

## EMI Seals & Gaskets Ltd Terms and Conditions

The customer's attention is drawn in particular to the provisions of clause 8.

### 1. Interpretation

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 8.00am to 5pm Monday to Thursday 8.00am to 1pm Friday. on any Business Day.

**Client:** the person or firm who purchases the Goods from EMI.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.

**Contract:** the contract between EMI and the Client for the sale and purchase of the Goods in accordance with these Conditions.

**Delivery Location:** has the meaning given in 4.2.

**EMI:** EMI Seals and Gaskets LTD (registered in England and Wales with company number 05562401).

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

**Order:** the Client's order for the Goods, whether set out in the Client's purchase order form, placed over the phone, sent via email or the Client's acceptance of EMI's quotation, as the case may be.

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by EMI.

#### 1.2 Interpretation:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

## **2. Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Client to purchase the Goods in accordance with these Conditions. The Client is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Client are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when EMI issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Client waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Client that is inconsistent with these Conditions and these Conditions apply to the Contract 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.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by EMI and any descriptions or illustrations contained in EMI's catalogues, brochures or website or other communications 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.
- 2.6 A quotation for the Goods is an illustrative estimate only and the price for the goods may change in accordance with clause 7.2 Any quotation given by EMI shall not constitute an offer. A quotation shall only be valid for a period of 10 Business Days from its date of issue.

## **3. Goods**

- 3.1 The Goods are described in the Quotation or the Specification as the case may be.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Client, the Client shall indemnify EMI against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by EMI in connection with any claim made against EMI for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with EMI's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 EMI may provide substitute goods to the Goods or make changes to the Goods, or to the component parts, materials, assembly, design and manufacturing procedure used in the production of the Goods provided that:
- (a) the changes do not adversely affect the quality or materially change the description of the Goods; and
  - (b) the Goods continue to comply with all applicable statutory and regulatory requirements.
- 3.4 At any time before the Client places an Order for Goods the Client may request that EMI procure samples, data sheets or test results of Goods on behalf of the Client. Any such request if accepted by EMI shall be at the Client's cost and EMI shall inform the Client of the price of such request.
- 3.5 The Client acknowledges and accepts that any samples, data sheets, test results and design or specification assistance are provided on an "as is" basis and it is for the Client to test and determine the appropriateness and suitability of such samples, data sheets, test results and designs for its requirements and EMI shall not be responsible nor liable to the Client in this regard.
- 3.6 The Client acknowledges and accepts that due to the nature of the Goods variations in colour, texture dimension and test results can occur between batches of the Goods and therefore it is possible that some deviations and differing (within normal industry limits) may occur.

3.7 The Client's Order for any Goods following the provision of any samples, data sheets, test results and design assistance constitutes the Client's irrevocable confirmation that:

- (a) the Goods manufactured in conformity with the samples, data sheets, test results and design (or differing only within normal industrial limits) will comply with the Goods description and Specification; and
- (b) the Goods will meet the requirements of quality specified in clause 5.1.

3.8 To the extent that EMI provides assistance to the Client in respect of the design or Specification of the Goods, together with any tooling manufactured (and any replacement tooling) by EMI in accordance with such design or Specification shall be at the Client's cost.

3.9 EMI shall own all Intellectual Property Rights in such design or specification and any tooling as detailed in clause 3.8 which shall also be deemed EMI's confidential information.

3.10 Any additional charges or costs incurred by EMI under this clause shall be invoiced to the Client.

#### **4. Delivery**

4.1 EMI shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, and all relevant Client and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if EMI requires the Client to return any packaging materials to EMI, that fact is clearly stated on the delivery note. The Client shall make any such packaging materials available for collection at such times as EMI shall reasonably request. Returns of packaging materials shall be at EMI's expense.

4.2 EMI shall provide the Goods ex works Incoterms 2020 and the Client shall collect or arrange collection of the Goods from EMI's premises at 370 Ampress Lane, Lymington, Hampshire, England, SO41 8JX or such other location as may be advised by EMI prior to delivery ([Delivery Location](#)) within three Business Days of EMI notifying the Client that the Goods are ready.

4.3 In the event that EMI agrees to deliver the Goods then the Goods shall be delivered FCA Incoterms 2020 and the Client shall pay all costs associated with such delivery which shall be added to the Client's invoice.

4.4 Delivery is completed on the completion of the Client's loading of the Goods at the Delivery Location.

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. EMI shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide EMI with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 The Client may not cancel any Order after EMI's acceptance of an Order.

4.7 In the unlikely event EMI has to cancel an Order, EMI shall give the Client as much notice as reasonably possible.

4.8 EMI shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide EMI with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.9 If the Client fails to take delivery of the Goods within three Business Days of EMI notifying the Client that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or EMI's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which EMI notified the Client that the Goods were ready; and
  - (b) EMI shall store the Goods until actual delivery takes place and charge the Client for all related costs and expenses (including insurance).
- 4.10 If ten Business Days after the day on which EMI notified the Client that the Goods were ready for delivery the Client has not taken actual delivery of them, EMI may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Goods or charge the Client for any shortfall below the price of the Goods.
- 4.11 If EMI delivers up to and including 10% more or less than the quantity of Goods ordered the Client may not reject them, but on receipt of notice from the Client that the wrong quantity of Goods was delivered, EMI shall make a pro rata adjustment to the invoice for the Goods.
- 4.12 EMI may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

## **5. Quality**

- 5.1 EMI warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification; and
  - (b) be free from material defects in design, material and workmanship.
- 5.2 If the Client believes the Goods to be faulty then the Client must inform EMI by email to [sales@emiseals.com](mailto:sales@emiseals.com) within five Business Days of delivery or collection of the Goods or such other email address EMI may specify from time to time.
- 5.3 Subject to clause 5.5, if:
- (a) the Client gives notice in writing to EMI in accordance with clause 5.2;
  - (b) EMI arranges collection of the Goods at the Client's premises at EMI's cost or the Client (if asked to do so by EMI) returns such Goods to EMI's place of business or; and
  - (c) EMI is given a reasonable opportunity of examining such Goods; and if the Goods are in the reasonable opinion of EMI defective, EMI shall, replace the defective Goods.
- 5.4 In the event any returned Goods are in the reasonable opinion of EMI not defective then the Client shall pay and be responsible for any delivery or collection charges incurred by EMI including (without limitation) the costs incurred under clause 5.3(b) together with the cost of re-delivery of the Goods back to the Client. Such charges shall be added to the Client's invoice.
- 5.5 EMI shall not be liable for any Goods' if:
- (a) the Client makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - (b) the defect arises because the Client failed to follow EMI's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of EMI following any drawing, design or specification supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of EMI;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.6 Except as provided in this clause 5, EMI shall have no liability to the Client in respect of faulty Goods.'

5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.8 These Conditions shall apply to any repaired or replacement Goods supplied by EMI.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to the Client on completion of delivery.

6.2 Title to the Goods shall not pass to the Client until the earlier of:

- (a) EMI receives payment in full (in cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment and
- (b) the Client resells the Goods, in which case title to the Goods shall pass to the Client immediately before the time at which resale by the Client occurs.

6.3 Until title to the Goods has passed to the Client, the Client shall:

- (a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as EMI's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify EMI immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give EMI such information as EMI may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Client.
- (f) At any time before title to the Goods passes to the Client, EMI may require the Client to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

## **7. Price and payment**

7.1 The estimated price of the Goods shall be set out in the Order.

- 7.2 EMI may, by giving notice to the Client at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond EMI's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Client or failure of the Client to give EMI adequate or accurate information or instructions.

**7.3 The price of the Goods:**

- (a) excludes amounts in respect of value added tax (VAT), which the Client shall additionally be liable to pay to EMI at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Client.

7.4 Unless an Order is to be paid by the Client upon delivery of the Goods (as stated in EMI's acceptance of an Order), EMI may invoice the Client for the Goods on or at any time after the completion of delivery.

7.5 The Client shall pay each invoice submitted by EMI:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by EMI and confirmed in writing to the Client; and
- (b) in full and in cleared funds to a bank account nominated in writing by EMI, and time for payment shall be of the essence of the Contract.

7.6 If the Client fails to make a payment due to EMI under the Contract by the due date, then, without limiting EMI's remedies under clause 9, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**8. Limitation of liability**

8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 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;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

8.3 Subject to clause 8.2, EMI's total liability to the Client under each Order shall not exceed an amount equivalent to the total price of Goods paid under that Order.

8.4 Subject to clause 8.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.5 This clause 8 shall survive termination of the Contract.

## **9. Termination**

9.1 Without limiting its other rights or remedies, EMI may terminate this Contract with immediate effect by giving written notice to the Client if:

- (a) the Client commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- (b) the Client takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Client suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Client's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, EMI may suspend provision of the Goods under the Contract or any other contract between the Client and EMI if the Client becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or EMI reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, EMI may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Client shall immediately pay to EMI all of EMI's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, EMI shall submit an invoice, which shall be payable by the Client immediately on receipt.

9.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 10. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

## 11. General

### 11.1 Assignment and other dealings.

- (a) EMI may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Client may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of EMI.

### 11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### 11.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4 **Variation.** EMI has the right to vary these terms and conditions from time to time on giving the Client at least 14 days' notice in writing.



#### 11.5 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**11.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 11.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served): EMI: [sales@emiseals.com](mailto:sales@emiseals.com)  
Client: as stated on the Client's Order.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 11.8 Third party rights.

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**11.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**11.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.