

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

"**Contract**" means the contract for the Goods formed by the Company's acceptance (which, however made or communicated, shall be deemed made subject to these Conditions) of the Buyer's Order;

"**Buyer**" means the person or firm placing an Order with the Company;

"**Company**" means All Metal Gaskets Limited

"**Goods**" means any goods agreed to be supplied to the Buyer by the Company (including any part or parts of them);

"**Intellectual Property**" means all intellectual property rights including, without limitation, patents, registered designs and any rights to apply for the same copyright, design rights, database rights, rights in and to confidential information and know-how and any rights analogous to the same subsisting anywhere in the world at any time;

"**Order**" means the order placed by the Buyer for the supply of the Goods;

"**Company's Proposal**" means the rates quoted to the Buyer by the Company, prior to the Buyer's Order.

2. THE CONTRACT

- (a) The Contract shall be deemed to have been entered into upon receipt of Company's written order acknowledgement. All Goods are supplied subject to these Conditions and these Conditions shall be the sole terms and conditions applicable. Terms and Conditions on the Buyer's order form or other similar document shall not be binding on Company and the placing of the Order by the Buyer shall indicate unqualified acceptance of these Conditions.
- (b) Unless previously withdrawn, the Company's Proposal shall be valid for [30] days.
- (c) No representative, agent or other person has the Company's authority to vary, amend or waive any of these Conditions of Supply on behalf of the Company.
- (d) The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in the Contract shall exclude or limit the Company's liability for fraud or fraudulent misrepresentation.

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3. PRICE

- (a) Unless otherwise stated in the Company's Proposal, all prices therein quoted are based on costs current at the time and the Company accordingly reserves the right to substitute for any price such prices as are appropriate to take account of any increased cost up to the date of delivery of Goods and the Buyer shall accordingly be bound by any such increase.

4. PAYMENT

- (a) Payment by the Buyer shall be made nett monthly of the date of the Company's invoice or of the notice that the goods are ready for dispatch, whichever is the earlier.
- (b) Without prejudice to any other right or remedy the Company may have if the Buyer does not pay the full amount due in respect of any invoice before or on the due date interest will accrue due upon the outstanding balance at the rate of 3% per annum above HSBC Bank base lending rate from time to time and shall run from the due date for payment until receipt by the Company of the full amount whether or not before or after judgement and shall be payable by the Buyer to the Company on demand.
- (c) The Buyer shall make all payments due under the Contract in full without any deduction whether by set-off, counterclaim, discount, abatement or otherwise.
- (d) No payment shall be deemed to be received until the Company has received cleared funds.
- (e) If any buyer account has to be passed to a third party for legal action in order to recover an overdue amount, then the whole of the balance on the account shall become payable with immediate effect.

5. DESCRIPTION

- (a) The quantity and description of the Goods shall be as set out in the Company's Proposal.
- (b) All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

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6. DELIVERY

- (a) Delivery shall be ex works and any time or date stated by the Company for delivery is an estimate only and time of delivery shall not be of the essence. Though the Company will use reasonable endeavours to deliver within or at or on the stated time or date for delivery, the Company shall not be liable for any loss or damage whether such loss is direct or indirect whatsoever and howsoever arising for any delay in delivery of the Goods for whatever reason and nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds [180] days.
- (b) If the Buyer fails to accept delivery on the due date:
 - (i) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - (ii) the Goods shall be deemed to have been delivered; and
 - (iii) the Company shall be entitled to invoice and receive payment for the Goods as though the Buyer had taken delivery.
- (c) The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- (d) the Company shall not be liable for any full or partial non-delivery of the Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within [7] days of the date when the Goods have been delivered and in respect of which time shall be of the essence.
- (e) Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods or issuing a credit note against any invoice raised for such Goods.
- (f) In the event that the Buyer alleges full or partial non-delivery of the Order the Company servants and/or agents shall have the right to attend at the place where the Goods are so preserved and to investigate the claim.
- (g) Any failure by the Buyer to comply with this condition 6 shall render void any claim which the Buyer might otherwise have against the Company.

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7. QUALITY

- (a) The Company warrants that the Goods will for a period of [12] months from delivery meet the part description and specification within the companies order acknowledgement. The Company does not warrant or give any guarantees that the Goods will be fit for purpose and it shall be for the Buyer to determine that the Goods are fit for the Buyer's purpose prior to placing an Order.
- (b) In the event that the Goods do not on delivery comply with the warranty given in the above condition 7(a) the Buyer must notify the Company in writing within 7 days of delivery and the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company at the Buyer's expense within 30 days of the Company's request. Any Goods replaced by the Company shall become the property of the Company.

8. BUYER'S ACKNOWLEDGEMENTS

- (a) The Buyer hereby expressly acknowledges:-
 - (i) that it purchased the Goods in a competitive market and that the bargaining strength of the Company was in no way a relevant factor in the purchase of the Goods from the Company; and
 - (ii) that the Goods have been manufactured, processed and / or adapted to the Order of the Buyer.
- (b) The Company does not warrant that the Goods do not infringe the Intellectual Property rights of any third party and the Company accepts no liability in respect of any infringement of such rights by the Buyer relating to the Goods.
- (c) All Intellectual Property rights in the Goods and belonging to the Company shall remain entirely in the ownership of the Company. Nothing said or done by either party shall constitute the transfer of any rights.
- (d) The Company will not accept any liability if the Goods have been altered by the Buyer or a third party in any way whatsoever or by fitting into or onto them of any parts not originating from the Company or if the Company's instructions as to operation or use have not been complied with or if the Buyer has been negligent or improper in the storage or transport of the Goods.

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9. LIABILITY

- (a) This condition 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of the Contract; any use made or resale by the Buyer of any Goods, or of any product incorporating any of the Goods; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- (b) Except as expressly set out in these Conditions, all warranties, conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.
- (c) Nothing in these Conditions limits or excludes the liability of the Company for death or personal injury resulting from negligence; or for any damage or liability incurred by the Buyer as a result of fraud or fraudulent misrepresentation by the Company; or for any liability incurred by the Buyer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- (d) Subject to the above condition 9(c)
 - (i) the Company shall not be liable for loss of profits; or loss of business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of goods; or loss of contract; or loss of use; or loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
 - (ii) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall be limited to the price paid for the Goods.
- (e) The Buyer shall fully indemnify and keep indemnified the Company in respect of all damage or injury occurring to any person or to any property and against any and all damages, losses, actions, suits, claims, demands, costs, charges and expenses arising or reasonably foreseeable to arise in connection therewith which shall be occasioned by the act omission negligence and / or breach of the Contract (including anticipatory breach) or breach of statutory duty by the Buyer and / or any of its employees, sub-contractors, servants and agents.

10. CONFIDENTIALITY

- (a) The Buyer shall at all times keep secret and confidential all information of a confidential nature disclosed to the Buyer or the Buyers agent by the Company, its employees, agents or sub-contractors including any confidential information concerning the Company's business or its products which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Company, and shall ensure that such

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employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

- (b) The above condition 10(a) shall not apply to confidential information which:
 - (i) is in the public domain or is already lawfully known to the Buyer at the time of disclosure; or
 - (ii) subsequently comes lawfully into the possession of the Buyer from a third party; or
 - (iii) subsequently enters the public domain otherwise than as a result of unauthorised disclosure by the Company or any other person.
- (c) This condition 10 shall survive termination of the Contract, however arising.

11. TERMINATION

- (a) The Company reserves the right to terminate the Contract with immediate effect in the event that:
 - (i) the Buyer commits a breach of the Contract and fails to remedy it within 30 days of receipt of a notice from the Company specifying the breach;
 - (ii) if any distress or execution be levied upon the Buyer's property or assets; or
 - (iii) the Buyer shall make or offer to make an arrangement or composition with its creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be present or made against it or if the Buyer shall be a limited company and any resolution to wind up its business other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of its undertaking property or assets or any part thereof shall be appointed,
- (b) The exercise of the rights granted under this condition 11 shall not prejudice or affect any right of action or remedy which may have already accrued or may accrue thereafter.

12. FORCE MAJEURE

- (a) Notwithstanding any other provision hereof, the Company shall have no liability to the Buyer under the Contract if it is prevented from or delayed in performing any of its obligations under the Contract or from carrying on its business by any cause or causes whatsoever beyond the Company's control and in such event the Company shall be entitled to postpone, suspend or cancel any of its obligations under the Contract until (in the company's absolute discretion) any such cause has ceased to operate.

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13. RISK & TITLE

- (a) The Goods are at the risk of the Buyer from the time of delivery.
- (b) Ownership of the Goods shall not pass to the Buyer until the Company has received payment of all sums due to it in respect of:
 - (i) the Goods; and
 - (ii) all other sums which are or which become due to the Company from the Buyer.
- (c) Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - (i) hold the Goods on a fiduciary basis as the Company's bailee;
 - (ii) store the Goods (at no cost to the Company) on his premises separately from all other goods of the Buyer or those of any other person and in a manner that makes them readily identifiable as the Company's property;
 - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and not sell, dispose or part with possession of such Goods; and
 - (iv) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- (d) The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- (e) On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition shall remain in effect.

14. GENERAL

- (a) If any export licence or any government authorisation is required for the manufacture of the Goods, the Contract shall be subject to such licence or authorisation being granted and the Company shall incur no liability to the Buyer if the same is not granted.
- (b) Should any part of these conditions for any reason be declared invalid such decision shall not affect the validity of any remaining part which remaining part

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shall remain in full force and effect as if such invalid part of these conditions had not been included herein.

- (c) Any notice or other communication given hereunder shall be well and sufficiently given to the Company if left at or sent to its registered office (proof of postage will be required) and to the Buyer if left at or sent to such address as it shall from time to time communicate to the Company. Any notice or other communication sent by post shall be deemed to have been delivered 48 hours after it shall have been posted.
- (d) Neither party shall prior to the other party's written consent, assign, transfer or sub-contract the Contract or any of its rights, benefits or obligations under it to any other person, firm or Company.
- (e) A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract.
- (f) These conditions shall be construed in accordance with and governed by the law of England and the parties submit to the non-exclusive jurisdiction of the English courts.

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