

## **NYLACAST LIMITED - CONDITIONS OF SALE**

### **1. Construction of Contract.**

These Conditions shall apply to all Contracts between NYLACAST LIMITED (hereinafter referred to as the Company) and any person firm or the Company (hereinafter called the Customer ) for the supply of goods or the carrying out of work by the Company. The Company Contracts upon the terms of these Conditions only and any printed or other Standard Terms emanating from the Customer shall not apply. These Conditions shall not be modified without the written Agreement of the Company and in order that the Contract shall be a complete statement of the Agreement between the parties with regard to the supply of goods or the carrying out of work by the Company the Customer must ensure that any representation or instruction on which it wishes to rely has been accepted by the Company in writing. No order is deemed to be accepted or any contract made with the Company until an acknowledgement of such order or contract has been made by the Company.

### **2. Price Variation**

Quotations remain open for acceptance for a period of thirty days but both Quotations and Estimates are based on the Company's current costs of production and unless agreed are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs. The Company's statement that its costs have risen or fallen in such circumstances shall be conclusive as to the existence of such rise or fall. The Company reserves the right at any time to refuse to accept any order placed as a result of any quotation.

### **3. Tax**

All estimates and or Quotations are, unless specifically otherwise provided, exclusive of Value Added Tax and any other statutory charge as may be appropriate.

### **4. Delivery**

(i) Any time for performance of the Company's obligations under the Contract shall be reckoned from the date upon which the Company receives all the necessary information and documentation to enable it to produce with the supply of goods or the carrying out of work without interruption.

(ii) Any date for delivery specified in respect of goods sold or to be sold by the Company shall be treated only as an estimate given in good faith, and such delivery is not a term of the Contract and it is specifically hereby agreed that time for delivery is not of the essence. The Company shall not in any circumstances howsoever arising whether as a result of its own negligence or otherwise be under any liability to the Customer for any failure to deliver by or on such date and such failure shall not entitle the Customer to cancel or terminate the Contract.

(iii) Any delivery time specified shall be extended by any period or periods during which the manufacture or delivery of the goods or other work by the Company in connection with the Contract is delayed due to fire, explosion, flood, storm, tempest, sabotage, strikes official and unofficial riot, Invasion, acts of war (whether war be declared or not) shortage of labour power or materials, delay by the Company's suppliers or carriers, civil commotion, accidents, plant breakdown, technical difficulty, seizure, or other action by or in compliance with an order or an apparently competent authority and any other event or circumstance beyond the control of the Company. Notwithstanding such delays the Customer shall take and pay for at the rate of the Contract Price such of the goods as shall be tendered by the Company and be ready for delivery.

(iv) From the time of the despatch of the goods from the Company's premises the risk of any loss of or damage to or deterioration of the goods from whatever cause whether as result of the Company's negligence or otherwise shall be borne by the Customer. Goods shall be deemed to have been despatched in full quantity and in good condition unless particulars of the shortage or defect alleged are notified in writing by the Customer to the Company within 7 days of the date of despatch as shown on the Company's Delivery Note.

(v) The Company shall be entitled to charge for and be paid all delivery and Insurance costs incurred and not specifically included in the Contract Price.

### **5. Retention of Title**

#### **(a) Title**

No property in any goods supplied by the Company to the Customer shall pass from the Company to the Customer unless and until the Company has received payment in full for such goods and for any work done by the Company on behalf of the Customer and for any other debts owed by the Customer to the Company on any other account whatsoever.

#### **(b) Storage of the Goods**

Until payment for any goods supplied and for any work done has been made in full, including payment of any interest due, the Company shall store all goods supplied by the Company in such a way as to enable them to be identified as the property of the Company and shall hold such goods as bailee for the Company. The Customer shall not dispose or part with the possession of such goods until title has passed, save that the Customer may sell the goods in the normal course of business.

#### **(c) Risk**

The risk in any goods supplied by the Company shall pass to the Customer when they are despatched from the Company's premises either for delivery to the Customer or as a result of collection by the Customer. The Customer shall keep such goods fully insured until title has passed to the Customer.

#### **(d) Recovery of the Goods**

The Company reserves the right to repossess and uplift any goods supplied to the Customer and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's employees and agents to enter upon all or any of its vehicles or premises in which such goods or other products are stored with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Company thereunder or otherwise.

#### **(e) Recovery of Proceeds of Sale of Goods in the Event of Non-Payment**

If the Customer re-sells any goods supplied by the Company, notwithstanding that payment to the Company has not been made and that title to such goods has not passed to the Customer, the proceeds of any such re-sale equivalent to all sums owing ("the Proceeds") shall belong to the Company until payment has been received in full. The Customer will hold the Proceeds in a fiduciary capacity and keep them in a separate account, to be remitted forthwith to the Company.

#### **(f) Termination of Customer's Rights**

The Customer's right to possession shall cease forthwith in the following events:

- (i) The Customer has not paid all amounts due to the Company on any account whatsoever;
- (ii) The Customer is declared bankrupt or makes or attempts to make any proposal to his creditors for composition or other voluntary arrangement with its creditors or does or fails to do anything which would entitle a petition for winding up or a bankruptcy order to be presented;
- (iii) The Customer does or fails to do anything which would entitle any person to appoint a receiver to the whole or part of the Customer's assets or would entitle any person to present a petition for the administration of the Customer or a resolution is passed for the winding up of the Customer;
- (iv) A judgement against the Customer remains unsatisfied;
- (v) The Customer is unable to pay a debt to a third party as it falls due and/or is or is deemed to be insolvent;
- (vi) Any distress or execution is levied against any of the Customer's assets.

#### **(g) Mitigation**

All mitigation/recovery activities by the Company under the contract between the parties are agreed to be entirely without prejudice to any additional claims it may have against the Customer for any failure by the Customer to complete its obligations under the contract.

### **6. Payment**

The Contract price is to be paid within 30 days of the Company rendering to the Customer an invoice or within 30 days of the date of Delivery of the goods or within 30 days of being notified by the Company that the goods are ready for delivery whichever shall be the sooner. If the Customer delays taking delivery of the goods beyond the agreed delivery date, the goods may be invoiced and

payment due 30 days thereafter. Payment shall be made to the Company and the Company's official receipt shall be the only acknowledged discharge of the debt. The Customer shall not be

entitled to withhold payment of any amount due to the Company by reason of any payment credit set off counterclaim allegation of incorrect or defective goods or work or for any reason whatever which the Customer may allege excuses it from performing its obligation under the Contract. Interest shall accrue on any amount as remains outstanding after the period of thirty days at the rate of 1.5 per centum per month calculated from day to day.

### **7. Performance**

The Company shall accept no liability for any loss or damage arising by reason of the failure of the goods to comply with any written estimate as to the performance thereof provided that the Company shall be given reasonable opportunity to remedy any defect as to estimated performance and in the event that such defect shall not be so remedied, then the Company shall without prejudice to the liability hereunder give credit to or reimburse the customer for the cost of the goods on the return thereof to the Company.

### **8. The Company's Liability**

(i) The Company warrants any goods of its manufacture to be free from defects caused by faulty material or poor workmanship by gives no warranty or makes no representation whether expressed or implied as to any of the matters whatsoever including without limitation conditions as to merchantability or fitness for purpose or performance. Such warranty is limited to a period of six months from the sooner of the date of delivery or the date that the Customer was notified that the goods were available for delivery and is expressly conditional upon the Company being promptly notified in writing upon discovery of any such defects, the Customer forthwith ceasing to use the defective goods unless otherwise authorised by the Company and the defective item immediately being returned to the Company, transportation charges being prepaid to the Customer.

(ii) The Company's liability in respect of the Contract shall be limited to replacing, repairing or issuing credit at its option for any goods returned by the Customer within the aforesaid period. In no circumstances whatsoever shall the Company be liable to damages to the Customer for any loss of profit, consequently loss, loss of anticipated savings or profits or damage or loss of anticipated profits of any Third Party claimed against the Customer.

(iii) The Company shall be entitled without any liability of whatsoever nature to cancel any Contract with the Customer at any time should the Company not be able to obtain a credit reference in respect of the Customer which in the opinion of the Company, in its sole absolute and unfettered discretion it regards as an acceptable credit reference. Following such cancellation the Company shall be entitled to payment for all works carried out by the Company to the date of such cancellation and if such works only compromise a part of the Contract then a appropriate part of the Contract price as reflects their worth.

### **9. Cancellation**

#### **If any of the following apply**

(a) the Customer is in breach of any of the Conditions of Sale of the Company

(b) the Customer being a Company makes or attempts to make a voluntary arrangement under Part 1 Insolvency Act 1986 (the Act) or is likely or liable to become unable to pay any one of its debts or is or becomes the subject of an Application to the Court for an Administration Order under Part II of the Act or has appointed an Administrative Receiver or Liquidator

(c) the Customer being an individual appears to be unable to pay or to have any reasonable prospect of being able to pay any one of his/her debts or is or becomes the subject of a Bankruptcy Petition under Part IX of the Act or is the subject of a Statutory Demand for any of his/her debts under Part IX of the Act or if execution or other process is issued in respect of any of his/her debts on a Judgment or Order of any Court then and in any such event

#### **then**

(i) The Company shall be entitled forthwith to determine the contract in whole or in part

(ii) all costs, expenses, overheads and loss of profits incurred by the Company in connection with the Contract shall forthwith become payable as a debt due from the Customer to the Company

(iii) any goods of the Company kept by the Customer shall forthwith be delivered up to the Company or to its nominee who shall be given access to the goods in order to remove the same

(iv) the price of any goods delivered by the Company to and used by the Customer shall become due and payable forthwith

(v) cancellation of Orders by the Customer in whole or in part cannot be accepted without the Company's consent in writing.

### **10. General Lien**

Without prejudice to other remedies the Company shall in respect of all unpaid debts due from the Customer have General Lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days notice to the Customer to dispose of such goods or property as it thinks fit and to apply any proceeds towards such debts.

### **11. Contingencies**

The Company shall not be liable for failure to perform in whole or in part any of its obligations hereunder by reason of act of God, war, insurrection, Government regulations, embargoes, strikes or lock-outs, flood, fire, tempest or any other cause beyond the control of the Company.

### **12. Consequential Loss and Damage**

Save as herein expressly provided the Company shall not be liable to the Customer or to any third party for any loss or damage suffered in respect of the goods and the Company shall be indemnified by the Customer against all third party, claims made in respect thereof.

### **13. Law**

The proper Law of the Contract shall be English Law and any disputes arising thereunder shall be dealt with exclusively by the Courts of England save that the Company shall be entitled to bring proceedings against the Customer in the Courts of or any other Jurisdiction where the Customer resides or carries on business.

### **February 2004 Revision**