

TRIMFIX MOULDINGS

Plastic Injection Moulders

Unit 11 Leigh Road, Haine Industrial Estate, Ramsgate, Kent CT12 5EU | Tel +44 1843 585698 | E-mail enquiries@trimfix.co.uk

Terms of Trading

1. Definitions

- 1.1 In these terms, the following definitions apply: "you" means the person or firm who orders goods or services from us. "we/our/us" means Trimfix Limited trading as Trimfix Mouldings, Company Number 2078997 of Unit 11, Leigh Road, Haine Industrial Estate, Ramsgate, Kent CT12 5EU, England.

2. Basis of contract

- 2.1 An order constitutes an offer by you to purchase goods and/or services from us in accordance with these terms.
2.2 Your order shall only be deemed to be accepted when we issue a written acceptance of your order or we commence the supply of goods and/or services, whichever is the earlier, at which point and on which date a binding contract shall come into existence between you and us.
2.3 These terms apply to the contract between you and us to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.4 You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty which is not set out in these terms.
2.5 All of these terms shall apply to the supply of both goods and services except where application to one or the other is specified.

3. Price

- 3.1 The price for the goods and/or services shall be the price set out in our quote or, if no price is quoted, the price set out in our price list as at the date of delivery of the goods or performance of the services (or as otherwise agreed in writing between you and us).
3.2 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery or performance of the services.
3.3 Any quotation given by us shall not constitute an offer and all quotations shall lapse after 30 days (unless otherwise stated).
3.4 The price quoted excludes delivery of goods (unless otherwise stated).
3.5 Rates of tax and duties on the goods will be those applying at the time of delivery.
3.6 Trimfix reserves the right to increase prices without notice in line with any increases in raw material prices which may occur from time to time.

4. Delivery of Goods and Performance of Services

- 4.1 All delivery times quoted for goods are estimates only and time of delivery is not of the essence. We shall not be liable for any delay in delivery of the goods that is caused by a Force Majeure (see clause 15) or your failure to provide us with adequate delivery instructions that are relevant to the supply of goods.
4.2 We shall use all reasonable endeavours to meet any performance dates for services specified in a quote, but any such dates shall be estimates only and time shall not be of the essence for the performance of services.
4.3 If we fail to deliver within a reasonable time after the quoted delivery time, or we fail to perform the services within a reasonable time after the estimated performance date, you may (by informing us in writing) cancel the order, however:
4.3.1 you may not cancel if we receive your notice after the goods have been produced;
4.3.2 you may not cancel if we receive your notice after the goods have been despatched;
4.3.3 if you cancel the contract, you can have no further claim against us under that contract.
4.4 If you accept delivery of goods after the estimated delivery time, or accept our performance of services after the estimated performance time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).
4.5 We may deliver the goods in instalments. Each instalment is treated as a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
4.6 We may decline to deliver goods or perform services if:
4.6.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
4.6.2 the premises (or the access to them) are unsuitable for our vehicle or our carrier's vehicle or the provision of services.
4.7 If you fail to accept or take delivery of goods within 7 days of our notifying you that the goods are ready then, except where such failure or delay is caused by a Force Majeure (see clause 15) or by our failure to comply with our obligations under the contract in respect of the goods:
4.7.1 delivery of the goods shall be deemed to have been completed at 9am on the 7th day following the day on which we notified you that the goods were ready; and
4.7.2 we shall store the goods until delivery takes place, and may charge you for all related costs and expenses (including insurance).

5. Risk

- 5.1 Goods are at your risk from the time of delivery.
5.2 Delivery takes place either:
5.2.1 at our premises (if you are collecting them or arranging carriage); or
5.2.2 at your premises or address specified by you (if we are arranging carriage).
5.3 A signed carrier's note or single delivery note will be proof of delivery for the whole shipment.
5.4 You must inspect the goods on delivery. You must inform us of any shortages at the time of delivery by making a note on the delivery/carrier's note before signing. Where it is not possible to count items on delivery you must inform us of any shortages as soon as possible and in any event within three days of delivery. If any goods are damaged, you must write to tell us (and provide proof of damage) as soon as possible and in any event within three days of delivery. If packaging is damaged or contents are visibly damaged before unpacking, you must also note this when signing for the delivery. You must give us (and any carrier) a fair chance to inspect the damaged goods. We shall not be liable to you, pursuant to clause 8 or otherwise, for damage or loss if you fail to comply with the provisions of this clause 5.3.

6. Payment Terms

- 6.1 We may invoice you for goods on or at any time before delivery. In respect of services, we may invoice you at any time before the date the services are completed. You are to pay us in cash or cleared funds on, or prior to, delivery and/or completion of services unless you have an approved credit account. Time for payment shall be of the essence of the contract between you and us.
6.2 If you have an approved credit account, payment is due no later than 30 days end of month after the date of our invoice, unless otherwise agreed in writing.
6.3 If you fail to pay us in full on the due date we may:
6.3.1 suspend or cancel any outstanding and/or future deliveries and contracts;
6.3.2 cancel any discount offered to you;
6.3.3 charge you interest on any overdue amounts at the rate set under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998;
6.3.4 claim fixed sum compensation from you under section 5A of that Act to cover our credit control overhead costs; and
6.3.5 recover (under clause 6.7) the cost of taking legal action to make you pay
6.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for all payments if any invoice is overdue. We may do any of these at any time without notice.
6.5 You do not have the right to set off any money you may claim from us against anything you may owe us.
6.6 While you owe money to us, we have a lien and power of sale on any of your property in our possession.
6.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (whether directly or indirectly including financing costs, including legal costs, on a full indemnity basis and the cost of instructing a debt recovery agency to recover a debt due to us, if any) following any breach by you of any of your obligations under these terms.

7. Title

- 7.1 Title to the goods shall not pass to you until we receive payment in full (in cash or cleared funds) for the goods and any other goods that we have supplied to you in respect of which payment has become due, in which case title to the goods shall pass at the time of payment of all such sums.
7.2 Until title to the goods has passed to you, you shall, unless the goods are sold by you in the ordinary course of business:
7.2.1 store the goods separately from all other goods you hold so that they remain readily identifiable as our property;
7.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
7.2.3 maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
7.2.4 give us such information relating to the goods as we may require from time to time.
7.3 If before title to the goods passes to you, you become insolvent (see clause 16.4) then without limiting any other right or remedy we may have:
7.3.1 require you to deliver up the goods in your possession which have not been resold, or irrevocably incorporated into another product; and

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- 7.3.2. if you fail to do so promptly, enter any of your premises, or the premises of a third party where the goods are stored, in order to recover the goods.
- 7.4 You must inform us (in writing) immediately if you become insolvent (see clause 16.4).
- 7.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied, should you not pay us by the due date.
- 7.6 You are not our agent. You have no authority to make any contract on our behalf, or in our name.
- 8. Warranties**
- 8.1 We warrant that all services will be provided using reasonable care and skill. We have the right to make any changes to services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the services, and we shall notify you in any such event.
- 8.2 We warrant that the goods will for a period of 12 months:
- 8.2.1. comply with their description on our quotation form; and
- 8.2.2. are free from material defect at the time of delivery (as long as you comply with clause 8.5).
- 8.3 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the contract.
- 8.4 If you issue us with materials for modification, or incorporation into an item we are making for you, then this is entirely at your risk, unless we explicitly agree otherwise and the value of the materials issued are specified when we quote.
- 8.5 If you believe that we have delivered goods that are defective in materials or workmanship, or you believe we have performed services without using reasonable care and skill, you must:
- 8.5.1. inform us (in writing), with full details, as soon as possible after you have identified the defect in the goods and/or services; and
- 8.5.2. allow us to investigate (we may need access to your premises and/or product samples in order to do this, and we may require you to return the goods or a sample to us for inspection where in our opinion this would be more practicable. You must meet the cost of returning any goods or samples to us).
- 8.6 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 8.5) in full, we will (at our option) repair the goods, replace the goods or refund the price. If the services provided are found to have been provided without reasonable care and skill, we will (at our option) perform any remedial services required or refund the price paid for such defective
- 8.7 We shall under no circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract.
- 8.8 Our total liability to you in respect of all losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the invoiced price of the goods or services.
- 8.9 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.
- 8.10 We shall not be liable for goods' failure to comply with the warranty set out in clause 8.2 in any of the following events:
- 8.10.1. you make any further use of such goods after giving notice in accordance with clause 8.5;
- 8.10.2. the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the goods (or if there are none) good trade practice regarding the same;
- 8.10.3. the defect arises as a result of us following any drawing, design, or specification, or using any material, supplied by you;
- 8.10.4. you alter or repair the goods without our written consent;
- 8.10.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 8.10.6. the goods differ from their description or their specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.11 Except as provided in clause 8, we shall have no liability to you in respect of the services' failure to comply with the warranty set out in clause 8.1 or the goods' failure to comply with the warranty set out in clause 8.2
- 8.12 This clause 8 shall survive termination of the contract.
- 9. Customer Obligations**
- 9.1 You shall:
- 9.1.1. ensure that the terms of the order and any goods specifications you provide to us are complete and accurate;
- 9.1.2. co-operate with us in all matters relating to the provision of services;
- 9.1.3. provide us with such information and materials as we may reasonably require to supply services, and ensure that such information is accurate in all material respects;
- 9.1.4. obtain and maintain all necessary licenses, permissions and consents which may be required for the services before the date on which the services are to start; and
- 9.1.5. keep and maintain all materials, equipment, documents and other property of ours ("our material") at your premises in safe custody at your own risk, maintain our materials in good condition until returned to us, and not dispose of or use our materials other than in accordance with our written instruction and authorisation.
- 9.2 If our performance of any of our obligations in respect of services is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation ("your default"):
- 9.2.1. we shall, without limiting our rights or remedies, have the right to suspend performance of the services until you remedy your default, and to rely on your default to relieve us from the performance of any of our obligations to the extent the your default prevents or delays our performance of any of our obligations;
- 9.2.2. we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from your failure or delay to perform any of your obligations set out in this clause 9.2; and
- 9.2.3. you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from your default.
- 10. Return of Goods**
- 10.1 We will accept the return of goods from you only:
- 10.1.1. by our prior agreement (confirmed in writing);
- 10.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and
- 10.3 on payment of the whole or part order for which we have committed according to your specifications and instructions, where we cannot reasonably resell the goods (including the retention of any advance payment).
- 11. Specification**
- 11.1 If we produce goods to your specifications, you must ensure that:
- 11.1.1. your specifications are accurate;
- 11.1.2. any tool, material, drawing or image forming part of your specifications is of good quality and resolution;
- 11.1.3. goods are produced in accordance with your specifications, will be fit for the purpose for which you intend to use them; and
- 11.1.4. your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.
- 11.2 All All materials or tools we buy or make to produce the goods, are our property. We may dispose of materials or tools when the goods have been paid for.
- 11.3 We reserve the right:
- 11.3.1. to make any changes in the specifications of our goods that are necessary, to ensure they conform to any applicable safety or statutory requirements; and
- 11.3.2. to make, without notice, any minor modifications in our specifications we think necessary or desirable.
- 11.4 We will not be liable for any loss which arises out of the production of goods where you have supplied your specifications and we prepare the goods to those specifications. You shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with any claim made against us arising out of or in connection with our use of a specification supplied by you. This clause 11.4 shall survive termination of the contract.

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12. Export Terms

- 12.1 Clause 12 of these terms applies (except to the extent that it is inconsistent with any written agreement between us) where we supply the goods over an international border or overseas.
- 12.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the contract is made apply to exports, but these terms prevail to the extent that there is any inconsistency.
- 12.3 Unless otherwise agreed, the goods are supplied ex works, our place of manufacture.
- 12.4 Where the goods are to be sent by us to you by a route including sea transport, we are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.
- 12.5 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless otherwise agreed). We are not liable for any defect in the goods which would be apparent on inspection, unless a claim is made before shipment. We are not liable for any damage during transit.
- 12.6 We are not liable for death or personal injury arising from the use of the goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

13. Cancellation

- 13.1 You may not cancel the order unless we agree in writing (and clauses 4.3.2 and 13.2 then apply).
- 13.2 If the order is cancelled (for any reason) you are to pay us on demand (or otherwise agreed in writing) for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order. If we have manufactured goods to your specification and you cancel the order then you must pay us for the full price of the goods.
- 13.3 We may suspend or cancel the order or terminate the contract with immediate effect, by written notice, if:
 - 13.3.1. you fail to pay us any money when due (under the order or otherwise);
 - 13.3.2. you become insolvent (see clause 16.4);
 - 13.3.3. you fail to honour your obligations under these terms.
- 13.4 On termination of the contract for any reason, you shall:
 - 13.4.1. immediately pay us all of our outstanding unpaid invoices and interest; and
 - 13.4.2. you shall return all goods that have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the contract;
 - 13.4.3. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the contract which existed at or before the date of cancellation; and
 - 13.4.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. Waiver and Variations

- 14.1 Any waiver or variation of these terms is binding only if:
 - 14.1.1. made (or recorded) in writing;
 - 14.1.2. signed on behalf of each party; and
 - 14.1.3. expressly stating an intention to vary these terms.
- 14.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.
- 14.3 No failure or delay by a party in exercising any right or remedy under these terms shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. Force Majeure

- 15.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our reasonable control (a "Force Majeure"), we may cancel or suspend any of our obligations to you, without liability.
- 15.2 Examples of a Force Majeure circumstance include, but are not limited to, an act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strike and other industrial disputes and difficulty in obtaining supplies.

16. General

- 16.1 English law is applicable to any contract made under these terms. The English and Welsh courts have exclusive jurisdiction.
- 16.2 If you are more than one person, each of you has joint and several obligations under these terms.
- 16.3 If any of these terms are unenforceable, invalid or illegal as drafted:
 - 16.3.1. it will not affect the validity and enforceability of any other of these terms; and
 - 16.3.2. if it would be enforceable if amended, it will be treated as so amended to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provisions under this clause shall not affect the validity and enforceability of the rest of the contract.
- 16.4 We may treat you as insolvent if:
 - 16.4.1. you are unable to pay your debts as they fall due;
 - 16.4.2. you admit inability to pay your debts (including if you suspend, or threaten to suspend, payment of your debts); or
 - 16.4.3. if your financial position deteriorates to such an extent that in our reasonable opinion your capability to adequately fulfil your obligations under the contract has been placed in jeopardy;
 - 16.4.3.a. any formal insolvency (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy;
 - 16.4.3.b. any application or proposal for any formal insolvency procedure, or
 - 16.4.3.c. any application, procedure or proposals overseas with similar effect or purpose.
- 16.5 All brochures catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us, and you should not rely on them in entering into any contract with us.
- 16.6 Any notice by either of us, which is to be served under these terms may be served by leaving it at, or by delivering it to (by first class post or by fax or email) the other's registered office or principal place of business. All such notices must be signed.
- 16.7 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.6; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one business day after transmission.
- 16.8 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller;
- 16.9 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:
- 16.10 We reserve the right to record telephone calls, e-mails and any other communication between us and use such recordings to monitor compliance with our systems and as evidence in court, if required. In particular, we may use recordings as evidence of proof of delivery, if required.
- 16.11 Please note that we may transfer personal information about you to those we may appoint to administer your account or recover amounts owing. That may include, for example, passing information about you to our insurers, debt recovery agents and solicitors, if you fail to pay us.