

AESSEAL Inc.
STANDARD CONDITIONS OF SALE

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1. INTERPRETATION

1.1 In these Conditions:

BUYER means the person who accepts a quotation of the Seller for the sale of the Goods and/or performance of the Service or whose order for the Goods and/or Service is accepted by the Seller.

CONDITIONS means the standard Terms and Conditions of Sale set out in this document and (unless the context otherwise requires) includes any special Terms and Conditions agreed in writing between the Buyer and the Seller.

CONTRACT means the contract for the purchase and sale of the Goods and/or performance of the Service.

GOODS means the Goods (including any installment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions including Goods supplied as part of the Service.

SELLER means AESSEAL Inc. (a Corporation registered in the State of Tennessee).

SERVICE means the Service(s) (including any parts of the Service) which the Seller is to supply in accordance with these Conditions.

WRITING includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE CONTRACT

2.1 Subject to Clause 2.2:

2.1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written or telephone order of the Buyer which is accepted by the Seller; and/or

2.1.2 The Seller shall provide and the Buyer shall pay for the Service in accordance with any written quotation of the Seller, which is accepted by the Buyer, or any written or telephone order of the Buyer, which is accepted by the Seller.

2.2 These Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Service unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed.

2.5 Any advice or recommendations given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.7 Notwithstanding Clause 2.2, where the Goods consist (in whole or part) of products manufactured by third parties, then the Contract shall consist of these Conditions together with the terms and conditions of the relevant third party manufacturer so far as they relate to the use of the products.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Service within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the buyer) or the Buyer's order (if accepted by the Seller).

3.4 The description of and any specification for the Service shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.5 Where:

3.5.1 the Goods are to be manufactured by the Seller; or

3.5.2 any process is to be applied to the Goods by the Seller; or

3.5.3 the Service is to be provided by the Seller; in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement or any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.6 The Seller reserves the right to make any changes in the specification of the Goods, which do not materially affect their quality or performance.

3.7 The Seller reserves the right to subcontract, in whole or in part, its obligations hereunder.

3.8 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. SELLER'S DESIGNS

Any designs, drawings, plans, data or other information relating to the Goods ("Designs") supplied by the Seller to the Buyer, or specifically produced by the Seller for the Buyer in connection with the Contract together with the copyright, design rights or any other intellectual property rights in the Designs shall be the exclusive property of the Seller. The Buyer shall not disclose to any third party or use any such Designs except to the extent that it is, or becomes, public knowledge through no fault of the Seller, or as required for the purposes of the Contract.

5. PRICE OF THE GOODS AND/OR SERVICE

5.1 The price of the Goods and/or Service shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

5.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Service to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any changes in delivery dates, quantities or specifications for the Goods and/or Service which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

5.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods or provide the Service otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance (as may be appropriate).

5.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods and/or Service, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

6. TERMS OF PAYMENT

6.1 Subject to Clause 6.2, and any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer:

6.1.1 for the price of the Goods on or at any time after delivery of the Goods; and/or

6.1.2 for the price of the Service on or at any time after performance of the Service.

6.2 Where:

6.2.1 the Goods are to be collected by the Buyer; or

6.2.2 the Buyer wrongfully fails to take delivery of the Goods; or

6.2.3 The Seller is unable to provide the Service or any part of it by reason of the default of the Buyer: the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods or been unable, due to the Buyer's default, to provide the Service or any part of it.

6.3 The Buyer shall pay the price of the Goods and/or Service within 30 days of the date of the Seller's invoice, notwithstanding that delivery of the Goods or performance of the Service may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

6.4.1 Cancel the Contract or suspend any further deliveries or performance of Services to the Buyer under the Contract;

6.4.2 Appropriate any payment made by the Buyer to such of the Goods and/or part of the Service (or the Goods and/or Services supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and;

6.4.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 per cent over the base lending rate of HSBC or the highest lawful rate if less than the stated rate for the time being, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6.4.4 Where the Buyer is an authorised distributor, any conditions relating to payment and late payment penalties, contained in a signed distributor agreement, will take precedence over these Conditions.

6.5 The Seller reserves the right where any doubts arise as to the Buyer's financial position or in the case of failure to pay for any Goods and/or Service or any delivery or installment as aforesaid to:

6.5.1 (in relation to the Goods) suspend delivery of any order or any part or installment; and/or

6.5.2 (in relation to the Service) suspend performance of the Service or any part of the Service; without liability until payment or satisfactory security for payment has been provided.

7. DELIVERY OF THE GOODS AND/OR PERFORMANCE OF THE SERVICE

7.1 Unless agreed otherwise between the parties, where the Service consists (in whole or part) of product repairs, it shall be the sole responsibility of the Buyer to arrange (at its own cost) for that product to be conveyed to the Seller's premises.

7.2 Unless agreed otherwise between the parties, delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Performance of the Service shall be made by the Seller completing the Service.

7.3 Any dates quoted for delivery of the Goods and/or performance of the Service are approximate only and the Seller shall not be liable for any delay howsoever caused. Time for delivery and/or performance shall not be of the essence unless previously agreed by the Seller in writing. Where delivery and/or performance is agreed to be made within a certain period, that period shall only be deemed to commence once the Seller is in receipt of all the information and Designs requested by the Seller from the Buyer. The Goods may be delivered and/or the Service performed by the Seller in advance of the quoted delivery and/or performance date upon giving reasonable notice to the Buyer.

7.4 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the weight ordered or up to 10 per cent more or 10 per cent less than the length ordered, as the case may be, without any adjustment in the price, and the weight or length so delivered shall be deemed to be the weight or length ordered.

7.5 Where the Goods are to be delivered and/or the Service performed in installments, each delivery or installment shall constitute a separate contract and failure by the Seller to deliver and/or perform any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.6 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

7.7 If the Buyer fails to take delivery of the Goods or of any installment thereof or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

7.7.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.7.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7.8 If, after the Buyer has taken delivery of the Goods, the Seller agrees to the Goods being returned to the Seller then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

7.8.1 Invoice the Buyer for the cost of storing, transporting, packaging or re-packaging and insuring the Goods and any taxes, duties or legal fees incurred by the Seller in relation thereto and the Buyer shall indemnify the Seller against all losses, damages, injury, costs and expenses of whatever nature suffered by the Seller in connection with or as a result of transporting the Goods to the Seller; and

7.8.2 Claim from the Buyer a sum equal to 15% of the price of the returned Goods, as and for liquidated damages in respect of the Seller's lost sale, lost management time and other resulting losses and not as a penalty which sum shall be recovered from the Buyer by the Seller as follows:

7.8.2.1 In the event that the Buyer has paid for the returned Goods the Buyer shall be entitled to a rebate of 85% of the price, the remainder being retained by the Seller as liquidated damages in accordance with Clause 7.8.2; or

7.8.2.2 In the event that the Buyer has not paid for the returned Goods the Buyer shall pay to the Seller the sum referred to in Clause 7.8.2 within 30 days of despatch by the Buyer or collection by the Seller, whichever is the sooner, of the returned Goods.

7.9 For the avoidance of doubt, installation of the Goods shall be the sole responsibility of the Buyer.

8. RISK AND PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

8.1.1 In the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or

8.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of despatch by the Seller of the Goods.

8.1.3 In the case of Goods to be provided as part of the Service, at the time the Service is completed.

- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and/or Service and all other Goods agreed to be sold or Service agreed to be performed by the Seller to the Buyer for which payment is then due. The Seller may apply any payment in satisfaction of any Contract outstanding at the date of payment notwithstanding that payment is expressed to be made in respect of a particular Contract.
- 8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and separately identifiable as the Seller's property. Until that time, the Buyer shall be entitled to use the Goods in the ordinary course of its business or to sell the Goods to third parties in the normal course of its business on behalf of and for the account of the Seller (but so that the Buyer shall not be deemed as against any such third party to be the agent of the Seller) and shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 8.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and the Buyer hereby assigns to the Seller all rights and claims that the Buyer has against any such third party.
- 8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
9. LIMITED WARRANTY DISCLAIMER AND EXCLUSIONS
- 9.1 The Seller warrants that the Goods and/or Service will be free from defects in material and workmanship for a period of six months or in the case of mechanical seal repairs three months from the date of their initial use or six and three months respectively from delivery, whichever is the first to expire.
- 9.2 The sole obligation of AESSEAL under this Limited Warranty shall be to repair or replace or have its Authorized Distributor repair or replace any defective products within forty-five business days of a complaint communicated in writing to AESSEAL. EXCEPT AS EXPRESSLY PROVIDED HEREIN, AESSEAL SHALL NOT BE LIABLE FOR THE BREACH OF ANY WARRANTY EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, OR FOR ANY DAMAGES OR OTHER LIABILITY ARISING OUT OF OR IN CONNECTION WITH CUSTOMERS' USE OF SUPPLIER PRODUCTS OR AESSEAL OR THE AUTHORIZED DISTRIBUTOR DESIGNING, MANUFACTURING OR SELLING SUPPLIED PRODUCTS. IN NO EVENT SHALL AESSEAL BE LIABLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST SALES OR PROFIT, LOST PRODUCTION OR OUTPUT, INJURY TO PROPERTY OR REPUTATION, OR ANY OTHER DAMAGES WHETHER ARISING IN CONTRACT OR TORT OR OTHERWISE (WHETHER OR NOT ATTRIBUTABLE TO THE FAULT OR NEGLIGENCE OF AESSEAL). UNDER NO CIRCUMSTANCES SHALL ANY RECOVERY OF ANY KIND AGAINST AESSEAL BE GREATER IN AMOUNT THAN THE PRICE OF THE PRODUCT AND/OR SERVICE TO THE END USER.
- 9.3 Any Authorized Distributor shall ensure that the Limited Warranty, Disclaimer and Exclusions recited above (the "Limited Warranty") is disclosed and provided in writing to each purchaser prior to or contemporaneous with each purchase. Authorized Distributor shall indemnify and hold harmless AESSEAL and its officers, employees, agents and affiliates against any cost, expense or liability (including without limitation reasonable attorneys' fees) incurred by AESSEAL relating to the Authorized Distributor's failure to timely disclose and provide the Limited Warranty.
- 9.4 Any Authorized Distributor is expected and obligated to have all knowledge and skill necessary to properly install and select Supplier PRODUCTS for each customer and for each use thereof. Any advice or assistance provided to Authorized Distributor by AESSEAL in this regard is gratuitous. AESSEAL shall bear no liability or responsibility for any such assistance or advice. Authorized Distributor is solely responsible for any mistakes, defects, or other problems relating to the installation and selection of Supplier PRODUCTS for the customers to whom the Authorized Distributor sells those products.
- 9.5 With respect to both AESSEAL Authorized Distributors and their customers, the Limited Warranty shall supersede and displace any additional, inconsistent or supplemental warranties, limitations or exclusions of damages provided by AESSEAL's standard terms and conditions of sale or other documents or representations.
- 9.6 The above warranty is given by the Seller subject to the following conditions:
- 9.6.1 The Seller shall be under no liability in respect of any defect in the Goods and/or Service arising from any drawing, design or specification supplied by the Buyer.
- 9.6.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) in particular, but not limited to, the incorrect handling or application of the Goods, misuse or alteration or repair of the Goods without the Seller's approval;
- 9.6.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and/or Service has not been paid by the due date for payment;
- 9.6.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Seller so far as it is able, shall give the Buyer the benefit of any express warranty or guarantee as is given by the manufacturer to the Seller.
- 9.7 Further the Seller shall provide a free assessment Service as part of its quality assurance program for all mechanical seals manufactured by the Seller which are found to be defective within six months of the date of initial use or delivery, whichever is the first to expire provided that the Buyer follows the Seller's instructions for the proper fitment of the correct seal or sealing system for the application as recommended in writing by the Seller and that the equipment to which the seal or sealing system is attached has been maintained in good condition and also provided that the normal life expectancy of the seal is not less than six months.
- 9.8 Subject as expressly provided in these Conditions, and except where the Goods and/or Service are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.9 Where the Goods and/or Service are sold under a consumer transaction (as defined by the Consumer Product Safety Act), the statutory rights of the Buyer are not affected by these Conditions.
- 9.10 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or Service or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and/or Service had been delivered in accordance with the Contract.
- 9.11 Where any valid claim in respect of any of the Goods and/or Service which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge, but the Seller shall have no further liability to the Buyer and title to the Goods so replaced shall revert to the Seller.
- 9.12 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Service or their use for resale by the Buyer, except as expressly provided in these Conditions.
- 9.13 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or Service, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 9.13.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.13.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.13.3 Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, state or local authority;
- 9.13.4 Import or export regulations or embargoes;
- 9.13.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.13.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.13.7 Power failure or breakdown in machinery.
10. INDEMNITY
- 10.1 The Seller gives no warranty as to the ownership, patent, copyright, design, trademark or other industrial or intellectual property rights in the Goods nor the Designs unless and until the Goods or the Designs have been produced by the Seller in pursuance of a specific design contract and for which full payment has been made by the Buyer to the Seller.
- 10.2 Subject to the provisions of Clause 10.1, if any claim is made against the Buyer that the Goods or the Designs infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim (including the cost of defending any legal proceedings), or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:-
- 10.2.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 10.2.2 The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.2.3 Except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 10.2.4 The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer might have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavour to do);
- 10.2.5 The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 10.2.6 Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.
- 10.3 The Buyer agrees upon demand to indemnify the Seller against all losses, damages, injury, costs and expenses of whatever nature suffered by the Seller to the extent that the same are caused by or related to:-
- 10.3.1 Designs, drawings or specifications given to the Seller by the Buyer in respect of Goods produced by the Seller for the Buyer; or
- 10.3.2 Defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller in Goods produced by the Seller for the Buyer; or
- 10.3.3 The improper incorporation, assembly, fitment, use, processing, storage or handling of Goods by the Buyer.
11. COVENANTS
- 11.1 The Buyer shall not during or for two (2) years after the performance or termination of the Contract, divulge to any person or persons whatsoever or otherwise make use of, and shall use its best endeavour to prevent the publication or disclosure of any trade secret or secret manufacturing process or designs or any confidential information concerning the business of the Seller.
- 11.2 The Buyer shall not for a period of two (2) years after the performance or termination of the Contract either on its own behalf or on behalf of any other person or persons canvass, solicit or approach or cause to be canvassed or solicited or approached for orders in respect of any Goods, any person or persons who at the date hereof is a supplier or customer of the Seller or is in the habit of dealing with the Seller.
12. INSOLVENCY OF BUYER
- 12.1 This clause applies if:-
- 12.1.1 The Buyer makes any voluntary arrangement with its Creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 12.1.2 An Encumbrancer takes possession, or a Receiver is appointed, of any of the property or assets of the Buyer; or
- 12.1.3 The Buyer ceases, or threatens to cease, to carry on business; or
- 12.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries and/or performance under the Contract without liability to the Buyer, and if the Goods have been delivered and/or the Service performed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
13. EXPORT TERMS
- 13.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any terms or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.
- 13.2 Where the Goods are supplied for export from the United States, the provisions of the Clause 13 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 13.3 The buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 13.4 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered ex-works and the Seller shall be under no obligation to give notice under any applicable law.
- 13.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 13.6 Payment of all amounts due to the Seller shall be made in accordance with Clause 6.3.
- 13.7 The Buyer undertakes not to offer the Goods for resale in any country outside the territory (as defined in any distribution agreement made between the Seller and the Buyer from time to time) or as may be agreed between the Seller and the Buyer from time to time, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such territory.
14. GENERAL
- 14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party or its Registered Office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 14.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall be not affected thereby.
- 14.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single Arbitrator appointed by agreement or (in default) in accordance with the rules and regulations of the American Arbitration Association.
- 14.5 The Contract shall be governed by the laws of State of Tennessee, except where a signed agreement between Buyer and Seller selects an alternative choice of law and/or forum.