

FLEXICON PLASTICS LIMITED – TERMS AND CONDITIONS OF SALE

1. APPLICABILITY OF THESE TERMS AND CONDITIONS

- These terms and conditions:
- Apply to the supply of all goods and services by Flexicon to its Customer.
- Override and are in substitution for any conditions stipulated or referred to by the Customer.
- Cannot be changed or waived except in writing signed or authenticated on Flexicon's behalf.

2. PRICES

- Prices are exclusive of GST, other taxes/duties, freighting costs and insurance.
- Flexicon endeavours to hold quoted prices for 30 days, but does reserve the right to vary a quoted price for material changes in its costs of supply, or for exchange rate fluctuations, or to correct errors in quotations.
- If Flexicon agrees to vary an order it may revise the price.

3. PAYMENT

- Unless otherwise agreed in writing signed or authenticated by Flexicon, full payment is due in cleared funds by the 20th of the month following date of Flexicon's invoice.
- However payment becomes due immediately on the Customer selling (or otherwise disposing of) Flexicon's goods, or upon Customer committing an act of insolvency (including an act of bankruptcy, entering into a composition or arrangement with creditors, service of a statutory demand or a resolution/application for liquidation, or appointment of a receiver or official manager).
- Payment by due date is agreed to be of the essence of this agreement.
- Payment is to be made without any set-off or deduction.
- If payment is not received by due date, Flexicon reserves the right to charge late payment interest on the outstanding amount on a daily basis at 5% per year above its BNZ Bank's Business Overdraft rate as at the payment due date until full payment. It also reserves the right to charge its debt collector's and/or its legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of this agreement.

4. ACKNOWLEDGEMENTS

- Customer acknowledges:
 - That Customer is solely responsible for establishing whether the Flexicon product is suitable for Customer's purpose. Flexicon is not responsible if a container or other product is not suitable for a Customer's particular product or purpose, whether or not Flexicon has knowledge of how the Customer intends to use the product.
 - Flexicon will provide one set of first off samples for compatibility testing, free of charge. The compatibility testing is for the Customer to determine that the container and printing is fit for their intended use and purpose. Additional samples will be charged at our standard rate.
 - That any information Flexicon may give about compatibility for the Customer's use is general advice only and is not to be relied on and does not detract from the Customer's responsibility to do its own testing to satisfy itself as to product compatibility and fitness for Customer's purpose.
 - That Flexicon's descriptions of its products (including descriptions on its website and in its quotations and invoices) are for identification purposes only and do not amount to a sale by description.
 - That Customer is solely responsible to ensure the correct decoration is on the products prior to filling.
 - That the colours of Flexicon products as shown on our website and in our brochures etc may be somewhat different from the products themselves, and that the colour of the contents may affect the colour of a container when filled.

5. DELIVERY

- Delivery will be made to the Customer's address, unless a different address has been agreed in writing signed or authenticated on Flexicon's behalf.
- Flexicon endeavours to deliver by the agreed or indicated date, but those dates are estimates only and Flexicon is not responsible for any loss or damage of any kind arising (directly or indirectly) from late delivery or non delivery.
- It is the Customer's responsibility to make all necessary arrangements to take delivery and provide the necessary access when the goods are tendered for delivery.
- The Customer is responsible to pay all charges and costs of delivery, including packing, freight and insurance.
- Flexicon may deliver goods by instalment, in which case each instalment is deemed to be a separate agreement on the same conditions as the main agreement, but with the price being adjusted to reflect the amount of under (or over) supply.
- Flexicon may deliver using its own vehicles, or may subcontract delivery. Flexicon may, with or without notice to the Customer, vary the route or means of transport or method of delivery, or substitute alternative carriers or service providers.
- Delivery is sufficiently proved by a completed delivery docket which may be signed by the driver or the Customer (or Customer's employee or agent).

6. ERRORS, RETURNS, DISPUTES

- Except as provided below, Flexicon does not accept returns.
- Customer is responsible to inspect the goods on delivery and to notify Flexicon in writing of any claim (eg of short delivery, damage in transit, defects, delivery of the wrong goods) within 7 days, and to promptly allow Flexicon to inspect the goods to verify the claim.
- Customer is deemed to have accepted goods unless it gives Flexicon written notice within 7 days of delivery that it rejects them.
- Flexicon will not accept claims outside the 7 day period, or if it is denied access to inspect the goods subject of the claim, and any goods returned must be in the same condition as despatched and be accompanied by a copy of Flexicon's invoice or invoice number.

7. RISK

- All risk in the goods passes to the Customer on delivery (notwithstanding that Flexicon may retain ownership in accordance with clause 9), except that if the Customer has arranged freighting the risk passes when Flexicon delivers the goods to the Customer's agent or carrier, in which case the Customer is responsible to ensure insurance cover from that point.

8. INTELLECTUAL PROPERTY

- Flexicon's intellectual property includes (without limitation) copyrights, patents, trade marks, design registrations, formulas and technical information and specifications, confidential information and trade secrets, of which Flexicon is the proprietor or a licensee.
- Customer acknowledges that Flexicon grants no right or licence of any of its intellectual property rights, except the right to use or resell the goods.
- Where Customer supplies materials or a design or instruction or similar for use by Flexicon, Customer warrants that it is entitled to do so, and agrees to indemnify Flexicon against any relevant liability to a third party claiming infringement.

9. TITLE TO GOODS

- Property (ie ownership/title) in the goods does not pass until the Customer has made payment in full for all goods supplied by Flexicon. Until property has passed, the Customer will be a bailee of any goods supplied by Flexicon and acting in a fiduciary capacity as regards Flexicon's goods and the following terms will apply:
 - The goods and any proceeds of sale of the goods will be kept separate until Flexicon has received full payment and all other obligations of the Customer have been met; and
 - The Customer must insure the goods and notify the insurer of Flexicon's interest; and
 - The Customer will not deal with the proceeds arising from the sale of the goods in any way adverse to Flexicon; and
 - Until property in the goods passes from Flexicon to the Customer, Flexicon may give notice in writing to the Customer to return any of the goods, in which case the Customer's right to obtain ownership in the goods will cease; and
 - If the Customer fails to return the goods, Flexicon (or its agent) may enter into land/premises owned, occupied or used by the Customer where the goods are situated and may take possession of the goods, without being responsible for any damage caused; and
 - The Customer must not charge the goods in any way or grant any interest in the goods while they remain Flexicon's property; and
- Flexicon may require payment of the price (or balance of the price due) together with any other amounts due from the Customer arising out of these terms and conditions, and Flexicon may take any lawful steps to require payment of the amount due; and
- Flexicon may issue proceedings to recover the price of the goods, notwithstanding that property in the goods may not have passed to the Customer.

10. PERSONAL PROPERTY SECURITIES ACT 1993 ("PPSA")

- Notwithstanding anything to the contrary contained in these terms and conditions, Flexicon and the Customer agree for the purposes of the PPSA:
 - The agreement constituted by these terms and conditions is to be treated as a Security Agreement, with Flexicon being the secured party; and
 - Flexicon has a purchase monies security interest ("PMSI") in all present and future goods it supplies to the Customer; and
 - Whenever Flexicon asks the Customer to do anything to better secure any property which secures or is intended to secure the supply of goods from Flexicon, the Customer must do it immediately at its own cost; and
 - Customer agrees that Flexicon may take whatever action it thinks appropriate to ensure it has first priority in the goods and agrees to indemnify Flexicon for any costs it incurs in doing this (for example in registering a financing statement at Customer's cost); and
 - Customer waives any rights to receive a copy of the verification statement under s 148 of the PPSA and agrees, to the extent permitted by law, and in respect of any arrangement between Customer and Flexicon, that:
 - Customer has no rights under (or by reference to) s 114(1) or s 133 of the PPSA; and

- The provisions of Part 9 of the PPSA (which are for the benefit of the Customer or place obligations on Flexicon, will apply only to the extent they are mandatory or Flexicon agrees to them applying; and
- Where Flexicon has rights in addition to those in Part 9 of the PPSA those rights will continue to apply.
- Customer will (immediately on request by Flexicon) procure from any person considered (by Flexicon) to be relevant to its security position such agreements and waivers (including equivalent to those above) as Flexicon may at any time require; and
- Customer warrants to Flexicon that all information it provides that is relevant to registering and maintain Flexicon's security interest is correct, and agrees to notify Flexicon if that information changes; and
- If Customer changes its name, it must immediately give written notice to Flexicon; and
- Customer agrees to indemnify Flexicon and keep it indemnified for all costs of registering, maintaining and enforcing (or attempting to enforce) its security interest created by these terms and conditions.
- Customer agrees to do any further acts (including sign documents or provide information) Flexicon may need to register its security interest on the Personal Property Securities Register.

11. CONSUMER GUARANTEES ACT 1993

- Customer acknowledges the Consumer Guarantees Act 1993 does not apply if Flexicon's goods are acquired for business purposes.
- If the Customer on-supplies the goods in trade to a person acquiring them for business purposes, it must ensure that buyer accepts that the Consumer Guarantees Act 1993 does not apply.

12. PRIVACY ACT 1993

- The Customer authorises Flexicon to collect, retain and use information about the Customer for purposes relevant to Flexicon's usual business functions, including checking credit worthiness, debt collection. Customer consents to any third party providing Flexicon with information relevant to these purposes.
- If the Customer is an individual, s/he has rights under the Privacy Act 1993 to access and request correction of personal information Flexicon holds about him/her.

13. LIABILITY

- Flexicon's total liability to the Customer in respect of any loss or damage (whether arising out of contract, tort and/or misrepresentation, equity or statute) is limited to the direct cost of repairing, replacing or resupplying the goods proven to be defective or otherwise not compliant with these terms and conditions.
- To the maximum extent permitted by law, Flexicon excludes all other liability to the Customer in respect of any loss or damage, whether arising out of contract, tort and/or misrepresentation, equity or statute. This exclusion also applies for the benefit of Flexicon's employees, agents, subcontractors and suppliers. Flexicon is not liable for any direct, indirect, special or consequential losses, damages or expenses (for example but not limited to loss of profits, business, data, use of the goods).
- Flexicon's terms and conditions do not however exclude or modify the effect of New Zealand legislation applying to the sale of goods and supply of services which cannot be excluded or modified.

14. MISCELLANEOUS

- Flexicon may cancel these terms and conditions or cancel delivery of goods at any time before delivery occurs, by giving written notice.
- If any provision in these terms and conditions is found to be unenforceable that does not affect the validity and enforceability of the remaining provisions.
- Flexicon reserves the right to review these terms and conditions at any time and to notify the Customer of the new or revised conditions, which will take effect from point of notification.
- Force majeure: Flexicon is not in any way liable for failure to comply with these terms and conditions if the failure is due to circumstances beyond its reasonable control.
- If Flexicon does not enforce any of these terms and conditions, that shall not be construed as a waiver of any of its rights.
- These terms and conditions will be governed by New Zealand law and the parties submit to exclusive jurisdiction of the New Zealand courts.
- Notices must be in writing and may be delivered personally, sent by fax or prepaid mail or email to the addressee's last known address.