

MULFORD ENGINEERING PLASTICS

(a division of Mulford Plastics (NZ) Limited)



STANDARD TERMS AND CONDITIONS

1. DEFINITIONS:

"The Contract" means the contract formed upon acceptance by the purchaser comprising the express terms agreed between Mulford and the Purchaser as specified in the applicable Quotation and these terms and conditions.

"Mulford" means Mulford Engineering Plastics, a division of Mulford Plastics (NZ) Limited.

"The Purchaser" means the person or company to whom the quotation is submitted.

"The Quotation" means the quotation given by Mulford to the Purchaser setting out Mulford's quotation to provide goods and/or services requested by the Purchaser.

2. **CONTRACT:** The contract from time to time between Mulford and the Customer for the supply of goods and services shall comprise the Contract together with any variation or exclusion of these terms and conditions which may expressly be agreed in writing by the parties. No other terms or conditions are to be made or implied.
3. **QUOTATION:** The Quotation is subject to withdrawal or variation by Mulford, at any time prior to acceptance in writing by the Purchaser. Unless otherwise specified it is available for acceptance within 30 days but is thereafter subject to confirmation.
4. **PRICES AND VARIATION:** Unless otherwise stated in writing the prices quoted are net, in New Zealand Dollars based upon labour and material costs at the date of quotation.
5. Where the Quotation is for the supply of goods to be imported by Mulford for the customer or purchased from another manufacturer, the price quoted is calculated on the basis of the price charged by the seller, the rate of exchange, duty, freight, insurance, clearance and other similar charges, as applicable, ruling at the date of quotation, and may increase therein shall be to the account of the Purchaser.
6. The price quoted for goods manufactured by Mulford is subject to rise and fall for variations in the cost of labour, materials or overheads after the date of quotation, unless otherwise specified in writing.
7. All prices for goods manufactured by Mulford or purchased from local suppliers for the Purchaser are exclusive of sales tax and are F.O.B. its Works or Warehouses. In the case of imported goods, unless otherwise specified, the price is C.I.F. New Zealand port of discharge and exclusive of sales tax. Landing charges, wharfage, storage, customs clearance and entry transport and insurance to the Purchaser, and all customs duties, primage, taxes and imports of any kind are to the account of the Purchaser.
8. **PAYMENT:** Payment shall be by cash or bank cheque against invoice before delivery, save where a credit account is approved in writing by Mulford, in its absolute discretion, grants its approval in writing to the Purchaser postponing such payment, in which case payment shall be made by the 20th of the month following the month for delivery, or save where special arrangements have been negotiated with the Purchaser and confirmed in writing provided that, where such payment is not made by the Purchaser on the date due for the same, interest on all overdue amounts shall be payable by the Purchaser to Mulford at the rate referred to in clause 9, such interest to be calculated on a daily basis from the date payment was due until the date of actual payment, such interest to be compounded monthly. Nothing herein contained shall be interpreted as an indulgence to the Purchaser to effect payment after the date due for the same.
9. Interest shall be payable by way of penalty for late payment at the rate of 1% per calendar month from the date of payment is due until payment is made.
10. Without prejudice to any other right or remedy the purchaser shall indemnify Mulford Engineering Plastics against any costs' fees charges and disbursements charged by any solicitor engaged for the purpose of the collection or recovery of moneys due and payable by the purchaser to Mulford Engineering Plastics on an indemnity basis and any fees, charges, disbursements or commissions charged by any mercantile agency or debt collecting firm.
11. Where the Contract provides for delivery by installments payment by due date is respect of installments delivered is a condition precedent to delivery by Mulford of further installments.
12. Unless otherwise stated in writing, payments for goods exported by Mulford to an overseas Purchaser shall be due in full in New Zealand dollars in Auckland, immediately upon presentation of negotiable shipping documents. If, for any reason, goods for export are collected by the Purchaser or his representative from Mulford's Works or Warehouses, or are delivered by Mulford to a local depot for the Purchaser, then payment

shall be due upon notification by or on behalf of Mulford, that the goods are ready for dispatch, unless the Purchaser or his representative operates a credit account with Mulford which maintained within Mulford's conditions applicable to such credit accounts.

13. PROPERTY IN GOODS AND SECURITY INTEREST:

- (a) Property in the goods supplied to the Purchaser pursuant to this Contract shall be, and remain, the property of Mulford until the purchaser has paid all monies owing by it to Mulford whether under this or any other contract.
- (b) Mulford shall retain property in the goods in accordance with paragraph (a), notwithstanding that risk in the goods shall pass to the Purchaser at the time of delivery of the same in accordance with clause 15 of this Contract and that such goods will not, at that time, be at the Purchaser's premises.
- (c) Until the Purchaser has paid all monies owing to Mulford whether under this or any other Contract:
 - (i) The Purchaser shall hold the goods in a fiduciary capacity as bailee of Mulford;
 - (ii) Should Mulford require, the Purchaser shall assign to Mulford all its rights to any claims it may have against third parties emanating from any sub-sale of the goods by the Purchaser as agent for Mulford;
 - (iii) If a liquidator, provisional liquidator, trustee, administrator manager, receiver, receiver and manager or similar officer is appointed in respect of the Purchaser or any of its assets, the right of the Purchaser to dispose, in the ordinary course of business or otherwise, of the goods terminates; and
 - (iv) Mulford may, in the event that any payments in respect of the goods are not paid by the due date, take possession of the goods and resell the same and, for such purposes, Mulford or its duly authorized representative may and is hereby authorized to enter upon the Purchaser's premises for the purpose of removing those goods there from (if necessary, after separating them from any item to which they have been incorporated) and taking possession of the same.
- (d) If the goods are mixed with or become a constituent of any other goods, whether by manufacture or otherwise, the property in those other goods shall be transferred to Mulford as surety for payment by the Purchaser to Mulford of all monies owing whether under this or any other Contract and in which case all provisions contained in paragraph (c) above shall apply in respect of those other goods and any sub-sale thereof by the Purchaser.
- (e) The Purchaser indemnifies Mulford and shall at all times keep Mulford indemnified against any loss, damage, costs, expenses, penalties, fines or claims suffered by Mulford or any other person arising from the exercise of Mulford's rights under this clause.
- (f) The Purchaser acknowledges that these terms and conditions create a security interest in all present and after acquired goods supplied or to be supplied by Mulford to the Purchaser and any proceeds of the sale of the goods as security for all the Purchaser's obligations to Mulford pursuant to the Personal Property Securities Act 1999 (PPSA) and that Mulford may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the Purchaser in accordance with the provisions of the PPSA. The Purchaser shall provide all information, execute or arrange for execution of all documents and do all other things Mulford may require to ensure that Mulford has perfected first ranking security interest in the goods under the PPSA. The Purchaser hereby gives Mulford power of attorney to complete any such documentation. The Purchaser shall immediately on request by Mulford procure from any person considered by Mulford to be relevant to its security position such agreements or waivers as Mulford may at any time require. The Purchaser shall immediately notify Mulford of any change of the Purchaser's name, address details and any other information provided to Mulford to enable Mulford to register a financing change statement if required.

- 14. DELIVERY AND RISK:** Delivery is deemed to occur at the time of dispatch of goods from Mulford's Works or Warehouses in accordance with Purchaser's instructions. In the absence of specific instructions Mulford, in its absolute discretion, shall utilize the most appropriate means of transport
15. All times quoted for delivery are estimates only and Mulford shall not be liable for any loss or damage, direct or consequential, arising from failure to deliver or delay in delivery, attributable to any cause beyond its reasonable control including, but not limited to instructions or lack of instructions from the Purchaser, strikes, lockouts, war, fire, accidents, delay in transport, defective material or any delay due to force majeure. The Purchaser shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery or dispatch.
16. Mulford reserves the rights to deliver by installments. Failure to deliver any installment by the date specified for delivery shall not entitle the Purchaser to rescind the Contract.
17. From the time of dispatch from Mulford Warehouses en route to the Purchaser, the risk of any loss, damage to or deterioration by the goods from whatsoever cause shall be borne by the Purchaser.
18. Mulford will not effect insurance on any goods after dispatch from its premises, unless it receives specific instructions from the Purchaser in which the case the cost of insurance will be borne by the Purchaser.
19. Where Mulford contracts to process goods or materials supplied by the Purchaser the responsibility for delivery and insurance of the Purchaser's goods or materials to Mulford's premises where required for processing shall be borne by the Purchaser.

20. **RETURNS:** Save in the case of breach of an implied right under statute, no goods delivered under the Contract may be returned by the Purchaser for credit without Mulford's express consent in writing. Applications for return of goods must be received within fourteen days from date of invoice and, where approval is granted for return of goods, a re-stocking fee, calculated at 15% of the nett invoiced value of the goods, will be applied.
21. **DRAWINGS AND SPECIFICATIONS:** All illustrations, drawings and specifications, supplied by, or on behalf of Mulford to the Purchaser, remain the exclusive property of Mulford. The Purchaser, remain the exclusive property of Mulford. The Purchaser may not use, reproduce or communicate their contents to any third party unless authorized by Mulford in writing to do so except for the purpose of implementing the Contract in respect of which they are supplied and except in the case of standard descriptive illustrations, drawings and specifications they are to be returned to Mulford, either on completion of the Contract or earlier at Mulford's request.
22. **DESIGN AND MATERIALS:** Unless otherwise specified, goods will be supplied to Mulford's standard designs and specifications current at the date of quotation, and will be manufactured from its standard materials, where not available. Where Mulford, at the request of the Purchaser, manufactures goods to the design, specification, or in compliance with suggestions of the Purchaser as to design, materials method of construction or otherwise, it will not assume any responsibility or liability for the practicability or performance of such designs, specifications or recommendations, or of the goods manufactured in compliance therewith.

Where Mulford has followed a design, sample or instruction furnished or given by the Purchaser, the Purchaser shall indemnify Mulford against all damages, penalties, costs and expenses to which it may become liable through any work required to be done in accordance with those instructions involving an infringement of any third party's intellectual property rights.

23. **TOOLING:** Where Mulford contracts to manufacture goods, articles or components which are other than standard items of its production, or are of the Purchasers own design or configuration, and which require the establishment by Mulford of dies, tools, moulds, cutters or jigs, then the Purchaser will be responsible for a portion of the total cost of such items and the amount of this portion shall be specified in the Quotation. To the extent necessary or desirable to enable Mulford to perform its obligations under the Contract the Purchaser grants Mulford a royalty free license to use such tooling for the purposes of performing its obligations under the Contract.
24. Unless otherwise agreed in writing, all dies, tools, moulds, cutters, or jigs manufactured or supplied by Mulford shall, upon completion or determination, for whatsoever cause, of the Contract remain in the possession of Mulford. Subject to its ability to do so, Mulford shall thereafter be prepared to produce articles from such equipment for the Purchaser at prices quoted at the time.
25. Mulford shall be responsible for maintaining, at its own expense, all dies, tools, moulds, cutters and jigs manufactured by them on behalf of purchasers, in reasonable order and condition during their economic production life. Where the condition of such tooling ultimately renders it beyond economic or practical repair or where additional fooling is required to cater for increased demand, then part of the cost of new tooling as then agreed between the two parties will be to the Purchasers account.
26. If dies, tools, moulds, cutters or jigs are supplied by the Purchaser reasonable care will be taken to ensure that they remain in the condition as supplied but no responsibility is accepted by Mulford for any loss or damage thereto Maintenance and repair of the same required under normal usage will be to the Purchaser's account as will be the cost of any modifications necessary to adapt to Mulford's plant or production process.
27. All dies, tools, moulds, cutters or jigs will be considered obsolete if no further orders have been placed for production within 3 years of the date of last supply by Mulford, and it accepts no responsibility for their continued existence or usability after such period.
28. **INSPECTION, SHORTAGES AND DAMAGED GOODS:**
- (a) All goods manufactured by Mulford are carefully inspected during manufacture, and, where practicable, submitted to standard tests and its Works prior to dispatch. If special tests or tests in the presence of the Purchaser or his representative are specified, such tests, unless otherwise agreed, shall be made at Mulford's Works and will be subject of the special charge specified in the Quotation. In the event of any delay on the part of the Purchaser or his representative in attending such tests, after seven days notice of the matter or equipment being available for testing, the tests will be held in the Purchaser's absence, and will be deemed to have been made in his presence.
 - (b) The Purchaser shall inspect the goods forthwith after receipt and shall within fourteen days after receipt, or delivery ex Works by Mulford to a carrier on his behalf (save in the case of goods exported overseas), give written notice to Mulford of any claim for shortage, wrongful delivery or any other overt breach of contract. If the Purchaser fails to inspect and give notice within the time stated, the Purchaser shall be deemed to have waived any such claims.
 - (c) Sub-clause (b) shall not apply to consumer sales.

29. **QUANTITY TOLERANCES:** Where Mulford has contracted to manufacture goods which are other than its standard items then owing to the difficulty of producing exact quantities, Mulford reserves the right to vary the final quantity delivered by a margin up to ten percent (10%) in excess of the quantity ordered by the Purchaser and to charge for this variation in quantity on a pro-rata basis.
30. **PERFORMANCE:** All figures or data supplied by Mulford for performance are intended to be bona fide reasonable estimate of the performance which would be expected in service. Except where performance figures are specifically guaranteed in writing by Mulford, within specific tolerances. Mulford accepts no responsibility for failure of any goods to meet stated performance figures, whether in writing or otherwise shall, not be constituted as a condition warranty or representation.
31. **WARRANTY AND LIABILITY:** Subject to specific agreement in writing by Mulford to the contrary:
- (a) Mulford guarantees that all products of its manufacture which, within a period of twelve months from the date of dispatch and upon examination by an authorized Mulford representative, are found to be defective in workmanship, material or design, whereby they are unsuitable, under proper usage and service for the purpose for which they are intended, will be replaced free of charge, including transport costs but excluding cost of removal and replacement.
 - (b) This warranty does not apply where a malfunction results from the design or specification of a product by the Purchaser; or has been caused by careless or improper handling by the Purchaser or user; or by incorrect fitting or by non-observance of operating or installation instructions; or by repair or attempted repair by the Purchaser or a third party without the consent of Mulford in writing; or where it is due to fair wear and tear;
 - (c) This warranty does not apply to any goods or materials supplied which, in accordance with the Quotation are second-hand.
 - (d) This warranty does not apply to any goods or materials components and parts supplied which are not manufactured by Mulford;
 - (e) If the Purchaser acquires the goods or services supplied by Mulford for business purposes, the guarantees and warranties in the Consumer Guarantees Act 1993 shall not apply to the Contract or in respect of those goods or services.
 - (f) Save as aforesaid, Mulford shall not be under any liability, representation or warranty to the Purchaser for any loss, injury to damage, whether direct, indirect or consequential, suffered by the Purchaser, or for loss of profits, or to give the Purchaser contribution or indemnity, or otherwise, in respect of any loss, injury or damage arising from, or attributable to, any such defect.
32. **INSOLVENCY OF PURCHASER:** Except where a confirmed and irrevocable banker's commercial credit has been arranged for the whole of the Contract price, Mulford shall have the right to terminate the Contract at its option if the Purchaser becomes bankrupt or insolvent or makes any arrangement with his creditors or suffers a receiver to be appointed or, being a body corporate, enters into liquidation, in any of which events Mulford shall thenceforth cease to have any further obligation under the Contract, and the price for all goods delivered, and in the course of manufacture, shall immediately become due and payable notwithstanding the prior grant of credit terms.
33. **CANCELLATION:** Any order placed on and accepted by Mulford shall not be cancelled by the Purchaser except by agreement in writing upon terms agreed between the parties, including cancellation charges which may be deducted from any advance payments made.
34. **TAXES AND CHARGES:** The Purchaser shall pay to Mulford any amount which Mulford is required to pay on account of any excise or sales taxes, customs duty, primage, or any other taxes, duties or charges which may be established or levied by any governmental authority (domestic or foreign) upon the goods or any part thereof, or the manufacture, or sale of the same.
- Unless such taxes or other impositions have been specifically included in the price quoted they shall be payable by the Purchaser as an extra charge.
35. **PRIVACY ACT:** The Purchaser gives authority to any person or company to provide Mulford with any information as required in response to creditworthiness enquiries concerning the Purchaser. The Purchaser agrees that Mulford may furnish this information to any third person without prior authority from the Purchaser.
36. **ASSIGNMENT:** The benefit of the Contract shall not be assigned by the Purchase without the consent of Mulford in writing.
37. **LAW:** The contract shall be deemed to have been accepted in New Zealand and shall be governed by the laws of New Zealand.