

# **SILICONE ENGINEERING LIMITED**

## **GENERAL CONDITIONS OF SALE**

### **1. General**

- (a) These General Conditions of Sale govern every contract of sale entered into by the Company to the exclusion of any other terms and conditions unless expressly excluded or varied in writing signed by the authorised representative of the Company. In these Conditions “the Company” means Silicone Engineering Limited.
- (b) Any order received by the Company shall not be binding upon the Company and no contract of sale shall be deemed to have been concluded between the Company and Buyer unless the Company shall have first delivered to the Buyer an official written order acknowledgement on the Company’s official letter headed paper.

### **2. Commercial Terms**

Prices quoted by the Company in the Company’s official quotation form or otherwise are deemed to be provisional only and may be amended by the Company at any time before issuing an official order acknowledgement without prior notice to the Buyer in the event of:

- (a) Any increase before the official order acknowledgement of the goods to the Buyer, in the cost to the Company by the way of wages, materials or any other costs, expenses and charges borne by the Company affecting prices quoted by the Company; or
- (b) Any change in the despatch dates, quantities or specifications for the goods which is requested by the Buyer or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

### **3. Pricing**

Pricing is subject to the Company’s current commercial guidelines and unless otherwise stated include packaging of material, adequate for the method of transportation agreed upon between the Company and the Buyer.

All prices quoted are valid for 90 days (30 days for cable items) or until early acceptance by the Buyer after which time they may be altered by the Company without giving notice to the Buyer. Where goods are sold without any price having been quoted to the Buyer, they will be charged for at the Company’s prices for the goods ruling at the date of official order acknowledgement.

### **4. Lead Time and Despatch Dates**

- (a) Estimated lead time shall be the period within which the Goods are intended to be despatched from the Company’s premises and shall be calculated from the time of the official order acknowledgement or from the receipt of the necessary information to enable the Company to manufacture the Goods whichever shall be the later.
- (b) Estimated despatch dates are given in good faith, but are approximate only and without any responsibility on the part of the Company. Estimated despatch date shall not be of the essence of any contract, nor shall the Company be under any liability for any delay in despatch of the goods howsoever caused.
- (c) Where the Goods are handed to a carrier for carriage to the Buyer or to the United Kingdom port for export, any such carrier shall be deemed to be any agent of the Company and not of the Buyer for the purpose of sections 44, 45 and 46 of the Sale of Goods Act 1979.
- (d) The Buyer agrees that Section 32(3) of the Sale of Goods Act 1979 shall not comply to goods sent by the Company.

- (e) Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and the failure by the Company to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as whole as repudiated.
- (f) If the Company fails to deliver the goods for any reason other than any cause beyond the Company's reasonable control of the Buyer's fault then, provided the Buyer has submitted a claim in respect of non-delivery in writing to the Company within 10 days of the date of the invoice, the Company undertakes at its option either to repossess or replace the goods or the part in question but shall not be under any further or other liability to any person with such non-delivery.
- (g) If, for any reason the Buyer is unable to accept delivery of the goods or fails to give the Company any adequate delivery instructions at the time when the goods are due and ready for despatch, the Company may at its sole discretion without prejudice to its other rights:
  - (i) Store the goods at the risk of the Buyer for the reasonable costs of any storage and take all reasonable steps to safeguard and insure the goods at the cost of the Buyer, provided that the Buyer shall be notified thereof: or
  - (ii) Sell the goods at the best price readily obtainable and (after deducting all reasonable storage, safeguarding, insuring and selling expenses) account to the Buyer for the excess over the price under the contract, or charge the Buyer for any shortfalls below the price under the contract.
- (h) The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.

#### 5. **Carriage**

Orders are delivered carriage paid to destinations in Great Britain by the Company's standard carrier unless agreed otherwise or quoted carriage excluded. Carriage for export orders is subject to the contractual agreement and will be confirmed by the Company at the quotation/order acknowledgement stage. Where goods are delivered by non-standard methods of transport at the request of the Buyer any additional cost will be charged to the Buyer.

#### 6. **Breakages and Shortages**

All goods must be examined by the Buyer/Goods in immediately upon arrival any claims for breakages or shortages must be notified to the carrier and to the Company in writing within seven days thereof. Once the goods have been signed off to the carrier as received in full and undamaged, no further complaints will be accepted to the shipment at a later stage.

#### 7. **Order Quantities**

Silicone rubber products manufactured to the Buyer's orders can be supplied within + or – 10% tolerance of the ordered quantity subject to manufacturing process. The Company reserves the right to amend the originally ordered product quantity within the above mentioned tolerance in the sales order and invoice the quantity of the actual supply.

#### 8. **Bonded Components**

Where inserts are supplied by the Buyer for bonding by the Company with goods to be supplied under the contract, the following provisions shall apply;

- (a) The quantity of the inserts delivered by the Buyer shall not be less than 10% excess of the total quantity actually required or such greater excess as may be specifically agreed in writing by the parties to cover wastage during manufacture by the Company.
- (b) The Company reserves the absolute right to reject by notice in writing to the Buyer all inserts supplied by the Buyer whatsoever

- (c) If the manufacture by the Company is delayed and/or interrupted for any periods due to delay in delivery or non-delivery of suitable inserts by the Buyer the Company shall be entitled to increase the quoted price by an amount equal to the additional costs, expenses and charges incurred by the Company.

## 9. **Payment**

- (a) Unless otherwise agreed by the Company in writing, payment shall be due no later than the end of the month next following the month of the date of the invoice notwithstanding that delivery to the Buyer's premises may not have taken place and the property in the goods has not passed to the Buyer save that payment shall become due in any event forthwith upon the occurrence of any of the events referred to in Condition 18 hereof.

If the goods are despatched in instalments, the Company shall be entitled to invoice each instalment as and when despatch thereof has been made and payment shall be due in respect of each instalment whereof despatch has been made notwithstanding of other instalments of other defaults on the part of the Company.

- (b) If upon the terms applicable to any order the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of goods at specified times, a default by the Buyer of the payment of any instalment or the failure to give delivery instructions in respect of any quantity of goods outstanding shall cause the whole of the balance of the price to become due forthwith.
- (c) The price of the goods shall be due in full to the Company in accordance with the terms on the Contract and the Buyer shall not be entitled to exercise any set-off lien or any other similar right or claim.
- (d) The time of payment shall be the essence of the contract.
- (e) If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
  - (i) Cancel the contract or suspend any further despatches to the Buyer
  - (ii) Appropriate any payment made by the Buyer to such of the goods (or goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer) and
  - (iii) Charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 5% per annum above National Westminster Bank base rate from time to time until payment in full is made (a part of a month being treated as full month for the purpose of calculating interest).

## 10. **Dies, Moulds, Patterns, Tools etc**

Unless otherwise agreed, the Company reserves the right to make a separate charge upon the Buyer in respect of all or a proportion (as the Company may in its sole discretion determine) of the cost incurred by the Company for manufacturing or otherwise obtaining of special dies, mould, patterns, tools, or other bespoke or specialised equipment required for the proper execution of the order received from the Buyer ('Equipment'). Such Equipment shall at all times remain the sole and exclusive property of the Company. The Company shall retain the Equipment for a period of 3 years in anticipation of further orders from the Buyer, after which the Company may, at its discretion, dispose of the Equipment by sale, destruction or otherwise as it sees fit.

In respect of any and all dies, moulds patterns, tools and other items supplied by the Buyer to the Company ("Buyer's Materials") for the execution of any order received by the Company from the Buyer:

- (a) no charge will be accepted by the Company for the use thereof
- (b) no liability whatsoever will be accepted by the Company for the loss, destruction or damage thereof but without prejudice to the foregoing the Company will use all reasonable endeavours to retain such items in safe custody (but unless otherwise agreed in writing with the Buyer shall have no obligation to insure the same whilst the Company's possession or under its control).
- (c) the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a

third party's intellectual property or other proprietary rights arising out of or in connection with the supply or use of Buyer's Materials.

- (d) In the event that the Buyer shall fail within three months of the delivery of Goods manufactured with the Buyer's Materials to notify the Company in writing of its wishes for the disposal of the Buyer's Materials, the Company shall be at liberty at its sole discretion without incurring any liability whatsoever to the Buyer to dispose of the Buyer's Materials at any time by sale destruction or otherwise.

#### 11. **Development Work**

- (a) In this clause reference to 'Development Work' shall mean all services carried out by (or commissioned by) the Company in obtaining, creating, developing, or adapting any Equipment or Buyer's Materials for production of the Goods and/or producing any samples, prototypes or carrying out trials in relation to any sample, prototype or trial manufacture of the Goods (excluding the cost of manufacture of the Goods following approval of samples or trials by the Buyer), the estimated price of such work being that set out in the official quotation form [or official order acknowledgement] or otherwise as amended in accordance with clause 2.
- (b) The Buyer shall pay to the Company all amounts actually and properly incurred by the Company in relation to Development Work undertaken on the part of the Company for the Buyer:
  - (i) without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law); and
  - (ii) regardless as to whether or not the Buyer requires further goods or services from the Company pursuant to the contract for sale, order or otherwise, after any Development Work has been carried out by the Company.
- (c) The Company shall be entitled to invoice the Buyer for all or any part of sums incurred in carrying out Development Work at such intervals as the Company may determine, together with applicable VAT or other sales tax, expenses, disbursements and the costs of Equipment (if any pursuant to clause 10, and third-party services.
- (d) The provisions of clause 9 shall apply to any request for payment or outstanding balance relating to Development Work.

#### 12. **Warranties and Liabilities**

- (a) Subject to the conditions set out below, the Company warrants that the Development Work will be carried out with reasonable care and skill within a reasonable time Goods will correspond with their pre-agreed specification, confirmed by the Company in writing, at the time of delivery and will be free from defects in the materials and workmanship for a period of three months from the date of delivery,.
- (b) The Company shall not be liable for any Development Work or the Goods failure to comply with the warranty set out in clause 12(a) in any of the following events:-
  - (i) in respect of any defect in the Development Work or the Goods arising from any drawing, design or specification supplied by the Buyer.
  - (ii) in respect of any defect in the Goods storage or from fair wear and tear, wilful damage, negligence, abnormal working conditions, or the Buyer's failure to follow the Company's instructions ( whether oral or in writing), misuse, alteration or repair of the Goods without the Company's approval.
  - (iii) in clause 12(a) if the total price for the Goods has not been paid by the due date for payment.
  - (iv) in respect of parts, material or equipment not manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier of the same to the Company.
  - (v) the Buyer modifies or repairs the Goods without the written consent of the Company.

- (c) Subject as expressly provided in these conditions and except where the Goods 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 status or common law are excluded from the Contract to the fullest extent permitted by the law.
- (d) Any claim by the Buyer which is based on any defect in the quality or condition of the Goods in their failure to correspond with pre-agreed specification shall (whether or not delivery is refused by the Buyer) shall be subject to the following conditions:-
  - (i) the claim is notified to the Company 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 or no notes about non-compliance are put on the signed proof of delivery, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
  - (ii) the Company is given a reasonable opportunity to examine such Goods.
  - (iii) the claim is accepted by the Company in writing after the company has had an opportunity to and has verified the validity of the complaint in accordance with the Company's current Quality procedure (available upon request).
  - (iv) the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business (at the Buyer's cost).
- (e) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the defective part in question) free of charge at the Company's sole discretion, or refund to the Buyer the price of the Goods (or a proportion part of the price relating to the defective element), but the Company shall have no further liability to the Buyer.
- (f) Except in respect of death or personal injury caused by the Company negligence, the Company 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 consequential compensation whatsoever ( and whether caused by the negligence of the Company, its employees or agents or otherwise which arise out of or in connection with carrying out the Development Work or the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Conditions.
- (g) Except as provided in clause 12 the Company shall have no liability to the Buyer in respect of the Development Work or Goods failure to comply with the warranties set out in clause 12(a).
- (h) These conditions shall apply to any replacement Goods supplied by the Company.

### 13. **Orders and Specifications and Drawings**

- (a) The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- (b) The quantity, quality and description of and any specification for the Goods including any related plans and drawings shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company via official order acknowledgement on a letter headed paper incorporating these terms).
- (c) If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for actions or alleged infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification

- (d) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specifications, do not materially affect their quality or performance.
- (e) No order which has been accepted by the Company may be cancelled by the Buyer except with the prior agreement in writing of the Company and on the terms that the Buyer shall indemnify the Company 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 Company as a result of the cancellation.

#### 14. **Insolvency of Buyer**

- (a) This clause applies if:
  - (i) The Buyer makes any voluntary arrangements with its creditors or becomes subject to 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
  - (ii) an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business or
  - (iii) The Buyer ceases, or threatens to cease, to carry on business or
  - (iv) The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly
  - (v) Any distress or execution shall be levied on the Buyer's property or assets
- (b) If this clause applies then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further despatches under the Contract without any liability to the Buyer and, if the goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### 15. **Export Goods**

Where the goods are supplied for export from the United Kingdom the provision of this clause shall (subject to any special terms agreed in writing between the Buyer and the Company) apply. Any export despatches take place in accordance with Incoterms 2010.

- The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties thereon (unless agreed otherwise in accordance with Incoterms 2010).
- Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be despatched per Incoterms 2010 as FCA Blackburn, Silicone Engineering Ltd premises.
- The Company is obliged to ensure that the packaging of the goods is efficient for the freight method chosen. The Buyer is to notify the Company about the freight method at the moment of placing the order. Should no information be provided, the Company reserves the right to pack the goods in the most economical way.

The purchase price (together with the cost of freight and insurance if arranged by the Company on behalf of the Buyer) is payable in GBP, EUR or USD at the Company's option either:

- by bank transfer;
- by cheque;
- by credit card (UK only in GBP).

#### 16. **Buyer's Conditions of Purchase**

Conditions set out on the Buyer's Purchase Orders are binding on the Company only if they do not conflict with these General Conditions of Sale and in the event of such conflict these Conditions of Sale shall prevail.

## 17. Arbitration

Any question, dispute or difference whatsoever arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration in the United Kingdom by a single arbitrator appointed by agreement or failing such agreement nominated on the application of either party by the president of for the time being of the Institute of Mechanical Engineers. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.

Neither party hereto, nor any person claiming under either of them, shall bring any action or legal proceeding against the other of them in respect of any such question, dispute or difference whatsoever until the same shall first have been heard and determined in accordance with the Arbitration Act 1996 and it is expressly agreed and declared that the obtaining of an award from the arbitrator shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such question, dispute or difference whatsoever.

## 18. Legal Construction

The Contract shall in all respects to be construed and operated as an English contract and in conformity with English law. Titles of the Clauses shall not affect the legal construction.

## 19. Passing of Title and Risk

- (a) From the time of delivery if the Buyer wrongfully fails to take delivery of Goods, the time when the Company has tendered delivery of the Goods, the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance, but unless otherwise agreed in writing, and not withstanding delivery and the passing of risk in the Goods or any provision of these Conditions, the property in the Goods shall not pass to the Buyer, until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.
- (b) Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the goods as the Company's fiduciary agent and bailee and shall keep the Goods identifiable from those of the Buyer and third parties and properly stored, protected and comprehensively insured against loss or damage by accident, fire or theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price of the same from time to time remaining outstanding and the policy shall bear an endorsement recording the Company's interest, and identified as the Company's property. Until that time, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but in that event, the beneficial entitlement of the Company shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other monies or paid into any overdrawn Bank account and shall at all times be identified as the Company's monies and the Buyer shall account to the Company for such proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds and in the case of tangible proceeds, shall keep them properly stored, protected and insured.
- (c) 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 Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company 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.

## 20. Orders and Specifications and Drawings

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

- (b) The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company via official order acknowledgement on a letter headed paper).
- (c) If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification
- (d) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specifications, do not materially affect their quality or performance.
- (e) No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on the terms that the Buyer shall indemnify the Company 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 Company as a result of the cancellation.

## 21. **Force Majeure**

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

## 22. **Representation**

- (a) No statement, description, information, warranty, condition, recommendation or communication made verbally by any of the agents or employees of the Company shall be construed to enlarge, vary or override in any way of the Conditions.
- (b) The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company 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.
- (c) Any advice or recommendations given by the Company 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 Company is followed or acted upon entirely at the Buyer's own risk and accordingly, the Company shall not be liable for any such advice or recommendation which is not confirmed.
- (d) Any typographical, clerical or other error or omission in any sale literature, quotation, pricelist, acceptance of other invoice or other document of information issued by the Company shall be subject to correction without any liability on the part of the Company.