

## **Terms and Condition of quotations and sale for Specialised Gaskets Pty Ltd**

All goods are supplied by the Company on the terms and conditions set out herein and no addition or variation to these terms and conditions will have any effect unless expressly agreed in writing by a Director of the company.

### **1. Quotations**

- a) Quotations are valid for 30 days and unless specifically stated otherwise are based on ex stock and subject to prior sales. After the period of 30 days has expired the Company reserves the right to vary or withdraw any quotation given by it prior to the Company's acceptance of the Customer's order.
- b) It is the responsibility of the Customer to ensure that the quantity, type and description of the goods specified in any quotation corresponds with the quantity, type and description of the goods required by the Customer and in respect of which the Customer has requested the Company to quote. The Company shall be under no liability whatsoever to the Customer for any discrepancy not drawn to the Company's attention prior to the acceptance by the Company of any order placed on the basis of the relevant quotation.

### **2. Price**

- a) Prices quoted do not include GST
- b) Prices quoted do not include cost of delivery costs or fuel surcharge. Both these items are itemized separately on each invoice.
- c) Notwithstanding Clause 1(a), the Company shall be entitled to vary the purchase price for the goods at any time prior to delivery if the cost to the Company of performing the contract is increased by reason of delivery of the goods outside normal working hours at the request of the customer or to an address other than that originally specified by the Customer.
- d) Notwithstanding Clause 1(a), the Company shall be entitled to vary the purchase price for imported goods at any time prior to delivery if the currency used to quote has shifted by more than 2.5% between the date quoted and the date of invoice.

### **3. Terms of Payment**

- a) Where the Customer has a credit account with the Company, the invoice amount for the goods must be paid in full within thirty (30) days of the end of the month during which the goods were invoiced. In all other cases the purchase price for the goods must be paid in full on or before delivery.
- b) The Customer is not entitled to withhold payment or make any deduction from the purchase of the goods in respect of any set off or counterclaim.
- c) If the Customer fails to pay for any installment or installments of the goods, the Company may in its absolute discretion, but without prejudice to any other remedy it may have, postpone the fulfillment of its obligations under this transaction and under any other transaction with this Customer until such payment is made and charge to the Customer any extra expense incurred thereby.

### **4. Property in the Goods**

- a) Notwithstanding delivery of the goods to the Customer, property in the goods will not pass to the Customer until the Customer has paid to the Company all sums owing by the Customer to the Company under the transaction.
- b) Until such payment is made, the Customer holds the goods as bailee for the Company and will store the goods separately from other goods on the premises of the Customer or in some other way as to render them capable of separate identification.
- c) Where payment is not made on or before the due date, the Customer will, upon demand by the Company, deliver up the goods to the Company, failing which the Company is hereby irrevocably authorised to enter upon the place where the goods are situated and remove the same and the Customer will indemnify the Company against any action claim or demand arising out of the exercise by the Company of its powers under this sub-clause.
- d) Where the contract is for delivery of goods by installments, the property will not pass in any installment until payment has been made to the Company for the whole ordered quantity.

## **5. Risk**

Risk will pass to the Customer on delivery of the goods notwithstanding that ownership remains with the Company until payment is made in full.

## **6. Delivery**

- a) Unless otherwise stated in writing, the Company shall be entitled to make delivery by installments and to determine the route and manner of delivery of the goods.
- b) The Company shall be entitled to deliver the goods to the premises notified by the Customer even though those premises may be unattended by the Customer at the time of delivery
- c) The Company's delivery records shall be prima facie proof of delivery of the goods to the Customer.
- d) If the Company is prevented (directly or indirectly) from delivering the goods or any of them by reason of any act of God or strikes, lockouts, trade disputes, fire, breakdown, interruption of transport, governmental action or any other cause whatsoever (whether or not of the like nature to those specified herein) outside its control the Company will be under no liability whatsoever to the Customer and will be entitled at its option either to terminate the transaction or to extend the time of its performance.

## **7. Cancellation or Suspension of Orders**

Except where the Customer has a statutory right of termination, orders accepted by the Company may not be cancelled either wholly or in part without the consent in writing of the Company.

## **8. Default by Customer**

Upon the happening of any of the following events:

- a) The Customer makes default in any payment due under any transaction or in payment of any monies due by the Customer to the Company,
- b) a resolution is passed or proposed or a petition is presented or an application filed for the winding-up of the Customer;
- c) a receiver or receiver and manager is appointed of the property or any part of the property of the customer;
- d) the Customer makes or proposes to make any arrangements with its creditors;
- e) the Customer is placed under official management;
- f) execution is levied upon any of the assets of the Customer;
- g) the Customer becomes bankrupt, the Company may at its option and notwithstanding its waiver of any previous default or failure and without prejudice to any other remedies it may have withhold further deliveries or require payment in cash before or on shipment or delivery (notwithstanding any prior agreement as to the terms of payment) or terminate all or any purchase orders.

## **9. Liability**

- a) Subject to any State or federal legislation which expressly prohibits the exclusion of any condition or warranty which may be implied into any transaction;
  - i) the Company will be under no liability to the Customer for any defects in the goods resulting from or arising out of the production of the same in accordance with any information, designs or drawings provided by the Customer or submitted to the Customer by the Company and approved by the Customer;
  - (ii) all conditions, warranties and representations on the part of the Company which are not contained in or incorporated by reference in these terms and conditions or on the fact hereof, whether express or implied, statutory or otherwise, and whether collateral or antecedent hereto or otherwise, are hereby expressly excluded;
  - (III) The limit of the companies warranty on the goods will extend so far as the cost of replacement of the same or an equivalent good and will only take effect if the product manufacturer is proven to have been negligent in its manufacture to the customers drawing or specifications. Any additional costs, claims or liabilities will be borne by the Customer.
  - (iv) the Company will be under no liability whatsoever to the Customer for any loss, injury or damage (including consequential loss, injury or damage) suffered or caused as a result of or arising out of any act or omission (whether negligent or otherwise) by the Company, its servants or agents or any other person in any way related to or arising out of the performance of the Contract by the Company;

#### **10. Miscellaneous**

(a) The Customer will, upon demand by the Company, pay to the Company the amount of any stamp duty or other tax (including sales tax and GST) payable on the supply of any goods by the Company.

(b) A certificate signed by an office of the Company stating the amount due and payable by the Customer under any contract will be prima facie evidence thereof.

#### **11. Intellectual Property**

All copyright, design right and other intellectual property in any design, specification, process, method of working or other information relating to the Goods (other than that provided by the Buyer to the Company) shall vest for all time in the Company. The Company only grants to the Buyer an irrevocable licence to use the Goods.