

# SUNPLAS ENGINEERING (82) LTD

## GENERAL CONDITIONS OF TRADE

If your order has not been previously acknowledged, this shall constitute an acknowledgment and the following conditions shall apply:

### 1. Preliminary and Definitions

- 1.1 In these conditions, The Company means Sunplas Engineering (82) Ltd.
- 1.2 "Customer" means the organisation, company, or person to whom the tools, services, and/or quotation are supplied by the Company.
- 1.3 These conditions apply unless expressly altered in writing by the Company.
- 1.4 The following terms have special and specific meaning as described in each written quote:
  - Manufacture
  - Design
  - Project Management

### 2. Delivery

Delivery dates quoted (i.e. availability for shipment to the Customer) shall be subject to the following:

- 2.1 Receipt of the Customer's official order.
- 2.2 Receipt of Customer's complete and final drawings or such information as required by the Company to produce design drawings suitable for the manufacture and/or supply of tools and services contracted.
- 2.3 That the terms of payment are met in respect of progress payments. Should these payments not be fulfilled, the Company reserves the right to stop work on the contract till such time as payments are received, and will advise revisions to the quoted delivery dates.
- 2.4 That all materials and services required for the contract be delivered to the Company in reasonable time to enable the contract to be completed within the delivery dates quotes.

If however, these materials and/or services are delayed through unavailability, strikes, lock-outs, transportation failure, civil unrest, war, force majeure, or any other reason beyond the Company's control, then the delivery date shall be extended to whatever is possible upon receipt of those delayed items.

Such extensions to delivery dates shall be notified to the Customer in writing and shall not entitle the Customer to cancel the contract and all other terms and conditions will remain in force.

### 3. Pricing

- 3.1 Notwithstanding the terms of payment and conditions of sale already set out, the contract value may be revised if the Customer requests modifications to drawings and/or specifications pertaining to this contract after receipt of the Customer's order.
- 3.2 If the Customer fails to take or accept delivery on the completion date or when notified that delivery is possible, he shall nevertheless make payments as set out as if delivery had been affected.
- 3.3 Where approval of tool samples is a condition, the Customer will test the tooling within 30 days of delivery. If the customer fails to test the tooling within 30 days of delivery and does not supply either acceptance of the tool or reasons for non-acceptance, he shall make payments as set out as if approval of samples had been made.

### 4. Terms of Payment

- 4.1 Where credit is extended to any customer, payment for the tools and services supplied shall be made on the 20<sup>th</sup> day of the month following delivery unless stated otherwise in the quotation.
- 4.2 In the event of payment not being received by the due date for payment, default interest by way of penalty for late payment will be charged monthly commencing from the due date of payment until actual payment. Such interest will be calculated at the National Bank of New Zealand Limited indicator lending rate plus 6%.

### 5. Title

- 5.1 Title to and property in the tools shall remain with the Company until the whole of the contract price and all other monies owing by the Customer to the Company have been paid in full.
- 5.2 The Customer will not modify the tools until payment in full has been received by the Company, unless expressly agreed in writing by the Company.
- 5.3 The Customer shall store and keep the tools in such a way that the tools shall be readily identifiable as the Company's tools.
- 5.4 Until payment in full, the Customer holds the tools as fiduciary and bailee.
- 5.5 Any sale of the tools by the Customer shall be as agent for and on behalf of the Company and the proceeds of any such sale shall be held by the Customer on trust for the Company separate from other monies of the Customer notwithstanding that any period of credit extended to the Customer may not have expired.
- 5.6 In the event of the Customer:
  - (i) Becoming insolvent or being unable to pay its debts (within the meaning of the Section 218 of the Companies Act 1955); or
  - (ii) Compounding with its creditors; or
  - (iii) Being wound-up (whether voluntarily or compulsory); or
  - (iv) Having a Receiver of all or any of its assets appointed;(In this agreement all such events being termed "acts of default").  
The Customer shall not dispose of any of the tools.
- 5.7 If payment for the tools is overdue in whole or in part, the Company may (without prejudice to any of its other rights) recover or resell the tools to third parties and for this purpose exercise its right under sub-clause 5.8 below. Payment shall become due immediately upon the happening of any acts of default as specified in sub-clause 5.6 above.
- 5.8 The Customer hereby irrevocably gives the Company licence by its officers, employees or agents with or without vehicles and machinery to enter upon and if necessary, break into any real property or building occupied by the Customer where the tools may be or may be supposed to be and as agent of the customer to enter upon any other realty property or building which the Customer might enter upon and where the tools may or may be supposed to be and to search for and take possession of the tools and remove them without being in any way liable to the Customer or anyone claiming under the Customer for so doing. The Company is under no obligation to give any notice of its intention to exercise its right contained in this sub-clause.

### 6. Damage

The Company accepts no responsibility for damage to tools during transit unless delivered by the Company.

### 7. Cancellation and Returns

- 7.1 The Customer shall not be entitled to cancel any order which has been accepted by the Company.
- 7.2 Except in the case of breach of warranty by the Company, the Customer shall not be entitled to return any tools or parts.
- 7.3 The Company may charge the customer for all costs and expenses incurred by the Company in respect of any cancelled order accepted by the Company.

8. **Drawings**

- 8.1 Where a contract requires the Company to design tools or services from information, samples or other drawings supplied by the Customer, the Company exonerates the Company from all legal action resulting in possible breach of trademark, copyright or other legal controls as may be applied to the tools or services that the Customer has contracted the seller to supply.
- 8.2 Any general or detailed tooling drawings which are produced by the Company as an aid to fulfilling the main contract remain the exclusive property of the Company.
- 8.3 Any variation to this condition can only be by separate contract. Such design drawings as contracted by the Customer become the Customers property and the master copies will be kept by the Company unless otherwise requested in writing.

9. **Other Services**

9.1 **Design Services:**

Where the Company accepts responsibility for design activity these terms and conditions will apply.  
The quote will separately identify the charges and services associated with design activity.

9.2 **Project Management:**

Where the Company accepts responsibility for project management activity these terms and conditions will apply.  
The quote will separately identify the charges and services associated with project management activity.

10. **Liability**

The Company shall not be bound by any representation or warranty made by the Company, its employees or agents, unless set out in writing and the customer agrees that it has purchased the tools solely in reliance of the customers judgement. The Company shall not be liable in any circumstances for consequential damage whether such damages shall arise out of breach of contract, failure to remedy any breach of contract, tort or otherwise. The Company shall not be liable in any way to the Customer and all conditions, representations, warranties and undertakings whether implied by statute or common law are hereby excluded provided, that if by reason of law the Company is obliged to pay damages to the customer (it being the intention that no such damages may be recovered) the same shall be limited to the customers actual loss or the cost of the tools, whichever is less.

11. **Insurance**

Whilst every precaution is taken in packing, tools are consigned uninsured against loss or damage in transit at purchasers' risk.

12. **Risk**

The purchaser will take proforma delivery of the tools upon them leaving the possession of the Company or its servants and thereupon the risk will be with the Customer. The Customer will have possession of the tools as bailee only and will insure them and keep them in good order and condition.