not determine the tolerance to which the Goods must be manufactured

6.0 Price and Vat

6.1 The price is subject to adjustment to cover any increases in the price of materials or other costs of manufacture which may occur after the date of acceptance of the Order and before delivery of the Goods.

Rosti standard terms & conditions of sale

6.2 The Seller shall, without prejudice to any other right it may have, also be entitled to increase the price if it incurs loss or additional cost due to any reason attributable to the Buyer, including, but not limited to, lack of instructions, defective, incorrect or incomplete instructions, or a change of instructions.

6.3 All prices are subject to the addition of value added tax at the rate applicable at the appropriate tax point.

7.0 Tools

7.1 For the avoidance of doubt, modifications in tooling agreed after the date of the tool order are the costs of the buyer, and the increase in price shall be payable within fourteen days after modifications are agreed.

7.2 The Seller shall maintain tool in reasonable working order (subject to reasonable wear and tear and the design life of the tool) at the buyer's expense. The Seller shall not be obliged to refurbish or replace a worn out tool, unless the price and other terms of doing so have first been agreed with the buyer. The Seller shall not be obliged to produce goods from a tool that requires refurbishment or replacement. The Seller's decision that a tool requires refurbishment or replacement shall be binding on the buyer.

7.3 Unless otherwise agreed the Buyer shall insure the tool whilst in the possession of the Seller at the value agreed between the Parties at the Buyer's expense. The Seller shall not be liable in any circumstances if any insurance proves inadequate or inappropriate.

8.0 Time for performance

8.1 Subject as provided in this clause, the Goods shall be delivered on the dates specified in writing by the Seller when the Order is accepted, or otherwise agreed in writing between the parties.

8.2 Delivery dates are subject to:

8.2.1 Buyer's compliance with its obligations; and

8.2.2 Seller's performance not being hindered, delayed or prevented by Force Majeure, or by any matter referred to in Clause 16.5.

8.3 In the event of delay by reason of any of the matters set out in clause 8.2 the time for delivery shall be extended by such time as the Seller may reasonably require.

8.4 Time shall not be of the essence for performance by the Seller.

Rosti standard terms & conditions of sale

9.0 Quantities and Instalments

9.1 Where Goods are delivered by instalments each instalment shall be deemed to be sold under a separate contract and the party in default in respect of any instalment shall be liable accordingly but no default in respects of any one instalment shall affect due performance of the contract as regards other instalments.

9.2 The Seller will endeavour to deliver the quantity of Goods ordered, but a delivery shall be deemed to comply with the Order if there is a surplus or shortage on the scheduled delivery quantity not exceeding ten per cent.

10.0 Delivery

10.1 Delivery shall be made to the Buyer at the place specified by the Seller on acceptance of the Order or as subsequently agreed between the parties. If there is no such specification or agreement, delivery shall be made at the Seller's premises.

10.2 If the Goods are to be carried by the Buyer's carrier, due delivery shall be deemed to have been effected on the delivery of the Goods by the Seller to such carrier with sufficient directions for carriage of the Goods.

10.3 Without prejudice to the Seller's other rights:

10.3.1 If the Buyer wrongfully fails to take, or delays in taking, delivery of the Goods, it shall pay the Seller's reasonable additional storage, transport and handling costs, and costs of storing the Goods; and

10.3.2 If the Buyer wrongfully fails to accept delivery for a period of fourteen days, the Seller shall be entitled to treat such failure as repudiatory breach of contract by the Buyer.

10.4 The Buyer is responsible for unloading the delivery vehicle and is responsible for all loss of or damage to the Goods during course of unloading

10.5 The Seller reserves the right to charge extra any special packaging or transport requirements of the Buyer.

11.0 Risk

11.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

11.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection.

Rosti standard terms & conditions of sale

11.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery, or if the Buyer wrongly fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.

11.2 If Goods are lost or damaged in transit while at the risk of the Seller, the Seller shall replace or credit the same without charge if written notice of such loss or damage is given by the Buyer to the Seller and the carrier, such notice being given within 14 days of actual receipt of the Goods by the Buyer, or (in the case of total non-receipt) within 7 days after the Seller notified the Buyer of the despatch of the Goods.

12.0 Title

12.1 Despite delivery and the passing of risk in the Goods or any other provision of these conditions, ownership of the Goods shall not pass to the Buyer until the Seller has received cleared payment of the price of the Goods, and all other sums owing to the Seller by the Buyer under this or any other contract. The Buyer shall store the Goods separately from its own property, marked as the property of the Seller.

12.2 Title to all copyrights in Tools, design drawings etc. and all other intellectual property rights, created by the Seller in connection with the Order shall remain with the Seller.

13.0 Payment

13.1 All invoices shall be due on delivery and paid not later than the 28th day of the calendar month following the calendar month in which the invoice is dated, except as agreed in writing.

13.2 Where the Goods are delivered by instalments each instalment shall be invoiced individually.

13.3 All payments shall be made by the Buyer without retention, deduction, set off, abatement or counterclaim on any account whatsoever.

14.0 Warranty

Goods

14.1 The Seller warrants that the Goods will be free from defects in materials or workmanship which cause failure under normal usage, for a period of 6 months following their delivery to the Buyer, provided that:

14.1.1 the defect or failure is not due to ordinary wear and tear or to unauthorised misuse or modification:

Rosti standard terms & conditions of sale

14.1.2 the Buyer notifies the Seller of the defect within 14 days after receipt by it of the Goods (in the case of defects which would be apparent on reasonable inspection) or (in the case of all other defects) within the shorter of 14 days after the defect or failure becoming apparent or six months after delivery: and

14.1.3 The Buyer at its own expense returns the Goods to the Seller for inspection, or if this is for any reason not possible, provides reasonable facilities for the Seller or its agents to inspect the same.

14.2 The Seller's sole liability for any nonconformity with the warranty contained in Clause 13.1 shall be at its option either to replace the defective Goods, or to credit the Buyer with the price of the same.

Tools

14.3 The Seller warrants that any Tool supplied by it will be free from defects in material or workmanship, which cause failure under normal usage, for a period of 6 months following its first being put into use.

14.4 The Seller's sole liability for any nonconformity with the warranty contained in Clause 13.3 shall be at its option one of the following: to replace the defective Tool, to repair the defective Tool, or to credit the Buyer with the price of the same.

14.5 The warranties contained in Clause 14.1 and 14.3 are given in lieu of all conditions, warranties, representations, undertakings and other terms (whether at common law, statute, custom of trade or otherwise) relating to the Seller's skill and care and the quality, merchantability, fitness for purpose, suitability or condition of the Goods and any Tool and their design and in lieu of any liabilities of the Seller in connection with the Goods or Tool and their design. Accordingly, all such conditions, warranties etc and all such liabilities are hereby excluded to the full extent permitted by law, and the liability of the Seller is further limited or excluded by Clauses 15 and 16.

14.6 Without limitation to the foregoing, the quoted Tool life is an estimate only, and not binding on the Seller.

15.0 Fitness for purpose

15.1 It is acknowledged that the Goods are produced to the Buyer's design and the Seller shall not be responsible for the fitness of the Goods for any purpose whether or not such purpose is made known by the Buyer to the Seller and the Buyer shall take the Goods at his own risk as to their fitness for such purpose.

Rosti standard terms & conditions of sale

15.2 No warranty condition, description or representation is to be taken to have been given or implied from anything said or written in the negotiations between the Parties or their representatives before the acceptance of the Order by the Seller and any statutory or other warranty condition or description express or implied is expressly excluded.

16.0 Liability

16.1 Nothing in these conditions shall exclude or limit the Seller's liability for death or personal injury caused by its negligence.

16.2 The Seller will not be liable to the Buyer for (i) any indirect, consequential or special loss, damage or injury (ii) any financial loss, loss of profits, loss of business or contracts or goodwill, loss of operating time, product recall, or loss of use, or damage caused by the Goods or a Tool to other property whether foreseeable or not howsoever, whenever or wheresoever arising.

16.3 The Seller shall not have any liability to the Buyer for any advice or recommendations (including, without limitation, as to the selection of materials) given to the Buyer in connection with the Goods or any Tool.

16.4 The Seller shall not be liable for any failure to perform its obligations caused by Force Majeure. The Seller shall not be liable for any failure to perform its obligations caused by a failure of any device or computer software to process dates or times accurately or at all.

16.5 The limitations, restrictions and exclusions of liability contained in these conditions shall apply regardless of the negligence or breach of statutory duty of the Seller.

17.0 Indemnities

17.1 The Buyer shall indemnify the Seller in respect of any costs, expenses, damage, loss, action claim or liability arising out of, or alleged to be caused by, or by the use of the Goods (or after it has been delivered by the Seller) any Tool or any mouldings made from it.

17.2 The Buyer shall indemnify the Seller in respect of any costs, expenses, damage loss, action claim or liability arising out of the infringement of any patent, trademark, registered design or similar right arising from the manufacture or supply of the Goods or any Tool or the doing of any work or the use of any article or material by the Seller to the design or specification or on the instruction of the Buyer.

18.0 Invalidity

Rosti standard terms & conditions of sale

If any provision of these conditions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other conditions shall not in any way be affected or impaired thereby.