

**Terms & Conditions – Sale of Goods and Supply of Services**

**1 Definitions and interpretation**

1.1 In these Conditions the following definitions apply:

<b>Affiliate</b>	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
<b>Applicable Law</b>	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or in any relevant jurisdiction;
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in Northern Ireland;
<b>Conditions</b>	means Donite Plastics Ltd’s terms and conditions of sale set out in this document;
<b>Confidential Information</b>	means any commercial, financial or technical information, information relating to the Goods or Services, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
<b>Contract</b>	means the agreement between Donite Plastics Ltd and the Customer for the sale and purchase of the Goods and/or Services incorporating these Conditions and where relevant, the terms of Donite Plastics Ltd’s Quotation (if accepted by the Customer), or the Customer’s Order (if accepted by Donite Plastics Ltd);
<b>Control</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and <b>Controls, Controlled</b> and <b>under common Control</b> shall be construed accordingly;
<b>Customer</b>	means party in the Contract which has agreed to purchase the Goods and/or Services from Donite Plastics Ltd and whose details are set out in the Order;
<b>Customer Materials</b>	means any materials provided by the Customer to Donite Plastics Ltd to manufacture the Goods (including, but not limited to tools, jugs, moulds and fixtures);
<b>Documentation</b>	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Goods and/or Services;
<b>Force Majeure</b>	means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or

telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving Donite Plastics Ltd or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

**Goods**

means the Goods and related accessories, spare parts and Documentation and other physical material set out in Donite Plastics Ltd's Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd) and to be supplied by Donite Plastics Ltd to the Customer in accordance with the Contract;

**Intellectual Property Rights**

means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

**Location**

means the address or addresses for delivery of the Goods as set out in the Order;

**Order**

means an order for the Goods and/or Services from the Customer;

**Price**

has the meaning given in clause 5.1;

**Quotation**

means a quotation for the Goods and/or Services given by Donite Plastics Ltd to the Customer;

**Services**

means the services (including services for design), set out in Donite Plastics Ltd's Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd) and to be supplied by Donite Plastics Ltd to the Customer in accordance with the Contract;

**Specification**

means the description or Documentation provided for the Goods and/or Services set out or referred to in the Contract;

**VAT**

means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods and/or Services; and

**Warranty Period**

has the meaning given in clause 12.1.1.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 a reference to the Contract includes these Conditions, Donite Plastics Ltd's Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd), and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as in force at the date of the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation.

**2 Application of these conditions**

- 2.1 These Conditions apply to and form part of the Contract between Donite Plastics Ltd and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that Donite Plastics Ltd otherwise agrees in writing.
- 2.3 No variation of these Conditions, or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of Donite Plastics Ltd and the Customer respectively.

**3 Specifications**

- 3.1 Donite Plastics Ltd reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory requirements or, where the Goods and/or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 3.2 Notwithstanding any recommendation or suggestion relating to the use of the Goods contained in the Donite Plastics Ltd's catalogue, website, or elsewhere or made by Donite Plastics Ltd in response to a specific enquiry from the Customer, it is the Customer's responsibility (unless otherwise specifically agreed by Donite Plastics Ltd in writing) to satisfy itself of the suitability of the Goods for its own particular purpose and it shall be deemed to have done so.
- 3.3 Donite Plastics Ltd shall have no responsibility for the accuracy of any drawings, particulars or specifications supplied by the Customer or for any defect or failure of the Goods to comply with any specifications arising as a result of the same.

## **4 Quotations and Orders**

- 4.1 Unless previously withdrawn, any Quotation given will remain open for acceptance within 30 of Business Days from the date the Quotation is given to the Customer.
- 4.2 The Quotation is conditional upon the Customer providing at the time of placing an Order or within the time stated in the Quotation all information necessary to enable manufacture of the Goods and/or the performance of the Services to proceed forthwith.
- 4.3 Each Order by the Customer to Donite Plastics Ltd shall be an offer to purchase the Goods and/or Services subject to the Contract including these Conditions.
- 4.4 If Donite Plastics Ltd is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 4.5 Donite Plastics Ltd may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods and/or Services shall arise, until the earlier of:
  - 4.5.1 Donite Plastics Ltd's written acceptance of the Order; or
  - 4.5.2 Donite Plastics Ltd dispatching the Goods; or
  - 4.5.3 Donite Plastic Ltd performing the Services.
- 4.6 The Customer shall be responsible to Donite Plastics Ltd for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer, and for giving Donite Plastics Ltd any necessary information relating to the Goods and/or Services to be performed within a sufficient time to enable the Donite Plastics Ltd to perform the Contract in accordance with its terms.
- 4.7 The following specific terms of Contract shall be set out in Donite Plastics Ltd's Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd);
  - 4.7.1 Quantity, quality and description of and any specification for the Goods and/or Services; and
  - 4.7.2 Location and Date of Delivery/collection
- 4.8 No Order which has been accepted by Donite Plastics Ltd may be cancelled by the Customer except with the agreement in writing of Donite Plastics Ltd and on terms that the Customer shall indemnify Donite Plastics Ltd in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Donite Plastics Ltd as a result of cancellation.

## **5 Price**

- 5.1 Subject to clause 4.1, the price for the Goods and/or Services shall be as set out Donite Plastics Ltd's Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd) (the **Price**).
- 5.2 The Prices are exclusive of:
  - 5.2.1 packaging, delivery, insurance, shipping carriage, and all other related charges or taxes which shall be charged in addition at Donite Plastics Ltd's standard rates, and
  - 5.2.2 VAT (or equivalent sales tax)unless otherwise stated.
- 5.3 The Customer shall pay any applicable VAT to Donite Plastics Ltd on receipt of a valid VAT invoice.
- 5.4 Donite Plastics Ltd reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to:
  - 5.4.1 any factor beyond the control of Donite Plastics Ltd (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture);

- 5.4.2 any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer; or
- 5.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give Donite Plastics Ltd adequate information or instructions.

## **6 Payment**

- 6.1 Donite Plastics Ltd shall invoice the Customer for the Goods and/or Services, partially or in full, at any time following acceptance of the Order.
- 6.2 Subject to the payment terms being set out in Donite Plastics Ltd's Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd), payment is to be made on delivery.
- 6.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date, Donite Plastics Ltd may:
  - 6.3.1 cancel the contract or suspend any further deliveries to the Customer;
  - 6.3.2 appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and Donite Plastics Ltd) and/or Services as Donite Plastics Ltd may think fit (notwithstanding any purported appropriation by the Customer); and
  - 6.3.3 without limiting its other rights, charge interest on such sums at 4% a year above the base rate of the Bank of England from time to time in force, and; interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

## **7 Cancellation**

- 7.1 Work individually commissioned or non-standard Goods and/or Services not used or taken up by the Customer may not be capable of resale or reprocessing. In the event of cancellation or alterations of the Contract, Donite Plastics Ltd may charge the Customer 100% of the price of the work cancelled, or to be substituted on which manufacture has commenced or been completed at the date of receipt of such written notice of cancellation or alteration by the Customer.

## **8 Credit limit**

Donite Plastics Ltd may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

## **9 Collection and Delivery**

- 9.1 Finished Goods shall be collected upon notification by Donite Plastics Ltd to the Customer of completion.
- 9.2 However, upon written confirmation, the Goods may be delivered by Donite Plastics Ltd, or its nominated carrier, to the Location on the date(s) specified in Donite Plastics Ltd's Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd). The Goods shall be deemed delivered on arrival only of the Goods at the Location by Donite Plastics Ltd or its nominated carrier (as the case may be).
- 9.3 Donite Plastics Ltd may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 9.4 Time of collection is of the essence; however, time of delivery is not of the essence. Donite Plastics Ltd shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.
- 9.5 Donite Plastics Ltd shall not be liable for any delay in or failure of delivery caused by:
  - 9.5.1 the Customer's failure to make the Location available;
  - 9.5.2 the Customer's failure to prepare the Location as required for delivery of the Goods;

9.5.3 the Customer's failure to provide Donite Plastics Ltd with adequate instructions for delivery and installation or otherwise relating to the Goods;

9.5.4 Force Majeure.

9.6 If the Customer fails to collect or accept delivery of the Goods, Donite Plastics Ltd shall store and insure the Goods pending collection or delivery, and the Customer shall pay all costs and expenses incurred by Donite Plastics Ltd in doing so.

## **10 Risk**

Risk in the Goods shall pass to the Customer on collection or delivery.

## **11 Title**

11.1 Title to the Goods shall pass to the Customer once Donite Plastics Ltd has received payment in full for all debts owed by the Customer to the Seller (including payment for the Goods) at any given time.

11.2 Until title to the Goods has passed to the Customer, the Customer shall:

11.2.1 hold the Goods as bailee for Donite Plastics Ltd;

11.2.2 store the Goods separately from all other material in the Customer's possession;

11.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;

11.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting Donite Plastics Ltd's interest on the policy;

11.2.5 ensure that the Goods are clearly identifiable as belonging to Donite Plastics Ltd;

11.2.6 not remove or alter any mark on or packaging of the Goods;

11.2.7 inform Donite Plastics Ltd immediately if it becomes subject to any of the events or circumstances set out in clauses 17.1.1 to 17.1.4 or 17.2.1 to 17.2.14; and

11.2.8 on reasonable notice permit Donite Plastics Ltd to inspect the Goods during the Customer's normal business hours and provide Donite Plastics Ltd with such information concerning the Goods as Donite Plastics Ltd may request from time to time.

11.3 If, at any time before title to the Goods has passed to the Customer, the Customer informs Donite Plastics Ltd or they reasonably believe, that the Customer has or is likely to become subject to any of the events specified in clauses 17.2.1 to 17.2.14, Donite Plastics Ltd may:

11.3.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and

11.3.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## **12 Warranty**

12.1 Donite Plastics Ltd warrants that the Goods shall:

12.1.1 for a period of 1 month from delivery,

(a) conform in all material respects to the Quotation (if accepted by the Customer), or the Customer's Order (if accepted by Donite Plastics Ltd) and the Specification;

12.1.2 for a period of 12 months from delivery,

(a) be free from material defects in design, material and workmanship;

(b) in the case of the Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

- (c) in the case of Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 198

(the **Warranty Period**)

- 12.2 In respect of clause 12.1.1(a), the Customer warrants that it will inspect that the Goods conform in all material respects to the Quotation, Order or Specification. If, after 1 month, the Customer has not notified Donite Plastics Ltd in writing that the Goods do not conform in all material respects to the Quotation, Order or Specification, the Customer shall be deemed to have accepted the Goods.
  - 12.3 As the Customer's sole and exclusive remedy, Donite Plastics Ltd shall, at its option, repair, remedy, replace, re-perform or refund the Price of any of the Goods and/or Services that do not comply with clause 12.1.1, provided that the Customer:
    - 12.3.1 serves a written notice on Donite Plastics Ltd:
      - (a) during the Warranty Period in the case of defects discoverable by a physical inspection; or
      - (b) in the case of latent defects, within one month from the date on which the Customer became aware (or should reasonably have become aware) of the defect;
    - 12.3.2 provides Donite Plastics Ltd with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
    - 12.3.3 gives Donite Plastics Ltd a reasonable opportunity to examine the defective Goods and/or Services; and
    - 12.3.4 returns the defective Goods to Donite Plastics Ltd at the Customer's expense.
  - 12.4 The provisions of these Conditions, including the warranties set out in clause 12.1.1, shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods and any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
  - 12.5 Donite Plastics Ltd shall not be liable for any failure of the Goods to comply with clause 12.1.1:
    - 12.5.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
    - 12.5.2 to the extent caused by the Customer's failure to comply with Donite Plastics Ltd's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
    - 12.5.3 to the extent caused by Donite Plastics Ltd following any specification, design, drawing, instruction or requirement of or given by the Customer in relation to the Goods;
    - 12.5.4 where the Customer modifies any Goods without Donite Plastics Ltd's prior written consent or, having received such consent, not in accordance with those instructions; or
    - 12.5.5 where the Customer uses any of the Goods after notifying Donite Plastics Ltd that they do not comply with clause 12.1.1(a).
  - 12.6 Donite Plastics Ltd shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
  - 12.7 Except as set out in this clause 12:
    - 12.7.1 Donite Plastics Ltd gives no warranties and makes no representations in relation to the Goods and/or Services; and
    - 12.7.2 shall have no liability for their failure to comply with the warranty in clause 12.1.1
- and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979 and ss 12 – 16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

### **13 Indemnity, Customer Materials and Insurance**

- 13.1 The Customer shall indemnify Donite Plastics Ltd from and against any losses, damages, liability, costs (including legal fees) and expenses which Donite Plastics Ltd may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
- 13.2 The parties acknowledges that Donite Plastics Ltd shall not have any interest in the title to the Customer's Materials, nor shall they be liable for any risk or losses in relation to the Customer's Materials. The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom or such other country by agreement in writing with Donite Plastics Ltd to cover its obligations in relation to the retention and storage of Customer Materials at Donite Plastics Ltd's premises and any other obligations under the Contract. On request, the Customer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

### **14 Limitation of liability**

- 14.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.
- 14.2 Subject to clauses 14.5 and 14.6, Donite Plastics Ltd's total liability shall not exceed the Price.
- 14.3 Subject to clauses 14.5 and 14.6, Donite Plastics Ltd shall not be liable for consequential, indirect or special losses.
- 14.4 Subject to clauses 14.5 and 14.6, Donite Plastics Ltd shall not be liable for any of the following (whether direct or indirect):
- 14.4.1 loss of profit;
  - 14.4.2 loss of revenue;
  - 14.4.3 loss or corruption of data;
  - 14.4.4 loss or corruption of software or systems;
  - 14.4.5 loss or damage to equipment;
  - 14.4.6 loss of use;
  - 14.4.7 loss of production;
  - 14.4.8 loss of contract;
  - 14.4.9 loss of commercial opportunity;
  - 14.4.10 loss of savings, discount or rebate (whether actual or anticipated);
  - 14.4.11 harm to reputation or loss of goodwill; and/or
  - 14.4.12 wasted expenditure.
- 14.5 The limitations of liability set out in clauses 14.2 to 14.4 shall not apply in respect of any indemnities given by the Customer under the Contract.
- 14.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 14.6.1 death or personal injury caused by negligence;
  - 14.6.2 fraud or fraudulent misrepresentation;
  - 14.6.3 any other losses which cannot be excluded or limited by Applicable Law;



14.6.4 any losses caused by wilful misconduct.

## **15 Confidentiality and announcements**

15.1 The Customer shall keep confidential all Confidential Information of Donite Plastics Ltd and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

15.1.1 any information which was in the public domain at the date of the Contract;

15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

15.1.3 any information which is independently developed by the Customer without using information supplied by Donite Plastics Ltd; or

15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

15.2 This clause 15 shall remain in force in perpetuity.

15.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

## **16 Force majeure**

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 21 days, either party may terminate the Contract by written notice to the other party.

## **17 Termination**

17.1 Donite Plastics Ltd may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

17.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;

17.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach;

17.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that Donite Plastics Ltd has given notification to the Customer that the payment is overdue; or

17.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

17.2 Donite Plastics Ltd may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

17.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

17.2.2 is unable to pay its debts either within the meaning of 103 of the Insolvency (Northern Ireland) Order 1989 or if Donite Plastics Ltd reasonably believes that to be the case;

17.2.3 becomes the subject of a company voluntary arrangement under the Insolvency (Northern Ireland) Order 1989;

17.2.4 becomes subject to a moratorium;

17.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;

- 17.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 17.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 17.2.8 has a resolution passed for its winding up;
  - 17.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 17.2.10 is subject to any procedure for the taking control of its Goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
  - 17.2.11 has a freezing order made against it;
  - 17.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
  - 17.2.13 is subject to any events or circumstances analogous to those in clauses 17.2.1 to 17.2.12 in any jurisdiction;
  - 17.2.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.2.1 to 17.2.13 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 17.3 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle Donite Plastics Ltd to terminate the Contract under this clause 17, it shall immediately notify Donite Plastics Ltd in writing.
- 17.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of Donite Plastics Ltd at any time up to the date of termination.

## **18 Notices**

- 18.1 Any notice or other communication given by a party under these Conditions shall:
- 18.1.1 be in writing and in English;
  - 18.1.2 be signed by, or on behalf of, the party giving it; and
  - 18.1.3 be sent to the relevant party at the address set out in the Contract.
- 18.2 Notices may be given, and are deemed received:
- 18.2.1 by hand: on receipt of a signature at the time of delivery;
  - 18.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
  - 18.2.3 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
  - 18.2.4 by email on receipt of a delivery email from the correct address.
- 18.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 18.1 and shall be effective:
- 18.3.1 on the date specified in the notice as being the date of such change; or
  - 18.3.2 if no date is so specified, ten Business Days after the notice is deemed to be received.
- 18.4 This clause 18 does not apply to notices given in legal proceedings or arbitration.

**19 Cumulative remedies**

The rights and remedies provided in the Contract for Donite Plastics Ltd only are cumulative and not exclusive of any rights and remedies provided by law.

**20 Time**

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

**21 Further assurance**

The Customer shall at the request of Donite Plastics Ltd, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

**22 Entire agreement**

22.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

22.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

22.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

**23 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

**24 Assignment**

24.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.

24.2 Notwithstanding clause 24.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives Donite Plastics Ltd prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

**25 Set-off**

25.1 Donite Plastics Ltd shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which Donite Plastics Ltd has with the Customer.

25.2 The Customer shall pay all sums that it owes to Donite Plastics Ltd under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

**26 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **27 Equitable relief**

The Customer recognises that any breach or threatened breach of the Contract may cause Donite Plastics Ltd irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that Donite Plastics Ltd is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **28 Severance**

28.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

28.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **29 Waiver**

29.1 No failure, delay or omission by Donite Plastics Ltd in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

29.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by Donite Plastics Ltd shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

## **30 Compliance with law**

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **31 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

## **32 Costs and expenses**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

## **33 Third party rights**

33.1 Except as expressly provided for in clause 33.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

33.2 Any Affiliate of Donite Plastics Ltd shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

## **34 Dispute resolution**

34.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 34.

34.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

34.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:

34.3.1 Within ten Business Days of service of the notice, the Sales Managers of each of the parties shall meet to discuss the dispute and attempt to resolve it.

34.3.2 If the dispute has not been resolved within ten Business Days of the first meeting of the Sales Managers, then the matter shall be referred to the Managing Directors (or persons of equivalent seniority) of each of the parties. The Managing Directors (or equivalent) shall meet within five Business Day to discuss the dispute and attempt to resolve it.

34.4 Until the parties have completed the steps referred to in clause 34.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

### **35 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Northern Ireland.

### **36 Jurisdiction**

The parties irrevocably agree that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).