

Conditions of Sale

1. **Interpretation**
- 1.1 In these conditions the following words have the following meanings:

"Agreement" means the agreement between the Company and the Customer for the sale and purchase of Goods comprising these conditions, and in relation to any Order such other specific terms and conditions as the parties shall agree in writing from time to time or as set out on the Company's invoice, subject always to clause 2.5;

"the Customer" means the person who purchases Goods from the Company;

"the Company" means Superior Seals Limited;

"Confidential Information" means information in relation to a party (whether in writing, electronic or oral form) belonging or relating to that party, its or their business, affairs, activities, products or services or in respect of which the disclosing party is bound by an obligation of confidence and any other information of a confidential nature which information is proprietary and confidential to the disclosing party whether or not such information is stated to be confidential and/or marked as such;

"Goods" means any goods to be supplied to the Customer by the Company pursuant to any Order, which goods shall be in accordance with any written specification issued by the parties therefor;

"Intellectual Property Rights" means all patents, registered designs, design rights, copyrights, trade secrets, confidential information, know-how and trade marks including the benefit of all registrations of and applications to register any of the aforesaid items, and all rights in the nature of any of the aforesaid items, anywhere in the world;

"Order" means any order for the sale and purchase of Goods by the Customer.;

"Safety Critical Product" means a product where the failure of the Goods will or is likely to (i) render the product in which any Goods are incorporated or used inoperable, or (ii) affect safe operation of any product in which any Goods are incorporated or used and/or involve a risk of personal injury or death to any person, or (iii) result in non-compliance with legislation or other regulation of government or any other competent authority.
- 1.2 In these conditions (i) any phrase introduced by the words "including" or "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the terms preceding those terms; (ii) any reference to the parties includes a reference to their respective successors in title and permitted assignees; and (iii) the headings will not affect the construction of these conditions
2. **Application of Conditions**
- 2.1 These conditions apply to all the Company's sales of the Goods and are the only standard terms on which the Goods may be sold, offered for sale or used.
- 2.2 Each Order by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to the terms of this Agreement.
- 2.3 When the Customer orders Goods for delivery in several instalments, each delivery shall constitute a separate Order for the purposes of this Agreement.
- 2.4 No Order placed by the Customer shall be deemed to be accepted by the Company until a written advice note or other acknowledgement of order is issued by the Company or (if earlier) the Company commences to fulfil the Order in whole or in part. The Company shall not be obliged to accept an Order, and shall not be obliged to give any reason for any such refusal.
- 2.5 Where there is any conflict or inconsistency between these conditions and the specific terms of any Order as set out on the Company's invoice for that Order or as otherwise agreed in writing by the parties, the specific terms shall prevail.
- 2.6 When the Customer places regular Orders to this Agreement in any calendar year which in the Company's reasonable opinion mean that Order forecasting is necessary, the Company may require the Customer to provide forecasts of its expected requirements for the Goods for such periods as the Company shall reasonably specify. The Customer shall use all reasonable endeavours to provide accurate forecasts of its requirements for such periods and shall notify the Company promptly of any material changes to its forecasted requirements, but save for the forecast for the immediately following four week period, the forecasts shall not be binding.
3. **Risk and Title**
- 3.1 Risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer. If the Customer refuses to accept delivery of the Goods, then the Goods shall be stored at the risk and expense of the Customer until actual delivery to the Customer. Delivery to a carrier or to any person on the Customer's behalf shall constitute delivery to the Customer.
 - i. Title to the Goods shall not pass until the Company has received full payment in cleared funds for the Goods and all other sums due to the Company from the Customer in respect of all other Orders which have been delivered to the Customer.
- 3.2 Until title in the Goods has passed to the Customer, the Customer (at no cost to the Company) shall:
 - i. keep the Goods separate from all other Goods in its possession and clearly identify the Goods as being the property of the Company;
 - ii. keep the Goods safe in the condition in which they were delivered and insured to their full replacement value;
 - iii. hold the proceeds of the insurance referred to in condition ii on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdraft bank account;
 - iv. afford the Company reasonable facilities to inspect the Goods and will forthwith notify the Company of any proceedings for distress in respect of the Goods on any premises wherein the Goods may be situated, and if any distress or other execution is attempted over the Goods will obtain the release of the Goods therefrom.
- 3.3 If the Customer shall sell any of the Goods or any other products into which the Goods shall have been incorporated before the same shall have been paid for in full then, the Customer shall hold the proceeds of sale thereof or such proportion thereof as represents the Customer's unpaid price for such Goods as trustee upon trust for the Company but without prejudice to the Company's rights to trace the same if the Customer fails to keep the same separate.
4. **Payment and Title**
- 4.1 The Company will invoice each Order separately. Unless the parties have agreed a credit account in accordance with clause 4.4, the terms of payment are strictly 30 days from the date of the Company's invoice. Time for payment shall always be of the essence of this Agreement. The Customer shall pay all sums due without set off, deduction or withholding of any nature. If the Customer is late in paying any amount due to the Company, then interest shall accrue on the overdue amount at the rate prescribed in the Late Payment of Commercial Debts (Interest) Act 1998 until payment in full in cleared funds is received by the Company.
- 4.2 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.
- 4.3 Unless otherwise specified, prices are inclusive of carriage charges in the United Kingdom only. If special delivery arrangements are requested, or delivery to a location outside the United Kingdom, any additional cost will be payable by the Customer.
- 4.4 The Company may open a credit account with the Customer subject to satisfactory credit ratings. Invoices will be raised within the week of despatch of any Order and a statement of account will be furnished covering despatches up to the end of the month in question. The Customer will pay for all Goods ordered in the month in question, before the end of the following month.
- 4.5 The price of the Goods is exclusive of any VAT or other applicable sales taxes, which the Customer will pay in addition where applicable.
- 4.6 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:
 - i. sue for the price notwithstanding that title has not passed;
 - ii. terminate this Agreement and/or cancel or suspend all Orders (whether in transit or otherwise), and/or refuse to accept any further Orders;
 - iii. 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);
 - iv. make a storage charge for any undelivered Goods at its rates current from time to time; and
 - v. 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.
 - vi. 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 Company irrevocably grants access to such premises for such purpose.
5. **Packing**
- 5.1 Unless otherwise specified by the Company, cartons, bags etc., will not be charged. Chargeable packing will be credited if returned carriage paid to the factory in good condition, within one month of delivery, otherwise they must be paid for at the invoiced price. The value of the packings must not be deducted when making payment unless the packages have been returned within the prescribed period.
6. **Tooling**
- 6.1 If the Company charges the Customer tooling charges, payment of the tooling charges incurred guarantees exclusive use of such tooling for the purpose and period for which the tooling charge was incurred. The tooling and all Intellectual Property Rights in the tooling remains the property of the Company.
7. **Delivery and Claims**
- 7.1 Any dates specified by the Company for delivery of the Goods are an estimate and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 7.2 The Customer will provide at its expense at the delivery address adequate and appropriate equipment and manual labour for unloading the Goods.
- 7.3 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity ordered the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for surplus Goods at the per product price on the relevant invoice.
- 7.4 The Customer shall advise the carrier and the Company within seven days of receipt of the Company's advice note if the Goods covered by the advice note have not been delivered, or within two days of actual delivery if damage, pilferage or shortage is revealed upon receipt of Goods. The Customer may only make a claim for Goods lost or damaged in transit, or for shortages on actual delivery, within fourteen days from the date of actual delivery of the Goods.
- 7.5 Any liability of the Company either for breach of warranty or otherwise, including for non-delivery of the Goods or damage to Goods in transit notified in accordance with clause 7.4 shall be limited to replacing the Goods within a reasonable time or issuing a credit note against any invoice raised for such Goods for the proportionate part of the price.
8. **Export**
- 8.1 Goods may be exported to any country within the European Free Trade Association but save as aforesaid it is an express condition of sale of the Goods that they shall not be exported to any other country without the previous written permission of the Company except when the same have been fitted to, or form, component parts of other products where the Company is aware of the nature of such Goods. The Customer shall be responsible for complying with any legislation or regulations governing the export of the Goods from the United Kingdom and the importation of the Goods into the country of delivery and the payment of any duties thereon.
9. **Notice of conditions**
- 9.1 When required by the Company, the Customer shall bring to the notice of all persons with whom they may deal in the Goods (including where incorporated into other products) the terms of any specification for the Goods, and any information on any restrictions on the use of Goods (including clause 10.1), or on safe use and maintenance provided by the Company from time to time.
10. **Warranties and Liability**
- 10.1 YOUR ATTENTION IS DRAWN TO THIS CLAUSE, WHICH CONTAINS RESTRICTIONS ON THE USE OF THE GOODS AND LIMITATIONS ON THE COMPANY'S LIABILITY
- 10.2 The Company will not supply Goods to any person for incorporation or use in any Safety Critical Product. The Customer shall not incorporate or use the Goods in Safety Critical Products. The Customer shall bring to the attention of any person to whom it sells the Goods (whether as part of any sub assembly of a Safety Critical Product or otherwise). The Customer shall indemnify and keep indemnified the Company against all claims actions demands and costs and expenses arising as a result of the incorporation or use of any Goods in Safety Critical Products, including any claim by a third party who suffers loss or damage as a result of such unauthorised use.
- 10.3 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 of the Customer. The Company shall have no liability to the extent that any defect in the Goods arises from any of the following:
 - i. 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;
 - ii. any defect arising from fair wear and tear, willful damage, failure to follow the Company's instructions (whether oral or in writing) including as to storage installation or use;
 - iii. any use of the Goods after the Goods have been removed from the product in which they were first incorporated;
 - iv. use of the Goods with incompatible products; or
 - v. alteration or repair of the Goods.The above warranty does not extend to parts or materials not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or third party to the Company.
- 10.4 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.
- 10.5 Where any valid claim in respect of any of the Goods is notified to the Company in accordance with these conditions, the Company shall at its option be entitled to replace the Goods free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer except for liability for personal injury or death or damage to property caused by the negligence of the Company its sub-contractors or agents up to the limits in clause 10.5.
- 10.6 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer whether in tort, contract or otherwise for any:
 - i. loss of profits loss of production or business interruption (whether direct or otherwise); or
 - ii. special, plain, indirect or consequential loss or damage of any nature whatsoever whether or not the Company has been advised of the possibility of such losses which arise out of or in connection with the supply of the Goods or their use or resale by the Customer.
- 10.7 The liability of the Company under or in connection with this Agreement, whether arising in contract, tort or otherwise howsoever, shall be limited as follows:
 - i. in the case of claims arising from death or injury to persons caused by the negligence of the Company or its sub-contractors and/or agents, there shall be no limit;
 - ii. in respect of any and all other liability arising out of or in connection with or relating to this Agreement, the Company's aggregate liability for any claims actions demands and costs and expenses in respect thereof or in relation thereto in any calendar year shall be limited in the aggregate price of the Goods supplied by the Company under this Agreement in the year in question.
- 10.8 The Customer shall indemnify and keep indemnified the Company against all claims actions demands and costs and expenses arising from any death or injury to persons caused by the negligence of the Company and against all actions, claims, demands and proceedings in respect thereof or in relation thereto, provided that this indemnification shall not apply to the extent that the death or injury to any person or the loss of or damage to any physical property is wholly or partly attributable to any act, default, or negligence of the Company or a third-party other than the Customer's agents or suppliers.
- 10.9 The parties agree that the price of the Goods has been based, amongst other things on the provisions of this clause, and that the conditions on liability set in this clause 10 are fair and reasonable with due regard to the potential loss and damage each party is likely to suffer as a direct result of the other's default and the Customer's ability to insure for any of the losses and damages arising, and that furthermore such limits shall continue in force notwithstanding the termination of this Agreement.
- 10.10 If the Customer has, or may have any claim against the Company as a result of any defect in the Goods or otherwise in connection with this Agreement (whether in contract, tort or otherwise) and the Customer is also entitled to make recovery against any other person in respect of the facts or circumstances by reference to which the Customer has or may have any claim against the Company then the Customer shall promptly and diligently take such action as the Company may require (subject to being properly indemnified against the reasonable costs of taking such action) to pursue such claim in accordance with the Company's instructions. This clause shall also apply if the Customer shall already have settled or paid the Customer in respect of any such claim. The Customer shall account to the Company for all sums recovered by it in relation to such claim, including costs recovered by it.
- 10.11 No action may be brought under this Agreement more than one year after the date that the cause of action arose or in the case of a latent defect, more than one year after the date that the defect first became apparent.
11. **Insolvency of Customer**
- 11.1 If:
 - i. 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
 - ii. 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
 - iii. 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
 - iv. the Customer ceases, or threatens to cease, to carry on business; or
 - v. 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 the remedies in clause 4.6i to vi (inclusive).
12. **Intellectual Property**
- 12.1 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.
13. **Product Recall**
- 13.1 If the Customer becomes aware or determines that the performance or condition of any Goods is falling in any respect to meet the specifications, warranties or other standards of quality applicable to such Goods pursuant to this Agreement, the Customer shall immediately give the Company notice relating to the defect, giving full details in relation thereto, and shall give all reasonable cooperation to the Company for the recall of the Goods or such other actions as the Company reasonably considers appropriate within such time as the Company shall reasonably request.
- 13.2 The Customer shall maintain adequate written records and procedures to enable the Company to recall the Goods from time to time.
14. **Confidentiality**
- 14.1 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.
- 14.2 Nothing in this clause 14 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.
- 14.3 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.
15. **Force Majeure**
- 15.1 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, by-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).
- 15.2 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.
16. **General**
- 16.1 The Company may sub-contract its obligations to any person, provided always that the Company shall remain liable for all the acts and defaults of its sub-contractors in the discharge of its obligations under this Agreement and to any company in its group of companies from time to time, but except as aforesaid, this Agreement is personal to the parties and neither party may assign, mortgage, or charge (otherwise than by floating charge) any of its rights or obligations hereunder, save with the prior written consent of the other party, such consent not to be unreasonably withheld.
- 16.2 Any notice or other information required or authorised by this Agreement to be given by either party to the other shall be given by sending it by pre-paid registered post to the other party at its registered or principal office, or to such other address as may be notified in writing by the other party in writing, and its transmission or receipt by any other means of communication. Any notice or information given by pre-paid registered post which is not returned to the sender as undelivered shall be deemed to have been given on the second working day after posting. Any notice or information sent by facsimile transmission or comparable means of communication shall be deemed to have been duly given on the date of transmission.
- 16.3 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.
- 16.4 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 specific right or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision of the same or any other provision of this Agreement.
- 16.5 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. 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.
- 16.6 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