

# TERMS & CONDITIONS OF SALE

## 1. Definitions

"**Buyer**" means any person, firm or company which orders or buys goods from the Company; and

"**Company**" means Trelleborg Sealing Solutions UK Ltd (Company No 446036) whose registered office is at International Drive, Tewkesbury Business Park, Tewkesbury, GL20 8UQ.

"**Conditions**" means these terms and conditions of sale.

"**Contract**" means a contract between the Buyer and the Company for the sale and purchase of the Goods in accordance with these Conditions.

"**Goods**" means the goods which are the subject of the Buyer's order, as confirmed by the Company in its written acceptance of the Buyer's order or otherwise.

1.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 A reference to **writing or written** includes in writing, facsimile transmission, electronic communication and comparable means of communication.

1.4 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of contract

2.1 These Conditions govern all sales of Goods by the Company to the exclusion of any other terms and conditions. No variation of these Conditions will be binding unless made in writing and signed by a director of the Company. No conduct by the Company shall constitute acceptance of any other terms or conditions.

2.2 These Conditions supersede all previous oral or written representations, undertakings and agreements relating to the Goods. All information contained in the Company's sales literature or correspondence is intended as a general guide only and does not form part of the Contract. The Company's employees and agents are not authorised to make representations or give undertakings relating to the Goods. The Goods are not sold by sample unless agreed otherwise in writing. The Company may vary the design of standard Goods without notice.

2.3 The Buyer's order for the Goods constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible **for** ensuring that the terms of its order, and any applicable specification submitted by the Buyer, are complete and accurate.

2.4 The Buyer's order shall only be deemed to be accepted when the Company issues a written acceptance of the Buyer's order, at which point the Contract shall come into existence.

## 3. Delivery

3.1 Delivery shall take place when the Company's carrier unloads the Goods at the Buyer's premises (where the Company arranges transport within the United Kingdom at the Buyer's request) or otherwise when the Buyer or its carrier or agent collects the Goods from the Company's premises.

3.2 All delivery dates (requested or agreed) are estimates only. Time of delivery is not of the essence and the Company shall not be liable for any delay in delivery. The Company may deliver the Goods in instalments and invoice for each instalment separately. Each delivery shall constitute a separate contract and any claim relating to specific instalments shall not entitle the Buyer to any right or remedy in respect of other instalments.

3.3 At the Buyer's request, the Company will supply the Buyer's order in instalments over a period of up to twelve months, according to an agreed written delivery timetable. If any Goods ordered by the Buyer remain undelivered at the end of that period the Company may deliver them without further notice and invoice for their price.

3.4 The Goods are not sold on a sale or return basis. Goods may only be returned with the Company's prior written authorisation, in their original condition and packaging, carriage paid and subject to the Buyer reimbursing all the Company's costs relating to the sale contract.

## 4. Price and payment

4.1 Unless the Company states otherwise in writing, the price of the Goods shall be the Company's list price for the Goods current at the date of acceptance of the Buyer's order.

4.2 Written quotations by the Company shall not constitute an offer and shall remain valid for thirty days after their date of issue. The Company may vary the price quoted if the Buyer orders a different quantity of Goods from that stated in the quotation.

4.3 The price of the Goods includes standard packaging, but excludes the cost of delivery, transit insurance, special inspection requirements, production of special tools, duties and value added tax, unless the Company states otherwise in writing.

4.4 The Company shall be entitled to invoice for the Goods at any time after despatch or making the Goods available for collection (as applicable) and may impose such terms relating to payment, credit, security or guarantees as it thinks fit. Unless the Company states otherwise in writing, the Buyer shall pay the Company's invoices in full without any deduction, abatement or legal or equitable set-off in pounds sterling (cash or cleared funds) within thirty days after the end of the month in which the invoice is issued. Time of payment is of the essence.

4.5 Without prejudice to any other remedy, if the Buyer fails to pay any invoice in full on the due date, the Company may charge interest (before and after any judgement) on the unpaid amount at the rate of 2% above the annual base lending rate from time to time of HSBC Bank Plc, compounded monthly. The Buyer shall indemnify the Company fully

against all fees, costs and expenses incurred in seeking to recover sums payable by the Buyer and repossessing Goods belonging to the Company.

## 5. Risk and title

5.1 Risk in the Goods shall pass to the Buyer upon delivery or upon the Goods being made available for collection (as applicable).

5.2 All materials supplied by the Buyer to the Company shall be at the Buyer's risk while they are in the possession of the Company or in transit to or from the Buyer and the Buyer shall insure them accordingly.

5.3 Title to the Goods shall not pass to the Buyer until the earlier of:

5.3.1 the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Buyer 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; and

5.3.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in Condition 5.5.

5.4 Until title to the Goods has passed to the Buyer, the Buyer shall:

5.4.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;

5.4.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

5.4.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

5.4.4 notify the Company immediately if it becomes subject to any of the events listed in Condition 11.1.2; and

5.4.5 give the Company such information relating to the Goods as the Company may require from time to time.

5.5 Subject to Condition 5.6, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:

5.5.1 it does so as principal and not as the Company's agent; and

5.5.2 title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

5.6 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Condition 11.1.2, then, without limiting any other right or remedy the Company may have:

5.6.1 the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

5.6.2 the Company may at any time:

(a) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(b) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## 6. Acceptance

6.1 The Buyer shall inspect the Goods upon delivery and shall be deemed to have accepted them unless it informs the Company and (where the Buyer does not collect the Goods) the Company's carrier in writing of:

6.1.1 any loss, shortage, excess or visible damage or non-conformity within seven days after delivery; or

6.1.2 any total failure to deliver within seven days after the date of the Company's invoice.

6.2 The Buyer may not reject short or excess deliveries which are within a margin of 10% (for bespoke Goods) and 5% (for standard Goods) of the quantity ordered. In such cases, the Company will adjust the price proportionately.

## 7. Warranty

7.1 The Company warrants that the Goods will be reasonably free from defects in workmanship and materials and will conform to the Company's specification for a period of twelve months after delivery. The Buyer's sole remedy for any proven breach of this warranty shall be (at the Company's option) the repair or replacement of the Goods or a refund of the price paid for the Goods, in each case subject to the Buyer returning the Goods carriage paid to the Company within the twelve month warranty period.

7.2 This warranty at Condition 7.1 does not apply to damage or defects if the same arise as a result of:

7.2.1 the Buyer failing to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance/servicing of the Goods or (if there are none good trade practice). The Buyer should request the Company's advice relating to any non-standard use of the Goods; or

7.2.2 fair wear and tear or other acts of the Buyer including without limitation wilful damage, negligence, overloading, abnormal working conditions, faulty installation or misuse;

7.2.3 the Buyer altering or repairing the Goods without the written consent of the Company;

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- 7.2.4 any design defect in any drawing, design or specification supplied or approved by the Buyer, or materials supplied by the Buyer; or
- 7.2.5 materials, parts and equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer to the Company that the Company is able to transfer to the Buyer.
- 7.3 The Company does not warrant that the Goods are suitable for the Buyer's particular requirements and all other representations, warranties, terms and conditions, whether express or implied, are excluded to the fullest extent permitted by law.
8. **Limitation of Liability**
- 8.1 Nothing in these Conditions shall exclude or limit the Company's liability for death or personal injury resulting from the Company's negligence or for any breach of the statutory implied undertakings as to title to the Goods or for fraud or any other liability which may not be limited or excluded by law.
- 8.2 The aggregate liability of the Company, its employees and agents to the Buyer in respect of any direct physical damage to the Buyer's property caused by the Company's negligence shall be limited to £100,000 in respect of any single event or series of connected events.
- 8.3 In all other cases, the aggregate liability of the Company, its employees and agents, whether in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising shall not exceed the price of the Goods in respect of which the claim is made.
- 8.4 In no circumstances will the Company, its employees or agents be liable for any business interruption, loss of use, revenue, contracts, profits, goodwill, loss of anticipated savings, loss arising from third party claims or any special, indirect, economic or consequential loss (whether or not foreseeable).
- 8.5 The Buyer shall store and use the Goods in accordance with any instructions from the Company, which will not be liable for any damage, loss, claim or expense arising from any failure to comply with such instructions.
- 8.6 The Company shall not be liable for defects in the Goods resulting from materials or designs supplied or specified by the Buyer.
- 8.7 The Company will in no circumstances be liable for any claim relating to the Goods or the contract of sale which is notified to the Company more than twelve months after the date of the Company's invoice.
9. **Force Majeure**
- 9.1 The Company will not be liable for any failure or delay in performing its obligations caused by any event which is beyond its reasonable control, including without limitation any act of God, fire, flood, plant breakdown, malicious damage, theft, non-availability of power, water, supplies or materials, industrial action, act of government or other public authority, civil disturbance, terrorism or war.
10. **Confidentiality.**
- 10.1 The Buyer undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Company or of any member of the group to which the Company belongs, except as permitted by Clause 10.2. For the purposes of this clause, "group" means the Company, any subsidiary or holding company from time to time of the Company, and any subsidiary from time to time of a holding company of the Company.
- 10.2 The Buyer may disclose the Company's confidential information:
- 10.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Buyer's rights or carrying out its obligations under or in connection with the Contract. The Buyer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Company's confidential information comply with this Clause 10; and
- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 The Buyer shall not use the Company's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
11. **Termination**
- 11.1 Without prejudice to any other remedy, the Company may immediately withhold deliveries, repossess Goods which remain its property and/or terminate the Contract (and any other contract with the Buyer) if:
- 11.1.1 the Buyer breaches any of these Conditions or fails to pay any sum due to the Company on any account on the due date; or
- 11.1.2 if any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Buyer or if the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding-up passed (except for the purpose of amalgamation or reconstruction not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the Buyer) or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the Buyer or if the Buyer ceases or threatens to cease to carry on business or if the Company reasonably suspects that the Buyer is likely to be subject to any of such actions or events.
- 11.2 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 11.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
12. **Communication**
- 12.1 All communications between the parties about this Contract must be in Writing:
- 12.1.1 (in case of communications to the Company) to its Customer Contact Centre for operational matters and in any other case its registered office or such other addresses shall be notified to the Buyer by the Company; or
- 12.1.2 (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 12.2 Communications shall be deemed to have been received:
- 12.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 12.2.2 if delivered by hand, on the day of delivery);
- 12.2.3 if sent by facsimile transmission or electronic mail on a working day prior to 4:00pm, at the time of transmission and otherwise on the next working day.
- 12.3 Communications addressed to the Company shall be marked for the attention of the Sales & Marketing Director.
13. **Miscellaneous**
- 13.1 The Company may sub-contract all or any of its obligations under the Contract. The Contract is personal to the Buyer who may not assign, novate, license or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- 13.2 The Buyer warrants that it has authority to supply any materials, designs and specifications provided by it to the Company and that any Goods produced using or based on the same will not infringe any third party rights. The Buyer indemnifies and shall keep the Company fully and effectively indemnified from and against any loss, claim, cost and expense arising from any breach of this warranty.
- 13.3 Unless otherwise agreed all tools, molds, dies, models, and testing equipment remain the property of the Company. After the completion of the particular order, such items will remain in the possession of the Company and will be held in storage for future orders for a reasonable period of time to be determined by the Company without any obligation on the part of the Company. The Company retains intellectual property rights and copyrights that may exist in such tools or in their underlying materials, e.g., drawings. Where such rights exist, the production of replicas of the items specified above is prohibited. Tooling costs invoiced by the Company are only proportionate tooling costs. This pro-rata cost includes regular and preventive maintenance, monitoring of production quantities, execution of potential necessary repairs, storage of the tool, its insurance and ensuring that these tools except for reasonable maintenance and repair times are ready for operation. Cost for consequential tools, which replace the currently used tool after the agreed output quantity has been reached, will be paid by the Buyer.
- 13.4 The Company reserves all intellectual property rights in the Goods and any tools used to produce them and its documents such as specifications, drawings, notes, memos, instructions, technical information and technical data, both in paper form and in electronic form, including but not limited to copyright, design rights, patents and patent applications, trademarks and confidential know-how, in each case whether or not registered. They Buyer may not use any such rights without the Company's express written consent. Buyer has to refrain from any reverse engineering i.e. backward analysis by observing, inspecting, dismantling or testing the goods for the purpose of acquiring the trade and business secrets embodied in such items.
- 13.5 If the Goods are exported outside the United Kingdom, the Buyer shall be responsible for complying with all laws and regulations governing their importation, handling, use and re-sale in the country destination. Unless agreed otherwise in writing, the Buyer shall bear all risks in export Goods after they leave the Company's premises and Section 32(3) of the Sale of Goods Act 1979 shall not apply. For the purposes of Sections 44, 45 and 46 of that Act, any carrier or United Kingdom port used to export the Goods shall be deemed to be agent of the Company.
- 13.6 Buyer agrees and undertakes that; it will not use the goods for any purpose connected with chemical, biological or nuclear weapons, missiles capable of delivering such weapons, nuclear explosive activity or in any way that would cause the Company to be in breach of financial or trade sanctions imposed against Iran or any other destination; it will not export, re-export, re-sell, supply or transfer the goods to any destination or party subject to UN, EU, or US trade embargos, or to any destination or party if it is known or suspected that the goods are likely to be used for the purposes set out in clause 13.6 above; it will comply with all applicable export and sanctions laws; it will include the same terms in its dealings with its customers; and it agrees to fully indemnify the Company for all costs, expenses, liabilities, losses, damages, claims, proceedings, (including without limitation legal fees) incurred or awarded against the Company arising out of or in connection with any breach of clause 13.6 whether such breach occurs directly or indirectly, with or without the knowledge of the Company.
- 13.7 Installation suggestions, material recommendations, parameters and further data including public comments or advertising are always subject to the particular field of use and the application in which the good is intended to be used and therefore neither constitute an agreement on the legal and factual nature nor a guarantee of quality except as otherwise agreed upon in writing. Where the Company issues installation recommendations, the Buyer must take into consideration that the function of the goods supplied by the Company depends not only on their particular features but first and foremost on how the goods supplied interact with the other components of the respective Buyer application system. Where the Company has not expressly entered into a contractual agreement to do so, the selection and testing of the suitability of the goods supplied by the Company for Buyers application are the Buyers responsibility, as is the testing of the interaction of the Company goods with the other components of the application. Technical modifications and errors excepted which do not adversely affect the Buyer and which are carried by a legitimate interest of the Company. Improperly performed attempts by the Buyer or a third party to remedy defects and improper storage – especially storage that contradicts the instructions given by the Company – shall result in the Buyer losing all rights to assert claims for defects.

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- 13.8 No delay or failure by the Company in enforcing its rights under these Conditions shall operate as a waiver unless confirmed in writing by a Director of the Company.
- 13.9 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified 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-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.10 Nothing in these Conditions is intended to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other.
- 13.11 For the purpose of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of these Conditions to be enforced by any third parties but any third party right, which exists or is available independently of that Act is preserved.
- 13.12 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England.
- 13.13 Each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.