

# WILKS (RUBBER PLASTICS) Mfgs. Co. Ltd

## Terms and Conditions of Sale

### 1.0 INTRODUCTION

- 1.1 The following terms and conditions are the only terms and conditions upon which Wilks (Rubber Plastics) Mfgs. Co. Ltd. (Wilks) will supply its products to a Purchaser and the terms of the Order Note and of these Conditions shall constitute the entire agreement between Wilks and a Purchaser.
- 1.2 No purported variation of these Conditions will be effective unless expressly accepted In writing by Wilks under signature of a director and in no other circumstances shall a Purchaser's standard conditions of purchase apply.
- 1.3 Wilks and its employees or agents shall be under no liability to a Purchaser in respect of any statements representations or warranties made other than as confirmed by a letter signed by a Wilks director, and no employee or agent has any power to make any representations or warranties in relation to any of the Products.

### 2.0 DEFINITIONS

- 2.1 In these Conditions the expression "Order Note" shall mean the note or form signed and accepted by Wilks identifying the purchaser ("the Purchaser"), the products to be purchased ("the Products"), the price to be paid by the Purchaser for the Products ("the Price") and any other special or additional terms of purchase agreed by Wilks.

### 3.0 ACCEPTANCE

- 3.1 Unless otherwise expressly stated in writing, all quotations and estimates issued by Wilks are invitations to treat. Quotations shall only be valid for a maximum period of 30 days from the date thereof and may be withdrawn or altered by Wilks within such period at any time without notice. No contract shall be made by the acceptance by the Customer of any quotation made by Wilks.
- 3.2 The placing of an order by a Purchaser by any means, the terms of which shall be recorded on an Order Note, shall constitute an offer to purchase the Products on the terms contained in such Order Note and in these Conditions.
- 3.3 Wilks shall notify Purchasers of its acceptance of an order placed by a Purchaser by forwarding to such Purchaser an Order Note or other appropriate confirmation whereupon the contract between Wilks and the Purchaser shall be deemed to be made.
- 3.4 Any quotation is made on the basis that orders will be placed by Purchasers in the quantities therein stated. Should a Purchaser place an order for part quantities only, Wilks reserves the right to submit a revised quotation.

### 4.0 PRICE

- 4.1 All prices shown in any price list which Wilks may from time to time issue shall be subject to variation without notice.
- 4.2 Unless stated otherwise, all prices are deemed to be exclusive of VAT.
- 4.3 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Products shall be the responsibility of and for the account of the Purchaser.
- 4.4 Unless otherwise stated, the price shown in the contract documents and in particular the Order Note shall include the cost of transport and insurance to the point of delivery.
- 4.5 Wilks shall be entitled to adjust the Price before or after the contract is entered into to reflect the additional cost to Wilks of supplying the Products caused by any reason beyond the control of Wilks including (without limitation) changes in exchange rates or the action of any government or authority or increases in labour, raw materials, production, transport and insurance costs.

### 5.0 PASSING OF PROPERTY

- 5.1 Title to and property in the Products shall, notwithstanding delivery to the Purchaser, remain in Wilks until the Purchaser has paid all sums due to Wilks in relation to the Products and all other goods agreed to be sold by Wilks to the Purchaser for which payment had not yet been made. For the purpose of recovery of the Products to which it still has title by virtue of this condition, Wilks may, by its servants or agents, enter upon the Purchaser's premises and repossess, remove and subsequently resell such Products and the Purchaser shall make no claim against Wilks in respect of such entry, repossession, removal or resale.
- 5.2 The Purchaser shall not, until payment in full has been received, mix the Products with other objects or convert products to other objects whether by the process of manufacture or otherwise.
- 5.3 In the event that the Purchaser shall mix or convert the products in breach of the foregoing, such mixed or converted products shall be deemed to be the property of Wilks.
- 5.4 Until Wilks is paid in full for all the Products, the relationship of the Purchaser to Wilks shall be fiduciary in respect of the Products and the Purchaser shall account to Wilks as bare trustee for any proceeds of earlier sale or of any insurance claim in respect of the Products and pending payment thereof to Wilks shall keep the same in a separate bank account.
- 5.5 Until payment in full is made for the Products the Purchaser shall, where reasonably practicable, insure and keep the Products in such a way that they are clearly identified as the property of Wilks and upon demand shall forthwith return the Products to Wilks.

### 6.0 PASSING OF RISK

- 6.1 Risk in the Products shall pass to the Purchaser immediately upon delivery to the Purchaser.

### 7.0 DESPATCH/DELIVERY

- 7.1 Unless otherwise stated, delivery of goods consigned to an address within the United Kingdom shall be made when they arrive at the Purchaser's place of business and delivery of goods consigned to an address outside the United Kingdom shall be made CIF to such an address.
- 7.2 Whereas Wilks shall use its best reasonable efforts to deliver on time, time shall not be of the essence of the contract and Wilks shall be entitled to deliver the Products at any time within 30 days of any stated delivery date. Notwithstanding condition 10.1, if delivery is delayed by strikes, lock-outs, fire, accidents, defective materials, delays in receipt of raw materials or bought-in-goods or components or any other cause beyond the reasonable control of Wilks, a reasonable extension of time for delivery shall be granted to Wilks and the Purchaser shall pay such reasonable extra charges as shall have been occasioned thereby.
- 7.3 If the Purchaser fails to take delivery on the agreed delivery date or when the Products are ready for despatch, Wilks shall be entitled to store and insure the same and to charge the Purchaser the reasonable costs of so doing.
- 7.4 If under the contract the Products are to be delivered by several instalments, each such instalment shall be treated (except as provided by this paragraph) as a separate and identifiable contract and the rights of the either party therefore shall be construed accordingly, save only that Wilks may suspend delivery whilst payment is overdue in respect of any previous instalment. If Wilks shall fail to make delivery or shall make defective delivery of any instalment, such failure or defective delivery shall not affect the obligations of the parties in respect of any other instalments under the Contract.
- 7.5 When it is necessary for the Purchaser to supply particulars of any work, processing or special requirement or otherwise in connection with the manufacture of the products or to do any other act to enable Wilks to deliver the same, such particulars must be furnished or such other act performed in good time to enable Wilks to deliver on the stated date. In the event of the Purchaser's failure to comply with this condition, Wilks may, at its option, cancel the contract in whole or in part by giving written notice thereof to the Purchaser, or extend the period for delivery as shall be appropriate to reflect the Purchaser's failure.

### 8.0 NON-DELIVERY/SHORT DELIVERY/DAMAGE

- 8.1 Any claim of non-delivery of any consignment of the Products must be made by the Purchaser in writing to the carrier and to Wilks within 10 days of the date of Wilks' invoice or other notification of despatch relating thereto, or such shorter time limit as may be specified in any conditions of the carrier. Failure by the Purchaser to comply with this condition shall render the Purchaser solely liable for any loss arising or damage suffered through failure to inform the carriers or the insurers within the required time limits.
- 8.2 The Purchaser shall note any claim for short delivery and/or damage to the Products on the delivery schedule at the time of delivery and shall confirm such claims in writing to Wilks within 5 working days from the date of delivery. In the event of any such claim Wilks shall be given a reasonable opportunity to inspect the Products before any use is made of them or any alteration or modification is made to them by the Purchaser. Compliance with this requirement shall be a condition precedent to any claim for short delivery and/or damage to the Products and in the event of failure by the Purchaser to do so, the Products shall be deemed to be in all respects in accordance with the contract and the Purchaser shall be bound to pay for the same accordingly. If short delivery does take place, the Purchaser shall have no right to reject the Products by reason of such short delivery but shall accept those delivered in part performance of the Contract.

### 9.0 DEFECTS

- 9.1 The Purchaser shall carry out a thorough inspection of the Products within a reasonable time after their delivery (and in any event within 5 working days) and shall forthwith give written notice to Wilks of any defects which such examination reveals.
- 9.2 In the case of other defects, the Purchaser shall give written notice within 5 working days of discovering defects in the Products and shall afford Wilks reasonable opportunity to inspect such defective Products. No claim will be accepted by Wilks for defective Products later than 42 days following their delivery.
- 9.3 Subject to compliance with the foregoing obligations, which shall be conditions precedent to any liability of Wilks, Wilks will, in respect of any of the Products which it agrees are defective, either replace the same or credit the invoice value of the same, and any such rectification, replacement or credit shall be in full satisfaction of all claims of the Purchaser directly or indirectly arising therefrom.

- 9.4 Where the Products comprise or include components or goods not of Wilks manufacture. Wilks will assign to the Purchaser as far as it is able so to do, its rights against the manufacturer of such components or goods and such rights shall be taken by the Purchaser in extinction of and in substitution for any rights which the Purchaser would otherwise have against Wilks.

- 9.5 The liability of Wilks under this clause 9 shall be limited to the invoice value of the Products replaced and, save as herein otherwise expressly provided, Wilks shall be under no liability whatsoever (including without prejudice to the foregoing, any liability in tort or for any consequential loss or damage of any kind suffered by the Purchaser or any third party) for any defect in or failure of or unsuitability for any purpose of the Products or any of them whether the same be due to any act or omission, negligence or willful default of Wilks its servants agents subcontractors or any of them, or to faulty design workmanship or materials, or any other cause whatsoever. All other representations, conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with this condition are hereby expressly excluded to the fullest extent permitted by law.

- 9.6 Nothing in this condition is intended to exclude any liability for death or personal injury caused by the negligence of Wilks, for fraud or fraudulent misrepresentation or for any other liability that cannot be excluded or limited under applicable law.

### 10.0 FORCE MAJEURE

- 10.1 Wilks shall use its best reasonable efforts to perform the terms of the contract and in particular to meet all delivery dates but shall not be liable for any failure to observe, or for any breach of, the terms hereof by reason of act of God, war, riot, civil commotion, strike, lock-out, trade dispute, fire, breakdown, interruption of transport, government action, delay in delivery by suppliers of Wilks or delay caused by a Purchaser's failure to provide adequate delivery instructions/instructions that were relevant to delivery or any other cause whatsoever beyond its control. In the event of such circumstances continuing for more than 30 days (except where goods are in transit) then either Wilks or the Purchaser may terminate the unperformed part of the contract by notice in writing delivered to the other within 14 days thereafter.

### 11.0 SAMPLES

- 11.1 Any samples or shade cards supplied to the Purchaser shall be accepted by the Purchaser as supplied solely for information and as in no way importing any expressed or implied conditions or warranties as to the suitability of the Products for the Purchaser's requirement, as to which the Purchaser shall be deemed to have satisfied himself prior to ordering the Products.

### 12.0 RECOMMENDATIONS

- 12.1 Whilst all written recommendations made by Wilks as to the treatment of the Products are made in good faith, Wilks shall have no responsibility whatsoever for any damage liability cost or expense suffered by the Purchaser or any third party through their following such recommendations.

### 13.0 SPECIFICATION ALTERATIONS

- 13.1 Wilks reserves the right to alter the formulation of any of the Products without prior reference to the Purchaser, provided that the Products comply in all other respects with the Purchaser's requirements as made known to Wilks in writing.

### 14.0 QUANTITY VARIATIONS

- 14.1 Wilks reserves the right to deliver against any order an excess or deficiency of up to 10% of the contractual weight, area or volume of the Products on the understanding that the Products invoiced will be those actually delivered. No claim respecting variations in quantity of the Products delivered may be made by the Purchaser if any of the Products have been mixed by the Purchaser with other goods or have been subjected to any manufacturing process by or on behalf of the Purchaser.

### 15.0 SUB-STANDARD/SURPLUS STOCK

- 15.1 Any Products sold by Wilks as sub-standard and surplus stock shall be accepted by the Purchaser in their actual state and condition and neither the warranty given in condition 9 hereof nor any other conditions or warranties whether express or implied, whether statutory or otherwise shall apply hereto.

### 16.0 TRADE MARKS/PATENTS

- 16.1 The supply of the Products by Wilks shall not confer any right upon the Purchaser to use any Wilks trade mark without prior written consent of Wilks and at all times such trade mark shall remain the property of Wilks. Neither does it imply any right to use any Wilks patent or any indemnity against infringement of third party patents.

### 17.0 ASSIGNMENT

- The Purchaser shall not assign or transfer or purport to assign or transfer the contract or the benefit thereof to any other person whomsoever.

### 18.0 INDULGENCE

- No indulgence or forbearance extended to the Purchaser shall limit or prejudice any right or claim available to Wilks.

### 19.0 SEVERANCE

- If any provision of these conditions is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these conditions and the validity and enforceability of the other provisions of these conditions shall not be affected.

### 20.0 THIRD PARTY RIGHTS

- 20.1 A person who is not a party to these conditions shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 20.2 The rights of the parties to terminate, rescind or agree a variation, waiver or settlement under these conditions are not subject to the consent of any person that is not a party to these conditions.

### 21.0 CANCELLATION

- If the Purchaser shall fail to make any payment when it becomes due or shall enter into any composition or arrangement with its creditors, or
- (a) (being a company) shall have a receiver appointed or shall pass a resolution for its winding-up or have a winding-up petition or a petition for an administration order presented, or
- (b) (being an individual) shall fail to pay a debt in excess of the bankruptcy level for the purposes of the Insolvency Act 1986 or in either case there shall be any breach by the Purchaser of any of the terms or conditions hereof, Wilks may defer or cancel any further deliveries and treat the contract as terminated but without prejudice to its right to any unpaid purchase price for the Products delivered and to damages for any loss suffered in consequence of such breach and termination.

### 22.0 TERMS OF PAYMENT

- 22.1 All accounts shall be strictly payable within 30 days following the month of invoice unless otherwise stated.
- 22.2 The Purchaser shall pay all accounts in full and shall not exercise any rights of set-off or counter-claim against invoices submitted.
- 22.3 The Purchaser shall pay interest on overdue accounts at a rate per annum of 4% above Barclays Bank PLC base lending rate, interest to accrue from day to day.
- 22.4 If the Purchaser shall fail to pay promptly in accordance with this condition, any discount previously given by Wilks may be withdrawn at the sole discretion of Wilks and without incurring any liability to the Purchaser.

### 23.0 ALTERATIONS TO THESE CONDITIONS

- 23.1 Wilks reserves the right to alter any of these Conditions at any time without notice to the Purchaser. The latest version of these Conditions shall be available on Wilks' website or in hard copy from Wilks on request.
- 23.2 For the avoidance of doubt, the terms that are applicable to any particular order placed with Wilks shall be those that are in force on the date on which the contract in question is formed in accordance with condition 3.3.

### 24.0 OPERATION OF LAW

- 24.1 These Conditions shall be construed in accordance with and the rights of the parties shall be regulated by the law of England.
- 24.2 Wilks and the Purchaser hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Date of publication: 11th November 2011