

TERMS AND CONDITIONS OF BUSINESS

1. GENERAL

(a) In these conditions:-

- (i) The "Seller" means Derby Gaskets Ltd
 - (ii) The "Buyer" means the individual firm company or other party with whom the "Seller" contracts.
 - (iii) The "Goods" should mean any goods and materials supplied by the "Seller" to the Buyer.
- (b) Any quotation or estimate made by or on behalf of the "Seller" whether in writing and/or orally is an invitation only to the Buyer for it to make an offer and no order in pursuance of any quotation or estimate shall be binding upon the Seller unless and until such order is accepted by the Seller in writing on its standard order acknowledgment form. Any agreement made between the Seller and the Buyer whether for the sale of goods or for work and materials (hereinafter called a "Contract") shall only be subject to these terms and conditions according to their provisions and those provisions set out in the Seller's standard order acknowledgement form. Any representation or warranty made by or on behalf of the Seller prior to the Contract whether orally or in writing is hereby expressly excluded and shall be of no effect.
- (c) Unless otherwise agreed in writing by the Seller these conditions shall override any terms and conditions stipulated incorporated or referred to by the Buyer in its order in any other document or during pre-contract negotiations. In the event of the Seller entering into a Contract without the Seller having submitted a written quotation or its standard order acknowledgment form but in circumstances when the Buyer has had prior notice of these conditions then all goods and materials supplied and work done shall be subject to these conditions.
- (d) The Seller reserves the right where there has been no previous course of dealings with the Buyer to insist that the Buyer notifies it in writing of the Buyer's full name and the address or addresses of its place or places of business the names of two persons firms or companies with whom the Buyer has had trade dealings and the name and address of the Buyer's bankers together with authority in writing for the Seller to contact the same for appropriate references.

2. CATALOGUES

- (a) Any figures statements descriptions illustrations photographs drawings or any other matter contained in the Seller's catalogues price lists or any other advertising literature are not guaranteed to be accurate and are intended merely to represent a general picture of the Seller's products and services and shall not form part of any Contract between the Seller and the Buyer.
- (b) The Seller reserves the right to amend the specification of its products and services from time to time so that the descriptions thereof as set out in its catalogues price lists and other advertising literature may not be identical to those set out in the Seller's quotations and the Buyer is advised to check the specification set out in the Seller's quotation before placing its order.

3. DESIGN

- (a) Where goods are made or materials supplied to the Buyer's own specification pattern or design the Buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification pattern or design thereof but also that such specification pattern or design does not infringe any patent trade mark registered design copyright or any other proprietary right and the Buyer shall indemnify the Seller in full for any loss damage or expense whatsoever which the Seller may incur in the performance of the Contract by reason of any infringement of such patent trade mark registered design copyright or any other proprietary right.
- (b) Any plant patterns dies tools gauges or other equipment acquired by the Seller for production of the goods or materials referred to in paragraph 3 (a) of these conditions shall remain the Seller's property notwithstanding that the Buyer may be required to reimburse the Seller for the whole or part of the cost thereof.

4. QUOTATIONS

Subject to any agreement in writing to the contrary the Seller's quotations are provisional in so far as they are subject to alterations by reference to any changes in the price of raw materials, rates of wages other costs of production and any other circumstances beyond the Seller's control taking place between the date of the quotation and the Seller's acceptance of the Buyer's order.

5. PRICE

- (a) The Seller shall be entitled to adjust the Contract price of the goods or work and materials whether before or after the making of the Contract in the event of any variation in the cost to the Seller of supplying the same or any part thereof caused by –
 - (i) Any increase in the cost of materials required by the Seller for the completion of the Contract.
 - (ii) Any increase in wages and manufacturing costs and other overheads.
 - (iii) Any other reason whatsoever beyond the control of the Seller including (but without prejudice to the generality of the foregoing) fluctuations in exchange rates between monetary currencies the action of any government or any other authority or any labour problems.
- (b) The Contract price includes the cost of packaging of goods and materials. Where special packaging is required by the Buyer the Seller reserves the right to make a charge for the cost of such packaging but will credit the Buyer with the current value of all cases returned in good condition to the Seller's premises within seven days of the receipt thereof by the Buyer.
- (c) The price set out upon the Seller's order acknowledgement form does not include Value Added Tax which will be charged at the rate applicable at the date of invoice.
- (d) The Contract price does not include the cost of carriage which shall be included as an extra item in the Seller's invoice and shall be payable by the Buyer to the Seller nor the cost of offloading of goods or materials which should be arranged by the Buyer at its sole risk and expense. The Seller will use its best endeavours to expedite delivery if requested so to do by the Buyer who must specify the means of transport to be used.

6. DELIVERY

(a) Delivery shall be deemed to be effected by the Seller at the following times:-

- (i) Where goods or materials are sold f.o.b. delivery shall be complete when they pass the ship's rail.
- (ii) Where goods or materials are delivered by the Company when the same arrive prior to unloading at the Buyer's premises or the premises of a third party where work is to be carried out.
- (iii) Notwithstanding the provisions of paragraph 5 (d) of these conditions where the Contract provides that goods or materials shall be delivered by an independent carrier delivery of the goods or materials in question by the Seller to the Buyer shall be deemed to be effected at the time of collection by or delivery to the carrier.
- (iv) Where goods are to be delivered by container delivery shall be complete when the goods are delivered to the container depot.
- (v) In the event of goods or materials being collected by or on behalf of the Buyer by its servants or agents collection as aforesaid will constitute delivery to the Buyer.
- (b) Whilst the Seller will make every reasonable effort to complete the Contract by the date or dates specified for delivery or completion such date or dates shall only constitute the times by which the Seller expects to effect delivery or completion and the Seller's failure to deliver or complete by the due date or dates shall not constitute a breach of contract and the Seller shall not be responsible for any direct or consequential loss resulting therefrom. The Seller may wholly or partly suspend deliveries of goods or materials or suspend work and the Buyer shall accept late delivery of such goods or materials or such late completion of work unless the Buyer has cancelled the Contract in accordance with the provisions of paragraph 9 (c) of these conditions.
- (c) When requested by the Buyer the Seller shall use its best endeavours to expedite delivery or completion of the Contract but the Buyer shall reimburse the Seller for overtime payments and other additional costs the Seller incurs thereby.

7. EXAMINATION & CLAIMS

- (a) The Buyer shall upon delivery examine the Goods and shall promptly (but in any event within seven working days of delivery) notify in writing the Seller and the carrier, where relevant, of any apparent damage defect or shortage.
- (b) The Buyer shall comply with the carriers rules, regulations and requirements so as, when appropriate, to enable the Seller to make a claim against the carrier in respect of any damage or loss in transit.
- (c) Claims in respect of damages defects or shortage not apparent on examination under (a) must be notified in writing to the Seller within twenty-one days of the date of delivery

- (d) Notification under (a) and (c) above shall be first made by telephoning then by notice in writing delivered by fax or by first class recorded delivery mail and addressed to:-

Derby Gaskets Ltd
Units 2, 3 & 4 Racecourse Ind Park
Mansfield Road
Derby
DE21 4SX
Telephone 01332 360701
Facsimile 01332 291484

In default of such notification the Seller shall, subject to any claim which the Buyer may have under the Warranty referred to in Clause 11 be deemed conclusively to have properly performed its obligations under the Contract.

8. TERMS OF PAYMENT

- (a) Unless otherwise provided payment shall be made by the Buyer net cash not later than the last day of the month following the date of invoice. Should the Buyer fail to comply with the Terms of Payment the Seller shall be entitled to interest on any amount outstanding after the due date for payment at the rate of 4% above the base rate of Co-operative Bank plc from time to time which shall accrue on a daily basis.
- (b) In the event of the Contract providing that goods or materials shall be delivered or work shall be completed by instalments each instalment shall be considered to be a separate Contract and construed as such in accordance with these conditions in particular failure by the Buyer to make payment by the due date for any one instalment for whatever reason entitles the Seller to suspend deliveries or work upon this or any other Contract between the Seller and the Buyer but without prejudice to any other right the Seller may have under the provisions of this Contract.
- (c) Payments may not be delayed or refused for any alleged defects in the goods work and materials which the Seller undertakes to correct under the terms of its warranty.

9. SUSPENSION & CANCELLATION

- (a) If the Buyer shall fail to give delivery instructions or take delivery or make any payment when it becomes due or shall commit any other breach of contract and fail to remedy the same within seven days of receiving the Seller's request in writing so to do or if any notice is given to the Buyer that a receiver, manager, administrative receiver, supervisor, nominee or administrator is to be or has been appointed over any of the property or assets of the Buyer or that a petition to wind up the Buyer is to be or has been presented or that an application for an administration order is to be or has been made or of any notice of a resolution to wind up the Buyer (save for the purposes of a bona fide reconstruction or amalgamation) or if a decision is made by the Buyer that the Buyer intends to make any arrangement or composition with its creditors generally or where by Buyer pursuant to Section 123 or Section 268 of the Insolvency Act 1986 appeared to be unable to pay a debt or appears to have no reasonable prospect of being able to pay a debt or if any distress or execution is levied or threatened to be

- levied on any property or assets of the Buyer or if the Buyer is unable to pay his debts as they fall due the Seller may defer or cancel any further deliveries or work and treat the Contract of which these conditions form part and any other Contract between the Seller and the Buyer as determined but without prejudice to its right to any unpaid price for goods delivered or cost of work done under this or any other Contract and to damages for loss suffered in consequence thereof.
- (b) If the Buyer requires cancellation of the Contract this will only be accepted at the sole discretion of the Seller and unless otherwise agreed in writing only upon condition that any costs charges or expenses (both direct and consequential) incurred by the Seller up to the date of cancellation and the value of all loss or damage (both direct and consequential) incurred by the Seller by reason of such cancellation will be reimbursed by the Buyer to the Seller forthwith. Acceptance by the Seller of any cancellation by the Buyer will only be binding upon the Seller if it is made in writing.
 - (c) In the event of the Seller being prevented from completing the Contract either wholly or in part in accordance with the terms thereof for any reason whatsoever beyond its reasonable control then further performance of the Contract shall be suspended for the period during which the Seller is so prevented provided that in the event of the Contract being suspended for a continuous period of more than three months then either party may give the other notice in writing to terminate the Contract forthwith and in such circumstances the Buyer shall pay for all goods and materials supplied and work completed to the date of such termination such payment to be made on or before the last day of the month following the month during which termination was effected. The Seller shall be under no liability whatsoever to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result of the Seller's inability to perform its obligations under the Contract in these circumstances.
 - (d) The Seller shall suspend the performance of the Contract upon receipt of a request in writing from the Buyer so to do but only for a period not exceeding twenty-eight days and the Buyer shall reimburse the Seller for all storage charges and other additional costs the Seller incurs thereby in the event of the suspension are aforesaid continuing for a period in excess of twenty-eight days then the Seller may terminate the Contract and the liabilities of the parties thereto shall be the same as if the Contract had been cancelled in accordance with the provisions of paragraph 9 (b) of these conditions.
10. CLAIMS FOR DAMAGE IN TRANSIT
- (a) Every possible care is taken in the final examination and packing of goods and materials but damage can sometimes occur during transit. Accordingly subject to the provisions of paragraphs 10 (b) and 13 (b) of these conditions the Seller undertakes to repair or at its discretion replace free of charge any such goods or materials damaged in transit to the contracted place of delivery in which event the time for that delivery of such goods shall be extended for such period as the Seller may reasonably require.
 - (b) The Seller shall only be bound by its undertaking to repair or replace set out in paragraph 10 (a) of these conditions if:-

- (i) The Buyer shall have given written notice of such damage in transit with reasonable written particulars thereof to the Seller and the carrier if other than the Seller within ten days of receipt of the goods in question and
- (ii) The Buyer when requested by the Seller so to do shall ensure that the goods or materials in question are returned to the Seller's premises within 21 days of the date of the written notice referred to in sub-paragraph 10 (b) (i) of these conditions.

11. WARRANTY

- (a) The Seller's liability in respect of any defect in or failure of goods or materials supplied or work completed or for any loss injury or damage attributable thereto is limited to making good by replacement or repair at its option defects or failure which under proper use or conditions of storage appear therein and arise solely from faulty design materials or workmanship within a period of twelve calendar months after the goods have been dispatched to the Buyer or his nominees or the work has been completed. It shall be a condition precedent to the Seller's liability under this warranty that the defective item is immediately returned to the Seller upon being found defective or if that is not practicable immediate notice in writing of the defect is given to the Seller and the Buyer gives the Seller authority for its servants and agents to inspect the same. Thereafter the Seller shall be given a reasonable period in which to complete the necessary repair or deliver the replacement.
- (b) The Seller's liability under this warranty shall automatically cease if:-
 - (i) The Buyer shall not have paid for all goods and materials supplied and work done by the due date (whether under this or any other Contract between the Seller and the Buyer) referred to in paragraph 8 of these conditions.
 - (ii) The Seller or its servants and agents are denied full and free right of access to the defective goods or materials or work done.
 - (iii) The Buyer permits persons other than the Seller its servants or agents to effect or attempt any repair or replacement of defective goods or materials or work done.
- (c) The warranty set out in paragraph 11 (a) of these conditions shall be in lieu of any warranties conditions or undertakings whether express or implied by statute common law or otherwise howsoever which warranties conditions and undertakings are subject to Section 6 (1) of the Unfair Contract Terms Act 1977 hereby expressly excluded.
- (d) The Seller's responsibility is limited to the terms of this warranty and (except in respect of death or personal injury resulting from the negligence of the Seller its servants or agents) the Seller shall not be liable for any claim for direct or indirect consequential or incidental loss injury damage made by the Buyer or any third party against the Seller arising out of or in connection with any defect in the goods work or materials which are subject of this Contract whether or not such defect directly or indirectly wholly or in part caused by the negligence act omission default or neglect of the Seller its servants or agents whether or not such defect amounts to a breach of a fundamental term or a primary obligation of the Contract or fundamental breach thereof.
- (e) Notwithstanding the provisions of this warranty if the Contract is with a person who deals as consumer as defined in Section 12 of the Unfair Contract Terms Act

- 1977 nothing herein contained shall operate to exclude or restrict any liability for breach of such obligations as are mentioned in Section 6 (2) of the said Act:-
12. PROPERTY AND RISK
- (a) Risk shall pass to the Buyer on delivery and the goods should be insured accordingly.
- (b) (i) Property (both legal and beneficial) in the Goods shall remain in the Seller until all sums owing to the Seller whether under this Contract or any other contract between the Seller and the Buyer (“The indebtedness”) shall have been paid in full. Until such time the Buyer shall hold the Goods as bailee for the Seller.
(ii) The Buyer until otherwise notified by the Seller on the happening of any of the events specified in Clause 9 (e) above (“The Events”) shall have the power (“The Power”) only to sell the Goods and pass property in them in the ordinary course of business (“The Resale”). The Buyer’s obligations as bailee of the Goods are set out in (iii) below (“The Stipulations”).
(iii) The Stipulations are that until the indebtedness has been fully discharged:-
(A) the goods shall not be converted into another product or admixed with other goods to make another product (“The New Product”) nor will the Buyer sell the New Product and pass property in it (“The Sale”) but if the Buyer in breach of the above provision does convert or admix the Goods property in the New Product shall at the earliest moment that such vesting is possible, vest and remain in the Seller whether or not the property in the Goods is at that moment extinguished;
(B) the Resale or the Sale shall be for the account of the Seller and, unless the Seller by written notice requires the payment to it of the proceeds of the Resale or the Sale (“The Proceeds”) in which case the Buyer shall forthwith on receipt of such notice or as soon thereafter as it shall receive the Proceeds make such payment, the Buyer shall retain the Proceeds in a separate bank account to the order of the Seller and not mix them with any other monies;
(C) in the event of a breach by the Buyer of its obligations under (B) the Seller shall have the right to trace the Proceeds into any other monies with which they may have been mixed and the Buyer shall indemnify the Seller on a full indemnity base against loss, damage, costs or expense incurred in such tracing;
(D) until the Resale or the Sale the Seller shall have the right to repossess the Goods or take possession of the New Product at any time and for this purpose shall have the right to enter on any premises or land in the ownership or possession of the Buyer and remove the Goods and/or the New Product notwithstanding that they are affixed to such premises or land and the Buyer shall indemnify the Seller on a full indemnity basis against all loss, damage, costs or expenses so arising including loss, damage, costs or expenses in respect of third party claims;
(E) the Goods and the New Products shall until their Resale or Sale be stored separately and shall be clearly marked as the property of the Seller.
(iv) On receipt of notification from the Seller under (ii) or on the happening of any of the Events, the Power of the Buyer shall cease and the Buyer shall immediately deliver the Goods and the New Product property in which is then

reserved to or vested in the Seller to such address as the Seller shall specify in default of which, or in the alternative, the Seller shall have the right to enter on any premises or land in the ownership or possession of the Buyer and remove the Goods and the Buyer shall indemnify the Seller on a full indemnity basis against all loss, damage, costs or expenses so arising including loss, damage, costs or expenses in respect of third party claims.

13. INSURANCE

- (a) The risk in the goods and materials shall pass to the Buyer at the time of delivery as provided for in paragraph 6 of these conditions. The reservation of title contained in paragraph 12 of these conditions shall not affect the Buyer's responsibility to effect insurance cover which it may consider to be appropriate.
- (b) Where the goods or materials are not manufactured by the Seller and are delivered direct to the Buyer or collected by the Buyer from the manufacturer or other third party the Seller shall not be liable for any loss or damage to the goods whatsoever or whensoever occurring.

14. BUYER'S PROPERTY

- (a) In the event of any goods materials plant tools equipment or other property being supplied by or on behalf of the Buyer to the Seller for carrying out the Contract either at the Seller's premises or elsewhere such property shall remain at the Buyer's risk at all times whilst it is in the Seller's premises or in transit to and from his premises or otherwise under his control. The Seller its servants and agents will not be responsible for any loss thereto or damage thereto unless such damage or loss is due directly to the negligence of the Seller its servants or agents and in any event the Seller's liability therefore shall be limited at the option of the Seller for the replacement or repair thereof or the payment to the Buyer of the open market value thereof. Under no circumstances whatsoever will the Seller be liable for any consequential loss or damage arising therefrom. The Buyer is advised to insure all property for all risks.
- (b) The Buyer shall indemnify the Seller in full for any loss damage or expense which the Seller may incur arising directly or indirectly as a result of any defects in such goods materials plant tools equipment or other property supplied by the Buyer to the Seller pursuant to sub-clause (s) of this paragraph 14.

15. ERRORS

The Seller reserves the right to correct any clerical or typographical errors made by its employees servants or agents at any time.

16. HEALTH AND SAFETY AT WORK ACT 1974

The attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety at Work Act 1974. The Seller will make available upon request information on the design construction and installation of its products to ensure that as far as reasonably practicable they are safe and without risk to health when properly used, it is the responsibility of the Buyer to take such steps as are necessary to ensure that such information relevant to the goods which is appropriate is made available to its servants agents or any person to whom the Buyer supplies them and to any other person to whom the Buyer should reasonably consider any such information should be given.

17. SEVERANCE

If at any time any one or more of the provisions of these conditions becomes invalid illegal or unenforceable in any respect under any law or is held by a court to be so invalid illegal or unenforceable the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

18. AUDITOR'S CERTIFICATE

In the event of a dispute arising between the Seller and the Buyer concerned with the sum or sums to which the Seller is entitled in addition to the Contract sum or sums as provided for in these conditions then a certificate from the Seller's auditors certifying such sum or sums shall be conclusive and binding upon the Seller and the Buyer. Any sum certified by the auditors as aforesaid shall be paid by the Buyer on or before 30 days from its receipt of such certificate.

19. INTERPRETATION

In these conditions the neuter gender shall include the masculine and feminine and vice-versa and the singular number shall include the plural and vice-versa.

20. JURISDICTION

These conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the laws of England.