



DP Seals Ltd.

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DP Seals Limited - Terms and Conditions of Sale

1. General

- 1.1 These Conditions and every contract made pursuant thereto shall be governed by and construed in accordance with English law.
- 1.2 These Conditions apply to the contract between you and DP Seals Ltd (the "Company", "us" or "we") for the supply and purchase of goods to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.3 The order constitutes an offer by the Customer to purchase the goods supplied by us ("Goods") in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the order and any applicable specification are complete and accurate.
- 1.4 The order shall only be deemed to be accepted when we issue a written acceptance of the order, at which point a contract shall come into existence ("Contract"). Any order issued by the Customer is subject to acceptance by the Company at the Company's discretion.
- 1.5 A quotation for the Goods given by the Company shall not constitute an offer. The Company's quotation for the Goods constitutes an invitation to treat (i.e a proposal to enter into a contract) and will, unless otherwise stated in the quotation, be valid for a period of [30] days from the date of issue unless the Company has previously withdrawn it.
- 1.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 1.7 Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 1.8 Contracts and orders are only accepted upon and subject to our Conditions of Sales as set out herein. No variation of these Conditions shall be effective unless expressly accepted by us in writing.
- 1.9 Any latitude or concession allowed by us to the Customer shall not prevent our subsequently exercising our full rights under the Contract in all respects.

2. Prices and Quotations

- 2.1 On request, current prices will be quoted for our products, but will be subject to alteration without notice and orders are only accepted on the basis that prices charged are those ruling at the date of dispatch.
- 2.2 Unless otherwise stated, any quote given by us is an invitation to the Customer to make an offer only and no order of the Customer shall be binding on us unless and until it is accepted in writing.
- 2.3 We reserve the right to vary the price for the goods should the Customer order different quantities from those stated and quoted for, and/or require delivery over a different period; the cost of any variation or modification in design, specification, materials or drawings or the development thereof requested by the Customer after the date of dispatch of Confirmation of order by us shall, if agreed to by us, be borne by the Customer.



- 2.4 All prices are quoted exclusive of Value Added Tax, which will be at the rate applicable at the appropriate tax point.
- 2.5 Unless otherwise specified, all prices are ex-works and all goods will be subject to a carriage charge. A minimum charge will be quoted per consignment and additional charges for timed delivery. If special delivery arrangements are requested, any additional cost will be payable by the Customer.

3. Settlement Terms

- 3.1 Except for sales of tooling and where otherwise agreed by us, all accounts are strictly net for settlement 30 days from the date of invoice. DP Seals Ltd will retain majority ownership of tooling and tooling costs will be shared with the customer on a 70:30 basis.
- 3.2 The price of the Goods is as set out on the Company's invoice. The Company reserves the right to alter the price of the Goods by giving to the Customer not less than 30 days' notice in writing, and in respect of Goods ordered after such changes of price have taken effect the price charged shall be the new price for the Goods.
- 3.3 We reserve the right to charge interest on overdue accounts at 8% above the Bank of England base rate.
- 3.4 Time for payment shall be of the essence of the Contract and failure to pay at the time specified shall entitle us forthwith without notice to suspend further deliveries without prejudice to any other remedy we have.
- 3.5 If the Customer fails to make any payment on the due date or shall materially breach any of the other terms of any Order then the whole of the balance of the price of the Goods for all outstanding Orders shall become due and payable forthwith and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- (a) Sue for the price notwithstanding that title has not passed;
 - (b) Terminate this Agreement and/or cancel or suspend all Orders (whether in transit or otherwise), and/or refuse to accept any further Orders;
 - (c) Appropriate any payment made by the Customer to such of the Goods (or the goods or services supplied under any other Order between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer);
 - (d) Make a storage charge for any undelivered Goods at its rates current from time to time; and
 - (e) A general lien on all property belonging to the Customer and such lien shall be exercisable in respect of all sums due to the Company. The Company may dispose of such property in such manner and at such price as it thinks fit following the expiration of 14 days' notice in writing to the Customer and to apply the proceeds towards the amount outstanding.
 - (f) Retain and recover possession of the Goods or any part of them, and, at any time, to enter onto any premises of the Customer or under its control for the purposes of recovering possession, and the Customer irrevocably grants access to such premises for such purpose.

4. Moulds, Dies, Jigs

- 4.1 Except where otherwise agreed we are solely entitled to the property in and of use of all moulds, dies and jigs provided by us; where an agreed part charge or contribution towards the cost of any mould, die or jig is levied, we will undertake to reserve these exclusively for the manufacture of products against Customers' orders, unless otherwise agreed in writing.

5. Lien

- 5.1 Customers' property sent to us for treatment and moulds sent to us for production purposed are subject to a general lien for work done upon or with them and also for the general balance of the account.
- 5.2 Whilst every care will be exercised, we cannot accept any liability for damage to such items whilst in our possession, nor can we agree to accept any debit or charge in connection with such goods when sent forward to us.



6. Carriage

- 6.1 All goods are subject to Carriage Charges. A minimum charge will be quoted per consignment and additional charges for timed deliveries.

7. Delivery Risk and Property

- 7.1 Risk of damage to or loss of the goods shall pass to you:
- (a) In the case of goods to be delivered at our premises, at the time when we notify you that the goods are available for collection, or
 - (b) In the case of goods to be delivered otherwise than at our premises, at the time of delivery or, if you wrongfully fail to take delivery of the goods, the time when we have tendered delivery of the goods.
 - (c) Where we do not deliver, or if the place for delivery is specified or agreed, delivery shall take place at our works immediately prior to loading for dispatch to the Customer.
- 7.2 In all cases the risk in respect of all goods shall pass to the Customer at the time of delivery.
- 7.3 Notwithstanding such delivery, until the price of the goods comprised in this or any other contract between the Customer and us shall have been paid or satisfied in full;
- (a) The title to and property in the goods shall remain vested in us.
 - (b) We may at any time recover and resell the goods (if in the Customers' possession or under its control) if any sum owed by the Customer to us under this contract is not paid on the due date for payment. For the purpose of exercising our rights under this sub-clause ((b) we, our servants or agents, together with all necessary and appropriate transport, shall be entitled to free and unrestricted entry upon the Customer's premises and/or the location where the goods are situated.
 - (c) The Customer shall possess the goods as our Bailee and shall store the goods for us in a proper manner without charge and ensure that they are clearly identified as belonging to us.
 - (d) The Customer is hereby authorized to sell the goods in the ordinary course of its business as our agent and for our account and to pass the goods title in the goods to its purchasers being bona fide purchasers for the value without notice of our rights, but for the Customer's right of resale shall automatically cease if any sum owed by the Customer to us under any contract is not paid on the due date for payment.
 - (e) Upon the resale of the goods by the Customer the proceeds of sale thereof shall be received and held by the Customer in trust for us but the Customer shall be entitled to retain for itself therefrom any excess over the amount then outstanding under this or any other contract.
 - (f) Nothing in this sub-clause shall:
 - (i) Entitle the Customer to return the goods and/or materials or to delay payment therefore; or
 - (ii) Constitute or be deemed to have constituted the Customer as our agent otherwise than for the purpose of this sub-clause 7.3.
 - (iii) Authorise the Customer to give or make any representation to any third party in relation to the goods that shall be binding on us.
- 7.4 The Customer shall advise the both the carrier and the Company within 7 days of receipt of the Company's invoice if the Goods covered by the invoice have not been delivered, or within 3 days of actual delivery if damage, pilferage or shortage is revealed upon receipt of Goods. Provided that such notice is given we will endeavour to assist the Customer to obtain proof of delivery or admission of damage, pilferage or short delivery. The Customer may only make a claim for Goods lost or damaged in transit, or for shortages in actual delivery within fourteen days from the date of actual delivery of the Goods.



8. Delay in Delivery

- 8.1 Orders will be executed as expeditiously as possible, but where a delivery date is quoted it is a settlement of expectation only, and time of delivery shall not be of the essence of Contract.
- 8.2 If having used our reasonable endeavours we fail to despatch or deliver by any stated date, such failure shall not be a breach of Contract and the Customer shall not be entitled to claim compensation for such failure or any consequential loss or damage resulting therefrom.
- 8.3 No liability is accepted for direct or consequential loss or damage arising from delay in delivery or failure to deliver due to fire, storm, strike action or other industrial disputes, inability to obtain or shortage of supplies or other matters whatsoever outside our control.

9. Packaging

- 9.1 Normal packaging requirements are included in the cost of the goods; any special packaging must be specified and paid for by the Customer.

10. Schedule Contracts

- 10.1 Where goods are delivered or services are supplied on schedules:
- (a) Each such schedule be deemed to be sold or supplied under a separate contract to which these Conditions shall apply and save as provided in Clause 3 no default in respect of any one schedule shall affect or prejudice due performance of the Contract as regard any other deliveries.
 - (b) The Customer shall be obliged to pay for each delivery upon the terms set out in Clause 3.

11. Warranty

- 11.1 The Company warrants that the Goods will on delivery correspond with any written specification for the Goods agreed by the parties but save as expressly agreed in any Order it does not warrant that the Goods will be fit for any particular purpose.
- 11.2 The Company shall have no liability to the extent that any defect in the Goods arises from any of the following:
- (a) Any defect arising from any drawing, design or specification supplied by the Customer. The Customer shall indemnify the Company from and against all claims and proceedings for or on account of any infringement or alleged infringement of any third party Intellectual Property Rights as a result of the use of such drawings, designs or specifications;
 - (b) Any defect arising from fair wear and tear, wilful damage, failure to follow the Company's instructions (whether oral or in writing) including as to storage installation or use;
 - (c) Any use or re-use of the Goods after the Goods have been removed from the product in which they were first incorporated;
 - (d) Use of the Goods with incompatible products; or
 - (e) Alteration or repair of the Goods.
- 11.3 Subject as expressly provided in this Agreement all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.4 Where any goods or service are shown to our reasonable satisfaction to be defective by reason or faulty materials or workmanship, or (in the case of goods other than Special Goods as defined in clause 12. Design, we shall at our sole discretion either:
- (a) Deliver replacement goods and/or supply further services to the Customer free of charge or
 - (b) Refund the Customer the Contract price of such goods and/or services or
 - (c) Require the Customer to retain the goods and/or services and grant to the Customer a reasonable allowance in respect of such defects.



- 11.5 Provided that:
- (a) The Customer shall notify us in writing within 14 days of receipt of goods and
 - (b) If so required by us, all defective goods are first returned to our premises carriage paid and
 - (c) The goods shall have been properly and correctly stored and/or used by the Customer and
 - (d) Our liability for any such defects shall be limited as described in sub-clause 11.4 and 11.5 of this Clause.
- 11.6 Unless product specific aging tests have been carried out and approved by the customer, we shall not be liable for any claims with regards to cosmetic and/or visual changes to the product over time.
- 11.7 References to liability in the remainder of this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.8 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 11.9 Subject to clause 11.8, the Company's total liability to the Customer arising from or related to each Contract in respect of any and all claims (whether arising in contract, tort, or otherwise including without limitation non-fraudulent misrepresentation) shall not exceed the price payable by the Customer under the relevant Contract.
- 11.10 Subject to clause 11.8, the following types of loss are wholly excluded:
- (a) loss of profits or anticipated profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of or interruption to production;
 - (e) delay to other works;
 - (f) increased costs of working;
 - (g) loss of anticipated savings;
 - (h) loss of or damage to goodwill; and
 - (i) indirect or consequential loss.
- 11.11 This clause 11 shall survive termination of the Contract.

12. Special Goods

- 12.1 In this Clause "Special Goods" means goods made or adapted specifically to the Customer's design and/or specification
- 12.2 We accept no responsibility whatsoever for the accuracy or suitability of patterns, designs, dimensions, drawings, colours, particulars or specifications relating to Special Goods which shall be supplied by the Customer and we shall be entitled to accept the same as being without defect. We shall have no responsibility for the quality or fitness of Special Goods for any particular purpose whether or not such purpose is made known to us and the conditions implied by sections 13 – to 15 of the Sale of Goods Act 1979 shall be excluded. The customer undertakes to indemnify us and keep us fully effectively indemnified from and against all actions, proceedings, claims, costs, loss, damage or expense whatsoever, whether arising in contract or in tort which we may suffer or incur as a result of any defect in Special Goods, whether in quality, design, fitness for purpose or in any other way whatsoever unless the same is due directly to our negligence or the negligence of our servants or agents.
- 12.3 The Customer represents and warrants to us that neither Special Goods nor the manufacture thereof by us will infringe any patent, copyright, registered design or other proprietary right of any third party (third party rights) and the Customer further undertakes to indemnify us and keep us fully and effectually indemnified from and against all actions, proceedings, claims, costs, loss, any amounts paid by us (upon legal advice) in settlement of any claim out of Court.



- 12.4 Special Goods (whether or not own-named branded or marked) not accepted by the Customer (for whatever reason) may be sold in the open market for such price as we may be able to obtain and we may reimburse ourselves out of the proceeds, this without prejudice to any further course of action by us for recovery.

13. Insolvency of Customer

13.1

- (a) If the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or partnership) becomes bankrupt or is dissolved or (being a company) goes into liquidation; or
- (b) If an encumbrancer takes possession, or a trustee for receiver or administrative receiver is appointed, of the Customer or of or over any of its property or assets; or
- (c) If any judgment is obtained against the Customer or any distress or execution is levied on any premises or goods or other assets owned or occupied by the Customer; or
- (d) If the Customer ceases, or threatens to cease, to carry on business; or
- (e) If the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly:

Then without prejudice to its other rights and remedies the Company shall be entitled to apply clause 3.5 and all its remedies (a) to (e) (inclusive).

14. Intellectual Property

- 14.1 The Intellectual Property Rights in or relating to the Goods and all tooling and documents supplied to the Customer under this Agreement shall (subject to any existing rights of any third party in any design or invention incorporated or used in the design of the Goods) remain exclusively the property of the Company and neither the Customer nor any agent contractor or other person authorised by the Customer shall at any time make any unauthorised use thereof.

15. Confidentiality

- 15.1 Each party undertakes that, it shall, at all times during the continuance of this Agreement and after its termination keep confidential all Confidential Information, of the other party and shall only use such Confidential Information for any purpose as contemplated by and subject to the terms of this Agreement. Either party may disclose any Confidential Information to its employees, sub-contractors and agents as strictly necessary for the performance of its obligations under this Agreement, provided that it remains liable for their acts and defaults in relation to Confidential Information.
- 15.2 Nothing in this clause 15 shall prevent the disclosure of Confidential Information in compliance with any request of a body with competent legal or regulatory authority with power to compel disclosure of information.
- 15.3 The restrictions on confidentiality shall not apply to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that party, provided that in doing so that party does not disclose any part of that Confidential Information which is not public knowledge.

16. Force Majeure

- 16.1 For the purposes of this Agreement "Force Majeure" means, in relation to either party, any circumstances beyond the reasonable control of that party (including act of God, explosion, flood, storm or accident, war, civil disturbance, emergency or threat of the same, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind by any competent authority, import or export regulations or embargo, difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery, strike, lock-out or other form of industrial action).



16.2 The Company shall not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in performing or failure to perform any of the Company's obligations under this Agreement where such delay or failure is due to any Force Majeure and the Company shall be entitled to a reasonable extension of time for performing such obligations.

17. General – This agreement

- 17.1 This Agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in this Agreement. No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of this Agreement or any Order simply as a result of such document being referred to in any Order.
- 17.2 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 17.3 If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 17.4 The parties are independent contractors, and nothing in this Agreement shall create a partnership between the parties nor constitute any party as the agent of any other person.
- 17.5 This Agreement shall be governed by, and construed in accordance with, English Law. Each of the parties irrevocably submits to the exclusive jurisdiction of the English courts in relation to any disputes arising out of this Agreement.